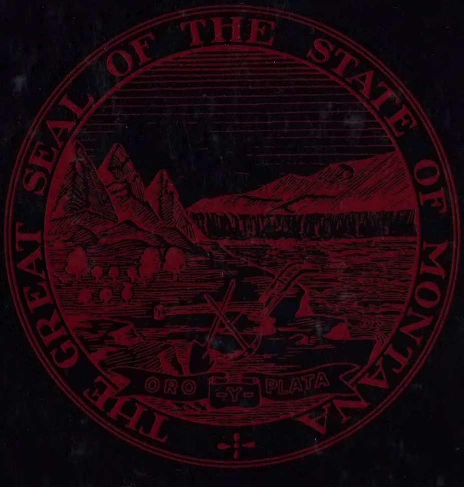
Montana Code Annotated

ANNOTATIONS

2024



Human Rights • Health & Safety • Family Services
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VOLUME 11

2024
ANNOTATIONS
to the
MONTANA CODE ANNOTATED

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2024 ANNOTATIONS to the MONTANA CODE ANNOTATED

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PREFACE TO VOLUME 11
(Annotations — September 2024)

Annotations to this volume include:

Case notes of applicable court decisions through:

- public domain citation 2023 MT 177
- volume 413 Montana Reports page 356
- volume 535 Pacific Reporter (3rd Series) page 1133

Digests of Montana Attorney General's opinions through:

- volume 59 opinion number 1 of the Report and Official Opinions of Attorney General

Amendment notes listed under compiler's comments are intended to explain only amendments made in the year indicated and may not accurately reflect current statutory language because of subsequent amendment.

The annotations are provided as a convenience to the user and are not intended to be an exhaustive compilation of the law under a given statute or in a given area.

TITLE 49
HUMAN RIGHTS

CHAPTER 1
BASIC RIGHTS

Chapter Law Review Articles

The Severe or Pervasive Standard in the Modern Age, Kimmel, 84 Mont. L. Rev. 299 (2023), https://scholarworks.umt.edu/mlr/vol84/iss2/6/.

Significant Montana Cases, Hill, Monroe, & Liechty, 83 Mont. L. Rev. 422 (2022), https://scholarworks.umt.edu/mlr/vol83/iss2/9/.

Transgender Equality and Dignity Under the Montana Constitution, Borgmann, 79 Mont. L. Rev. 95 (2018).

Applying Strict Scrutiny: An Empirical Analysis of Free Exercise Cases, Wolanek & Liu, 78 Mont. L. Rev. 275 (2017).

James R. Browning, Sexual Assault on Campus: Conflicts Between Campus and Courts Symposium, 78 Mont. L. Rev. 1-224 (2017).

The Poacher, the Sovereign Citizen, the Moonlighter, and the Denturists: A Practical Guide to Inalienable Rights in Montana, Bourguignon, 77 Mont. L. Rev. 5 (2016).

Human Rights Must Be at the Core of the Post-2015 International Development Agenda, Nanda, 75 Mont. L. Rev. 1 (2014).

James R. Browning, Right to Privacy Symposium, 68 Mont. L. Rev. 251-335 (2007).

Part 1
Basic Personal Rights

Part Law Review Articles

Transgender Equality and Dignity Under the Montana Constitution, Borgmann, 79 Mont. L. Rev. 95 (2018).

49-1-101. Right of protection from personal injury.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Law Review Articles

James R. Browning, Sexual Assault on Campus: Conflicts Between Campus and Courts Symposium, 78 Mont. L. Rev. 1-224 (2017).

49-1-102. Freedom from discrimination.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 26, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

1993 Amendment: Chapter 407 in (1) substituted "disability" for "handicap".

Preamble: The preamble attached to Ch. 407, L. 1993, provided: "WHEREAS, many individuals with disabilities and many organizations representing individuals with disabilities object to the use of the terms "handicap" and "handicapped person"; and

WHEREAS, as with racial and ethnic terms, the choice of words used to describe a person with a disability is overlaid with stereotypes and emotional connotations; and

WHEREAS, it is important to use terminology most in line with the sensibilities of most persons with disabilities; and

WHEREAS, the current accepted terminology is "disability" rather than "handicap" and "person with a disability" rather than "handicapped person"; and

WHEREAS, the federal Americans with Disabilities Act of 1990 uses the terms "disability" and "individual with a disability" rather than the terms "handicap" or "handicapped person"; and

WHEREAS, making the state human rights laws consistent with the Americans with Disabilities Act will eliminate some confusion between state and federal laws.

THEREFORE, it is appropriate for the Legislature to revise the state human rights laws to replace the terms "handicap" and "handicapped person" with the terms "disability" and "person with a disability"."

1991 Amendment: Inserted (2) concerning consideration of factors in adoption proceedings; and made minor change in style. Amendment effective July 1, 1991.

Severability: Section 7, Ch. 682, L. 1991, was a severability clause.

Case Notes

Direct Evidence of Discriminatory Intent — Standard of Proof — Heiat Criteria Applicable to Cases Involving Circumstantial Evidence: The summary judgment burdens of proof discussed in Heiat v. E. Mont. College, 275 M 322, 912 P2d 787 (1996), are not limited only to cases of sex discrimination brought under federal law, but rather apply in all types of discrimination cases whether based on federal or state law. However, the Heiat test is confined to use in cases in which discriminatory intent can only be proved by circumstantial evidence. In a direct evidence case, one in which the parties do not dispute the reason for the employer's action but only whether that action is illegal discrimination, the standard is that the employer must prove by a preponderance of the evidence that an unlawful motive played no role in the challenged action or that the direct evidence of discrimination is not credible and is unworthy of belief. That method of proof, as set out in ARM 24.9.610(5), is the proper test in cases in which the plaintiff presents direct evidence of discrimination. Traditional summary judgment principles apply to direct evidence discrimination cases, requiring the moving party to establish that no material issues of fact exist and that the movant is entitled to judgment as a matter of law. If the employer is the moving party, the employer has the burden of showing that no issues of material fact remain and that plaintiff cannot prove a prima facie case of discrimination as a matter of law. Reeves v. Dairy Queen, Inc., 1998 MT 13, 287 M 196, 953 P2d 703, 55 St. Rep. 44 (1998), clarified and followed in Hafner v. Conoco, Inc., 1999 MT 68, 293 M 542, 977 P2d 330, 56 St. Rep. 277 (1999). See also Stuart v. First Sec. Bank, Havre, 2000 MT 309, 302 M 431, 15 P3d 1198, 57 St. Rep. 1309 (2000) (the Heiat test was applied in determining that the bank's reasons for denying an agricultural loan to Native Americans were not a pretext for discrimination).

Disability Determination on Case-by-Case Basis — High Blood Pressure as Disability: Whether a person is disabled under Title 49, ch. 2, commonly known as the Montana Human Rights Act, cannot be decided as a matter of law, but rather requires a factual determination to be made on a case-by-case basis. Under 49-4-101, to establish a prima facie case of discrimination in employment, an employee must show that the employee belonged to a protected class, that the employee was otherwise qualified for continued employment and that the employment did not subject the employee or others to physical harm, and that continued employment was denied because of the employee's disability. A person is entitled to the protections of the Act not only if the person suffers from a substantially limiting impairment, but also if the person suffers from a condition that is regarded as such an impairment. High blood pressure is an example of a perceived disability. It is no more legal to discriminate against one who exhibits symptoms of a disease than to discriminate against one who suffers from the disease itself. In this case, Reeves was terminated because, in the employer's own words, "it was a combination of having high blood pressure and working in a position as a fast order cook working under conditions of pressure, stress and heat . . . and I decided this would be best for Donna". Reeves met the test for proving a prima facie case under 49-4-101. The District Court erred in summarily dismissing Reeves' claim, and the case was remanded for further proceedings. Reeves v. Dairy Queen, Inc., 1998 MT 13, 287 M 196, 953 P2d 703, 55 St. Rep. 44 (1998).

No Right to Jury Trial on Discrimination Claim: It was not error to bifurcate a discrimination claim based on Title 49, ch. 2, commonly known as the Montana Human Rights Act, from a wrongful discharge claim and to refuse a jury trial on the former. Sullivan v. Sisters of Charity of Providence of Mont., 268 M 71, 885 P2d 488, 51 St. Rep. 1193 (1994).

Elements of Federal ADEA Claim: To establish a prima facie case under the federal Age Discrimination in Employment Act, one must either provide direct evidence of discrimination or present evidence that the plaintiff was in the protected age group, was performing the job satisfactorily, was discharged, and was replaced by a substantially younger person. The employer then has the burden to articulate a nondiscriminatory reason for the discharge, after which the plaintiff has to prove by a preponderance of the evidence that the employer's reasons are a pretext for discrimination. Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326, 50 St. Rep. 518 (1993).

Federal ADEA Claim Proved by Forty-Nine-Year-Old Woman Bank Employee: Violation of the federal Age Discrimination in Employment Act was shown by a 49-year-old bank employee who presented evidence that: (1) the bank holding company president thought she was too old and should be gotten rid of and that her supervisor would take care of it; (2) she had satisfactory performance reviews and was recently employee of the month; (3) she was erroneously placed on probation by her supervisor after many years of service; (4) before she was fired, business cards had been ordered with her title and a newly hired employee's name; (5) she was fired for not carrying out her supervisor's order to train the new employee for her type of position even though the plaintiff had merely postponed the training because the new employee's temporary replacement for the training period did not show up for work; and (6) the new employee was given her position after she was fired. Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326, 50 St. Rep. 518 (1993).

Proof Forty-Nine-Year-Old Woman Replaced by Substantially Younger Person: In an action under the federal Age Discrimination in Employment Act, a finding that the plaintiff bank employee was replaced by a substantially younger employee was supported by her supervisor's deposition stating that another employee who had resigned withdrew her resignation after the plaintiff was discharged and assumed some of the plaintiff's duties and by the plaintiff's testimony that the other employee was much younger than the plaintiff. Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326, 50 St. Rep. 518 (1993).

Proof of Age Discrimination Against Forty-Nine-Year-Old Woman: In an action under the federal Age Discrimination in Employment Act, findings concerning the bank holding company president's discrimination toward a discharged 49-year-old female bank employee were supported by testimony of the bank vice president that the president said that he did not believe the plaintiff was right for her position because of her age and background, that he had encouraged those responsible to make a change because he did not want the plaintiff in her position, and that he felt that the plaintiff's supervisor (who later fired the plaintiff) would "get it handled". The finding that the president could influence hiring and firing was supported by the vice president's testimony that the president could prevent the vice president from making the plaintiff the teller supervisor. Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326, 50 St. Rep. 518 (1993).

Recovery Under Both Wrongful Discharge Act and Federal ADEA Barred: The Montana Wrongful Discharge From Employment Act provides that it does not apply to a discharge subject to any other state or federal statute providing a remedy. A discharged bank employee could not recover under both the wrongful discharge act and the federal Age Discrimination in Employment Act. Concurrent claims may be filed under the wrongful discharge act and under any other state or federal statutes, but if the plaintiff obtains an affirmative determination under the other statutes, the wrongful discharge claim no longer applies. The Supreme Court declined to follow two recent Montana federal District Court cases allowing concurrent actions based on separate and distinct factual predicates, and to the extent that this conclusion changes the holding in Deeds v. Decker Coal Co., 246 M 220, 805 P2d 1270 (1990), the opinion in that case is modified. In this case, the claims were made in the same action, and once it was determined that the federal Age Discrimination in Employment Act was violated, the wrongful discharge act did not apply. Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326, 50 St. Rep. 518 (1993).

Limitation of Testimony of Statistician With Regard to Age Discrimination — Union Versus Nonunion Employees: The District Court correctly limited the age discrimination testimony of plaintiff's statistical expert to testimony of statistical tests performed only on nonunion employees when the inclusion of union employees (whose employment contracts contained seniority rights) in the statistical population would skew the figures affecting older terminated nonunion employees as to the probability that older nonunion employees were discriminated against on the basis of age. Mahan v. Farmers Union Cent. Exch., Inc., 235 M 410, 768 P2d 850, 46 St. Rep. 96 (1989).

Investigation of Human Rights Violations — Personnel Files: The Human Rights Commission (HRC) requested access to personnel files in connection with its investigation of a discrimination complaint. The court found that information sought by the HRC is protected by the right of privacy. The court also found that a sufficient showing of compelling state interest was made under Art. II, sec. 4, Mont. Const., and Title 49, ch. 2, allowing the HRC access to the information. To protect the privacy of the individuals whose files are disclosed, the court directed that the HRC may not disclose the information unless it is altered so as to provide for the anonymity of the persons involved. If the information must be released in such a way as to disclose the identity of the persons involved, HRC must, prior to the release, obtain an order from the District Court authorizing the release. Mont. Human Rights Div. v. Billings, 199 M 434, 649 P2d 1283, 39 St. Rep. 1504 (1982), followed in Flesh v. Bd. of Trustees, 241 M 158, 786 P2d 4, 47 St. Rep. 161 (1990).

Law Review Articles

Applying Strict Scrutiny: An Empirical Analysis of Free Exercise Cases, Wolanek & Liu, 78 Mont. L. Rev. 275 (2017).

Mandatory Arbitration of Civil Rights Claims in the Workplace: No Enforceability without Equivalency, France & Kelley, 64 Mont. L. Rev. 449 (2003).

49-1-103. Right to use force.

Case Notes

"Stop and Frisk" by Private Security Guard Held Proper: A "stop and frisk" by a private security guard of a suspected thief on the hotel grounds was justifiable as an action taken to protect the hotel and its occupants against trespassers in the process of committing an offense, since a person has the right to use any necessary force to protect himself or his employer or his employer's property from wrongful injury. St. v. Bradford, 210 M 130, 683 P2d 924, 41 St. Rep. 962 (1984).

Right to Kill Game Out of Season: A defendant accused of killing an elk out of season may interpose the defense of legal justification when he claims that he acted in defense of property. This section and 87-3-104 (now repealed) must be read together to avoid an unconstitutional denial of an inalienable right. St. v. Rathbone, 110 M 225, 100 P2d 86 (1940).

Burden of Proof That Force Excessive: When plaintiff and her husband were trespassers upon the property of defendant and at least contributed to provoke an alleged assault by defendant, the burden was upon them to prove that the force used by defendant in repelling the trespass was excessive. Therefore, an instruction that the burden rested upon defendant to justify the means employed in trying to evict plaintiff was erroneous. Vaughn v. Mesch, 107 M 498, 87 P2d 177 (1939).

Exemplary Damages: While it is a sound rule that exemplary damages are not recoverable in an assault case when provocation furnished by the plaintiff affords a reasonable excuse for the assault, the rule that if a defendant uses excessive or unwarranted force in repelling the aggressor, such damages may be awarded is equally well settled. When malice is alleged, it is not quantum of force used but whether the assailant was in a malicious state of mind which is the test in awarding exemplary damages. Use of a dangerous weapon (a hammer) is some evidence of wanton disregard of human life and generally gives rise to such damages. The question of malice is generally one for the jury. Vaughn v. Mesch, 107 M 498, 87 P2d 177 (1939).

Part 2
Basic Political Rights

49-1-202. Right to hold elected office.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

49-1-208. Short title.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Severability: Section 5, Ch. 523, L. 2023, was a severability clause.

49-1-209. Definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Severability: Section 5, Ch. 523, L. 2023, was a severability clause.

49-1-210. Right to bear arms protected — remedies.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Severability: Section 5, Ch. 523, L. 2023, was a severability clause.

CHAPTER 2
ILLEGAL DISCRIMINATION

Chapter Compiler's Comments

Preamble: The preamble attached to Ch. 407, L. 1993, provided: "WHEREAS, many individuals with disabilities and many organizations representing individuals with disabilities object to the use of the terms "handicap" and "handicapped person"; and

WHEREAS, as with racial and ethnic terms, the choice of words used to describe a person with a disability is overlaid with stereotypes and emotional connotations; and

WHEREAS, it is important to use terminology most in line with the sensibilities of most persons with disabilities; and

WHEREAS, the current accepted terminology is "disability" rather than "handicap" and "person with a disability" rather than "handicapped person"; and

WHEREAS, the federal Americans with Disabilities Act of 1990 uses the terms "disability" and "individual with a disability" rather than the terms "handicap" or "handicapped person"; and

WHEREAS, making the state human rights laws consistent with the Americans with Disabilities Act will eliminate some confusion between state and federal laws.

THEREFORE, it is appropriate for the Legislature to revise the state human rights laws to replace the terms "handicap" and "handicapped person" with the terms "disability" and "person with a disability"."

Chapter Administrative Rules

Title 24, chapter 8, ARM Human Rights Bureau.

Title 24, chapter 9, ARM Human Rights Commission.

Chapter Case Notes

Conduct of City Council Meeting Hearing Criticism of City Employee — Not Restricted by Free Speech and Privileged Communication Cases and Statute — Not Legislative Act Shielded by Legislative Immunity: Denke filed complaints with the Human Rights Commission alleging that Thompson Falls and Shoemaker, a City Council member, retaliated against her for previously filing sexual harassment charges with the Commission by holding a City Council meeting at which Shoemaker was allowed, with virtually no limitation, to severely criticize her conduct as city clerk and finance officer. The Commission hearing examiner, the Commission, and the District Court held that Shoemaker's criticism of Denke's actions as city bookkeeper aired during the City Council meeting was a "legislative act" within the meaning of 2-9-111 and the city was therefore immune from a charge of retaliation. The Supreme Court held that 27-1-804(2) and free speech cases such as New York Times Co. v. Sullivan, 376 US 254 (1964), and Skinner v. Pistoria, 194 M 257, 633 P2d 672 (1981), did not limit the City Council's ability to regulate the time, place, and manner of Shoemaker's criticism. The Supreme Court also held that Denke's claim did not involve the calling of the City Council meeting (for which the city would be immune under 2-9-114) so much as the manner in which the meeting was conducted and that the conduct of the meeting did not fall within the definition of a "legislative act", and remanded the case for further proceedings. Denke v. Shoemaker, 2008 MT 418, 347 M 322, 198 P3d 284 (2008).

District Court Order Denying Petition for Judicial Review of Human Rights Commission Order Held Overbroad — District Court Ruling Held Premature and Held to Be Sua Sponte Reversal of Ruling Previously Forfeited: Denke filed complaints with the Human Rights Commission alleging that Thompson Falls and Shoemaker, a City Council member, retaliated against her for previously filing sexual harassment charges with the Commission by writing letters to the newspaper and holding a City Council meeting at which Shoemaker was allowed, with virtually no limitation, to severely criticize her conduct as city clerk and finance officer. In denying a petition for judicial review of the decision of the Commission hearing officer, the District Court held that Thompson Falls was not liable for Councilman Shoemaker's letters to the editor or for comments made by those attending the City Council meeting because of 27-1-804, protecting privileged communication, and the Montana Supreme Court case of Skinner v. Pistoria, 194 M 257, 633 P2d 672 (1981). The Supreme Court held that this statement in the District Court's order denying Denke's petition for judicial review was overbroad and had to be vacated because: (1) Denke did not seek to hold anyone at the City Council meeting liable for their statements except Shoemaker; (2) proceedings in the District Court against Shoemaker were stayed by his bankruptcy proceeding and the statement was therefore premature; and (3) the hearing examiner determined that 27-1-804 didn't apply to Shoemaker's letters to the editor and Shoemaker had previously forfeited his appeal on this issue in Shoemaker v. Denke, 2004 MT 11, 319 M 238, 84

P3d 4 (2004). The Supreme Court held that the District Court therefore wasn't in a position to rule that Shoemaker's letters were privileged. Denke v. Shoemaker, 2008 MT 418, 347 M 322, 198 P3d 284 (2008).

Respondeat Superior Applicable to City Council Member Who Severely Criticized City Employee — Criticism Within Scope of Employment for Respondeat Superior but Not for Application of Legislative Immunity: Shoemaker, a member of the Thompson Falls City Council, severely criticized Denke, the city clerk and finance officer, in two letters to the editor and in a City Council meeting for her job performance that Shoemaker alleged caused the city to hire a CPA. Denke charged that Shoemaker's criticism was unlawful retaliatory conduct for her previous filing of a sexual harassment complaint against the Mayor. Following Kenyon v. Stillwater County, 254 M 142, 835 P2d 742 (1992), the Supreme Court held that Shoemaker was a city employee. The Supreme Court held that Shoemaker was acting as a member of the City Council when he signed the letters and that the city had admitted in an administrative hearing that Shoemaker was within the scope of his employment. The court held that: (1) Shoemaker didn't have to be Denke's supervisor for purposes of applying respondeat superior; (2) Shoemaker's unlawful retaliatory conduct was not within the official discharge of Shoemaker's duties for the purposes of legislative immunity under 27-1-804, but the conduct was within the scope of Shoemaker's employment for purposes of respondeat superior; and (3) the statement of the city in the Human Rights Commission administrative hearing that Shoemaker was acting as a member of the City Council constituted a judicial admission, was an "acknowledgment" under 2-9-305, and was binding upon the city for the purposes of its liability for retaliation. Denke v. Shoemaker, 2008 MT 418, 347 M 322, 198 P3d 284 (2008).

Sufficient Evidence of Employer's Creation of Hostile Work Environment and Failure to Discipline Offending Supervisor Following Incident of Sexual Harassment: The hearings examiner found that an employee was sexually harassed following an office Christmas party, that the employer failed to discipline the offending employee, and that the employer then created a hostile work environment and sought to find fault with the victim's work in order to fire her and avoid a sexual discrimination suit. Although evidence also existed to support the employer's contrary assertions, under the totality of the circumstances, the hearings examiner's conclusion that the work environment was hostile and abusive was properly upheld by the District Court, and the Supreme Court declined to disturb the agency's findings. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005). See also Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Single Incident of Sexual Assault — Work Environment That Is Not Subjectively Objectionable Not Considered Type of Hostile Environment to Be Actionable Under Title VII — Standard of Review: Following a single incident of sexual assault by a coworker, Beaver brought a claim against the Department of Natural Resources and Conservation (DNRC) under the Montana governmental code of fair practices; Title VII of the Civil Rights Act of 1964; and this chapter, commonly known as the Montana Human Rights Act, asserting that the incident was sufficiently severe or pervasive to alter employment conditions and to create a hostile and abusive working environment. Under Harris v. Forklift Sys., Inc., 510 US 17 (1993), to be sufficiently severe or pervasive to violate Title VII and establish a claim, the misconduct must create a working environment that is both objectively and subjectively offensive and that a reasonable person and the victim perceive as hostile and abusive. The correct legal standard for determining whether an environment is hostile or abusive under Title VII is to review the totality of the circumstances, including: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct, whether it is physically threatening or humiliating or a mere offensive utterance; and (3) whether the conduct interferes with an employee's work performance. Psychological well-being is one factor among many in the determination. Here, the coworker was dismissed following the incident, and Beaver continued working for DNRC, testifying that conditions of employment did not change following the assault. Thus, the District Court correctly concluded that the work environment was not subjectively objectionable to Beaver and that the single incident of sexual assault did not create the type of hostile or abusive environment actionable under Title VII. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003). See also Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Attempt to Raise New Theory Five Days Before Trial Prejudicial: Allison brought a claim against the town of Clyde Park, alleging disability, sex, and age discrimination in employment. Five days before trial, Allison attempted to raise a new theory based on alleged violation of the governmental code of fair practices. The town moved to prohibit introduction of the new theory at trial, arguing that prejudice would result because of the lack of notice and the inability to prepare a defense. The District Court agreed and granted the town's motion to preclude introduction of the new theory. On appeal, Allison contended that the court erred in prohibiting raising of the new theory because the legal obligations in the governmental code of fair practices were not presented as a separate claim, but rather were intended as evidence of the discrimination claims. However, characterizing the newly alleged violations as evidence did not alter the fact that Allison attempted to introduce a new theory 5 days before trial. The court correctly found that the alleged violations were two distinct causes of action and that allowing introduction of the new cause of action so soon before trial would prejudice the town. Allison v. Clyde Park, 2000 MT 267, 302 M 55, 11 P3d 544, 57 St. Rep. 1119 (2000).

Evidence of Sex Discrimination Warranting Submission to Jury — Directed Verdict Improper: Allison brought a claim against the town of Clyde Park, alleging disability, sex, and age discrimination in employment. At the close of Allison's case in chief, the court granted the town's motion for a directed verdict on the sex discrimination claim, but declined a similar motion on the age discrimination claim. The court allowed submission of both the age discrimination and disability claims to the jury, which returned a verdict against Allison on both claims. On appeal, Allison argued that the jury should also have been allowed to decide the sex discrimination claim. Motions for directed verdict are properly granted only when there is a complete absence of evidence to warrant submission to the jury when the evidence is considered in the light most favorable to the party opposing the motion. Here, Allison produced evidence, although minimal, in support of the sex discrimination claim, so the directed verdict on that issue was incorrectly granted. The case was remanded for trial on the sex discrimination claim. Allison v. Clyde Park, 2000 MT 267, 302 M 55, 11 P3d 544, 57 St. Rep. 1119 (2000), followed in DiMarzio v. Crazy Mtn. Constr., Inc., 2010 MT 231, 358 Mont. 119, 243 P.3d 718.

Sexual Harassment as Sexual Discrimination: Current authority supports the conclusion that by definition sexual harassment constitutes sexual discrimination. Therefore, a claim of sexual harassment in employment falls under the exclusive remedy provisions of this chapter, often referred to as the Montana Human Rights Act. Harrison v. Chance, 244 M 215, 797 P2d 200, 47 St. Rep. 1539 (1990), followed in Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999, 54 St. Rep. 815 (1997).

Right to Jury Trial — Equity Claim and Claim for Damages Tried in Single Proceeding: The District Court granted plaintiffs' motion for a new nonjury trial, ruling that an action under Title 49, ch. 2, is equitable in nature and implies no right to a trial by jury in a federal suit under Title VII of the federal Civil Rights Act of 1964 (Act). Plaintiffs contended that the only damages sought were backpay and reinstatement. The Supreme Court found that the record disclosed that plaintiffs submitted evidence of damages other than backpay and reinstatement and concluded that a claim for relief under the Act and a legal claim for damages as a result of unlawful discharge were tried in a single proceeding, each claim arising out of common fact issues. The court held that the right to a jury trial encompassed both the claims under the Act and the legal claims for damages, and that the trial judge was bound by the jury's determination of facts on all issues. The Supreme Court further held that the District Court erred in granting a new nonjury trial, and the case was remanded with instructions to reinstate the jury verdict and enter judgment accordingly. Breese v. Steele Mtn. Enterprises, Inc., 220 M 454, 716 P2d 214, 43 St. Rep. 522 (1986).

Chapter Attorney General's Opinions

Teaching of "Critical Race Theory", "Anti-Racism" — May Constitute Discrimination on Basis of Race, Color, or National Origin: In response to a request from the Superintendent of Public Instruction, the Attorney General held that in many instances the use of "Critical Race Theory" and "anti-racism" programming discriminates on the basis of race, color, or national origin in violation of the equal protection clause of the 14th amendment to the United States Constitution, Title VI of the federal Civil Rights Act of 1964, Art. II, sec. 3, Mont. Const., and the Montana Human Rights Act. 58 A.G. Op. 1 (2021).

Chapter Law Review Articles

The Severe or Pervasive Standard in the Modern Age, Kimmel, 84 Mont. L. Rev. 299 (2023), https://scholarworks.umt.edu/mlr/vol84/iss2/6/.

Significant Montana Cases, Hill, Monroe, & Liechty, 83 Mont. L. Rev. 422 (2022), https://scholarworks.umt.edu/mlr/vol83/iss2/9/.

Transgender Equality and Dignity Under the Montana Constitution, Borgmann, 79 Mont. L. Rev. 95 (2018).

Applying Strict Scrutiny: An Empirical Analysis of Free Exercise Cases, Wolanek & Liu, 78 Mont. L. Rev. 275 (2017).

Privatizing Antidiscrimination Law With Arbitration: The Title VII Proof Problem, Plass, 68 Mont. L. Rev. 151 (2007).

Part 1
General Provisions

49-2-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 27, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

2015 Amendment: Chapter 15 in definition of public accommodation inserted "barbering nonchemical". Amendment effective October 1, 2015.

2011 Amendment: Chapter 201 in definition of employee inserted (b) exempting independent contractor; and made minor changes in style. Amendment effective April 15, 2011.

2003 Amendment: Chapter 243 in definition of public accommodation in (a) substituted "barbering, cosmetology, electrology, esthetics, or manicuring salon or shop" for "barbershop, beauty parlor". Amendment effective October 1, 2003.

Severability: Section 25, Ch. 243, L. 2003, was a severability clause.

1997 Amendment: Chapter 467 inserted definitions of aggrieved party, Commissioner, Department, and organization; in definition of person, near end, inserted "organizations"; deleted definition of staff or Commission staff that read: ""Staff" or "commission staff" means the staff of the commission for human rights"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

1993 Amendments: Chapter 235 in definition of employer, after "persons", inserted "or an agent of the employer"; and made minor changes in style.

Chapter 407 substituted physical or mental disability for physical or mental handicap as defined term and in two places in (b) substituted "disability" for "handicap"; and made minor changes in style.

Preamble: The preamble attached to Ch. 235, L. 1993, provided: "WHEREAS, the employment discrimination provision of Montana law, commonly called the Montana Human Rights Act, Title 49, chapter 2, MCA, prohibits discriminatory acts by an employer; and

WHEREAS, the Montana Human Rights Act does not include an agent of an employer in the definition of employer; and

WHEREAS, certain discriminatory employment acts, including sexual harassment, may be committed by an agent of the employer, such as a supervisor; and

WHEREAS, under the present Montana Human Rights Act, a complainant has no remedy against an agent of an employer; and

WHEREAS, the federal counterpart of the employment discrimination provision of the Montana Human Rights Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(b), does make the agent of an employer responsible for discriminatory acts committed by that agent.

THEREFORE, it is appropriate for the Legislature to amend the Montana Human Rights Act to make an agent of an employer responsible for discriminatory acts committed by that agent."

1991 Amendment: In definition of financial institution inserted "credit union"; deleted former definition of mental handicap that read: ""Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence"; substituted present definition of physical or mental handicap for former definition of physical handicap that read: ""Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device"; and made minor changes in style.

Preamble: The preamble attached to Ch. 241, L. 1991, provided: "WHEREAS, the Legislature has previously included physical and mental handicaps as subjects of discrimination law in the Montana Human Rights Act and the Montana Governmental Code of Fair Practices; and

WHEREAS, the definitions previously adopted lack clarity and are inconsistent with definitions used in federal civil rights statutes and court interpretations on the subject; and

WHEREAS, federal handicap discrimination law requires reasonable accommodation for mental and physical handicaps.

THEREFORE, it is appropriate for the Legislature to redefine the terms "mental handicap" and "physical handicap" and to include the requirement of reasonable accommodation."

1989 Amendment: In definition of public accommodation inserted (b) stating the definition does not include certain distinctly private places. Amendment effective April 14, 1989.

Severability: Section 5, Ch. 543, L. 1989, was a severability clause.

Administrative Rules

Title 24, chapter 9, ARM Human Rights Commission.

Case Notes

Disability Discrimination — Employee Hampered Good Faith Effort of Employer to Engage in Interactive Process: The plaintiff was a former shift supervisor at the Montana Developmental Center (MDC) who occasionally had to use force to restrain clients at work. After one such incident, he required shoulder surgery, which prohibited him from restraining clients. The plaintiff and MDC then entered into an interactive process to find an alternative position for the plaintiff; however, the plaintiff never provided information MDC staff requested to help him locate an alternative position for which he was qualified. Ultimately, MDC terminated the plaintiff from employment. After exhausting administrative remedies, the plaintiff sued MDC alleging the defendant discriminated against him. The District Court granted the defendant summary judgment, and the plaintiff appealed. The Supreme Court affirmed, holding that while the defendant had made a good faith effort to engage in the interactive process, the plaintiff had not. Alexander v. Mont. Developmental Center, 2018 MT 271, 393 Mont. 272, 430 P.3d 90.

Review of Reasonable Accommodation Efforts: A county employee developed a debilitating hypersensitivity to fragrances. The employee participated sporadically with the county in developing a reasonable accommodation, filed a complaint with the Human Rights Bureau, resigned his job, and filed a complaint in District Court. The District Court did not consider allegations of ongoing discrimination that arose after the Human Rights Bureau complaint, reasoning that it can only review claims asserted before the Bureau, and entered summary judgment for the county. On appeal, the Supreme Court affirmed, explaining that a District Court is constrained by statute to entertain only those claims that the Human Rights Bureau adjudicates and that the county engaged in a good faith effort to develop a reasonable accommodation. Borges v. Missoula County Sheriff's Office, 2018 MT 14, 390 Mont. 161, 415 P.3d 976.

No Discrimination on Basis of Disability When Employee Is Not Substantially Limited and Employer Does Not Regard Individual as Restricted: The plaintiff employee filed a Human Rights Act claim against the defendant employer, claiming discrimination because of a disability. The Supreme Court concluded that the District Court properly affirmed the hearings officer's determination that: (1) the employer did not discriminate on the basis of a disability against the employee because the employee was not substantially limited, within the meaning of 49-2-101(19), in his ability to work in a class of jobs generally; (2) the employer did not regard the employee as restricted in his ability to perform the basic functions of his own job; and (3) the employee resigned of his own accord and was not discharged. Welch v. Holcim, 2014 MT 1, 373 Mont. 181, 316 P.3d 823.

Attorney With Potential Clients With Disabilities Not Aggrieved Party — No Standing to Assert Public Accommodations Discrimination Claim: The respondent, an attorney who rented office space in a building managed by the petitioner, brought a public accommodations discrimination claim against the petitioner, arguing that the petitioner had blocked public access to the only elevator in the building, making the respondent's second-floor law office inaccessible for clients with disabilities. The Supreme Court dismissed the respondent's claim, holding that he lacked standing to bring the claim. The court held that the respondent's intention to open a discrimination law practice for unknown potential clients was not a specific personal and legal interest sufficient to qualify him as an aggrieved person under the Montana Human Rights Act (MHRA). While the MHRA prohibits discrimination in public accommodations, a plaintiff is generally limited to asserting his own legal rights and interests; in this case, the respondent's claim was based on his potential future clients' access to his office, rather than his own access, and was therefore insufficient to establish standing. Baxter Homeowners Ass'n, Inc. v. Angel, 2013 MT 83, 369 Mont. 398, 298 P.3d 1145, following Williamson v. Mont. Pub. Serv. Comm'n, 2012 MT 32, 364 Mont. 128, 272 P.3d 71.

Obesity Absent Physiological Disorder Constituting Physical or Mental Impairment: On a certified question from the U.S. District Court, the Montana Supreme Court held that obesity that is not a symptom of a physiological disorder or condition may constitute a physical or mental impairment as used in the definition of "physical or mental disability" if the individual's weight is outside "normal range" and affects "one or more body systems" as defined in 29 CFR 1630.2(h)(1). In construing "impairment" for the first time, the court looked to the federal Equal Employment Opportunity Commission's Interpretive Guidance, which states that impairment does not include physical characteristics that are within normal range and are not the result of a physiological disorder. The court concluded that a finding of impairment requires a physiological disorder only if a person's physical characteristic is within normal range. BNSF Ry. Co. v. Feit, 2012 MT 147, 365 Mont. 359, 281 P.3d 225.

Use of Contemporaneous Federal Interpretation by Court Appropriate: On a certified question from the U.S. District Court, the Montana Supreme Court held that obesity that is not a symptom of a physiological disorder or condition may constitute a physical or mental impairment as used in the definition of "physical or mental disability" if the individual's weight is outside "normal range" and affects "one or more body systems" as defined in federal regulation. The court relied on the Americans with Disabilities Act (ADA), the ADA Amendments Act of 2008, the Equal Employment Opportunity Commission's 2011 Interpretive Guidance, and contemporaneous federal interpretations to satisfy the Legislature's directive that Montana law be interpreted consistently with federal discrimination laws. BNSF Ry. Co. v. Feit, 2012 MT 147, 365 Mont. 359, 281 P.3d 225.

Reasonable Accommodation of Disabled Employee's Service Dog — Employer's Duties to Provide Reasonable Accommodation — Employee's Requested Accommodation Within Scope of Human Rights Act: McDonald was employed by the Department of Environmental Quality (DEQ) as a fiscal officer. As a disabled person, McDonald required the use of a service dog. However, the dog continually slipped on the floors of the DEQ building where McDonald worked, and despite McDonald's repeated requests for DEQ to install nonslip surfaces for the dog, the requested accommodation was still not made 1½ years after McDonald's request. McDonald eventually left DEQ and had to retire the dog, which allegedly caused numerous work-related and social problems for McDonald. McDonald then sued DEQ for employment discrimination. The hearings examiner concluded that there was no rational basis for the delay and that McDonald was discriminated against; the examiner imposed injunctive relief and awarded McDonald damages of $10,000 for emotional distress, $18,000 for a replacement service animal, $1,536 for travel expenses to procure the animal, and $333.84 for veterinary expenses. The Human Rights Commission affirmed the agency decision, but the District Court reversed. The court concluded that DEQ met its legal duty to provide a reasonable accommodation by allowing McDonald to use the service dog in the workplace but held that DEQ had no legal duty to provide an accommodation for the service animal. McDonald appealed and the Supreme Court reversed. The court held that the reasonable accommodation requirement is best understood as a means by which barriers to equal employment of disabled persons are removed or alleviated, so if an adjustment or modification is job-related and specifically assists the person in performing the duties of a particular job, it will be considered a type of reasonable accommodation. Employers are not relieved of the duty to accommodate when an employee is already able to perform the essential functions of a job. Rather, an employer is fundamentally obligated to not interfere, either through action or inaction, with a disabled employee's efforts to pursue a normal life. Further, an employer's duty to make reasonable accommodations does not end with allowing an assistive device through the front door. The duty also requires an employer to address any barriers to the employee's ability to actually use the device effectively in the workplace, which includes modification of a floor surface if such an accommodation is otherwise reasonable. In this case, substantial evidence supported the hearings examiner's ultimate finding that McDonald needed an accommodation, and the District Court erred in holding that McDonald's requested accommodation for the service dog was beyond the scope of the DEQ's duty under the Montana Human Rights Act. McDonald v. Dept. of Environmental Quality, 2009 MT 209, 351 M 243, 214 P3d 749 (2009), following Buckingham v. U.S., 998 F2d 735 (9th Cir. 1993).

Sufficient Evidence of Employer's Creation of Hostile Work Environment and Failure to Discipline Offending Supervisor Following Incident of Sexual Harassment: The hearings examiner found that an employee was sexually harassed following an office Christmas party, that the employer failed to discipline the offending employee, and that the employer then created a hostile work environment and sought to find fault with the victim's work in order to fire her and avoid a sexual discrimination suit. Although evidence also existed to support the employer's contrary assertions, under the totality of the circumstances, the hearings examiner's conclusion that the work environment was hostile and abusive was properly upheld by the District Court, and the Supreme Court declined to disturb the agency's findings. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005). See also Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Indefinite Leave of Absence Not Considered Reasonable Accommodation — Standard for Ascertaining Whether Person Qualified Individual Deserving of Reasonable Accommodation: After Pannoni was terminated from his teaching job for excessive absences, Pannoni filed a discrimination complaint alleging that he had been terminated because of a mental disability and that the school district failed to accommodate his disability by granting continued unpaid leaves of absence. The Department of Labor and Industry concluded that Pannoni was not able to perform essential job functions and therefore was not a qualified person for the teaching position. The Commission for Human Rights and the District Court agreed, and on appeal, the Supreme Court affirmed. Although an employer has a duty to provide a reasonable accommodation to a person with a disability if the accommodation allows the person to perform essential job functions, an employer is not required to accommodate an employee who suffers from a prolonged illness by allowing the employee an indefinite leave of absence, nor is an employer required to grant a second leave if the employee's condition recurs after return from the first leave. The requirement to grant a leave of absence cannot be repeatedly invoked to permit an unqualified employee to avoid termination by requesting leave each time that the employee is about to be fired. Although Pannoni suggested a lenient plausibility standard for determining whether an accommodation is reasonable, the Supreme Court applied the standard already in Montana administrative law that a person with a disability is qualified to hold an employment position if the person can perform the essential functions of the job with or without a reasonable accommodation for the disability. Pannoni could not show that he was a qualified individual capable of performing essential teaching functions even with a reasonable accommodation, so the discrimination claim failed. Pannoni v. Browning School District No. 9 Bd. of Trustees, 2004 MT 130, 321 M 311, 90 P3d 438 (2004), following Kimbro v. Atl. Richfield Co., 889 F2d 869 (9th Cir. 1989), Nowak v. St. Rita High School, 142 F3d 999 (7th Cir. 1998), and Humphrey v. Mem. Hosp. Ass'n, 239 F3d 1128 (9th Cir. 2001).

Temporary, Nonchronic Condition Not Considered Disability — Human Rights Act Claim Properly Dismissed: Adamson injured his shoulder off the job and was allowed to return to work with lifting restrictions, but the County Commission denied reinstatement to his former job. Adamson returned to work after 6 months with no restrictions, underwent surgery 3 months later, and was released to work 1 month later with restrictions, but again the County Commission denied his request to return to work until he had no restrictions. Adamson ultimately returned to work with a full release and worked until retirement, but subsequently filed a complaint with the Commission for Human Rights, claiming financial loss because of discrimination by the County Commission for his temporary disabilities. A hearings examiner and the Commission held for the county, and the District Court affirmed the decision after finding that Adamson was not disabled pursuant to Title 49, ch. 2, commonly known as the Montana Human Rights Act. On appeal, the Supreme Court affirmed. Noting that the determination of a disability is made on a case-by-case basis, the Supreme Court held that Adamson's temporary, nonchronic impairment of short duration, with little or no long-term permanent impact, was not a disability as defined in 49-2-303. Other similar impairments not considered to be disabilities may include but are not limited to broken hips, sprained joints, concussions, appendicitis, and influenza (see the interpretive guidelines in 29 CFR 1630.2(j)). Adamson v. Pondera County, 2004 MT 27, 319 M 378, 84 P3d 1048 (2004), distinguishing Martinell v. Mont. Power Co., 268 M 292, 886 P2d 421 (1994), and Butterfield v. Sidney Pub. Schools, 2001 MT 177, 306 M 179, 32 P3d 1243 (2001).

Single Incident of Sexual Assault — Work Environment That Is Not Subjectively Objectionable Not Considered Type of Hostile Environment to Be Actionable Under Title VII — Standard of Review: Following a single incident of sexual assault by a coworker, Beaver brought a claim against the Department of Natural Resources and Conservation (DNRC) under the Montana governmental code of fair practices; Title VII of the Civil Rights Act of 1964; and this chapter, commonly known as the Montana Human Rights Act, asserting that the incident was sufficiently severe or pervasive to alter employment conditions and to create a hostile and abusive working environment. Under Harris v. Forklift Sys., Inc., 510 US 17 (1993), to be sufficiently severe or pervasive to violate Title VII and establish a claim, the misconduct must create a working environment that is both objectively and subjectively offensive and that a reasonable person and the victim perceive as hostile and abusive. The correct legal standard for determining whether an environment is hostile or abusive under Title VII is to review the totality of the circumstances, including: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct, whether it is physically threatening or humiliating or a mere offensive utterance; and (3) whether the conduct interferes with an employee's work performance. Psychological well-being is one factor among many in the determination. Here, the coworker was dismissed following the incident, and Beaver continued working for DNRC, testifying that conditions of employment did not change following the assault. Thus, the District Court correctly concluded that the work environment was not subjectively objectionable to Beaver and that the single incident of sexual assault did not create the type of hostile or abusive environment actionable under Title VII. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003). See also Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

No Record or Evidence of Mental Impairment Rising to Level of Disability — Particular Job but Not Broad Range of Jobs Precluded: Walker contended that his employer, Montana Power Company (MPC), knew that he suffered from a mental impairment brought about by work-related stress and that he had a documented record of impairment and was regarded as having an impairment. Citing Holihan v. Lucky Stores, Inc., 87 F3d 362 (9th Cir. 1996), the Supreme Court held that depression and anxiety do not render a person disabled within the meaning of 29 CFR 1630.2(j)(3)(i) of the federal Americans With Disabilities Act of 1990 when the depression and anxiety do not prevent that person from working at a broad range of jobs, but only at a particular job. Walker's record of depression and stress was limited at best, and both of his supervisors testified that they did not believe that he had a record of, nor did they perceive that he had, a mental disability. MPC did not treat Walker as if he were limited in all fields of employment, only in the job of lineman supervisor. Thus, the jury could properly have determined that the credible evidence weighed in favor of a finding that Walker did not have a mental impairment that rose to the level of a disability and that he did not have a record of an impairment. Walker v. Mont. Power Co., 278 M 344, 924 P2d 1339, 53 St. Rep. 943 (1996).

"Employee" Included in Definition of Employer: In amending the definition of employer, the 1993 Legislature included an "agent of the employer". The ordinary meaning of agent includes employees who are subject to an employer's control while performing their job duties. The purpose of the amendment was to allow the Commission to redress situations in which an employee is sexually harassed by another employee. As a result, this chapter, commonly known as the Montana Human Rights Act, provides the exclusive remedy for claims based on sexual harassment committed by one employee against another, rather than being limited to direct acts by an employer. Fandrich v. Capital Ford Lincoln Mercury, 272 M 425, 901 P2d 112, 52 St. Rep. 806 (1995).

Definition of "Otherwise Qualified" for Employment: Under the first stage of the three-stage test for employment discrimination articulated in McDonnell Douglas Corp. v. Green, 411 US 792, 36 L Ed 2d 668, 93 S Ct 1817 (1973), a job applicant must establish four elements in order to make a prima facie case of discrimination, showing: (1) the person is a member of the class protected by the statute; (2) the person applied for and was qualified for the position; (3) the person was rejected despite being qualified for the job; and (4) the position remained open and the employer continued to accept applications from persons with comparable qualifications. In the case at hand, the District Court determined that Hafner failed to establish the second element of the prima facie case. The Supreme Court relied on Chandler v. Dallas, 2 F3d 1385 (5th Cir. 1993), in defining an "otherwise qualified" person as one who is able to meet all of a program's requirements in spite of a handicap. Hafner's initial qualifications for the position were demonstrated by the employer's offer of probationary employment and by the fact that Hafner had done similar work and understood and felt capable of performing the required activities. The District Court erred in determining that Hafner had failed to establish the second element of a prima facie case. Hafner v. Conoco, Inc., 268 M 396, 886 P2d 947, 51 St. Rep. 1391 (1994). On remand, the District Court erred in finding that Hafner's disability precluded him from performance of the position of helper when the question had been previously resolved in Hafner I, ibid., which became the law of the case. The District Court had no jurisdiction to revisit the issue.

Definition of "Regarded as Having an Impairment": Under the first stage of the three-stage test for employment discrimination articulated in McDonnell Douglas Corp. v. Green, 411 US 792, 36 L Ed 2d 668, 93 S Ct 1817 (1973), a job applicant must establish four elements in order to make a prima facie case of discrimination, showing: (1) the person is a member of the class protected by the statute; (2) the person applied for and was qualified for the position; (3) the person was rejected despite being qualified for the job; and (4) the position remained open and the employer continued to accept applications from persons with comparable qualifications. In the case at hand, the District Court determined that Hafner failed to establish the first element of the prima facie case. By definition in this section, physical or mental disability means a physical or mental impairment that substantially limits one or more of a person's major life activities, a record of such an impairment, or a condition "regarded as" such an impairment. In interpreting the "regarded as" provision of the definition, the Supreme Court cited Forrisi v. Bowen, 794 F2d 931 (4th Cir. 1986), in finding that an employer regards an employee as handicapped in the ability to work by finding the employee's impairment to foreclose generally the type of employment involved. Because Hafner established as a matter of law that he was "regarded" by the employer as physically disabled, the District Court erred in determining that Hafner had failed to establish the first element of a prima facie case. Hafner v. Conoco, Inc., 268 M 396, 886 P2d 947, 51 St. Rep. 1391 (1994), followed in Butterfield v. Sidney Pub. Schools, 2001 MT 177, 306 M 179, 32 P3d 1243 (2001).

Trial Court Finding That Endometriosis Constituted Handicap Upheld: Martinell was diagnosed with endometriosis and opted to be treated with drugs rather than have a hysterectomy because she wanted to have children. Treatment with the drugs caused Martinell to suffer depression that would have been lessened by straight day shifts, which Montana Power refused to let her work because she worked in a unit on swing shifts. Montana Power argued that Martinell's condition did not constitute a physical handicap as defined by the 1983 statute. The Supreme Court held that the lower court had correctly given deference to rulings and findings by the Montana Human Rights Commission and had correctly relied upon an Illinois decision in reaching the conclusion that Martinell's condition was an infirmity constituting a handicap that limited one or more of her major life activities, which included the ability to be employed. The Supreme Court further held that the lower court had correctly stated that whether or not a disease such as endometriosis constituted a handicap had to be determined on a case-by-case basis. Martinell v. Mont. Power Co., 268 M 292, 886 P2d 421, 51 St. Rep. 1329 (1994).

Law Review Articles

Significant Montana Cases, Hill, Monroe, & Liechty, 83 Mont. L. Rev. 422 (2022), https://scholarworks.umt.edu/mlr/vol83/iss2/9/.

49-2-102. Records to be kept.

Administrative Rules

ARM 24.8.107 Record keeping requirements for employers.
ARM 24.9.805 Employment records.

Part 2

Commission for Human Rights

Part Administrative Rules

Title 24, chapter 9, ARM Human Rights Commission.

49-2-202. Authority to require posted notice.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

49-2-203. Subpoena power of department and commissioner.

Compiler's Comments

2011 Amendment: Chapter 205 in (1) at beginning substituted "The department may issue subpoenas" for "The commission may subpoena witnesses" and at end substituted "complaint of discrimination filed under this chapter" for "matter in question before the commission"; in (2) at end substituted "production of books, papers, or other tangible evidence for examination relating to the matter under investigation" for "production, for examination, of books, papers, or other intangible evidence"; deleted former (3) that read: "(3) A party may request subpoenas from the commissioner for the purposes provided in subsection (2)"; and made minor changes in style. Amendment effective April 18, 2011.

1997 Amendment: Chapter 467 in (1), near end after "matter", deleted "either under investigation by the commission staff or" and deleted second sentence that read: "The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint"; inserted (2) concerning staff-requested subpoenas; inserted (3) concerning party-requested subpoenas; and made minor changes in style. Amendment effective July 1, 1997.

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

Case Notes

Investigation of Human Rights Violations — Personnel Files: The Human Rights Commission (HRC) requested access to personnel files in connection with its investigation of a discrimination complaint. The court found that information sought by the HRC is protected by the right of privacy. The court also found that a sufficient showing of compelling state interest was made under Art. II, sec. 4, Mont. Const., and Title 49, ch. 2, allowing the HRC access to the information. To protect the privacy of the individuals whose files are disclosed, the court directed that the HRC may not disclose the information unless it is altered so as to provide for the anonymity of the persons involved. If the information must be released in such a way as to disclose the identity of the persons involved, HRC must, prior to the release, obtain an order from the District Court authorizing the release. Mont. Human Rights Div. v. Billings, 199 M 434, 649 P2d 1283, 39 St. Rep. 1504 (1982).

49-2-204. Rules.

Compiler's Comments

1997 Amendment: Chapter 467 in (1), in first sentence after "implement", inserted "the commission's responsibilities under", inserted third sentence concerning procedural rules, and inserted fourth sentence concerning criminal procedure; inserted (2) concerning adoption of procedural and substantive rules, contested case procedure, and applicable portions of Rules of Civil Procedure and Rules of Evidence; and made minor changes in style. Amendment effective July 1, 1997.

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

Administrative Rules

Title 24, chapter 8, ARM Human Rights Bureau.
Title 24, chapter 9, ARM Human Rights Commission.

Case Notes

Commission for Human Rights Discretion to Award Compensatory Damages in Mixed Motives Cases: Laudert suffered liver failure while employed by the Richland County Sheriff's Department (RCSD) and had to resign. Following Laudert's full recovery, his former position came open again and he applied but was not rehired. He filed a discrimination charge on grounds of age and disability. The hearings examiner found that questions asked by the RCSD interview panel constituted direct evidence that RCSD had unlawfully considered Laudert's disability, but did not award damages because Laudert would not have been hired even in the absence of any unlawful consideration of his disability. RCSD maintained that Laudert was not hired because of his employment history. The hearings examiner properly determined that this was a "mixed motive" case. Whether Laudert was entitled to compensatory damages depended on whether RCSD proved by a preponderance of the evidence that it would have made the same decision in the absence of Laudert's disability, and Laudert's employment history provided substantial evidence proving that Laudert would not have been hired in any event. The Supreme Court found that the hearings examiner properly exercised the statutory discretion to preclude damages, and the court affirmed the authority of the Commission for Human Rights to limit compensatory damages in mixed motive cases pursuant to ARM 24.9.611 and Price Waterhouse v. Hopkins, 490 US 228 (1989). Laudert v. Richland County Sheriff's Dept., 2000 MT 218, 301 M 114, 7 P3d 386, 57 St. Rep. 872 (2000).

Date of Requested Rehearing — Running of Judicial Review Period: The 30-day period under 2-4-702 began to run when the Human Rights Commission issued its final order, not when the Commission denied a requested rehearing, since the Commission has no rule allowing a rehearing. Bradco Supply Co. v. Larsen, 183 M 97, 598 P2d 596 (1979).

49-2-205. Purpose.

Compiler's Comments

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

Effective Date: Section 21, Ch. 467, L. 1997, provided: "[This act] is effective July 1, 1997."

Case Notes

Substantial Evidence Supporting Hearings Examiner's Finding of Sexual Discrimination — Commission for Human Rights Reversal of Hearings Examiner's Findings Reversed: Schmidt was hired as a live-in maid at a motel but was told by the manager that as part of the job, she would be required to have sex with him and with motel customers. Schmidt filed a human rights complaint against the motel manager and the owner, alleging that the manager and the motel discriminated against her on the basis of sex in employment by subjecting her to sexual harassment. A hearings examiner determined that the manager illegally discriminated against Schmidt by subjecting her to quid pro quo sexual harassment as a condition of employment as a maid and that the owner was jointly and severally liable for failing to provide a sexual harassment policy. The owner appealed the final agency decision to the Commission for Human Rights, which reversed the agency decision and dismissed Schmidt's complaint. The District Court affirmed the Commission decision, and Schmidt appealed. The Supreme Court found that although there may have been evidence in the record that supported contrary findings, substantial credible evidence supported the hearings examiner's findings. Thus, the Commission for Human Rights erred in reversing the hearings examiner, and the District Court erred in affirming the Commission. The case was reversed and remanded for further proceedings. Schmidt v. Cook, 2005 MT 53, 326 M 202, 108 P3d 511 (2005).

49-2-210. Enforcement.

Compiler's Comments

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

Effective Date: Section 21, Ch. 467, L. 1997, provided: "[This act] is effective July 1, 1997."

Part 3
Prohibited Discriminatory Practices

Part Case Notes

Corporation Without Standing to Bring Retaliation Claim: The plain language of 49-2-301 allows only an individual to bring a claim for retaliation. Therefore, 49-2-301 does not allow nonhuman entities, including corporations, to bring retaliation claims under the Montana Human Rights Act. Mont. Independent Living Project v. Helena, 2021 MT 14, 403 Mont. 81, 479 P.3d 961.

Sufficient Evidence of Racial Discrimination — Commission for Human Rights Decision Upheld: An employee quit his job after his supervisor called him a racial slur on four occasions. He subsequently filed a racial discrimination complaint against his former employer. The Human Rights Commission found that the employee was subjected to racial discrimination and awarded him lost wage damages and emotional distress damages. The employer appealed to the District Court, which upheld the decision, and then the Supreme Court. The Supreme Court reviewed the record under the Montana Administrative Procedure Act and found that the Commission's findings of fact were not clearly erroneous, its conclusions of law were correct, and the damages awarded were not excessive. KB Enterprises, LLC v. Mont. Human Rights Comm'n, 2019 MT 131, 396 Mont. 134, 443 P.3d 498.

Human Rights Bureau Upheld — Nurse Dishonest — Privacy Breaches — Sufficient Evidence for Termination: The District Court did not err in upholding the Human Rights Bureau's decision that the petitioner nurse was properly terminated by the respondent clinic. As meticulously analyzed by the hearing officer, the petitioner's termination was consistent with personnel actions taken against other clinic employees who engaged in privacy breaches and were dishonest in the clinic's investigation. The Supreme Court concluded that the petitioner's lying to the clinic during its internal investigation was in and of itself sufficient evidence to support her termination from employment. Thus, the clinic's reasons for discharging the petitioner were not completely unworthy of credence. Regardless of whether her prior discipline and investigative interactions with the clinic or her removal of a surgery schedule from clinic premises were protected activities, the District Court did not err in upholding the hearing officer's conclusion that the petitioner was properly terminated by the clinic for her dishonesty. Bollinger v. Billings Clinic, 2019 MT 42, 394 Mont. 338, 434 P.3d 885.

Motion to Compel E-Mails Properly Denied — Employee Subject to Termination, Regardless of Retaliation: The District Court did not err in upholding the Human Rights Bureau's denial of the petitioner nurse's motion to compel the employer clinic to produce certain e-mails in support of her retaliation claim. The Supreme Court determined that the nurse was properly terminated by the clinic for lying during an internal investigation. Consequently, the e-mails did not affect the outcome of the case, even if the hearing officer erred in determining they were all privileged. To the extent any error could be found, it would be harmless error. Bollinger v. Billings Clinic, 2019 MT 42, 394 Mont. 338, 434 P.3d 885.

Sufficient Evidence of Employer's Creation of Hostile Work Environment and Failure to Discipline Offending Supervisor Following Incident of Sexual Harassment: The hearings examiner found that an employee was sexually harassed following an office Christmas party, that the employer failed to discipline the offending employee, and that the employer then created a hostile work environment and sought to find fault with the victim's work in order to fire her and avoid a sexual discrimination suit. Although evidence also existed to support the employer's contrary assertions, under the totality of the circumstances, the hearings examiner's conclusion that the work environment was hostile and abusive was properly upheld by the District Court, and the Supreme Court declined to disturb the agency's findings. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005). See also Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Assignment of Particular Work Position Not Considered Marital or Sex-Plus Discrimination: Three temporary seasonal positions at the Department of Natural Resources and Conservation (DNRC) were eliminated, including Beaver's position, and three permanent seasonal positions were created, including two 8-month positions and one 6-month position. Beaver was given the 6-month position and later sued DNRC for marital and sex-plus discrimination, based in part on the comment by a supervisor that Beaver did not have to worry about getting the 6-month position because she had recently been married and now had a new husband to support her. DNRC contended that the positions were offered based on experience and training, and it was within the discretion of the District Court to determine the credibility of the witnesses and testimony. Although agreeing that the supervisor's statement was highly inappropriate, the Supreme Court nevertheless held that based on the evidence, the employment decision did not involve marital or sex-plus discrimination and that DNRC did not discriminate against Beaver based on marital status. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003).

Failure to Establish Prima Facie Case of Employment Discrimination Based on Alleged Retaliation: Three temporary seasonal positions at the Department of Natural Resources and Conservation (DNRC) were eliminated, including Beaver's position, and three permanent seasonal positions were created, including two 8-month positions and one 6-month position. Beaver was given the 6-month position and later sued DNRC for retaliation for Beaver's earlier filing of an employment discrimination complaint against DNRC. Under Wrighten v. Metropolitan Hosp., Inc., 726 F2d 1346 (9th Cir. 1984), a plaintiff bringing an action for retaliation under Title VII of the Civil Rights Act of 1964 must first establish a prima facie case by showing that: (1) plaintiff engaged in a protected activity; (2) plaintiff was thereafter subjected to adverse employment action by the employer; and (3) there was a causal link between the two. The District Court correctly concluded that the second and third elements were not satisfied. Although the 6-month position was the less favorable of the three, it was still better than the temporary seasonable position that Beaver had before and thus could not be considered an adverse employment action. Further, credible evidence indicated that the positions were assigned based on experience and training rather than on retaliation for Beaver's filing a complaint. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003).

Single Incident of Sexual Assault — Work Environment That Is Not Subjectively Objectionable Not Considered Type of Hostile Environment to Be Actionable Under Title VII — Standard of Review: Following a single incident of sexual assault by a coworker, Beaver brought a claim against the Department of Natural Resources and Conservation (DNRC) under the Montana governmental code of fair practices; Title VII of the Civil Rights Act of 1964; and this chapter, commonly known as the Montana Human Rights Act, asserting that the incident was sufficiently severe or pervasive to alter employment conditions and to create a hostile and abusive working environment. Under Harris v. Forklift Sys., Inc., 510 US 17 (1993), to be sufficiently severe or pervasive to violate Title VII and establish a claim, the misconduct must create a working environment that is both objectively and subjectively offensive and that a reasonable person and the victim perceive as hostile and abusive. The correct legal standard for determining whether an environment is hostile or abusive under Title VII is to review the totality of the circumstances, including: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct, whether it is physically threatening or humiliating or a mere offensive utterance; and (3) whether the conduct interferes with an employee's work performance. Psychological well-being is one factor among many in the determination. Here, the coworker was dismissed following the incident, and Beaver continued working for DNRC, testifying that conditions of employment did not change following the assault. Thus, the District Court correctly concluded that the work environment was not subjectively objectionable to Beaver and that the single incident of sexual assault did not create the type of hostile or abusive environment actionable under Title VII. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003). See also Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Sexual Harassment as Sexual Discrimination: Current authority supports the conclusion that by definition sexual harassment constitutes sexual discrimination. Therefore, a claim of sexual harassment in employment falls under the exclusive remedy provisions of this chapter, often referred to as the Montana Human Rights Act. Harrison v. Chance, 244 M 215, 797 P2d 200, 47 St. Rep. 1539 (1990), followed in Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999, 54 St. Rep. 815 (1997).

Montana Maternity Leave Act — Not Preempted by Federal Law: Female employee who was discharged from her employment because of her pregnancy sought back wages and penalties. Employer claimed its no-leave policy for employees with less than 1 year with the company was facially neutral because it applied to both sexes and sought a judicial determination that the Montana Maternity Leave Act (MMLA) is invalid because it is preempted by Title VII of the Civil Rights Act of 1964 and the federal Pregnancy Discrimination Act (PDA). The District Court held the MMLA invalid. The Supreme Court reversed the District Court decision and held that the employer's no-leave policy clearly violated the Montana law and that the employee was entitled to backpay and penalties for her wrongful discharge. The Supreme Court stated that the employer's no-leave policy created a disparate effect on women who become pregnant compared to men who do not become pregnant. Although the policy was facially neutral, it nonetheless subjected pregnant women to job termination on a basis not faced by men. The no-leave policy therefore appears to be gender-based discrimination by an employer in violation of Title VII and the PDA. The Supreme Court stated that the MMLA is consonant with Title VII and the PDA and is not preempted by either. Miller-Wohl Co., Inc. v. Comm'r of Labor & Industry, 214 M 238, 692 P2d 1243, 41 St. Rep. 2445 (1984); on appeal to the U.S. Supreme Court, judgment vacated and case remanded, 479 US 1048, 93 L Ed 2d 972, 107 S Ct 919 (1987); judgment reinstated and remanded to the District Court for determination of appropriate attorney fees and costs, 228 M 505, 744 P2d 871, 44 St. Rep. 1718 (1987).

Equal Protection — Discrimination in Private Trust Not Illegal Absent State Action: A trust that was created to provide stipends to male members of Future Farmers of America and 4-H clubs, although clearly discriminatory, did not violate the Equal Protection Clause of the United States Constitution. A private person may dispose of his money or property as he wishes and in so doing may lawfully discriminate without offending the Equal Protection Clause as long as the state and its instrumentalities are not involved. In re the Trust Created Under the Will of Cram, 186 M 37, 606 P2d 145, 37 St. Rep. 222 (1980).

Part Law Review Articles

Significant Montana Cases, Hill, Monroe, & Liechty, 83 Mont. L. Rev. 422 (2022), https://scholarworks.umt.edu/mlr/vol83/iss2/9/.

49-2-301. Retaliation prohibited.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Case Notes

Elements of Prima Facie Case of Retaliation Satisfied — Presumption of Retaliatory Intent and Shifting Burden — District Court Upheld. Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Corporation Without Standing to Bring Retaliation Claim: The plain language of 49-2-301 allows only an individual to bring a claim for retaliation. Therefore, 49-2-301 does not allow nonhuman entities, including corporations, to bring retaliation claims under the Montana Human Rights Act. Mont. Independent Living Project v. Helena, 2021 MT 14, 403 Mont. 81, 479 P.3d 961.

Human Rights Bureau Upheld — Nurse Dishonest — Privacy Breaches — Sufficient Evidence for Termination: The District Court did not err in upholding the Human Rights Bureau's decision that the petitioner nurse was properly terminated by the respondent clinic. As meticulously analyzed by the hearing officer, the petitioner's termination was consistent with personnel actions taken against other clinic employees who engaged in privacy breaches and were dishonest in the clinic's investigation. The Supreme Court concluded that the petitioner's lying to the clinic during its internal investigation was in and of itself sufficient evidence to support her termination from employment. Thus, the clinic's reasons for discharging the petitioner were not completely unworthy of credence. Regardless of whether her prior discipline and investigative interactions with the clinic or her removal of a surgery schedule from clinic premises were protected activities, the District Court did not err in upholding the hearing officer's conclusion that the petitioner was properly terminated by the clinic for her dishonesty. Bollinger v. Billings Clinic, 2019 MT 42, 394 Mont. 338, 434 P.3d 885.

No Finding of Malicious Prosecution, Abuse of Process, or Tortious Interference in Employment Discrimination Claim — Judgment as Matter of Law Proper: Lynch filed an employment discrimination claim against doctor Hughes for sexual harassment actions that Hughes took in a hospital in which Lynch was employed. The Commission for Human Rights determined that Hughes was not an employer or agent of an employer, so Hughes did not bear an employer's liability for sexual harassment. Hughes' behavior after Lynch filed the claim was determined to constitute illegal retaliation, but because Lynch did not claim retaliation, the claim was dismissed. Hughes then filed an action in District Court alleging malicious prosecution, abuse of process, and tortious interference. The court found that the claims could not be proved and granted Lynch judgment as a matter of law. Hughes appealed, but the Supreme Court examined each claim and affirmed. First, Hughes could not prove that there was a lack of probable cause for Lynch's action or that the proceeding favored Lynch, so the malicious prosecution claim failed. Second, nothing in the record showed that Lynch used abuse of process to coerce Hughes to do some collateral thing that Hughes could not be legally and regularly compelled to do, so the abuse of process claim also failed. Third, there was no evidence to suggest that Lynch's acts were calculated to damage Hughes, and Lynch was entitled to seek redress and damages for the alleged discrimination, so the tortious interference claim failed as well. Thus, the District Court correctly determined that no genuine issue of material fact existed and that Lynch was entitled to judgment as a matter of law. Hughes v. Lynch, 2007 MT 177, 338 M 214, 164 P3d 913 (2007), following Plouffe v. Dept. of Public Health and Human Services, 2002 MT 64, 309 M 184, 45 P3d 10 (2002), and Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006), and followed in Judd v. Burlington N. & Santa Fe Ry. Co., 2008 MT 181, 343 M 416, 186 P3d 214 (2008), with regard to applicability of the probable cause standard for a malicious prosecution claim.

Failure to Establish Prima Facie Case of Employment Discrimination Based on Alleged Retaliation: Three temporary seasonal positions at the Department of Natural Resources and Conservation (DNRC) were eliminated, including Beaver's position, and three permanent seasonal positions were created, including two 8-month positions and one 6-month position. Beaver was given the 6-month position and later sued DNRC for retaliation for Beaver's earlier filing of an employment discrimination complaint against DNRC. Under Wrighten v. Metropolitan Hosp., Inc., 726 F2d 1346 (9th Cir. 1984), a plaintiff bringing an action for retaliation under Title VII of the Civil Rights Act of 1964 must first establish a prima facie case by showing that: (1) plaintiff engaged in a protected activity; (2) plaintiff was thereafter subjected to adverse employment action by the employer; and (3) there was a causal link between the two. The District Court correctly concluded that the second and third elements were not satisfied. Although the 6-month position was the less favorable of the three, it was still better than the temporary seasonable position that Beaver had before and thus could not be considered an adverse employment action. Further, credible evidence indicated that the positions were assigned based on experience and training rather than on retaliation for Beaver's filing a complaint. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003).

Employment Contingent on Adherence to Teachings of Roman Catholic Church — Discrimination Statutes Inapplicable: Until her termination in 1993, Parker-Bigback was employed by St. Labre School, which is operated by the St. Labre Indian School Education Association, an institution based on the teachings and beliefs of the Roman Catholic Church. Parker-Bigback filed a complaint with the Montana Commission for Human Rights, alleging that she was discriminated against because her termination was based on marital status or sex discrimination. The school maintained that Parker-Bigback's position was eliminated to establish a personnel department, which Parker-Bigback contended was simply a pretext for terminating her employment based on her lifestyle of cohabiting with a man who was not her husband. However, one condition of Parker-Bigback's employment was an agreement to adhere to the moral and religious teachings and beliefs of the Roman Catholic Church and to not engage in any personal conduct or lifestyle contrary to church policies. Thus, it made no difference whether Parker-Bigback was married or single—if she cohabited with someone of the opposite sex to whom she was not married, she would be at variance with church teachings in violation of her contract. Therefore, this was not a case about marital status or gender, but rather about conduct Parker-Bigback agreed to avoid as a condition of employment. Nothing in Art. II, sec. 4, Mont. Const., or 49-2-303 prohibits discrimination based on conduct, nor was any authority offered to persuade the Supreme Court that Parker-Bigback's conduct involved a right of such high order that it would overcome the school's right to freely exercise its religion through its employment practices. Even if she was terminated for cohabitation, her rights to be free from discrimination were not involved, so her employment discrimination case was properly dismissed by summary judgment for the school. Parker-Bigback v. St. Labre School, 2000 MT 210, 301 M 16, 7 P3d 361, 57 St. Rep. 823 (2000). See also Miller v. Catholic Diocese of Great Falls, 224 M 113, 728 P2d 794 (1986).

Termination for Failure to Notify Employer of Conflict of Interest — Not Retaliation for Exercising Right to Sue: Hafner was fired for failure to inform the employer of Hafner's pending litigation against the employer's client while continuing to work on the client's account on behalf of the employer. Hafner was denied unemployment compensation benefits based on employee misconduct. The failure to inform the employer of the conflict of interest constituted willful disregard of the interests of the employer and of reasonable standards of behavior that the employer had the right to expect. Hafner was not terminated for pursuing life's basic necessities or for pursuing a discrimination claim against the client. Termination did not amount to retaliation under this section. Hafner v. Dept. of Labor and Industry, 280 M 95, 929 P2d 233, 53 St. Rep. 1315 (1996).

Proof of Retaliatory Discharge — Claim Outside Context of Collective Bargaining Agreement Not Preempted by Federal Law: To prove retaliatory discharge involving sexual harassment, it must be shown that: (1) the employee was discharged; (2) the employee was subjected to sexual harassment during the course of employment; and (3) the employer's motivation for the discharge was to retaliate for the employee's resistance to the sexual harassment. When this factual inquiry does not turn on the meaning of any term of a collective bargaining agreement, the wrongful discharge claim is considered independent of the agreement for purposes of preemption under federal law. Foster v. Albertsons, Inc., 254 M 117, 835 P2d 720, 49 St. Rep. 638 (1992), following Lingle v. Norge Div. of Magic Chef, Inc., 486 US 399, 100 L Ed 2d 410, 108 S Ct 1877 (1988), and followed, with respect to sexual discrimination, in Pike v. Burlington N. RR Co., 273 M 390, 903 P2d 1352, 52 St. Rep. 1005 (1995).

Jury Instruction on Issue of Retaliation for Participation in Discrimination Action: Acts of retaliation for participating in proceedings before the Human Rights Commission are discrimination actions separate and apart from the claim of discrimination in the original proceedings. Plaintiff is therefore entitled to jury instructions based on his claim of retaliation and is further entitled to comment on the retaliation in oral argument. Mahan v. Farmers Union Cent. Exch., Inc., 235 M 410, 768 P2d 850, 46 St. Rep. 96 (1989).

Verdict Supported by the Evidence: There was substantial evidence to support the jury's finding that the plaintiff was dismissed from her employment because she filed charges with the United States Equal Employment Opportunity Commission alleging unlawful employment practices by her employer. Strong v. St., 183 M 410, 600 P2d 191 (1979).

Law Review Articles

The Severe or Pervasive Standard in the Modern Age, Kimmel, 84 Mont. L. Rev. 299 (2023), https://scholarworks.umt.edu/mlr/vol84/iss2/6/.

Significant Montana Cases, Hill, Monroe, & Liechty, 83 Mont. L. Rev. 422 (2022), https://scholarworks.umt.edu/mlr/vol83/iss2/9/.

49-2-302. Aiding, coercing, or attempting.

Case Notes

Alleged "Aiding" Under Montana Human Rights Act — No Obligation for Police to Remedy Discrimination: After a hotel refused to register the plaintiff because he had a service dog with him, the plaintiff called 9-1-1 to report that the hotel was violating his rights. The police officers told him that he would have to leave, and ultimately the plaintiff filed a discrimination claim against the police department for "aiding and abetting" the hotel in discrimination. The District

Court granted the defendant summary judgment based on its conclusion that Title 49, ch. 2, commonly known as the Montana Human Rights Act, does not require law enforcement personnel to remedy unlawful discrimination. On appeal, the Supreme Court affirmed. Hansen v. Bozeman Police Dept., 2015 MT 143, 379 Mont. 284, 350 P.3d 372.

49-2-303. Discrimination in employment.

Compiler's Comments

2011 Amendment: Chapter 205 inserted (6) exempting businesses on or near Indian reservation from provisions of chapter. Amendment effective April 18, 2011.

2001 Amendment: Chapter 287 inserted (5)(b) providing that it is not marital status discrimination for an employer to employ or offer to employ a person who is qualified for the position and to also employ or offer to employ the person's spouse; and made minor changes in style. Amendment effective October 1, 2001.

1993 Amendments: Chapter 13 inserted (5) to clarify that providing greater or additional contributions to a bona fide group insurance plan for employees with dependents does not constitute discrimination based on marital status; and made minor changes in style. Amendment effective February 1, 1993.

Chapter 407 throughout section substituted "disability" for "handicap"; and made minor changes in style.

1991 Amendment: Inserted (4) relating to Indian hiring preference.

Applicability: Section 7, Ch. 506, L. 1991, provided: "[This act] applies to hiring for vacancies in state agency or state construction project positions within an Indian reservation that occur after [the effective date of this act] [effective October 1, 1991]."

1985 Amendment: Inserted (3) providing that compliance with state antinepotism statutes is not employment discrimination.

1983 Amendment: In (1)(a) and (1)(b), allowed marital status discrimination when the reasonable demands of the position covered by (1)(a) or the program covered by (1)(b) require an age distinction by deleting one reference to "marital status" before "or because of" and inserting two references to "marital status" after that phrase.

Administrative Rules

Title 24, chapter 9, ARM Human Rights Commission.

Case Notes

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GENERAL

Guidance of Wrongful Discharge From Employment Act — Front-Pay Cap on Damages Not Arbitrary and Capricious in Discrimination Case if Supported by Record — Human Rights Commission's Front-Pay Damages Reinstated — Reversed and Remanded. Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Montana Human Rights Act Exclusive Remedy for State Law Discrimination Claims, Not Federal Section 1983 Claims — Claim Properly Dismissed Due to Claim Preclusion. Clark v. McDermott, 2022 MT 186, 410 Mont. 174, 518 P.3d 76.

Age Discrimination Claim Futile as Matter of Law — Good Cause for Termination Shown: Although the District Court found that the plaintiff's proposed age discrimination claim would be futile as a matter of law because it would necessarily have to be a mixed-motive case, the reasoning only settled the matter under federal law, but it would not necessarily foreclose the plaintiff's claim under state law because the plaintiff could have an opportunity to present evidence of age discrimination or evidence that the company's justification for his termination was pretextual. However, because the undisputed facts in the record were sufficient to establish good cause for the plaintiff's termination in briefing on the plaintiff's other claim concerning wrongful discharge, pursuit of the plaintiff's age discrimination claim would be futile, and the District Court was within its discretion to deny the plaintiff leave to amend his complaint to include the age discrimination claim. Hathaway v. Zoot Enterprises, Inc., 2021 MT 292, 406 Mont. 239, 498 P.3d 204.

State and Federal Discrimination Claims — Right to Jury Trial on Federal Claims Not Barred by State Law: The petitioner filed suit against the Department of Public Health and Human Services alleging discrimination under state and federal law after he applied for a job and did not get an interview. The Department filed a motion to strike the petitioner's request for a jury, arguing that all of the petitioner's claims were restricted to a bench trial pursuant to the Montana Human Rights Act. After the District Court granted the motion to strike, the petitioner filed a writ of supervisory control, which the Supreme Court granted. The Supreme Court reversed the District Court, ruling that the petitioner's right to a jury trial on his federal discrimination claims was a substantive, not procedural, right and therefore could not be restricted by state law. Spillers v. 3rd Judicial District Court, 2020 MT 8, 398 Mont. 323, 456 P.3d 560.

Disability Discrimination — Employee Hampered Good Faith Effort of Employer to Engage in Interactive Process: The plaintiff was a former shift supervisor at the Montana Developmental Center (MDC) who occasionally had to use force to restrain clients at work. After one such incident, he required shoulder surgery, which prohibited him from restraining clients. The plaintiff and MDC then entered into an interactive process to find an alternative position for the plaintiff; however, the plaintiff never provided information MDC staff requested to help him locate an alternative position for which he was qualified. Ultimately, MDC terminated the plaintiff from employment. After exhausting administrative remedies, the plaintiff sued MDC alleging the defendant discriminated against him. The District Court granted the defendant summary judgment, and the plaintiff appealed. The Supreme Court affirmed, holding that while the defendant had made a good faith effort to engage in the interactive process, the plaintiff had not. Alexander v. Mont. Developmental Center, 2018 MT 271, 393 Mont. 272, 430 P.3d 90.

Hearings Officer's Decision on Hostile Work Environment Claim — Insufficient Evidence to Determine Whether Standards of Evidence Properly Applied to Testimony: The petitioner quit working for the respondent after 2 months on the job and filed a complaint alleging that the owner of the company had sexually harassed her. A hearings officer for the Human Rights Commission granted judgment in favor of the respondent, which the Commission upheld. Following the District Court's denial of her petition for judicial review, the petitioner appealed to the Supreme Court, arguing that the hearings officer had failed to properly weigh the testimony of her witnesses. The Supreme Court reversed, concluding that the hearings officer's decision lacked sufficient explanation for the court to determine whether or not the standards of evidence had been applied, and directed the officer on remand to consider the testimony of the plaintiff's witnesses and to apply the standards of review set forth in the opinion. Jones v. All Star Painting, Inc., 2018 MT 70, 391 Mont. 120, 415 P.3d 986.

Offer to Transfer Guard to Different Unit Reasonable Response to Sexual Harassment by Inmate — Claims for Discrimination and Sexual Harassment Properly Dismissed: A guard at a youth correctional facility resigned after her supervisor refused to transfer to the maximum security unit at the facility an inmate who had been threatening and intimidating her. The guard then sued her former employer for sexual harassment and discrimination. The facility argued that it took corrective action calculated to end the harassment when it offered to transfer the guard to another unit, but that it could not transfer the inmate as demanded by the guard. The District Court agreed and dismissed the guard's claims. On appeal, the Supreme Court affirmed, agreeing that the facility's offer to transfer the guard to another unit was reasonable and not pretext. Puskas v. Pine Hills Youth Correctional Facility, 2013 MT 223, 371 Mont. 259, 307 P.3d 298.

Husband Discriminated Against Based on Marital Status: Award of back pay to the husband was an appropriate remedy when a couple was fired due to the employer's dissatisfaction with the wife's job performance. The couple was hired as a management team, and there was no dissatisfaction with the husband's performance. Mercer v. McGee, 2008 MT 374, 346 M 484, 197 P3d 961 (2008).

Sexual Discrimination in the Workplace — Claim Affirmed: Defendant employer's son managed the employer's business. Plaintiff complained to the employer regarding the employer's son's sexual conduct on the job, but rather than considering any complaints against her son, the employer rescheduled plaintiff to work a shift that conflicted with plaintiff's child care arrangements, forcing plaintiff to quit. In considering plaintiff's sexual discrimination claim, the hearings examiner found that plaintiff had been discriminated against and that the employer's response to plaintiff's complaint created a hostile work environment. The Commission for Human Rights reversed the hearings examiner's decision, and the District Court affirmed, but on appeal, the Supreme Court reversed the District Court. By failing to do anything to change her son's behavior, the employer created a workplace permeated with discriminatory intimidation that was sufficiently severe or pervasive to alter the conditions of plaintiff's employment and create an abusive working environment. The District Court's affirmation of the Commission's decision was reversible error. Stringer-Altmaier v. Haffner, 2006 MT 129, 332 M 293, 138 P3d 419 (2006).

Court Reinstatement of Emotional Damage Award Following Arbitrary Reduction by Commission for Human Rights Affirmed: After finding that plaintiff was subjected to employment discrimination, the hearings examiner concluded that plaintiff was entitled to $75,000 in compensatory damages for emotional distress. The Commission for Human Rights reduced the award to $40,000, but the Commission did not cite any evidence to support the reduction, aside from the vague feeling of some Commissioners that the initial award was too high. The District Court reinstated the $75,000 award, and on appeal, the Supreme Court affirmed. The hearings examiner had authority to award compensatory damages, and the hearings examiner's findings were supported by testimony from plaintiff, plaintiff's experts, and others. The Commission's reduction was arbitrary, and the District Court did not err in reinstating the original compensatory award. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005).

No Error in Dismissal of Business Partner Uninvolved in Discrimination: Plaintiff sued a business, the business owner, the business manager, and the manager's husband for discrimination in employment. The hearings examiner found that it was the conduct of the business owner and the business manager that led to plaintiff's discharge from employment and dismissed the manager's husband from the suit. The District Court affirmed the finding, and on appeal, the Supreme Court agreed. The husband's conduct and apparent authority in the business were not sufficient to render him a de facto owner or operator of the business, and his dismissal from the suit was proper. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005).

No Error in Failure to Reduce Wage Loss Recovery in Human Rights Case for Failure to Mitigate: After finding that plaintiff was subjected to employment discrimination, the hearings examiner concluded that plaintiff was entitled to recover lost wages. Defendants contended that the wage loss should be reduced because plaintiff failed to take reasonable steps to mitigate the damages. The Supreme Court agreed that in a claim for lost wages before the Commission for Human Rights, a claimant must take reasonable steps toward mitigating damages. Citing Hulett v. Bozeman School District, 228 M 71, 740 P2d 1132 (1987), the court noted that plaintiff was not obligated to seek out all possible employment opportunities, but needed only to be reasonable in pursuing offers of employment. In this case, it was undisputed that plaintiff was emotionally debilitated, and although there was evidence of other reasons why plaintiff did not immediately seek new employment, plaintiff's medical testimony and testimony concerning plaintiff's loss of confidence, anxiety, and reluctance to meet new people supported the hearings examiner's findings, and the Supreme Court declined to disturb those findings. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005).

Duty of Reasonable Accommodation in Existence Prior to 1991 Revision of Law — Failure to Accommodate Constituting Constructive Discharge: Martinell was diagnosed with endometriosis and opted to be treated with drugs rather than have a hysterectomy because she wanted to have children. Treatment with the drugs caused Martinell to suffer depression that would have been lessened by straight day shifts, which Montana Power refused to let her work because she worked in a unit on swing shifts. Montana Power argued that prior to the 1991 revision of discrimination laws, there was no express duty of reasonable accommodation that would have required the company to place Martinell on day shifts. The Supreme Court held that the lower court had correctly determined that the Montana Human Rights Commission's rules and case rulings, as well as federal law and case law throughout the country, demonstrated that the law as it existed prior to 1991 created an implied duty of reasonable accommodation. The Supreme Court also held that an examination of the totality of the circumstances, including the fact that accommodation could be made without undue hardship or expense or without affecting the health or safety of others, supported the lower court's finding that Martinell had been constructively discharged. Martinell v. Mont. Power Co., 268 M 292, 886 P2d 421, 51 St. Rep. 1329 (1994).

Front Pay Option to Reinstatement When Antagonism Exists: Montana Power argued that the lower court erred in granting front pay to Martinell in a discrimination suit because reinstatement was a viable option. The Supreme Court held that the record and findings of the lower court supported front pay when Martinell proved that antagonism existed between the parties, ruling out reinstatement. Martinell v. Mont. Power Co., 268 M 292, 886 P2d 421, 51 St. Rep. 1329 (1994).

No Right to Jury Trial on Discrimination Claim: It was not error to bifurcate a discrimination claim based on this chapter, commonly known as the Montana Human Rights Act, from a wrongful discharge claim and to refuse a jury trial on the former. Sullivan v. Sisters of Charity of Providence of Mont., 268 M 71, 885 P2d 488, 51 St. Rep. 1193 (1994).

Respondeat Superior Liability of Bar Owner: A bar owner was liable, under respondeat superior, for discriminatory acts of her employee. Vainio v. Brookshire, 258 M 273, 852 P2d 596, 50 St. Rep. 529 (1993).

Payment of Fee in Lieu of Union Dues by Catholic Objecting to Union Stand on Abortion and Birth Control: A Roman Catholic teacher who opposed birth control and abortion on religious grounds objected to paying an agency fee under a collective bargaining agreement that allows payment of the fee in lieu of joining the unions, the fee being a payment for the collective bargaining efforts. She objected to paying the fee because one of the unions publicly supports birth control and abortion. The unions must reasonably accommodate her religious beliefs if they can do so without incurring undue hardship. Under federal civil rights law, a union with several means of reasonably accommodating an employee is free to select the one posing the least hardship to the union. Wolfe v. St., 255 M 336, 843 P2d 338, 49 St. Rep. 1042 (1992).

Employment Considerations Not Met — Discrimination Not Addressed: A Human Rights Commission decision that a teacher was unlawfully discriminated against on the basis of marital status was reversed when it was found that the teacher needed to show that he was in a position to be considered for employment, which he failed to demonstrate, before he could invoke the protection of this section. Johnson v. Bozeman School District, 226 M 134, 734 P2d 209, 44 St. Rep. 531 (1987), distinguished in Hearing Aid Institute v. Rasmussen, 258 M 367, 852 P2d 628, 50 St. Rep. 569 (1993).

Human Rights Commission Award of Backpay Contrary to Legal Conclusion of Hearing Examiner: It was not error for the Montana Human Rights Commission to award backpay when the hearing examiner, as a matter of law, refused to do so. After reviewing the record, the Commission may, under 2-4-621, reject or modify an examiner's conclusions of law. The Commission also has the authority under 49-2-506 to use its discretion to rectify harm done a person discriminated against. Unless the conclusions of the Commission in awarding backpay are arbitrary or capricious, which was not the case here, neither the District Court nor the Supreme Court may alter them. European Health Spa v. Human Rights Comm'n, 212 M 319, 687 P2d 1029, 41 St. Rep. 1766 (1984).

Mandatory Game Warden Retirement Without Exception or Justification — Impliedly Repealed: Sections 49-2-303 and 49-3-201, making it unlawful for an employer to refuse employment or discriminate against an employee because of his age when the reasonable demands of the position do not require an age distinction and requiring state officials and personnel to recruit, appoint, treat, and promote personnel without regard to age, being later enacted statutes than the provision of 19-8-601 requiring compulsory retirement of game wardens at age 60, impliedly repealed the retirement provision in order to effectuate the clear intent of the Legislature to prevent all age discrimination in employment unless age is related to job performance. The antidiscrimination statutes are very broad prohibitions with very limited exceptions and indicate legislative intent to abolish all discrimination in employment except under the most limited circumstances. Furthermore, there must be justification for any age discrimination to bring it within the purview of a Title 49 exception to the antidiscrimination prohibitions, and the exceptions will be strictly construed. The game warden (now game wardens' and peace officers') retirement statute contains no justification or qualification. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983), distinguished in Ross v. Great Falls, 1998 MT 276, 291 M 377, 967 P2d 1103, 55 St. Rep. 1127 (1998).

Valid Reason for Mandatory Retirement — Legislative, Not Judicial Task: Since compulsory game warden (now game wardens' and peace officers') retirement statute contained no qualifications or justification, it would be in excess of the authority of a court hearing a warden's suit challenging the statute's validity to hold a factfinding hearing to determine whether there was a basis for the age discrimination grounded in the reasonable demands of the position. Such a determination is a legislative function; the effort would be great; and the Legislature, not the courts, has the resources for such an undertaking. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983).

"Marital Status" Condition of Employment — Antinepotism Policy Discriminatory: Plaintiffs were employed as administrators in the Harlem schools. Their wives were teachers in the Harlem schools. After the school board adopted a policy that administrators could not have a spouse employed in any capacity in the Harlem school system, the board terminated one plaintiff and reduced the other to a teaching position. The board's policy was discriminatory, as the term "marital status" includes the identity and occupation of one spouse as well as whether one is married, single, widowed, or divorced. Thompson v. School District, 192 M 266, 627 P2d 1229, 38 St. Rep. 706 (1981).

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Age Discrimination Claim Futile as Matter of Law — Good Cause for Termination Shown: Although the District Court found that the plaintiff's proposed age discrimination claim would be futile as a matter of law because it would necessarily have to be a mixed-motive case, the reasoning only settled the matter under federal law, but it would not necessarily foreclose the plaintiff's claim under state law because the plaintiff could have an opportunity to present evidence of age discrimination or evidence that the company's justification for his termination was pretextual. However, because the undisputed facts in the record were sufficient to establish good cause for the plaintiff's termination in briefing on the plaintiff's other claim concerning wrongful discharge, pursuit of the plaintiff's age discrimination claim would be futile, and the District Court was within its discretion to deny the plaintiff leave to amend his complaint to include the age discrimination claim. Hathaway v. Zoot Enterprises, Inc., 2021 MT 292, 406 Mont. 239, 498 P.3d 204.

No Direct Evidence of Discrimination at Trial — Jury Instruction Regarding Motivating Factor for Discrimination Properly Denied: At Stevenson's trial alleging age discrimination, Stevenson proposed a jury instruction establishing that a prima facie case of discrimination arose from evidence from which the jury could infer that Stevenson's termination from employment was motivated by the employer's consideration of Stevenson's age. The trial court concluded that the proposed instruction was duplicative and declined to give the instruction. On appeal, Stevenson contended that the instruction was necessary because the employer gave direct testimony that Stevenson's age was a consideration in terminating employment. The Supreme Court disagreed. From the totality of the employer's testimony, it appeared that the employer was simply referring to a conversation with Stevenson to indicate that Stevenson could not slow down at work. Absent direct evidence of discrimination, the jury instructions as a whole constituted a correct statement of the law, and denial of Stevenson's proposed instruction was not error. Stevenson v. Felco Indus., Inc., 2009 MT 299, 352 M 303, 216 P3d 763 (2009).

Sanction for Failure to Object to Evidence by Motion In Limine — Admission of Patently Inadmissible Evidence Reversible Error: At Stevenson's trial alleging age discrimination, the trial court's scheduling order required that trial objections that could have been resolved by a pretrial motion in limine would be considered waived if not presented in a timely motion in limine. Defendant sought to introduce a Human Rights Bureau report that was patently inadmissible pursuant to Crockett v. Billings, 234 M 87, 761 P2d 813 (1988), but because plaintiff had not addressed the issue by pretrial motion, the trial court allowed the evidence. On appeal, the Supreme Court reversed. In this case, the trial court's establishment in the scheduling order of a waiver of the right to object to inadmissible evidence at trial was a sanction, especially when it resulted in the admission of patently inadmissible evidence. The sanction of waiver of the right to object to demonstrably inadmissible evidence is not recognized in the Montana Rules of Civil Procedure, and the trial court's admission of patently inadmissible evidence constituted reversible error. Stevenson v. Felco Indus., Inc., 2009 MT 299, 352 M 303, 216 P3d 763 (2009).

Foreign Medical Reports Not Considered Self-Authenticating Public Documents: In an employment discrimination case, Pannoni sought to introduce written medical reports in letter form that contained observational information and opinions regarding Pannoni's medical condition and ability to return to work. The letters were accompanied by written certification that the reports had been prepared as part of a Canadian mental health center's regularly conducted business. Pannoni contended that the records were self-authenticating documents under the authentication procedure for foreign public documents in Rule 902, M.R.Ev. (Title 26, ch. 10). The Supreme Court disagreed. Under Palmer v. Farmers Ins. Exch., 233 M 515, 761 P2d 401 (1988), hospital records and medical reports are ordinarily not documents that are self-authenticating and are not considered business records, and even though the reports were from Canada, they were not public documents of a foreign country as contemplated in Rule 902, M.R.Ev. Further, the medical expert who authored the reports was not called as a witness, did not give sworn testimony, and was not subject to cross-examination. Thus, the unsworn medical reports were not subject to any hearsay exception and constituted inadmissible hearsay. Pannoni v. Browning School District No. 9 Bd. of Trustees, 2004 MT 130, 321 M 311, 90 P3d 438 (2004), followed in St. v. Baze, 2011 MT 52, 359 Mont. 411, 251 P.3d 122.

Lacking Business Records Foundation by Records Custodian, Medical Reports Considered Inadmissible Hearsay: In an employment discrimination case, Pannoni sought to introduce written medical reports in letter form that contained observational information and opinions regarding Pannoni's medical condition and ability to return to work. The letters were accompanied by written certification that the reports had been prepared as part of a mental health center's regularly conducted business and were made at or near the time of Pannoni's diagnosis, but no one testified as to the contents of the reports or their status as regular business records. The employer objected to the evidence as hearsay, but Pannoni contended that they were admissible under the business records exception. The District Court concluded that because Pannoni had attempted to lay the foundation for the evidence through written certification prepared by a records custodian who did not testify, the foundational evidence itself was hearsay that could not establish the foundation for admission of otherwise inadmissible hearsay documents. Absent a proper foundation for admission of the evidence, the Supreme Court affirmed. Pannoni v. Browning School District No. 9 Bd. of Trustees, 2004 MT 130, 321 M 311, 90 P3d 438 (2004), followed in St. v. Baze, 2011 MT 52, 359 Mont. 411, 251 P.3d 122.

Failure to Timely File Discrimination Complaint With Commission — Prosecution in District Court Precluded: Skites filed a claim against her employer with the Montana Human Rights Commission 225 days after the most recent or continuing act of employment discrimination. Under 49-2-501, a complaint must be filed within 180 days after the unlawful discriminatory practice occurred or was discovered, and if the complaint is not timely filed, it may not be considered by the Commission. Further, pursuant to Hash v. U.S. W. Communications Serv., 268 M 326, 886 P2d 442 (1994), timely filing before the Commission is a prerequisite to filing an employment discrimination complaint in District Court because Title 49, ch. 2, commonly known as the Montana Human Rights Act, is the exclusive remedy for employment discrimination under Montana law. Skites' complaint was not timely filed with the Commission, thus her ability to prosecute the discrimination complaint in District Court was precluded. The District Court did not err in determining that no genuine issue of material fact existed that would preclude summary judgment for the employer. Skites v. Blue Cross Blue Shield of Mont., 1999 MT 301, 297 M 156, 991 P2d 955, 56 St. Rep. 1213 (1999).

Ability to Demonstrate Later Accrual of Action as Precluding Motion to Dismiss Based on Failure to State Claim — Human Rights Violation Claim: Powell was dismissed from his job with the Salvation Army on February 18, 1994, for the stated reason that he had been drinking on the job that day. Powell asserted that he learned months later that the dismissal was actually based on his past history of alcoholism, and he subsequently filed a grievance charge with the Human Rights Commission, alleging unlawful discrimination. The District Court granted a motion by the Salvation Army to dismiss for failure to state a claim for which relief could be granted for lack of jurisdiction based on Powell's failure to file a timely claim with the Commission. Under 27-2-102, the period of limitation applicable to any given cause of action begins to run when the claim or cause of action accrues, unless otherwise provided by statute. Pursuant to 49-2-501, a cause of action accrues under Title 49, ch. 2, commonly known as the Montana Human Rights Act, when the alleged unlawful discriminatory practice occurred or was discovered. Applying the principles in Hash v. U.S. W. Communication Serv., 268 M 326, 886 P2d 442 (1994), the Supreme Court found that Powell may well be able to demonstrate that his cause of action did not accrue until sometime after his termination and that he had thus complied with the applicable 300-day limitation period. The allegations in Powell's complaint were sufficient to withstand the Salvation Army's motion to dismiss, and the District Court erred in concluding otherwise. The case was remanded for further proceedings. Powell v. Salvation Army, 287 M 99, 951 P2d 1352, 54 St. Rep. 1518 (1997), following Willson v. Taylor, 194 M 123, 634 P2d 1180 (1981).

Saving Statute Inapplicable to Complaint Filed Against Party Not Originally Named in Complaint: On January 8, 1992, Williams filed a charge with the Human Rights Commission (HRC) of racial discrimination in employment against Zortman Mining, Inc. (Zortman), a wholly owned subsidiary of Pegasus Gold Corporation (Pegasus). At Zortman's request, a right-to-sue letter was issued by the HRC. On June 18, 1993, Williams filed a complaint against Pegasus in federal court, but that complaint was dismissed on November 3, 1993, because Williams had not exhausted his administrative remedies. The federal court noted that Williams was attempting to manipulate the diversity jurisdiction of the federal court by naming the foreign parent corporation, Pegasus, but not the Montana subsidiary, Zortman. Naming Zortman as a party would have defeated diversity jurisdiction under 28 U.S.C. 1332. On November 9, 1993, after the 90-day period to file following issuance of a right-to-sue letter, Williams filed a complaint in state District Court naming Zortman as the only defendant. Williams asserted that the federal filing satisfied 49-2-509(2) (now repealed) and that the saving statute, 27-2-407, gave him 1 year to refile his complaint following dismissal in federal court. However, Zortman was not named in the federal action. Because the federal action was against a different party, 27-2-407 did not apply. The saving statute applies only when the new complaint and the original complaint are substantially for the same cause of action, including identity of the parties. The statute of limitations in 49-2-509 (now repealed) operated to bar Williams' claim against Zortman because Zortman was not a party to the first suit. As set out in Tietjen v. Heberlein, 54 M 486, 171 P 928 (1918), 27-2-407 applies in cases in which an action has been commenced and, without plaintiff's fault, there is a failure to reach a determination of the merits and the statute of limitations runs during the pendency of the action. Williams v. Zortman Min., Inc., 275 M 510, 914 P2d 971, 53 St. Rep. 289 (1996), following Turner v. Aldor Co. of Nashville, Inc., 827 SW 2d 318 (Tenn. Ct. App. 1991).

Sexual Harassment Claim as Basis for Retaliatory Discharge Claim — Jury Instruction in Context of Only Constitutional Question Inadequate: An employee did not bring a sexual harassment claim as a separate cause of action; rather, specific allegations of harassment formed the basis of the retaliatory discharge claim. The employee's proposed jury instruction would have attempted to tie harassment testimony directly to the wrongful discharge count, but the trial court denied the instruction and instead submitted a special jury form that asked the jury to determine whether the employer engaged in sexual discrimination in violation of Art. II, sec. 4, Mont. Const. The jury found no sexual discrimination, and the court directed verdict for the employer on the wrongful discharge claim. On appeal, the Supreme Court held that the directed verdict was error absent an assurance that the jury was given an appropriate framework in which to tie the employee's testimony to the constitutional language. The jury instruction effectively denied the employee of the opportunity to fully present the wrongful discharge claim. Foster v. Albertsons, Inc., 254 M 117, 835 P2d 720, 49 St. Rep. 638 (1992).

Proper Test Review of Human Rights Commission Decisions: When reviewing a decision of the Montana Human Rights Commission under this section, the proper test is the test set forth in McDonnell Douglas Corp. v. Green, 411 US 792, 36 L Ed 2d 668, 93 S Ct 1817 (1973), rather than the test set forth in Mt. Healthy City School District Bd. of Educ. v. Doyle, 429 US 274, 50 L Ed 2d 471, 97 S Ct 568 (1977). European Health Spa v. Human Rights Comm'n, 212 M 319, 687 P2d 1029, 41 St. Rep. 1766 (1984). See also Johnson v. Bozeman School District, 226 M 134, 734 P2d 209, 44 St. Rep. 531 (1987), Crockett v. Billings, 234 M 87, 761 P2d 813, 45 St. Rep. 1751 (1988), Hearing Aid Institute v. Rasmussen, 258 M 367, 852 P2d 628, 50 St. Rep. 569 (1993), Hafner v. Conoco, Inc., 268 M 396, 886 P2d 947, 51 St. Rep. 1391 (1994), and Vortex Fishing Sys., Inc. v. Foss, 2001 MT 312, 308 M 8, 38 P3d 836 (2001).

Original Action Involving Interpretation of Statute Allowed Without Exhaustion of Administrative Remedies: Game warden mandatorily retired under 19-8-601 lost a complaint proceeding before the Montana Commission for Human Rights, did not pursue further administrative remedies, and brought a District Court action to declare the statute invalid. The exhaustion of administrative remedies doctrine did not preclude redress because: (1) the court action was an original action and not a judicial review of an administrative action, and (2) the Commission ruling was an interpretation of law that must be made by the judiciary. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983).

ELEMENTS OF DISCRIMINATION CLAIMS

No Finding of Malicious Prosecution, Abuse of Process, or Tortious Interference in Employment Discrimination Claim — Judgment as Matter of Law Proper: Lynch filed an employment discrimination claim against doctor Hughes for sexual harassment actions that Hughes took in a hospital in which Lynch was employed. The Commission for Human Rights determined that Hughes was not an employer or agent of an employer, so Hughes did not bear an employer's liability for sexual harassment. Hughes' behavior after Lynch filed the claim was determined to constitute illegal retaliation, but because Lynch did not claim retaliation, the claim was dismissed. Hughes then filed an action in District Court alleging malicious prosecution, abuse of process, and tortious interference. The court found that the claims could not be proved and granted Lynch judgment as a matter of law. Hughes appealed, but the Supreme Court examined each claim and affirmed. First, Hughes could not prove that there was a lack of probable cause for Lynch's action or that the proceeding favored Lynch, so the malicious prosecution claim failed. Second, nothing in the record showed that Lynch used abuse of process to coerce Hughes to do some collateral thing that Hughes could not be legally and regularly compelled to do, so the abuse of process claim also failed. Third, there was no evidence to suggest that Lynch's acts were calculated to damage Hughes, and Lynch was entitled to seek redress and damages for the alleged discrimination, so the tortious interference claim failed as well. Thus, the District Court correctly determined that no genuine issue of material fact existed and that Lynch was entitled to judgment as a matter of law. Hughes v. Lynch, 2007 MT 177, 338 M 214, 164 P3d 913 (2007), following Plouffe v. Dept. of Public Health and Human Services, 2002 MT 64, 309 M 184, 45 P3d

10 (2002), and Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006), and followed in Judd v. Burlington N. & Santa Fe Ry. Co., 2008 MT 181, 343 M 416, 186 P3d 214 (2008), with regard to applicability of the probable cause standard for a malicious prosecution claim.

Full-Time Employment Wage Disparity Not Pleaded in Sex Discrimination Case — Improper Amendment of Pleadings by Hearings Examiner to Include Full-Time Employment Claim — Reversal of Commission Order Affirmed: Sprow brought an employment discrimination case, claiming that because of her sex, she was paid less than other employees at plaintiff's corporation. Sprow had started the job as a full-time employee, but received a pay decrease upon moving to part-time work, at which time she discovered the pay disparity between part-time employees and filed the claim. The hearings examiner reported that plaintiff had provided a legitimate nondiscriminatory reason for paying Sprow less as a part-time employee, but that Sprow had established that for full-time work, Sprow was as qualified as other workers. The hearings examiner concluded that plaintiff had discriminated against Sprow based on pay discrepancies in her full-time employment. In order to reach that conclusion, the hearings examiner amended the original pleadings, which only alleged discrimination regarding part-time employment. Plaintiff appealed to District Court, and the court reversed on grounds that the court had no jurisdiction to determine discrimination in full-time employment because Sprow's complaint concerned only part-time wage disparity. On appeal, the Supreme Court affirmed. Sprow never pleaded wage disparity in full-time employment, the hearings examiner erred by inserting the issue into the pleadings, and the Commission for Human Rights erred by concluding that Sprow had alleged full-time wage disparity based on the improperly amended pleadings. The District Court properly reversed in favor of plaintiff. Centech Corp. v. Sprow, 2006 MT 27, 331 M 98, 128 P3d 1036 (2006).

Sufficient Evidence of Employer's Creation of Hostile Work Environment and Failure to Discipline Offending Supervisor Following Incident of Sexual Harassment: The hearings examiner found that an employee was sexually harassed following an office Christmas party, that the employer failed to discipline the offending employee, and that the employer then created a hostile work environment and sought to find fault with the victim's work in order to fire her and avoid a sexual discrimination suit. Although evidence also existed to support the employer's contrary assertions, under the totality of the circumstances, the hearings examiner's conclusion that the work environment was hostile and abusive was properly upheld by the District Court, and the Supreme Court declined to disturb the agency's findings. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005). See also Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Substantial Evidence Supporting Hearings Examiner's Finding of Sexual Discrimination — Commission for Human Rights Reversal of Hearings Examiner's Findings Reversed: Schmidt was hired as a live-in maid at a motel but was told by the manager that as part of the job, she would be required to have sex with him and with motel customers. Schmidt filed a human rights complaint against the motel manager and the owner, alleging that the manager and the motel discriminated against her on the basis of sex in employment by subjecting her to sexual harassment. A hearings examiner determined that the manager illegally discriminated against Schmidt by subjecting her to quid pro quo sexual harassment as a condition of employment as a maid and that the owner was jointly and severally liable for failing to provide a sexual harassment policy. The owner appealed the final agency decision to the Commission for Human Rights, which reversed the agency decision and dismissed Schmidt's complaint. The District Court affirmed the Commission decision, and Schmidt appealed. The Supreme Court found that although there may have been evidence in the record that supported contrary findings, substantial credible evidence supported the hearings examiner's findings. Thus, the Commission for Human Rights erred in reversing the hearings examiner, and the District Court erred in affirming the Commission. The case was reversed and remanded for further proceedings. Schmidt v. Cook, 2005 MT 53, 326 M 202, 108 P3d 511 (2005).

Elements of Workplace Sexual Harassment — Claim Dismissed Upon Failure to Prove Discriminatory Motive: Campbell worked as the newest member of a plumbing crew and was barraged with offensive sex-themed comments from the all-male crew. The comments nearly always referred to ways that the other crewmembers wanted to use Campbell to sexually gratify themselves. Campbell ultimately brought a sexual harassment claim against the employer, but the claim was dismissed, and Campbell appealed. The Supreme Court noted that there are four requirements that must be met for a plaintiff to establish a prima facie case of hostile environment sexual harassment. A plaintiff must: (1) be a member of a protected class; (2) show that the offensive conduct amounted to actual discrimination because of sex; (3) show that the harassment was unwelcome; and (4) show that the claimed sexual harassment was so severe and pervasive that it altered the conditions of employment and created an abusive work environment. To be sufficiently severe, the work environment must be one that a reasonable person would find hostile and abusive and that plaintiff in fact perceived as hostile and abusive. To determine whether the environment was hostile and abusive, a court must look at all circumstances, including the frequency of the discriminatory conduct, the severity of the conduct and whether it was physically threatening or humiliating or a mere offensive utterance, and whether the conduct unreasonably interfered with the employee's work performance. Here, Campbell met requirements one and three, but failed to meet requirement two by proving a discriminatory motive and that the disturbing treatment was perpetrated because Campbell was male. Because Campbell's claim failed to satisfy requirement two, the court declined to analyze requirement four, and dismissal of the claim was affirmed. Campbell v. Garden City Plumbing & Heating, Inc., 2004 MT 231, 322 M 434, 97 P3d 546 (2004), following Oncale v. Sundowner Offshore Serv., Inc., 523 US 75 (1998).

Assignment of Particular Work Position Not Considered Marital or Sex-Plus Discrimination: Three temporary seasonal positions at the Department of Natural Resources and Conservation (DNRC) were eliminated, including Beaver's position, and three permanent seasonal positions were created, including two 8-month positions and one 6-month position. Beaver was given the 6-month position and later sued DNRC for marital and sex-plus discrimination, based in part on the comment by a supervisor that Beaver did not have to worry about getting the 6-month position because she had recently been married and now had a new husband to support her. DNRC contended that the positions were offered based on experience and training, and it was within the discretion of the District Court to determine the credibility of the witnesses and testimony. Although agreeing that the supervisor's statement was highly inappropriate, the Supreme Court nevertheless held that based on the evidence, the employment decision did not involve marital or sex-plus discrimination and that DNRC did not discriminate against Beaver based on marital status. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003).

Failure to Establish Prima Facie Case of Employment Discrimination Based on Alleged Retaliation: Three temporary seasonal positions at the Department of Natural Resources and Conservation (DNRC) were eliminated, including Beaver's position, and three permanent seasonal positions were created, including two 8-month positions and one 6-month position. Beaver was given the 6-month position and later sued DNRC for retaliation for Beaver's earlier filing of an employment discrimination complaint against DNRC. Under Wrighten v. Metropolitan Hosp., Inc., 726 F2d 1346 (9th Cir. 1984), a plaintiff bringing an action for retaliation under Title VII of the Civil Rights Act of 1964 must first establish a prima facie case by showing that: (1) plaintiff engaged in a protected activity; (2) plaintiff was thereafter subjected to adverse employment action by the employer; and (3) there was a causal link between the two. The District Court correctly concluded that the second and third elements were not satisfied. Although the 6-month position was the less favorable of the three, it was still better than the temporary seasonable position that Beaver had before and thus could not be considered an adverse employment action. Further, credible evidence indicated that the positions were assigned based on experience and training rather than on retaliation for Beaver's filing a complaint. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003).

Elements of Prima Facie Case of Alleged Employment Discrimination Based on Marital Status: Under the first part of the test for employment discrimination set out in McDonnell Douglas Corp. v. Green, 411 US 792 (1973), plaintiff must first establish a prima facie case of discrimination. In cases of alleged employment discrimination resulting in termination and based on marital status, plaintiff must prove the following prima facie elements: (1) the claimant belonged to a protected class; (2) the claimant was otherwise qualified for continued employment; and (3) the claimant was denied employment under circumstances that raise a reasonable inference that the claimant was treated differently because of membership in the protected class. Here, Foss notified his employer, Vortex Fishing Systems, Inc. (Vortex), of his intention to marry another Vortex employee and was told that under Vortex's unwritten antinepotism policy, a change in his marital status was grounds for termination. Foss quit his employment because of the policy and married within the week. Even though Foss was not married at the time that he quit, he was nevertheless a member of a protected class because it was the change in his marital status that jeopardized his employment. The second element was undisputed because Foss was otherwise qualified for the job and had been a satisfactory employee. Foss also proved the third element because there was no other apparent reason why Foss would have left his job but for his belief that he would soon be fired. The Vortex policy in effect gave Foss a choice between his job and his marriage, and as a member of a protected class, Foss was treated differently and denied further employment with Vortex. Foss established a prima facie case of employment discrimination, and the Commission for Human Rights' holding to that effect was affirmed. (See 2001 amendment.) Vortex Fishing Sys., Inc. v. Foss, 2001 MT 312, 308 M 8, 38 P3d 836 (2001).

Insufficient Evidence of Nondiscriminatory Reasons for Antinepotism Policy — Illegal Discrimination Based on Marital Status Affirmed: Under the second part of the test for employment discrimination set out in McDonnell Douglas Corp. v. Green, 411 US 792 (1973), once plaintiff has established a prima facie case of discrimination, the burden shifts to the employer to rebut the presumption of discrimination by producing a legitimate, nondiscriminatory reason for its actions. Here, Vortex Fishing Systems, Inc. (Vortex), established an unwritten antinepotism policy that prohibited the employment of married employees. The reasons given for the policy were that: (1) supervisors tend to bestow favors upon other employed relatives; (2) when relatives are working and one decides to take time off, it usually results in the other relative also taking time off, which disrupts business; (3) if one relative is terminated, the other relative becomes disgruntled or quits; and (4) the employment of relatives makes pilferage more likely. Employee Foss announced his intention to marry another Vortex employee, but quit when reminded of the antinepotism policy. Foss proved a prima facie case of discrimination, and Vortex's reasons for its actions in adopting the policy were considered unconvincing. The first reason was overly broad because it precluded all individuals from marrying even when no supervisory relationship existed between the employees. The second reason was also rejected because the ability to approve or disapprove leave time lies with the employer. The third and fourth reasons lacked any factual basis. Absent sufficient evidence of nondiscriminatory reasons for the policy, the Commission for Human Rights' conclusion that Vortex discriminated against Foss because of marital status was affirmed. (See 2001 amendment.) Vortex Fishing Sys., Inc. v. Foss, 2001 MT 312, 308 M 8, 38 P3d 836 (2001).

Employment Contingent on Adherence to Teachings of Roman Catholic Church — Discrimination Statutes Inapplicable: Until her termination in 1993, Parker-Bigback was employed by St. Labre School, which is operated by the St. Labre Indian School Education Association, an institution based on the teachings and beliefs of the Roman Catholic Church. Parker-Bigback filed a complaint with the Montana Commission for Human Rights, alleging that she was discriminated against because her termination was based on marital status or sex discrimination. The school maintained that Parker-Bigback's position was eliminated to establish a personnel department, which Parker-Bigback contended was simply a pretext for terminating her employment based on her lifestyle of cohabiting with a man who was not her husband. However, one condition of Parker-Bigback's employment was an agreement to adhere to the moral and religious teachings and beliefs of the Roman Catholic Church and to not engage in any personal conduct or lifestyle contrary to church policies. Thus, it made no difference whether Parker-Bigback was married or single—if she cohabited with someone of the opposite sex to whom she was not married, she would be at variance with church teachings in violation of her contract. Therefore, this was not a case about marital status or gender, but rather about conduct Parker-Bigback agreed to avoid as a condition of employment. Nothing in Art. II, sec. 4, Mont. Const., or this section prohibits discrimination based on conduct, nor was any authority offered to persuade the Supreme Court that Parker-Bigback's conduct involved a right of such high order that it would overcome the school's right to freely exercise its religion through its employment practices. Even if she was terminated for cohabitation, her rights to be free from discrimination were not involved, so her employment discrimination case was properly dismissed by summary judgment for the school. Parker-Bigback v. St. Labre School, 2000 MT 210, 301 M 16, 7 P3d 361, 57 St. Rep. 823 (2000). See also Miller v. Catholic Diocese of Great Falls, 224 M 113, 728 P2d 794 (1986).

Disability Determination on Case-by-Case Basis — High Blood Pressure as Disability: Whether a person is disabled under Title 49, ch. 2, commonly known as the Montana Human Rights Act, cannot be decided as a matter of law, but rather requires a factual determination to be made on a case-by-case basis. Under 49-4-101, to establish a prima facie case of discrimination in employment, an employee must show that the employee belonged to a protected class, that the employee was otherwise qualified for continued employment and that the employment did not subject the employee or others to physical harm, and that continued employment was denied because of the employee's disability. A person is entitled to the protections of the Act not only if the person suffers from a substantially limiting impairment, but also if the person suffers from a condition that is regarded as such an impairment. High blood pressure is an example of a perceived disability. It is no more legal to discriminate against one who exhibits symptoms of a disease than to discriminate against one who suffers from the disease itself. In this case, Reeves was terminated because, in the employer's own words, "it was a combination of having high blood pressure and working in a position as a fast order cook working under conditions of pressure, stress and heat . . . and I decided this would be best for Donna". Reeves met the test for proving a prima facie case under 49-4-101. The District Court erred in summarily dismissing Reeves' claim, and the case was remanded for further proceedings. Reeves v. Dairy Queen, Inc., 1998 MT 13, 287 M 196, 953 P2d 703, 55 St. Rep. 44 (1998).

No Record or Evidence of Mental Impairment Rising to Level of Disability — Particular Job but Not Broad Range of Jobs Precluded: Walker contended that his employer, Montana Power Company (MPC), knew that he suffered from a mental impairment brought about by work-related stress and that he had a documented record of impairment and was regarded as having an impairment. Citing Holihan v. Lucky Stores, Inc., 87 F3d 362 (9th Cir. 1996), the Supreme Court held that depression and anxiety do not render a person disabled within the meaning of 29 CFR 1630.2(j)(3)(i) of the federal Americans With Disabilities Act of 1990 when the depression and anxiety do not prevent that person from working at a broad range of jobs, but only at a particular job. Walker's record of depression and stress was limited at best, and both of his supervisors testified that they did not believe that he had a record of, nor did they perceive that he had, a mental disability. MPC did not treat Walker as if he were limited in all fields of employment, only in the job of lineman supervisor. Thus, the jury could properly have determined that the credible evidence weighed in favor of a finding that Walker did not have a mental impairment that rose to the level of a disability and that he did not have a record of an impairment. Walker v. Mont. Power Co., 278 M 344, 924 P2d 1339, 53 St. Rep. 943 (1996).

Definition of "Otherwise Qualified" for Employment: Under the first stage of the three-stage test for employment discrimination articulated in McDonnell Douglas Corp. v. Green, 411 US 792, 36 L Ed 2d 668, 93 S Ct 1817 (1973), a job applicant must establish four elements in order to make a prima facie case of discrimination, showing: (1) the person is a member of the class protected by the statute; (2) the person applied for and was qualified for the position; (3) the person was rejected despite being qualified for the job; and (4) the position remained open and the employer continued to accept applications from persons with comparable qualifications. In the case at hand, the District Court determined that Hafner failed to establish the second element of the prima facie case. The Supreme Court relied on Chandler v. Dallas, 2 F3d 1385 (5th Cir. 1993), in defining an "otherwise qualified" person as one who is able to meet all of a program's requirements in spite of a handicap. Hafner's initial qualifications for the position were demonstrated by the employer's offer of probationary employment and by the fact that Hafner had done similar work and understood and felt capable of performing the required activities. The District Court erred in determining that Hafner had failed to establish the second element of a prima facie case. Hafner v. Conoco, Inc., 268 M 396, 886 P2d 947, 51 St. Rep. 1391 (1994).

Definition of "Regarded as Having an Impairment": Under the first stage of the three-stage test for employment discrimination articulated in McDonnell Douglas Corp. v. Green, 411 US 792, 36 L Ed 2d 668, 93 S Ct 1817 (1973), a job applicant must establish four elements in order to make a prima facie case of discrimination, showing: (1) the person is a member of the class protected by the statute; (2) the person applied for and was qualified for the position; (3) the person was rejected despite being qualified for the job; and (4) the position remained open and the employer continued to accept applications from persons with comparable qualifications. In the case at hand, the District Court determined that Hafner failed to establish the first element of the prima facie case. By definition in 49-2-101, physical or mental disability means a physical or mental impairment that substantially limits one or more of a person's major life activities, a record of such an impairment, or a condition "regarded as" such an impairment. In interpreting the "regarded as" provision of the definition, the Supreme Court cited Forrisi v. Bowen, 794 F2d 931 (4th Cir. 1986), in finding that an employer regards an employee as handicapped in the ability to work by finding the employee's impairment to foreclose generally the type of employment involved. Because Hafner established as a matter of law that he was "regarded" by the employer as physically disabled, the District Court erred in determining that Hafner had failed to establish the first element of a prima facie case. Hafner v. Conoco, Inc., 268 M 396, 886 P2d 947, 51 St. Rep. 1391 (1994), followed in Butterfield v. Sidney Pub. Schools, 2001 MT 177, 306 M 179, 32 P3d 1243 (2001). On remand, the District Court erred in finding that Hafner's disability precluded him from performance of the position of helper when the question had been previously resolved in Hafner I, ibid., which became the law of the case. The District Court had no jurisdiction to revisit the issue.

Elements of Federal ADEA Claim: To establish a prima facie case under the federal Age Discrimination in Employment Act, one must either provide direct evidence of discrimination or present evidence that the plaintiff was in the protected age group, was performing the job satisfactorily, was discharged, and was replaced by a substantially younger person. The employer then has the burden to articulate a nondiscriminatory reason for the discharge, after which the plaintiff has to prove by a preponderance of the evidence that the employer's reasons are a pretext for discrimination. Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326, 50 St. Rep. 518 (1993).

Federal ADEA Claim Proved by Forty-Nine-Year-Old Woman Bank Employee: Violation of the federal Age Discrimination in Employment Act was shown by a 49-year-old bank employee who presented evidence that: (1) the bank holding company president thought she was too old and should be gotten rid of and that her supervisor would take care of it; (2) she had satisfactory performance reviews and was recently employee of the month; (3) she was erroneously placed on probation by her supervisor after many years of service; (4) before she was fired, business cards had been ordered with her title and a newly hired employee's name; (5) she was fired for not carrying out her supervisor's order to train the new employee for her type of position even though the plaintiff had merely postponed the training because the new employee's temporary replacement for the training period did not show up for work; and (6) the new employee was given her position after she was fired. Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326, 50 St. Rep. 518 (1993).

TESTS OR STANDARD APPLIED IN DISCRIMINATION ANALYSIS

Reasonable Accommodation of Disabled Employee's Service Dog — Employer's Duties to Provide Reasonable Accommodation — Employee's Requested Accommodation Within Scope of Human Rights Act: McDonald was employed by the Department of Environmental Quality (DEQ) as a fiscal officer. As a disabled person, McDonald required the use of a service dog. However, the dog continually slipped on the floors of the DEQ building where McDonald worked, and despite McDonald's repeated requests for DEQ to install nonslip surfaces for the dog, the requested accommodation was still not made 1½ years after McDonald's request. McDonald eventually left DEQ and had to retire the dog, which allegedly caused numerous work-related and social problems for McDonald. McDonald then sued DEQ for employment discrimination. The hearings examiner concluded that there was no rational basis for the delay and that McDonald was discriminated against; the examiner imposed injunctive relief and awarded McDonald damages of $10,000 for emotional distress, $18,000 for a replacement service animal, $1,536 for travel expenses to procure the animal, and $333.84 for veterinary expenses. The Human Rights Commission affirmed the agency decision, but the District Court reversed. The court concluded that DEQ met its legal duty to provide a reasonable accommodation by allowing McDonald to use the service dog in the workplace but held that DEQ had no legal duty to provide an accommodation for the service animal. McDonald appealed and the Supreme Court reversed. The court held that the reasonable accommodation requirement is best understood as a means by which barriers to equal employment of disabled persons are removed or alleviated, so if an adjustment or modification is job-related and specifically assists the person in performing the duties of a particular job, it will be considered a type of reasonable accommodation. Employers are not relieved of the duty to accommodate when an employee is already able to perform the essential functions of a job. Rather, an employer is fundamentally obligated to not interfere, either through action or inaction, with a disabled employee's efforts to pursue a normal life. Further, an employer's duty to make reasonable accommodations does not end with allowing an assistive device through the front door. The duty also requires an employer to address any barriers to the employee's ability to actually use the device effectively in the workplace, which includes modification of a floor surface if such an accommodation is otherwise reasonable. In this case, substantial evidence supported the hearings examiner's ultimate finding that McDonald needed an accommodation, and the District Court erred in holding that McDonald's requested accommodation for the service dog was beyond the scope of the DEQ's duty under the Montana Human Rights Act. McDonald v. Dept. of Environmental Quality, 2009 MT 209, 351 M 243, 214 P3d 749 (2009), following Buckingham v. U.S., 998 F2d 735 (9th Cir. 1993).

Quid Pro Quo Sexual Harassment Claim Affirmed: Following the breakdown of their office romance, employer Lowther told employee Williams that the situation was no longer tolerable and offered Williams a severance package, consisting of wages and a lump-sum payment, and the choice to either resume their intimate relationship or leave the job. Williams declined the offer. Lowther reiterated the offer with an increased lump-sum payment, but Williams again refused the offer, so Lowther fired Williams. Williams then filed an employment discrimination suit, alleging sex discrimination when she was subjected to unwelcome quid pro quo sexual harassment culminating in termination from employment by Lowther's corporation. The Department of Labor and Industry found for Williams and ordered the corporation to pay Williams $30,155.13 in damages. Lowther appealed to the Commission for Human Rights, which affirmed the agency's decision, and then to District Court. The court held that Williams had made a prima facie showing of quid pro quo sexual discrimination and affirmed the award, and Lowther appealed to the Supreme Court. Without adopting a formal test for quid pro quo sexual discrimination, the court deferred to federal guidelines and affirmed. Lowther did not challenge the finding that even after terminating Williams' employment, he offered Williams the choice of having her job back if she resumed the intimate relationship, and this finding demonstrated that submission to or rejection of that conduct by Williams was used as the basis for employment decisions affecting her, in violation of 29 CFR 1604.11. Williams v. Joe Lowther Ins. Agency, Inc., 2008 MT 46, 341 M 394, 177 P3d 1018 (2008).

Plaintiff Subject to McDonnell Douglas Test to Prove Employment Discrimination: Ray argued that his position as department head at Montana Tech of the University of Montana (now Montana Technological University) was not renewed because of his environmental activities and criticism of engineering students and also because of his marital status because one of the administrators was opposed to his being married to another member of the faculty. The Commission for Human Rights determined that the university had presented legitimate reasons for the nonrenewal and found for the school. The decision was upheld by the District Court. On appeal, Ray asserted that he was not subject to the McDonnell Douglas test adopted by the Montana Supreme Court in Martinez v. Yellowstone County Welfare Dept., 192 M 42, 626 P2d 242 (1981). The Supreme Court found that Ray had not presented any direct evidence that he was discriminated against based upon his political beliefs or marital status and therefore was subject to the test that provides that a plaintiff, relying on circumstantial evidence, has the initial burden of proving a prima facie case of discrimination. However, if the other party then meets its burden of rebutting the prima facie case, the burden reverts to the plaintiff. The Supreme Court agreed with the Commission for Human Rights that Ray had met the initial burden. However, the Supreme Court ruled that Montana Tech had then met its burden of showing legitimate reasons for the nonrenewal, which were supported by substantial credible evidence. The Supreme Court upheld the Commission's and District Court's findings that Montana Tech had presented reasons for the nonrenewal that were not pretextual, and that shifted the burden back to Ray who had not presented any convincing evidence that the reasons given for the nonrenewal were pretextual. Ray v. Mont. Tech of the Univ. of Mont., 2007 MT 21, 335 M 367, 152 P3d 122 (2007). See also Baumgart v. St., 2014 MT 194, 376 Mont. 1, 332 P.3d 225, holding that speculative and conclusory statements were insufficient to show the prima facie case for political affiliation discrimination.

Failure to Establish Elements of Prima Facie Retaliation Case — Partial Summary Judgment Proper: The elements of a prima facie case under Title VII of the federal Civil Rights Act of 1964 are: (1) the plaintiff engaged in a protected activity; (2) thereafter, the employer took an adverse employment action against the plaintiff; and (3) a causal link existed between the protected activity and the employer's action. In cases under this chapter, commonly known as the Montana Human Rights Act, elements of a prima facie retaliation case generally consist of proof that the charging party was qualified for employment, was engaged in a protected activity, and was subjected to adverse action, as well as proof of a causal connection or other circumstances raising a reasonable inference that the charging party was treated differently because of the protected activity. In the present case, the Supreme Court applied the three-prong burden-shifting test for summary judgment motions in disparate treatment cases set forth in Heiat v. E. Mont. College, 275 M 322, 912 P2d 787 (1996), to evaluate whether Rolison's complaint constituted a prima facie case. Rolison established the protected activity element of a prima facie case by filing a gender discrimination case that the employer was aware of. However, Rolison failed to raise a genuine issue of material fact regarding the adverse employment action of the retaliation claim, thus failing the Heiat test for a prima facie case, so partial summary judgment for the employer on the state and federal discrimination claims was proper. Rolison v. Bozeman Deaconess Health Serv., Inc., 2005 MT 95, 326 M 491, 111 P3d 202 (2005). See also Wrighten v. Metropolitan Hosp., Inc., 726 F2d 1346 (9th Cir. 1984), and Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003).

Indefinite Leave of Absence Not Considered Reasonable Accommodation — Standard for Ascertaining Whether Person Qualified Individual Deserving of Reasonable Accommodation: After Pannoni was terminated from his teaching job for excessive absences, Pannoni filed a discrimination complaint alleging that he had been terminated because of a mental disability and that the school district failed to accommodate his disability by granting continued unpaid leaves of absence. The Department of Labor and Industry concluded that Pannoni was not able to perform essential job functions and therefore was not a qualified person for the teaching position. The Commission for Human Rights and the District Court agreed, and on appeal, the Supreme Court affirmed. Although an employer has a duty to provide a reasonable accommodation to a person with a disability if the accommodation allows the person to perform essential job functions, an employer is not required to accommodate an employee who suffers from a prolonged illness by allowing the employee an indefinite leave of absence, nor is an employer required to grant a second leave if the employee's condition recurs after return from the first leave. The requirement to grant a leave of absence cannot be repeatedly invoked to permit an unqualified employee to avoid termination by requesting leave each time that the employee is about to be fired. Although Pannoni suggested a lenient plausibility standard for determining whether an accommodation is reasonable, the Supreme Court applied the standard already in Montana administrative law that a person with a disability is qualified to hold an employment position if the person can perform the essential functions of the job with or without a reasonable accommodation for the disability. Pannoni could not show that he was a qualified individual capable of performing essential teaching functions even with a reasonable accommodation, so the discrimination claim failed. Pannoni v. Browning School District No. 9 Bd. of Trustees, 2004 MT 130, 321 M 311, 90 P3d 438 (2004), following Kimbro v. Atl. Richfield Co., 889 F2d 869 (9th Cir. 1989), Nowak v. St. Rita High School, 142 F3d 999 (7th Cir. 1998), and Humphrey v. Mem. Hosp. Ass'n, 239 F3d 1128 (9th Cir. 2001).

Single Incident of Sexual Assault — Work Environment That Is Not Subjectively Objectionable Not Considered Type of Hostile Environment to Be Actionable Under Title VII — Standard of Review: Following a single incident of sexual assault by a coworker, Beaver brought a claim against the Department of Natural Resources and Conservation (DNRC) under the Montana governmental code of fair practices; Title VII of the Civil Rights Act of 1964; and this chapter, commonly known as the Montana Human Rights Act, asserting that the incident was sufficiently severe or pervasive to alter employment conditions and to create a hostile and abusive working environment. Under Harris v. Forklift Sys., Inc., 510 US 17 (1993), to be sufficiently severe or pervasive to violate Title VII and establish a claim, the misconduct must create a working environment that is both objectively and subjectively offensive and that a reasonable person and the victim perceive as hostile and abusive. The correct legal standard for determining whether an environment is hostile or abusive under Title VII is to review the totality of the circumstances, including: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct, whether it is physically threatening or humiliating or a mere offensive utterance; and (3) whether the conduct interferes with an employee's work performance. Psychological well-being is one factor among many in the determination. Here, the coworker was dismissed following the incident, and Beaver continued working for DNRC, testifying that conditions of employment did not change following the assault. Thus, the District Court correctly concluded that the work environment was not subjectively objectionable to Beaver and that the single incident of sexual assault did not create the type of hostile or abusive environment actionable under Title VII. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003). See also Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Mixed Motive Analysis Applicable When Parties Disagree on Reason for Refusing to Hire: Laudert suffered liver failure while employed by the Richland County Sheriff's Department (RCSD) and had to resign. Following Laudert's full recovery, his former position came open again and he applied but was not rehired. He filed a discrimination charge on grounds of age and disability. The hearings examiner found that questions asked by the RCSD interview panel constituted direct evidence that RCSD had unlawfully considered Laudert's disability, but did not award damages because Laudert would not have been hired even in the absence of any unlawful consideration of his disability. RCSD maintained that Laudert was not hired because of his employment history. The hearings examiner determined that this was a "mixed motive" case. On review, the District Court concluded that European Health Spa v. Human Rights Comm'n, 212 M 319, 687 P2d 1029 (1984), precluded it from applying the mixed motive approach, so the court instead applied the burden-shifting approach in McDonnell Douglas Corp. v. Green, 411 US 792 (1973). However, the McDonnell Douglas test applies to claims involving circumstantial evidence of unlawful discrimination or pretext, while in this case, Laudert presented direct evidence of discrimination, rendering the McDonnell Douglas test inapplicable under Trans World Airlines, Inc. v. Thurston, 469 US 111 (1985). On appeal, Laudert maintained that Reeves

v. Dairy Queen, 1998 MT 13, 287 M 196, 953 P2d 703 (1998), should apply because that decision stated that when discrimination is proved by direct evidence, the employer must prove by a preponderance of the evidence that an unlawful motive played no role in the challenged action or that the direct evidence was not credible. However, the Reeves approach was not directly on point either, because Reeves pertains only to instances in which the parties do not dispute the employer's reasons for the challenged action. The Supreme Court held that the District Court should have applied the mixed motive analysis contained in Price Waterhouse v. Hopkins, 490 US 228 (1989), as suggested by the hearings examiner. Laudert v. Richland County Sheriff's Dept., 2000 MT 218, 301 M 114, 7 P3d 386, 57 St. Rep. 872 (2000).

Direct Evidence of Discriminatory Intent — Standard of Proof — Heiat Criteria Applicable to Cases Involving Circumstantial Evidence: The summary judgment burdens of proof discussed in Heiat v. E. Mont. College, 275 M 322, 912 P2d 787 (1996), are not limited only to cases of sex discrimination brought under federal law, but rather apply in all types of discrimination cases whether based on federal or state law. However, the Heiat test is confined to use in cases in which discriminatory intent can only be proved by circumstantial evidence. In a direct evidence case, one in which the parties do not dispute the reason for the employer's action but only whether that action is illegal discrimination, the standard is that the employer must prove by a preponderance of the evidence that an unlawful motive played no role in the challenged action or that the direct evidence of discrimination is not credible and is unworthy of belief. That method of proof, as set out in ARM 24.9.610(5), is the proper test in cases in which the plaintiff presents direct evidence of discrimination. Traditional summary judgment principles apply to direct evidence discrimination cases, requiring the moving party to establish that no material issues of fact exist and that the movant is entitled to judgment as a matter of law. If the employer is the moving party, the employer has the burden of showing that no issues of material fact remain and that plaintiff cannot prove a prima facie case of discrimination as a matter of law. Reeves v. Dairy Queen, Inc., 1998 MT 13, 287 M 196, 953 P2d 703, 55 St. Rep. 44 (1998), clarified and followed in Hafner v. Conoco, Inc., 1999 MT 68, 293 M 542, 977 P2d 330, 56 St. Rep. 277 (1999).

Burden-Shifting Analysis in Employment Discrimination Cases — Pretext for Discrimination: Under the rationale in Tex. Dept. of Community Affairs v. Burdine, 450 US 248, 67 L Ed 2d 207, 101 S Ct 1089 (1981) (citing McDonnell Douglas Corp. v. Green, 411 US 792, 36 L Ed 2d 668, 93 S Ct 1817 (1973)), according to the U.S. Supreme Court's burden-shifting analysis employed in discrimination cases, once a plaintiff has proved a prima facie case of employment discrimination by a preponderance of the evidence, the burden shifts to the defendant to articulate some legitimate, nondiscriminatory reason for the employee's rejection. Should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reason offered by the defendant was not the true reason, but rather was a pretext for discrimination, and under St. Mary's Honor Ctr. v. Hicks, 509 US 502, 125 L Ed 2d 407, 113 S Ct 2742 (1993), the reason cannot be proved to be a pretext for discrimination unless it is shown both that the reason was false and that discrimination was the real reason. At this point, the burden merges with the ultimate burden of persuading the court that the plaintiff has been a victim of intentional discrimination. The plaintiff succeeds either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence. The Montana Supreme Court held in Kenyon v. Stillwater County, 254 M 142, 835 P2d 742 (1992), that in order to survive a motion for summary judgment, the plaintiff has the initial burden to adduce facts that, if believed, support a reasonable inference that the plaintiff was denied an employment opportunity and, if the employer rebuts the inference of discrimination with evidence of legitimate, nondiscriminatory reasons, to demonstrate with specific facts that the employer's explanation is a pretext. This places the plaintiff, as nonmoving party in the summary judgment context, in the peculiar position of having to prove the case to survive the defendant's summary motion. The Kenyon requirements are thus overruled, and the Burdine analysis is adopted for employment discrimination cases. The plaintiff is required to raise an inference of pretext as opposed to proving pretext, so the burden is more aligned with the general requirement of raising a genuine issue of material fact to survive the motion for summary judgment. Heiat v. E. Mont. College, 275 M 322, 912 P2d 787, 53 St. Rep. 162 (1996), overruling Kenyon v. Stillwater County, 254 M 142, 835 P2d 742 (1992), and followed in Rolison v. Bozeman Deaconess Health Serv., Inc., 2005 MT 95, 326 M 491, 111 P3d 202 (2005).

Risk of Future Injury as Nondiscriminatory Reason for Precluding Employment — Mantolete Standard: After plaintiff establishes a prima facie case of employment discrimination, the burden shifts to the employer to rebut the presumption of discrimination by producing a legitimate, nondiscriminatory reason for failure to hire. In Mantolete v. Bolger, 767 F2d 1416 (9th Cir. 1985), cited with approval in Hearing Aid Institute v. Rasmussen, 258 M 367, 852 P2d 628 (1993), the level to which risk of future injury must rise in order to stand as a nondiscriminatory reason disqualifying an applicant from employment must be based on a showing of a reasonable probability of substantial harm. The Supreme Court declined to cite the Mantolete standard as controlling because of the argument that any progressive condition may subject an employee to potential physical harm. However, the court agreed that the Mantolete standard provided useful guidance in relation to pretext. Because plaintiff established a genuine issue of material fact as to whether the employer's withdrawal of a job offer was pretextual, summary dismissal of the discrimination complaint constituted reversible error. Hafner v. Conoco, Inc., 268 M 396, 886 P2d 947, 51 St. Rep. 1391 (1994). Hafner having proved pretext under Hafner I, ibid., the burden then shifted to Conoco to prove absence of unlawful motive under the test in Reeves v. Dairy Queen, Inc., 1998 MT 13, 287 M 196, 953 P2d 703 (1998). In light of Reeves, the Supreme Court nevertheless applied the Mantolete standard, holding that when an employer defends an employment discrimination case by asserting risk of harm, the employer has a duty to independently assess that risk in accordance with ARM 24.9.606(8), regardless of whether the case arises under the McDonnell or Reeves burden-shifting tests and whether the alleged risk of harm is directed to the employee's initial qualifications or the existence of reasonable qualifications. In determining whether an employer has discharged its duty in this regard, a District Court must make specific findings concerning with whom the employer spoke about the risk of substantial harm and whether the employer took into account all relevant information concerning the risk of harm, including: (1) the seriousness of the employee's injury; (2) the employee's work history; (3) the employee's medical history; and (4) the existence of reasonable accommodations that could possibly reduce the risk of substantial harm to the employee. Failure to make specific findings constituted reversible error. Hafner v. Conoco, Inc., 1999 MT 68, 293 M 542, 977 P2d 330, 56 St. Rep. 277 (1999).

Disparate Impact — May Be Established Without Elaborate Statistical Proof — Can Be Inferred From Word-of-Mouth Advertising by Employer: Byard's expert witnesses testified that Montana Rail Link's job interviewers did not follow any written or organized interview plan, thereby producing interviews that were infused with the stereotyping and biases of the interviewers and when combined with statistical evidence showing the disproportionate number of women selected to fill positions, that demonstrated the existence of discriminatory practices. The witnesses were not able to produce extensive statistical proof regarding the sexual breakdown of persons hired for specific job categories, partly because of Montana Rail Link's recordkeeping processes and partly because of resistance on the employer's part to produce the requested material. The Supreme Court held that a case of disparate impact can be established without elaborate statistical proof. The Supreme Court also held that courts can infer a disparate impact upon a protected class from the use of word-of-mouth advertising by the employer. Mont. Rail Link v. Byard, 260 M 331, 860 P2d 121, 50 St. Rep. 1084 (1993).

Pretext for Discrimination — May Be Proved Indirectly: Byard brought a sex discrimination complaint against Montana Rail Link based on its hiring practices. The Supreme Court held that Byard had met her burden to establish a prima facie case of discrimination, thereby shifting the burden to Montana Rail Link to articulate some legitimate reason for not hiring the complainant to rebut the prima facie case, and that the company had set forth a legitimate reason for rejecting Byard. The Supreme Court additionally held that Byard then had the right to prove that the legitimate reasons given by the employer were a pretext for discrimination and could prove the pretext indirectly by showing that the employer's explanation was unworthy of belief. Mont. Rail Link v. Byard, 260 M 331, 860 P2d 121, 50 St. Rep. 1084 (1993).

Requirements to Prove Discrimination by Disparate Impact: Byard's expert witnesses testified that Montana Rail Link's job interviewers did not follow any written or organized interview plan, thereby producing interviews that were infused with the stereotyping and biases of the interviewers. When combined with statistical evidence showing the disproportionate number of women selected to fill positions, the subjective procedures demonstrated the existence of discriminatory practices. The Supreme Court held that, in order to establish a prima facie case of disparate impact, the complainant must demonstrate that it is the application of a specific employment practice that has created the disparate impact under attack. If the employer is able to produce a business justification for the practice at issue, the complainant must be given the chance to show that other selection devices, without the undesirable effect, would also serve the employer's legitimate hiring interests. Mont. Rail Link v. Byard, 260 M 331, 860 P2d 121, 50 St. Rep. 1084 (1993).

Proof Forty-Nine-Year-Old Woman Replaced by Substantially Younger Person: In an action under the federal Age Discrimination in Employment Act, a finding that the plaintiff bank employee was replaced by a substantially younger employee was supported by her supervisor's deposition stating that another employee who had resigned withdrew her resignation after the plaintiff was discharged and assumed some of the plaintiff's duties and by the plaintiff's testimony that the other employee was much younger than the plaintiff. Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326, 50 St. Rep. 518 (1993).

Proof of Age Discrimination Against Forty-Nine-Year-Old Woman: In an action under the federal Age Discrimination in Employment Act, findings concerning the bank holding company president's discrimination toward a discharged 49-year-old female bank employee were supported by testimony of the bank vice president that the president said that he did not believe the plaintiff was right for her position because of her age and background, that he had encouraged those responsible to make a change because he did not want the plaintiff in her position, and that he felt that the plaintiff's supervisor (who later fired the plaintiff) would "get it handled". The finding that the president could influence hiring and firing was supported by the vice president's testimony that the president could prevent the vice president from making the plaintiff the teller supervisor. Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326, 50 St. Rep. 518 (1993).

Inference of Age Discrimination — Failure to Present Facts Indicating Dismissal a Pretext — Summary Judgment Proper: In the context of a summary judgment motion in an age discrimination action under 29 U.S.C. 621, et seq., the plaintiff need only adduce facts that, if believed, support a reasonable inference of the denial of an employment opportunity because of discriminatory age criteria. If that burden is met, the employer must rebut the inference of discrimination with evidence of legitimate, nondiscriminatory reasons that the plaintiff was not hired or was terminated. Upon such a showing, the burden shifts back to the employee to demonstrate with specific facts that the employer's explanation is a pretext. In this case, Kenyon was in the protected age class, met the minimum job qualifications, and was discharged and replaced by a younger woman, which was sufficient to support a reasonable inference of age discrimination. The employer then established that there were problems with Kenyon's work performance, number of absences, and time spent on nonprofessional duties over a long period of time and that there was a documented probation for poor work performance. Kenyon admitted by deposition that her employer's dissatisfaction with her work performance was apparent by his yelling at her on an almost daily basis. This evidence was sufficient to rebut the inference of discrimination. Kenyon subsequently failed to present specific facts that indicated that the employer's explanation for her dismissal was a pretext, relying only on conclusory assertions of discrimination raised in her affidavit. Kenyon therefore failed to raise a genuine issue of material fact as to her age discrimination claim, and summary dismissal in favor of the employer was proper. Kenyon v. Stillwater County, 254 M 142, 835 P2d 742, 49 St. Rep. 673 (1992), following Foster v. Arcata Assoc., Inc., 772 F2d 1453 (9th Cir. 1985), and overruled, with regard to plaintiff's burden to adduce facts that, if believed, support a reasonable inference that plaintiff was denied an employment opportunity and, if the employer rebuts the inference of discrimination with evidence of legitimate, nondiscriminatory reasons, to demonstrate with specific facts that the employer's explanation is a pretext, in Heiat v. E. Mont. College, 275 M 322, 912 P2d 787, 53 St. Rep. 162 (1996).

Exclusion of Evidence in Age Discrimination Case: It was within the discretion of the District Court in an age discrimination case to exclude: (1) refinery yield statements; (2) evidence respecting new construction at the refinery; (3) evidence whether the reduction of force was caused by mismanagement of the company; (4) evidence relating to the relationship of the cost of labor to the cost of producing a refined product at the refinery; (5) evidence regarding the benefits of plaintiff's job to the company and his ability to fill the job; and (6) an exhibit that did not relate to age discrimination. Moreover, it was not error to allow defendant to offer evidence showing the necessity of the cost containment program that led to the reduction in force. Mahan v. Farmers Union Cent. Exch., Inc., 235 M 410, 768 P2d 850, 46 St. Rep. 96 (1989).

Past Job Performance — Legitimate Reason Not to Hire: Plaintiff alleged employment discrimination based on marital status. Defendant cited its reason not to hire plaintiff was the plaintiff's poor past job performance and offered substantial credible evidence to support its contention. In applying the three-tier test of McDonnell Douglas Corp. v. Green, 411 US 792, 36 L Ed 2d 668, 93 S Ct 1817 (1973), the court held that past conduct may be relevant to an employer's assessment of present fitness for a job and that poor past performance constitutes a legitimate nondiscriminatory reason not to hire. The defendant therefore met its burden (under the second tier of the McDonnell Douglas test) to "articulate some legitimate, nondiscriminatory reason for the employee's rejection". Crockett v. Billings, 234 M 87, 761 P2d 813, 45 St. Rep. 1751 (1988).

Gender — Bona Fide Occupational Qualification for Second School Guidance Counselor Position: Male applicant for school counselor position filed a sex discrimination complaint against school district that chose to consider only female applicants for a second counselor position when first position was already filled by a man. The Montana Human Rights Commission found in petitioner's favor and ordered payment of lost salary. The District Court reversed and ordered the Commission to vacate its findings and dismiss the charge of sex discrimination. The Supreme Court affirmed the District Court order and held that an employer can discriminate on the basis of gender when the reasonable demands of the position require a sex discrimination. The Supreme Court found that there was substantial credible evidence to support the District Court's finding that there was a compelling privacy interest in providing counselors of both sexes; therefore, gender was a bona fide occupational qualification for the position and the school district could discriminate on the basis of gender. Stone v. Belgrade School District, 217 M 309, 703 P2d 136, 41 St. Rep. 2436 (1984).

Employee Sensitivity Not Sufficient to Support Discrimination Claim: Petitioner filed an employment discrimination claim with the Human Rights Commission alleging that he was forced to resign from his position as a welder with respondent because of racial harassment. The hearing examiner found that although rough language and ethnic joking were common in the workplace, they were not directed toward petitioner. The hearing examiner also found that petitioner had failed to bring his allegations to respondent's attention. On appeal, the court affirmed the hearing examiner's finding that the sensitivity of an employee to casual remarks, isolated incidents of harassment, or an occasional racial slur is not sufficient to support a discrimination claim. Snell v. Montana-Dakota Util. Co., 198 M 56, 643 P2d 841, 39 St. Rep. 763 (1982).

Scienter of Employer Not Necessary: The director of a county welfare department denied the complainant's employment application based upon recommendations of his subordinates. The complainant was not required to prove that the director knew she was black when he denied her application. To require scienter on the part of an employer effectively destroys the rule developed in federal case law that once certain factual elements are proved prima facie, an inference of discrimination is created by law. A requirement of scienter is also contrary to the rationale expressed in Bd. of Trustees v. State ex rel. Bd. of Personnel Appeals, 185 M 89, 604 P2d 770 (1979), that employers relying upon tainted employee evaluations may not insulate themselves from charges of discrimination by claiming a lack of knowledge. Martinez v. Yellowstone County Welfare Dept., 192 M 42, 626 P2d 242, 38 St. Rep. 474 (1981).

USE OF STATISTICAL TESTIMONY

Age Discrimination — Scope of Statistical Expert Testimony: Statisticians may testify that their statistics do or do not show patterns of discrimination based on age but may not testify to the ultimate conclusion that age discrimination was or was not exercised in an employment termination. Mahan v. Farmers Union Cent. Exch., Inc., 235 M 410, 768 P2d 850, 46 St. Rep. 96 (1989).

Limitation of Testimony of Statistician With Regard to Age Discrimination — Union Versus Nonunion Employees: The District Court correctly limited the age discrimination testimony of plaintiff's statistical expert to testimony of statistical tests performed only on nonunion employees when the inclusion of union employees (whose employment contracts contained seniority rights) in the statistical population would skew the figures affecting older terminated nonunion employees as to the probability that older nonunion employees were discriminated against on the basis of age. Mahan v. Farmers Union Cent. Exch., Inc., 235 M 410, 768 P2d 850, 46 St. Rep. 96 (1989).

APPLICABILITY OF ACT — REMEDY

Human Rights Complaint — Gravamen Test No Longer Applicable: The plain language of the Montana Human Rights Act, Title 49, ch. 2, after its 2007 amendments, states that a charging party may file a complaint in District Court once the Human Rights Bureau dismisses a complaint as long as the party complies with 49-2-511. Thus it is no longer necessary to apply a "gravamen" analysis when determining whether a suit may be filed in District Court following the notice of dismissal. A "gravamen" analysis may still be proper in a claim alleging discrimination that is filed in District Court without first filing a claim before the Human Rights Bureau and receiving a notice of dismissal. Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321.

Pursuit of Discrimination or Tort Claim Based on Gravamen of Complaint: In determining whether a claimant has stated a tort claim or a discrimination claim, the Supreme Court looks to the gravamen of the complaint. When the gravamen is ascertained, the complaint is designated as either a tort action or a discrimination action. If the alleged conduct falls outside the definition of unlawful discrimination in this chapter, commonly known as the Montana Human Rights Act (MHRA), a plaintiff may maintain a tort action. However, because the MHRA establishes the exclusive means of legal redress for unlawful discrimination, the plaintiff may not simultaneously proceed in District Court with a discrimination claim based on the same allegations when it is determined that the complaint sounds in tort. Saucier v. McDonald's Restaurants of Mont., 2008 MT 63, 342 M 29, 179 P3d 481 (2008), distinguished in Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321, after 2007 amendment of Montana Human Rights Act. See also Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), and Lay v. Dept. of Military Affairs, 2015 MT 158, 379 Mont. 365, 351 P.3d 672.

Wrongful Discharge Claim Not Premised on Discrimination Not Precluded by Dismissal of Employment Discrimination Claim — Summary Dismissal of Wrongful Discharge Claim Improper: Plaintiff filed a wrongful discharge from employment claim and an employment discrimination claim. The Department of Labor and Industry found no grounds for the discrimination claim, and the District Court subsequently granted defendant summary judgment on both claims, finding that the exclusive remedy provisions of Montana employment discrimination law precluded the wrongful discharge claim. Plaintiff appealed on grounds that dismissal of the discrimination claim did not preclude the wrongful discharge claim and that genuine issues of material fact existed in support of the wrongful discharge claim. The Supreme Court agreed on both issues. Discrimination can occur without a wrongful discharge and vice versa. When a plaintiff charges discrimination but fails to demonstrate a prima facie case warranting recovery, dismissal of the discrimination claim does not preclude a wrongful discharge claim that is not based on underlying claims of discrimination. In this case, plaintiff raised genuine issues of material fact regarding the legitimacy of the proffered reasons for his discharge that were outside the scope of discrimination, and it was error for the District Court to summarily dismiss the wrongful discharge claim. The case was remanded for trial on the wrongful discharge claim. Vettel-Becker v. Deaconess Medical Center of Billings, Inc., 2008 MT 51, 341 M 435, 177 P3d 1034 (2008), followed, with regard to a claim in tort, in Saucier v. McDonald's Restaurants of Mont., 2008 MT 63, 342 M 29, 179 P3d 481 (2008). See also Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326 (1993), Arthur v. Pierre Ltd., 2004 MT 303, 323 M 453, 100 P3d 987 (2004), and Selensky-Foust v. Mercer, 2022 MT 97, 408 Mont. 488, 510 P.3d 78.

Temporary, Nonchronic Condition Not Considered Disability — Human Rights Act Claim Properly Dismissed: Adamson injured his shoulder off the job and was allowed to return to work with lifting restrictions, but the County Commission denied reinstatement to his former job. Adamson returned to work after 6 months with no restrictions, underwent surgery 3 months later, and was released to work 1 month later with restrictions, but again the County Commission denied his request to return to work until he had no restrictions. Adamson ultimately returned to work with a full release and worked until retirement, but subsequently filed a complaint with the Commission for Human Rights, claiming financial loss because of discrimination by the County Commission for his temporary disabilities. A hearings examiner and the Commission held for the county, and the District Court affirmed the decision after finding that Adamson was not disabled pursuant to Title 49, ch. 2, commonly known as the Montana Human Rights Act. On appeal, the Supreme Court affirmed. Noting that the determination of a disability is made on a case-by-case basis, the Supreme Court held that Adamson's temporary, nonchronic impairment of short duration, with little or no long-term permanent impact, was not a disability as defined in this section. Other similar impairments not considered to be disabilities may include but are not limited to broken hips, sprained joints, concussions, appendicitis, and influenza (see the interpretive guidelines in 29 CFR 1630.2(j)). Adamson v. Pondera County, 2004 MT 27, 319 M 378, 84 P3d 1048 (2004), distinguishing Martinell v. Mont. Power Co., 268 M 292, 886 P2d 421 (1994), and Butterfield v. Sidney Pub. Schools, 2001 MT 177, 306 M 179, 32 P3d 1243 (2001).

Recovery Under Both Wrongful Discharge Act and Federal ADEA Barred: The Montana Wrongful Discharge From Employment Act provides that it does not apply to a discharge subject to any other state or federal statute providing a remedy. A discharged bank employee could not recover under both the wrongful discharge act and the federal Age Discrimination in Employment Act. Concurrent claims may be filed under the wrongful discharge act and under any other state or federal statutes, but if the plaintiff obtains an affirmative determination under the other statutes, the wrongful discharge claim no longer applies. The Supreme Court declined to follow two recent Montana federal District Court cases allowing concurrent actions based on separate and distinct factual predicates, and to the extent that this conclusion changes the holding in Deeds v. Decker Coal Co., 246 M 220, 805 P2d 1270 (1990), the opinion in that case is modified. In this case, the claims were made in the same action, and once it was determined that the federal Age Discrimination in Employment Act was violated, the wrongful discharge act did not apply. Tonack v. Mont. Bank of Billings, 258 M 247, 854 P2d 326, 50 St. Rep. 518 (1993).

Sexual Harassment as Sexual Discrimination: Current authority supports the conclusion that by definition sexual harassment constitutes sexual discrimination. Therefore, a claim of sexual harassment in employment falls under the exclusive remedy provisions of this chapter, often referred to as the Montana Human Rights Act. Harrison v. Chance, 244 M 215, 797 P2d 200, 47 St. Rep. 1539 (1990), followed in Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999, 54 St. Rep. 815 (1997).

Arbitrator's Discrimination Award Proper: The defendant school district was required by the collective bargaining agreement to pay 85% of the teachers' medical insurance costs. The district had been paying 100% of the costs when both spouses worked for the district. The arbitrator ruled that the district had to pay the single teachers for the amount of benefits they had not received in the past. The Supreme Court upheld the order, stating that the remedy for a discrimination violation is to make the injured party whole. The court held that the district could pay 85% of all teachers' medical insurance costs in the future but had to pay the single teachers for the past inequity. Glasgow Educ. Ass'n v. Bd. of Trustees, 242 M 478, 791 P2d 1367, 47 St. Rep. 898 (1990).

Human Rights Act Not Exclusive Remedy for Sexual Harassment: When plaintiff failed to obtain a "right-to-sue" letter from the Commission for Human Rights prior to filing a civil suit alleging sexual harassment, the District Court granted summary judgment for defendants. On appeal, the Supreme Court reversed, ruling that the 180-day statute of limitations provision provided in 49-2-501 demonstrates legislative intent that the Human Rights Act not be the sole and exclusive remedy for acts which also give rise to an independent, common law cause of action. Drinkwalter v. Shipton Supply Co., Inc., 225 M 380, 732 P2d 1335, 44 St. Rep. 318 (1987), distinguished in Frigon v. Morrison-Maierle, Inc., 233 M 113, 760 P2d 57, 45 St. Rep. 1344 (1988), but see Harrison v. Chance, 244 M 215, 797 P2d 200, 47 St. Rep. 1539 (1990), in which the Supreme Court found that the 1987 amendment to 49-2-509 (now repealed) demonstrated a clear intent to legislatively overrule Drinkwalter and to allow the Commission for Human Rights to provide the exclusive remedy for discrimination in employment, including sexual harassment.

Mandatory Teacher Retirement Impliedly Repealed: In accordance with 20-4-203, the plaintiff, a tenured elementary school principal, received notification that because she was 65 years of age her contract would not be renewed. Because 20-4-203 permitted discrimination based solely on age with no qualifications or justifications bringing it within the limited exceptions of Title 49 and because the mandatory retirement provision bore no relationship to job performance, it was impliedly repealed by the adoption of 49-2-303 and 49-3-201. Dolan v. School District, 195 M 340, 636 P2d 825, 38 St. Rep. 1903 (1981), followed in Kenny v. Bd. of Trustees, 563 F. Supp. 95, 39 St. Rep. 1377 (D.C. Mont. 1982), and distinguished in Ross v. Great Falls, 1998 MT 276, 291 M 377, 967 P2d 1103, 55 St. Rep. 1127 (1998).

Attorney General's Opinions

Prescription Contraceptives and Related Medical Services Covered Under Employee Benefit Plan Pursuant to Human Rights Act: If an employee benefit plan provides prescription drug coverage and other medical services, this section requires inclusion of coverage for prescription contraceptives and related medical services. 51 A.G. Op. 16 (2006).

Applicability of Montana Human Rights Act to Employment in School Districts Located on Indian Reservations: Although applicability of the Montana Human Rights Act to reservation-related activities must be decided on a case-by-case basis, the Act does apply to public school districts lying wholly or partially within Indian reservations on district-owned lands and prohibits the school district from granting employment preferences to Indians unless specifically required by federal statute. Indian tribes do not have a federally protected interest in requiring that employment preferences be granted to their members or to other Indians. (See 1991 amendment.) 43 A.G. Op. 42 (1989).

Application of Nepotism Law to Rehiring of Tenured Teacher: The nepotism statutes (2-2-301 through 2-2-304) prohibit the rehiring of a tenured teacher if the teacher is within one of the prohibited relationships to a member of the school district board of trustees. The 1985 amendments of 49-2-303(3) and 49-3-201(5) overruled 39 A.G. Op. 67 (1982), insofar as it holds that the nepotism law does not apply to relationships by affinity. 41 A.G. Op. 57 (1986). (But see 1987 amendment to 2-2-302.)

Impliedly Repealed Nepotism Statute Not Revived by 1983 Amendments: The Attorney General issued an opinion (39 A.G. Op. 67 (1982)) that 2-2-302 had been impliedly repealed by the Human Rights Act. The 1983 amendments to the Human Rights Act and the Governmental Code of Fair Practices (which amendments permit assertion of the "reasonable demands" or "bona fide occupational qualification" defense to marital status discrimination) did not revive the impliedly repealed portion of 2-2-302 restricting employment on the basis of affinity. 40 A.G. Op. 40 (1984).

Nepotism Statute Subservient to Human Rights Law: The nepotism law clearly violates the intent of the human rights law because it permits discrimination in employment based solely on marital status. Applying the rule of construction that when two laws are in conflict, the later one supersedes the earlier, the human rights law must prevail. Thus, the Human Rights Act prohibits the Board of Trustees of a school district from enforcing the nepotism statute by refusing employment to a teacher solely on the basis of her relationship by affinity to a board member. 39 A.G. Op. 67 (1982), overruled by 1985 amendment of this section, as declared by 41 A.G. Op. 57 (1986) (see also 1987 amendment to 2-2-302).

Law Review Articles

The Severe or Pervasive Standard in the Modern Age, Kimmel, 84 Mont. L. Rev. 299 (2023), https://scholarworks.umt.edu/mlr/vol84/iss2/6/.

Privatizing Antidiscrimination Law With Arbitration: The Title VII Proof Problem, Plass, 68 Mont. L. Rev. 151 (2007).

Mandatory Arbitration of Civil Rights Claims in the Workplace: No Enforceability without Equivalency, France & Kelley, 64 Mont. L. Rev. 449 (2003).

49-2-304. Discrimination in public accommodations.

Compiler's Comments

1993 Amendment: Chapter 407 throughout section substituted "disability" for "handicap".

1991 Amendment: In (1)(a), (1)(b), and (2), after "sex", inserted "marital status".

Preamble: The preamble attached to Ch. 454, L. 1991, provided: "WHEREAS, Article II, section 4, of the Montana Constitution prohibits discrimination by the state or any person, firm, corporation, or institution against any person on account of social condition; and

WHEREAS, the Legislature has previously defined social condition to include marital status; and

WHEREAS, an individual may be subjected to discrimination because of marital status in the enjoyment of public accommodations and access to housing.

THEREFORE, it is appropriate for the Legislature to prohibit such discrimination."

1989 Amendments: Chapter 3 inserted (3) permitting public accommodations to provide special treatment of persons based on age; and made minor changes in form.

Chapter 543 inserted (2) prohibiting discrimination by alcoholic beverage licensees other than fraternal lodges; and made minor changes in form. Amendment effective April 14, 1989.

Severability: Section 5, Ch. 543, L. 1989, was a severability clause.

Administrative Rules

ARM 24.9.609 Discrimination prohibited — public accommodation.

Case Notes

Plaintiff's Failure to File Accurate Complaint Not Detrimental — Defendant Had Notice of Nature of Claim: A tenant filed a complaint with the Human Rights Commission alleging that her landlord committed sexual harassment under the public accommodations provision in 49-2-304. The Commission determined that 49-2-304 was inapplicable, as the rental property was private property, but it allowed the tenant to pursue a claim based on the real estate transaction provision in 49-2-305. The landlord then petitioned the District Court for judicial review, reasoning that his due process rights would be violated if the tenant was allowed to pursue a claim under 49-2-305. The District Court agreed with the landlord and reversed the Commission, but the Supreme Court, in turn, reversed the District Court and determined that while the tenant could have been clearer in asserting a claim under 49-2-305, the landlord had sufficient notice of the nature of the claim and no evidence was presented showing that the landlord would have presented any additional evidence in a 49-2-305 defense. Bates v. Neva, 2013 MT 246, 371 Mont. 466, 308 P.3d 114.

Attorney With Potential Clients With Disabilities Not Aggrieved Party — No Standing to Assert Public Accommodations Discrimination Claim: The respondent, an attorney who rented office space in a building managed by the petitioner, brought a public accommodations discrimination claim against the petitioner, arguing that the petitioner had blocked public access to the only elevator in the building, making the respondent's second-floor law office inaccessible for clients with disabilities. The Supreme Court dismissed the respondent's claim, holding that he lacked standing to bring the claim. The court held that the respondent's intention to open a discrimination law practice for unknown potential clients was not a specific personal and legal interest sufficient to qualify him as an aggrieved person under the Montana Human Rights Act (MHRA). While the MHRA prohibits discrimination in public accommodations, a plaintiff is generally limited to asserting his own legal rights and interests; in this case, the respondent's claim was based on his potential future clients' access to his office, rather than his own access, and was therefore insufficient to establish standing. Baxter Homeowners Ass'n, Inc. v. Angel, 2013 MT 83, 369 Mont. 398, 298 P.3d 1145, following Williamson v. Mont. Pub. Serv. Comm'n, 2012 MT 32, 364 Mont. 128, 272 P.3d 71.

Questioning Only Validity of Statute for First Time in District Court — Other Issues to Be Raised at Administrative Level: The Commission for Human Rights enjoined the Hilands Golf Club (Hilands) from engaging in future gender discrimination, ordered Hilands to create a three-person committee to review its policies and practices, required the promotion of greater numbers of female members, and ordered Hilands to pay Ashmore $750 in damages for emotional distress. Hilands petitioned for judicial review, and the Supreme Court denied a challenge to the validity of Hilands' appeal in Hilands Golf Club v. Ashmore, 277 M 324, 922 P2d 469 (1996). Following remand, Hilands moved to dismiss based on its contention that Ashmore lacked standing and that the claim was moot, and the District Court granted Hilands' motion. Ashmore appealed, contending that Hilands knew the facts that gave rise to its standing and mootness claims prior to the contested case hearing, but waived those arguments by not raising them at the administrative level. Hilands maintained that because both standing and mootness are jurisdictional issues, they can be raised at any stage of the proceedings. The Supreme Court noted that a District Court's authority to review administrative rulings is constrained by statute. A plain reading of 2-4-702(1)(b) indicates that a party may question the validity of a statute for the first time on judicial review to the District Court, but other than that exception, all other issues must be raised at the administrative level absent good cause. Because the Legislature created judicial review of administrative decisions and at the same time limited the scope of review, the general rule that justiciability questions can be raised at any time does not apply in these circumstances. Therefore, standing and mootness questions cannot be raised for the first time on judicial review of an administrative decision unless the District Court determines that there was good cause for the party's failure to raise the questions before the agency. Here, Hilands knew that the claims were viable issues that could be raised before the Commission, yet Hilands failed to raise them. If some event had occurred after the administrative hearing that raised the issues, Hilands would presumably be able to show good cause for failure to raise the issues, but the good cause exception did not exist here. Thus, the District Court erred in granting the motion to dismiss, and the Supreme Court remanded for further consideration of any substantive issues raised in the petition for judicial review. Hilands Golf Club v. Ashmore, 2002 MT 8, 308 M 111, 39 P3d 697 (2002), following Lincoln County v. Sanders County, 261 M 344, 862 P2d 1133 (1993), and distinguishing Shamrock Motors, Inc. v. Ford Motor Co., 1999 MT 21, 293 M 188, 974 P2d 1154 (1999), and Shamrock Motors, Inc. v. Chrysler Corp., 1999 MT 39, 293 M 317, 974 P2d 1154 (1999).

Petition for Judicial Review of Contested Case — Service on Parties Under Former Rule 5(b) Held Sufficient: Ashmore brought a claim before the Human Rights Commission, alleging that she had been discriminated against by Hilands Golf Club because of her gender, in violation of this section. The Commission found in favor of Ashmore and awarded her relief. Hilands filed a petition for judicial review pursuant to 2-4-702 and served copies of the petition by mail upon counsel for the Commission and Hilands. No summons was served with the petition, and no service was made upon the Attorney General. Ashmore filed a motion to dismiss under former Rule 12(b), M.R.Civ.P. (now superseded), alleging that no jurisdiction had been obtained over the Commission by service of a summons upon the Attorney General, contrary to the holding in Fife v. Martin, 261 M 471, 863 P2d 403 (1993). The District Court granted the motion. The Supreme Court reversed, overruling Fife and holding that because judicial review pursuant to 2-4-702 is in the nature of an appeal, in which jurisdiction over the parties has already been established, service of a summons with the petition is unnecessary and holding that the petition may be served upon the parties by mail under former Rule 5(b), M.R.Civ.P. (now superseded). The Supreme Court noted that it was sufficient to mail a copy of the petition upon the parties and the agency, whether or not the agency had been a party to the administrative proceeding. Hilands Golf Club v. Ashmore, 277 M 324, 922 P2d 469, 53 St. Rep. 664 (1996), followed in Forsythe v. Great Falls Holdings, LLC, 2008 MT 384, 347 M 67, 196 P3d 1233 (2008).

49-2-305. Discrimination in housing — exemptions.

Compiler's Comments

2011 Amendment: Chapter 205 in (1) in introductory clause substituted "lessor" for "lessee"; in (5)(a) after "modification on the" substituted "lessee's" for "lessor's"; and in (5)(c)(i)(D) after "features" deleted "of adaptive design". Amendment effective April 18, 2011.

1997 Amendment: Chapter 194 in (10)(c), at end after "42 U.S.C. 3607(b)(2)(C) and", substituted "(b)(3) through (b)(5), as those provisions read on March 31, 1996" for "(3) and 24 CFR 100.304, as those sections read on October 1, 1989"; and made minor changes in style.

1993 Amendment: Chapter 407 throughout section substituted "disability" for "handicap" and references to a person with a disability for references to a handicapped person; in (1)(c), (7)(a), and (8) inserted "marital status"; and made minor changes in style.

1991 Amendments: Chapter 328 in (10)(c) substituted reference to 42 U.S.C. 3607(b)(2)(C) and (3) for reference to 42 U.S.C. 3605(b)(2)(C) and (3). Amendment effective April 4, 1991.

Chapter 454 in (1)(a), (1)(b), (1)(c), and (1)(d), after "sex", inserted "marital status".

Chapter 801 at beginning of (1) deleted "Except when the distinction is based on reasonable grounds" and after "or" inserted "for any"; in (1)(c), before "inquiry", deleted "written or oral", after "inquiry" deleted "or record", after "age" inserted "familial status", and after "property" inserted final clause concerning purpose to discriminate on basis of prohibited category; in (1)(d), after "unavailable", inserted "or deny"; inserted (1)(e) establishing as unlawful practice representation that housing or property is unavailable for inspection, sale, or rent because of sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin; inserted (1)(f) establishing as unlawful practice inducing or attempting to induce for profit the sale or rental of housing or property by representations regarding entry or prospective entry into neighborhood of persons of particular sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin; in (2) substituted "owner" for "landlord" and at end, after "subsection (1)", inserted provision restricting number of sleeping rooms rented; inserted (4) establishing as unlawful discriminatory practice discrimination in sale, rental, or availability of housing or property, in terms or privileges of sale or rental, or in provision of services or facilities in housing or property because of physical or mental handicap of buyer, lessee, or renter, of person residing in housing or property after sale, or of person associated with buyer, lessee, or renter; inserted (5) outlining what is included in discrimination because of physical or mental handicap; inserted (6) defining covered multifamily housing accommodation; inserted (7) establishing as unlawful discriminatory practice for person whose business includes engaging in residential real estate-related transactions discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in making transaction available or in conditions of transaction and defining residential real estate-related transaction; inserted (8) establishing as unlawful discriminatory practice denial of assess to or membership or participation in particular service, organization, or facility relating to selling, leasing, or renting housing or property or discrimination in terms or conditions of access, membership, or participation because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin; inserted (9) establishing as unlawful discriminatory practice coercion, intimidation, threat, or interference with exercise or enjoyment of granted or protected housing accommodation or property right; in (11) substituted reference to subsection (1) for "this section"; and made minor changes in style.

Preamble: The preamble attached to Ch. 328, L. 1991, provided: "WHEREAS, section 49-2-305, MCA, of the Human Rights Act prohibits discrimination in housing; and

WHEREAS, that section exempts "housing for older persons" from the prohibitions against discrimination in housing based upon age and familial status; and

WHEREAS, the definition of "housing for older persons" refers to 42 U.S.C. 3605(b)(2)(C) and (3) of the federal Fair Housing Act; and

WHEREAS, this citation is incorrect and should read 42 U.S.C. 3607(b)(2)(C) and (3), which define "housing for older persons" under federal law.

THEREFORE, it is appropriate for the Legislature to amend section 49-2-305, MCA, to correct this citation error."

Preamble: The preamble attached to Ch. 454, L. 1991, provided: "WHEREAS, Article II, section 4, of the Montana Constitution prohibits discrimination by the state or any person, firm, corporation, or institution against any person on account of social condition; and

WHEREAS, the Legislature has previously defined social condition to include marital status; and

WHEREAS, an individual may be subjected to discrimination because of marital status in the enjoyment of public accommodations and access to housing.

THEREFORE, it is appropriate for the Legislature to prohibit such discrimination."

Preamble: The preamble attached to Ch. 801, L. 1991, provided: "WHEREAS, the Legislature has previously included housing discrimination as a subject of discrimination law in the Montana Human Rights Act; and

WHEREAS, the housing discrimination laws in the Montana Human Rights Act were modeled after the federal Fair Housing Act of 1968; and

WHEREAS, in 1988, Congress substantially amended the federal Fair Housing Act, enforced by the Department of Housing and Urban Development; and

WHEREAS, the Montana Commission for Human Rights processes housing discrimination complaints in Montana that allege a violation of both the Montana Human Rights Act and the federal Fair Housing Act; and

WHEREAS, the Montana Commission for Human Rights receives a substantial portion of its funding from contracts with the Department of Housing and Urban Development for processing federal housing discrimination cases; and

WHEREAS, after January 13, 1992, the Department of Housing and Urban Development will no longer contract with any state fair housing agency that does not enforce a state law providing rights and remedies substantially equivalent to those provided by the federal Fair Housing Act; and

WHEREAS, the rights and remedies provided by the Montana Human Rights Act are not presently substantially equivalent to those provided by the federal Fair Housing Act.

THEREFORE, it is appropriate for the Legislature to amend the housing discrimination laws in the Montana Human Rights Act to maintain substantial equivalency with the federal Fair Housing Act."

Retroactive Applicability: Section 2, Ch. 328, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to causes of action arising on or after October 1, 1989."

1989 Amendment: In (1)(a), (1)(b), and (1)(d), after "age", inserted "familial status"; inserted (4) exempting particular housing for older persons from prohibitions against age and familial status discrimination provisions; inserted (5) extending exemption from prohibition against age and familial status discrimination provisions to certain rooms or units where owner is in residence; and inserted (6) defining familial status.

Preamble: The preamble to Ch. 503, L. 1989, provided: "WHEREAS, Article II, section 4, of the Montana Constitution prohibits discrimination by the state or any person, firm, corporation, or institution against any person on account of social condition; and

WHEREAS, Article II, section 15, of the Montana Constitution confers upon children the same rights as those conferred upon adults, with the exception of rights precluded by laws that enhance the protection of persons under 18 years of age; and

WHEREAS, persons or families with children have been denied housing opportunities for reasons unrelated to public safety, public health, or the protection of children.

THEREFORE, it is appropriate that the Legislature enact a law to enhance the protection of children by prohibiting the denial of housing to persons or families with children."

1981 Amendment: Inserted subsection (1)(d) making an unlawful discriminatory practice the refusal to negotiate a sale or to make a housing accommodation property unavailable because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin; substituted "subsection (1)" for "this section" at the end of (2); added subsection (3) providing that the making, printing, or publishing of a notice, statement, or advertisement indicating a preference, limitation, or discrimination in housing is an unlawful discriminatory practice.

Administrative Rules

ARM 24.9.1501 Purpose and scope of rules.
ARM 24.9.1502 Definitions.
ARM 24.9.1503 Exemptions.
ARM 24.9.1506 Conciliation.
ARM 24.9.1508 Final disposition.

Case Notes

Act Applicable to Discrimination in Commercial Leases Between Private Parties: A former tenant sued her commercial landlord for sexual discrimination. A hearings officer concluded that the Montana Human Rights Act did not apply to commercial leases between private individuals. The Human Rights Commission, however, ruled that the Act did apply to commercial leases and the District Court agreed. On appeal, the Supreme Court affirmed, holding that the term "unimproved property" in the Act includes both residential and commercial leases, and remanded the matter to allow the tenant to proceed with her claim. Bates v. Neva, 2014 MT 336, 377 Mont. 350, 339 P.3d 1265.

Plaintiff's Failure to File Accurate Complaint Not Detrimental — Defendant Had Notice of Nature of Claim: A tenant filed a complaint with the Human Rights Commission alleging that her landlord committed sexual harassment under the public accommodations provision in 49-2-304. The Commission determined that 49-2-304 was inapplicable, as the rental property was private property, but it allowed the tenant to pursue a claim based on the real estate transaction provision in 49-2-305. The landlord then petitioned the District Court for judicial review, reasoning that his due process rights would be violated if the tenant was allowed to pursue a claim under 49-2-305. The District Court agreed with the landlord and reversed the Commission, but the Supreme Court, in turn, reversed the District Court and determined that while the tenant could have been clearer in asserting a claim under 49-2-305, the landlord had sufficient notice of the nature of the claim and no evidence was presented showing that the landlord would have presented any additional evidence in a 49-2-305 defense. Bates v. Neva, 2013 MT 246, 371 Mont. 466, 308 P.3d 114.

Housing Discrimination — Recovery Under Section 1982: Plaintiffs, who were denied rental units because they were African-American, were entitled to compensatory damages for emotional distress in view of overt discrimination against them by the rental unit owners and of plaintiffs' testimony that they suffered emotional distress as a result. Evidence of economic loss or medical evidence of mental or physical symptoms stemming from humiliation need not be submitted to support an award for compensatory damages for humiliation and emotional distress under section 1982. Johnson v. Hale, 940 F2d 1192 (9th Cir. 1991). The District Court damage award of $125 to tenants was reversed as insufficient in Johnson v. Hale, 13 F3d 1351 (9th Cir. 1994).

49-2-306. Discrimination in financing and credit transactions.

Compiler's Comments

1993 Amendment: Chapter 407 throughout section substituted "disability" for "handicap"; and made minor changes in style.

Administrative Rules

Title 24, chapter 9, subchapter 6, ARM Proof of unlawful discrimination.

49-2-307. Discrimination in education.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 256, L. 2023. Amendment effective April 25, 2023.

1993 Amendment: Chapter 407 throughout section substituted "disability" for "handicap".

Administrative Rules

Title 24, chapter 9, subchapter 10, ARM Sex discrimination in education.

Case Notes

Complaint of School Use of Indian Mascots — Montana Commission for Human Rights Proper Forum for Claim of Unlawful Discrimination: Dupuis brought a discrimination claim against a reservation school district for using mascots allegedly degrading to Indian students. Without ruling on whether the use of the mascots was degrading, the Supreme Court held that Dupuis's remedy for a human dignity and racial discrimination case was to bring a claim before the Montana Commission for Human Rights before bringing an action in District Court. Failure to exhaust administrative remedies precluded the Supreme Court's consideration of the discrimination claims. Dupuis v. Ronan School District No. 30, 2006 MT 3, 330 M 232, 128 P3d 1010 (2006).

Exhaustion of Remedies Under Individuals With Disabilities Act Not Required Upon Claim of Discrimination in Public Education Under Human Rights Act: Amanda Johnson suffered from Campomelic Syndrome and as a result was confined to a wheelchair. Prior to Amanda's enrollment at Great Falls High School, her family brought Amanda's access issues to the attention of the Great Falls School District. There was no elevator in the school, which precluded

Amanda's access to second-floor classrooms and science labs. There were numerous other physical barriers as well, such as parking problems, snow-covered sidewalks, cafeteria restrictions, heavy doors, office countertops that were too high, and inaccessibility to restrooms, water fountains, vending machines, and public telephones. The district determined that it could not build an elevator and continue to provide educational services to the rest of the student body; however, the district did prepare individualized education programs for Amanda each year that attempted to accommodate her by scheduling her classes on the first floor, transporting her to another high school for science labs, fitting desks for her and providing special seating, making minor physical adjustments to the building, providing a parking space for her in the faculty lot, attempting to coordinate snow removal with her arrival, and assigning a staff member to help her use the cafeteria. Nevertheless, her family was dissatisfied with the district's efforts and brought an education discrimination claim, alleging that the district illegally discriminated against Amanda by failing to provide an accessible building in violation of Title 49, ch. 2, commonly known as the Montana Human Rights Act (MHRA), and specifically 49-2-308 and this section. A hearings examiner found that Amanda did have far less access to the school than her classmates, but concluded that the district had provided reasonable access in light of the resources available to meet Amanda's needs. The hearings examiner ordered the district to proactively monitor accommodations provided to students with physical disabilities and to take a number of steps to minimize the likelihood of future violations of the MHRA. The Commission for Human Rights adopted the hearings examiner's findings and conclusions, and the district filed for judicial review, arguing to the District Court that: (1) the Commission lacked jurisdiction to consider the complaint until Amanda exhausted the administrative remedies under the Individuals With Disabilities Education Act (IDEA) through the Office of Public Instruction; and (2) the relief granted exceeded the Commission's statutory authority. The District Court agreed and overruled the Commission's order, and the issues were appealed to the Supreme Court. On the first issue, the Supreme Court found that the gravamen of Amanda's claim was grounded in discrimination under the MHRA, not the right to a free appropriate public education under the IDEA. Disabled students can receive an appropriate education, as attested by Amanda's 3.7 grade point average, and still suffer discrimination when the physical premises of a school deprive them of basic human dignities. When claims involve the simple application of the IDEA exhaustion doctrine in the absence of a parallel state statutory remedy, the logic of the IDEA exhaustion may apply, but when, as here, state human rights laws provide an administrative remedy through the Commission for Human Rights, there is no compelling reason to preclude the MHRA claim by first requiring the IDEA exhaustion. The court found no legal basis for determining that the IDEA was intended to limit applicable state human rights discrimination claims. Thus, Amanda's claim could proceed prior to exhaustion of or without ever invoking the IDEA administrative remedies, and the District Court erred in holding otherwise. On the second issue, the Supreme Court found that the remedy ordered by the Commission—requiring the district to formalize its policy and procedure for addressing the special needs of disabled students—fell within the authority of 49-2-506 and was reasonable in light of the relief requested. The District Court was reversed, and the Commission's order was reinstated. Great Falls Pub. Schools v. Johnson, **2001 MT 95, 305 M 200, 26 P3d 734 (2001)**, following Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), and Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999 (1997), and distinguishing Koopman v. Freemont County School District No. 1, 911 P2d 1049 (Wyo. 1996).

IDEA Complaint Held Subject to Exhaustion of Administrative Remedies Under Montana Human Rights Act: The Shieldses brought a civil action under 42 U.S.C. 1983 to enforce the rights of their son under the Individuals With Disabilities Education Act (IDEA) after he was excluded from a ski trip. The Shieldses had previously filed a grievance with the school, appealed the result of the grievance to the Superintendent of the Helena School District, and appealed the Superintendent's decision to the trustees of the School District. The District Court dismissed the section 1983 action, holding that the Shieldses failed to first file a complaint with the Human Rights Commission and thereby failed to exhaust their administrative remedies. The Shieldses argued that their case was a state tort action and did not fall within the jurisdiction of the Commission under Title 49, ch. 2, commonly known as the Montana Human Rights Act. Citing Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), the Supreme Court held that because the gravamen of the complaint was discrimination, the complaint fell under the Montana Human Rights Act and that the Shieldses were therefore required to file a written, verified complaint with the Commission. The Supreme Court held that only after exhausting that procedure could they then bring a complaint in District Court. Shields v. Helena School District No. 1, **284 M 138, 943 P2d 999, 54 St. Rep. 815 (1997)**.

49-2-308. Discrimination by the state.

Compiler's Comments

1993 Amendment: Chapter 407 throughout section substituted "disability" for "handicap"; and made minor changes in style.

1991 Amendment: Inserted (2) concerning consideration of factors in adoption proceedings. Amendment effective July 1, 1991.

Severability: Section 7, Ch. 682, L. 1991, was a severability clause.

Case Notes

Death of Inmate While in Custody — Human Rights Commission — Administrative Appeal and Review: An 18-year-old died from delirium tremens after being arrested by Blaine County authorities and while in the custody of the Hill County Detention Center. His estate brought a case before the Human Rights Bureau, alleging that the two counties had discriminated on the basis of race and disability. The hearing officer concluded that the counties had not discriminated against the estate. On appeal, the Human Rights Commission found clear error in the hearing officer's findings and reversed. On appeal of the Commission's findings, the District Court reversed, vacated the Commission's decision, and reinstated the hearing officer's order. The estate moved to alter or amend. The District Court, acting through a second judge following the retirement of the first judge, concluded that the first judge had fashioned an improper remedy. Both parties appealed to the Supreme Court, which held that the Commission had abused its discretion by modifying the findings of the hearing examiner without first determining that the findings were not supported by substantial evidence, the Commission abused its discretion by applying the wrong standard of review, the first judge correctly concluded that the Commission had improperly modified the hearing officer's findings, the replacement judge had incorrectly concluded that the original judge had erred as a matter of law, and the Montana Human Rights Act was not a proper legal remedy for the estate. Blaine County & Hill County v. Estate of Longsoldier, Jr., 2017 MT 80, 387 Mont. 202, 394 P.3d 159. See also Mont. St. Univ.-N. v. Bachmeier, 2021 MT 26, 403 Mont. 136, 480 P.3d 233.

Plaintiff Subject to McDonnell Douglas Test to Prove Employment Discrimination: Ray argued that his position as department head at Montana Tech of the University of Montana (now Montana Technological University) was not renewed because of his environmental activities and criticism of engineering students and also because of his marital status because one of the administrators was opposed to his being married to another member of the faculty. The Commission for Human Rights determined that the university had presented legitimate reasons for the nonrenewal and found for the school. The decision was upheld by the District Court. On appeal, Ray asserted that he was not subject to the McDonnell Douglas test adopted by the Montana Supreme Court in Martinez v. Yellowstone County Welfare Dept., 192 M 42, 626 P2d 242 (1981). The Supreme Court found that Ray had not presented any direct evidence that he was discriminated against based upon his political beliefs or marital status and therefore was subject to the test that provides that a plaintiff, relying on circumstantial evidence, has the initial burden of proving a prima facie case of discrimination. However, if the other party then meets its burden of rebutting the prima facie case, the burden reverts to the plaintiff. The Supreme Court agreed with the Commission for Human Rights that Ray had met the initial burden. However, the Supreme Court ruled that Montana Tech had then met its burden of showing legitimate reasons for the nonrenewal, which were supported by substantial credible evidence. The Supreme Court upheld the Commission's and District Court's findings that Montana Tech had presented reasons for the nonrenewal that were not pretextual, and that shifted the burden back to Ray who had not presented any convincing evidence that the reasons given for the nonrenewal were pretextual. Ray v. Mont. Tech of the Univ. of Mont., 2007 MT 21, 335 M 367, 152 P3d 122 (2007). See also Baumgart v. St., 2014 MT 194, 376 Mont. 1, 332 P.3d 225, holding that speculative and conclusory statements were insufficient to show the prima facie case for political affiliation discrimination.

Assignment of Particular Work Position Not Considered Marital or Sex-Plus Discrimination: Three temporary seasonal positions at the Department of Natural Resources and Conservation (DNRC) were eliminated, including Beaver's position, and three permanent seasonal positions were created, including two 8-month positions and one 6-month position. Beaver was given the 6-month position and later sued DNRC for marital and sex-plus discrimination, based in part on the comment by a supervisor that Beaver did not have to worry about getting the 6-month position because she had recently been married and now had a new husband to support her. DNRC contended that the positions were offered based on experience and training, and it was within the discretion of the District Court to determine the credibility of the witnesses and testimony. Although agreeing that the supervisor's statement was highly inappropriate, the Supreme Court nevertheless held that based on the evidence, the employment decision did not involve marital or sex-plus discrimination and that DNRC did not discriminate against Beaver based on marital status. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003).

Exhaustion of Remedies Under Individuals With Disabilities Act Not Required Upon Claim of Discrimination in Public Education Under Human Rights Act: Amanda Johnson suffered from Campomelic Syndrome and as a result was confined to a wheelchair. Prior to Amanda's enrollment at Great Falls High School, her family brought Amanda's access issues to the attention of the Great Falls School District. There was no elevator in the school, which precluded Amanda's access to second-floor classrooms and science labs. There were numerous other physical barriers as well, such as parking problems, snow-covered sidewalks, cafeteria restrictions, heavy doors, office countertops that were too high, and inaccessibility to restrooms, water fountains, vending machines, and public telephones. The district determined that it could not build an elevator and continue to provide educational services to the rest of the student body; however, the district did prepare individualized education programs for Amanda each year that attempted to accommodate her by scheduling her classes on the first floor, transporting her to another high school for science labs, fitting desks for her and providing special seating, making minor physical adjustments to the building, providing a parking space for her in the faculty lot, attempting to coordinate snow removal with her arrival, and assigning a staff member to help her use the cafeteria. Nevertheless, her family was dissatisfied with the district's efforts and brought an education discrimination claim, alleging that the district illegally discriminated against Amanda by failing to provide an accessible building in violation of Title 49, ch. 2, commonly known as the Montana Human Rights Act (MHRA), and specifically 49-2-307 and this section. A hearings examiner found that Amanda did have far less access to the school than her classmates, but concluded that the district had provided reasonable access in light of the resources available to meet Amanda's needs. The hearings examiner ordered the district to proactively monitor accommodations provided to students with physical disabilities and to take a number of steps to minimize the likelihood of future violations of the MHRA. The Commission for Human Rights adopted the hearings examiner's findings and conclusions, and the district filed for judicial review, arguing to the District Court that: (1) the Commission lacked jurisdiction to consider the complaint until Amanda exhausted the administrative remedies under the Individuals With Disabilities Education Act (IDEA) through the Office of Public Instruction; and (2) the relief granted exceeded the Commission's statutory authority. The District Court agreed and overruled the Commission's order, and the issues were appealed to the Supreme Court. On the first issue, the Supreme Court found that the gravamen of Amanda's claim was grounded in discrimination under the MHRA, not the right to a free appropriate public education under the IDEA. Disabled students can receive an appropriate education, as attested by Amanda's 3.7 grade point average, and still suffer discrimination when the physical premises of a school deprive them of basic human dignities. When claims involve the simple application of the IDEA exhaustion doctrine in the absence of a parallel state statutory remedy, the logic of the IDEA exhaustion may apply, but when, as here, state human rights laws provide an administrative remedy through the Commission for Human Rights, there is no compelling reason to preclude the MHRA claim by first requiring the IDEA exhaustion. The court found no legal basis for determining that the IDEA was intended to limit applicable state human rights discrimination claims. Thus, Amanda's claim could proceed prior to exhaustion of or without ever invoking the IDEA administrative remedies, and the District Court erred in holding otherwise. On the second issue, the Supreme Court found that the remedy ordered by the Commission—requiring the district to formalize its policy and procedure for addressing the special needs of disabled students—fell within the authority of 49-2-506 and was reasonable in light of the relief requested. The District Court was reversed, and the Commission's order was reinstated. Great Falls Pub. Schools v. Johnson, 2001 MT 95, 305 M 200, 26 P3d 734 (2001), following Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), and Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999 (1997), and distinguishing Koopman v. Freemont County School District No. 1, 911 P2d 1049 (Wyo. 1996).

Employment Rights Inapplicable to State Prison Inmates: Plaintiffs maintained that while they were male inmates at the state prison, they were employed in various capacities and paid wages substantially less than were paid female inmates for essentially the same jobs. They requested damages, claiming that as male prisoners they were economically discriminated against in favor of female prisoners. They also asked the District Court to describe conditions of work that would alleviate this sexual discrimination in the state prison system. However, the legislature specifically prohibited plaintiffs from receiving the relief they sought by providing that one of the penalties for being a prison inmate is that a prisoner does not have employment rights while serving a sentence in the state prison. The Supreme Court affirmed, holding the plaintiffs were precluded from recovering under both the sex discrimination statutes and the Fair Labor Standards Act. Quigg v. South, 245 M 438, 793 P2d 831, 47 St. Rep. 1176 (1990). See also Worsley v. Lash, 421 F.Supp. 556 (N.D. Ind. 1976).

Employment Discrimination Based on Political Beliefs: The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) did not hire plaintiff because of her support for certain legislation pending before the Legislature. The Supreme Court cited Pickering v. Bd. of Educ., 391 US 563, 20 L Ed 2d 811, 88 S Ct 1731 (1968), in holding that a public employee does not relinquish his first amendment right to comment on matters of public interest by virtue of government employment. Plaintiff's support of proposed legislation was a matter of public concern as to how government should be conducted and thus was an expression of her political ideas or beliefs. Failure to hire her because of those ideas or beliefs constituted illegal discrimination. Taliaferro v. Dept. of Social and Rehabilitation Services, 235 M 23, 764 P2d 860, 45 St. Rep. 2131 (1988).

Attorney General's Opinions

Municipal Authority to Set Water and Sewer Service Rates — Applicability of Human Rights Act to Setting of Water and Sewer Rates: A provision in 7-13-4304 provides that the rates for municipal water and sewer charges may be fixed in advance and must be uniform for like services in all parts of the municipality. The city of Bozeman sought to provide discounts or preferential rates to senior citizens on water and wastewater charges. The question was whether the senior rates violated the statutory requirement for uniform or equitable rates. The Attorney General held that because water and sewer ratemaking is not an area affirmatively subject to state control, a local government with self-government powers may set rates for those services without regard to the requirements of 7-13-4304. However, the Attorney General noted that age discrimination does violate this chapter, commonly known as the Montana Human Rights Act, that Bozeman is subject to the Act despite its status as a self-governing municipality, and that discrimination in government services is affirmatively subject to state control. Without deciding whether Bozeman's proposed ordinance would meet the standard of strict construction of reasonable grounds based on age, the Attorney General nevertheless concluded that this section of the Act did apply to the Bozeman ordinance setting senior rates for municipal water and sewer services. 50 A.G. Op. 10 (2004).

Age Limitation for Certification Repealed by Implication: The age limitation established in 20-4-104(1)(a) as a qualification for certification to teach is repealed by implication by 49-2-308 and 49-3-204. Age alone is not reasonable grounds to deny a teaching certificate to an otherwise qualified teacher. Based on the holding in Dolan v. School District, 195 M 340, 636 P2d 825, 38 St. Rep. 1903 (1981), 20-4-104(1)(a) is impliedly repealed by the Human Rights Act. 39 A.G. Op. 54 (1982).

49-2-309. Discrimination in insurance and retirement plans.

Compiler's Comments

2021 Amendment: Chapter 250 in (1) at beginning substituted "A financial institution or person may not discriminate" for "It is an unlawful discriminatory practice for a financial institution or person to discriminate"; and inserted (4) concerning sex or marital status discrimination using accepted ratemaking methodologies in establishing insurance premium rates. Amendment effective October 1, 2021.

Applicability: Section 2, Ch. 250, L. 2021, provided: "[This act] applies to insurance contracts entered into or renewed on or after January 1, 2022."

1993 Amendment: Chapter 13 inserted (3) to clarify that providing greater or additional contributions to a bona fide group insurance plan for employees with dependents does not constitute discrimination based on marital status; and made minor changes in style. Amendment effective February 1, 1993.

Administrative Rules

Title 24, chapter 9, subchapter 13, ARM Insurance and retirement plans.

Case Notes

Exclusion of Pregnancy Coverage in Major Medical Policy — Sexual Discrimination: Four women, the charging parties, obtained major medical insurance policies from Bankers Life and Casualty. The policies contained exclusions for pregnancy medical benefits. The Supreme Court held that the policies provided comprehensive coverage for major medical expenses, including male-specific conditions, and that the exclusion of pregnancy and childbirth expenses from coverage entitled women to fewer benefits because of their sex and was discriminatory on its face. Bankers Life & Cas. Co. v. Peterson, 263 M 156, 866 P2d 241, 50 St. Rep. 1753 (1993).

Attorney General's Opinions

Prescription Contraceptives and Related Medical Services Covered Under Employer Insurance Policy Pursuant to Unisex Insurance Law: If an employer provides an insurance policy that provides prescription drug coverage and other medical services, this section requires inclusion of coverage for prescription contraceptives and related medical services. 51 A.G. Op. 16 (2006).

49-2-310. Maternity leave — unlawful acts of employers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: Deleted former (4), which read: "retaliate against any employee who files a complaint with the commissioner under the provisions of this part".

Functions Transferred: Chapter 285, L. 1983, repealed 39-7-201, 39-7-202, and 39-7-205 through 39-7-209; renumbered 39-7-203 and 39-7-204 as 49-2-310 and 49-2-311 after amending 39-7-203; transferred the maternity leave functions of the Commissioner of Labor and Industry to the Commission for Human Rights; and provided that Ch. 285 does not affect any complaints filed with the Commissioner of Labor and Industry under Title 39, ch. 7, part 2, prior to July 1, 1983, the effective date of Ch. 285. The repealed sections are procedural provisions implementing 39-7-203 and 39-7-204 and are unnecessary in view of the similar procedure in this chapter, to which those sections were renumbered.

Administrative Rules

Title 24, chapter 9, subchapter 12, ARM Maternity leave.

Case Notes

Montana Maternity Leave Act — Not Preempted by Federal Law: Female employee who was discharged from her employment because of her pregnancy sought back wages and penalties. Employer claimed its no-leave policy for employees with less than 1 year with the company was facially neutral because it applied to both sexes and sought a judicial determination that the Montana Maternity Leave Act (MMLA) is invalid because it is preempted by Title VII of the Civil Rights Act of 1964 and the federal Pregnancy Discrimination Act (PDA). The District Court held the MMLA invalid. The Supreme Court reversed the District Court decision and held that the employer's no-leave policy clearly violated the Montana law and that the employee was entitled to backpay and penalties for her wrongful discharge. The Supreme Court stated that the employer's no-leave policy created a disparate effect on women who become pregnant compared to men who do not become pregnant. Although the policy was facially neutral, it nonetheless subjected pregnant women to job termination on a basis not faced by men. The no-leave policy therefore appears to be gender-based discrimination by an employer in violation of Title VII and the PDA. The Supreme Court stated that the MMLA is consonant with Title VII and the PDA and is not preempted by either. Miller-Wohl Co., Inc. v. Comm'r of Labor & Industry, 214 M 238, 692 P2d 1243, 41 St. Rep. 2445 (1984); on appeal to the U.S. Supreme Court, judgment vacated and case remanded, 479 US 1048, 93 L Ed 2d 972, 107 S Ct 919 (1987); judgment reinstated and remanded to the District Court for determination of appropriate attorney fees and costs, 228 M 505, 744 P2d 871, 44 St. Rep. 1718 (1987).

"Disability as a Result of Pregnancy"— Application to Normal Pregnancy: "Disability as a result of pregnancy" applies to disabilities resulting from normal as well as abnormal pregnancies, and the period of coverage extends from onset of actual disability through termination of gestation and a reasonable period of recovery, to be determined by competent medical authority. Mtn. States Tel. & Tel. Co. v. Comm'r of Labor & Indus., 187 M 22, 608 P2d 1047, 36 St. Rep. 1844 (1979).

Federal Preemption Theory Rejected: The Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq., the Labor Management Relations Act of 1947, as amended, 29 U.S.C. § 141, et seq., and the National Labor Relations Act, 29 U.S.C. § 151, et seq., do not preempt the application of subsection (3) of this section to the Mountain States Telephone and Telegraph Company. To hold otherwise would create an enormous vacuum in areas that have heretofore been traditionally dealt with by the states through the liberal intent of Title VII of the Civil Rights Act of 1964. Mtn. States Tel. & Tel. Co. v. Comm'r of Labor & Indus., 187 M 22, 608 P2d 1047, 36 St. Rep. 1844 (1979).

49-2-311. Reinstatement to job following pregnancy-related leave of absence.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 24.9.1207 Return to employment after maternity leave.

49-2-312. Discrimination based on vaccination status or possession of immunity passport prohibited — definitions.

Compiler's Comments

Effective Date: Section 6, Ch. 418, L. 2021, provided that this section is effective on passage and approval. Approved May 7, 2021.

Preamble: The preamble attached to Ch. 418, L. 2021, provided: "WHEREAS, as stated in section 50-16-502, MCA, the Legislature finds that "health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests"; and

WHEREAS, the Montana Supreme Court in State v. Nelson, 283 Mont. 231, 941 P.2d 441 (1997), concluded that "medical records fall within the zone of privacy protected by Article II, section 10, of the Montana Constitution" and "are quintessentially private and deserve the utmost constitutional protection"."

Severability: Section 5, Ch. 418, L. 2021, was a severability clause.

Case Notes

Preliminary Injunction Denied — Alternative Methods of Protecting Rights in Art. II, Sec. 3, Mont. Const. — No Manifest Abuse of Discretion. Netzer Law Office, P.C. v. St., 2022 MT 234, 410 Mont. 513, 520 P.3d 335.

49-2-313. Exemption.

Compiler's Comments

Effective Date: Section 6, Ch. 418, L. 2021, provided that this section is effective on passage and approval. Approved May 7, 2021.

Preamble: The preamble attached to Ch. 418, L. 2021, provided: "WHEREAS, as stated in section 50-16-502, MCA, the Legislature finds that "health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests"; and

WHEREAS, the Montana Supreme Court in State v. Nelson, 283 Mont. 231, 941 P.2d 441 (1997), concluded that "medical records fall within the zone of privacy protected by Article II, section 10, of the Montana Constitution" and "are quintessentially private and deserve the utmost constitutional protection"."

Severability: Section 5, Ch. 418, L. 2021, was a severability clause.

Part 4
Exceptions to Prohibitions

Part Administrative Rules

Title 24, chapter 9, ARM Human Rights Commission.

49-2-402. "Reasonable" to be strictly construed.

Attorney General's Opinions

Municipal Authority to Set Water and Sewer Service Rates — Applicability of Human Rights Act to Setting of Water and Sewer Rates: A provision in 7-13-4304 provides that the rates for municipal water and sewer charges may be fixed in advance and must be uniform for like services in all parts of the municipality. The city of Bozeman sought to provide discounts or preferential rates to senior citizens on water and wastewater charges. The question was whether the senior rates violated the statutory requirement for uniform or equitable rates. The Attorney General held that because water and sewer ratemaking is not an area affirmatively subject to state control, a local government with self-government powers may set rates for those services without regard to the requirements of 7-13-4304. However, the Attorney General noted that age discrimination does violate this chapter, commonly known as the Montana Human Rights Act, that Bozeman is subject to the Act despite its status as a self-governing municipality, and that discrimination in government services is affirmatively subject to state control. Without deciding whether Bozeman's proposed ordinance would meet the standard of strict construction of reasonable grounds based on age, the Attorney General nevertheless concluded that 49-2-308 of the Act did apply to the Bozeman ordinance setting senior rates for municipal water and sewer services. 50 A.G. Op. 10 (2004).

49-2-403. Specific limits on justification.

Compiler's Comments

2011 Amendment: Chapter 205 in (1) substituted "49-2-303(3) through (6)" for "49-2-303(3) through (5)". Amendment effective April 18, 2011.

1993 Amendments: Chapter 13 near beginning revised subsection reference to include 49-2-303(5). Amendment effective February 1, 1993.

Chapter 407 throughout section substituted "disability" for "handicap".

1991 Amendment: In (1) inserted reference to subsection (4) of 49-2-303 and after "justification for discrimination" substituted "except" for "unless the nature of the service requires the discrimination".

Applicability: Section 7, Ch. 506, L. 1991, provided: "[This act] applies to hiring for vacancies in state agency or state construction project positions within an Indian reservation that occur after [the effective date of this act] [effective October 1, 1991]."

1985 Amendment: At beginning inserted exception clause permitting compliance with state antinepotism statutes as proper justification for discrimination.

Attorney General's Opinions

Applicability of Montana Human Rights Act to Employment in School Districts Located on Indian Reservations: Although applicability of the Montana Human Rights Act to reservation-related activities must be decided on a case-by-case basis, the Act does apply to public school districts lying wholly or partially within Indian reservations on district-owned lands and prohibits the school district from granting employment preferences to Indians unless specifically required by federal statute. Indian tribes do not have a federally protected interest in requiring that employment preferences be granted to their members or to other Indians. (See 1991 amendment.) 43 A.G. Op. 42 (1989).

49-2-405. Veterans' and persons with disabilities employment preference.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 12, L. 1991, repealed sec. 19, Ch. 646, L. 1989, which terminated the 1989 amendments to this section July 1, 1991. Repealer effective February 7, 1991.

1989 Amendment: Inserted references to ch. 29 and to 39-29-101.

Severability: Section 18, Ch. 646, L. 1989, was a severability clause.

Part 5
Enforcement

Part Administrative Rules

Title 24, chapter 8, ARM Human Rights Bureau.

Part Case Notes

Human Rights Complaint — Gravamen Test No Longer Applicable: The plain language of the Montana Human Rights Act, Title 49, ch. 2, after its 2007 amendments, states that a charging party may file a complaint in District Court once the Human Rights Bureau dismisses a complaint as long as the party complies with 49-2-511. Thus it is no longer necessary to apply a "gravamen" analysis when determining whether a suit may be filed in District Court following the notice of dismissal. A "gravamen" analysis may still be proper in a claim alleging discrimination that is filed in District Court without first filing a claim before the Human Rights Bureau and receiving a notice of dismissal. Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321.

Nonconsensual Sex Not Considered Sexual Harassment for Purposes of Employment Discrimination: Nonconsensual sex goes beyond any reasonable conception of sexual harassment and falls outside the definition of discrimination in employment in this chapter, commonly known as the Montana Human Rights Act. Allegations of nonconsensual sex sound in tort, not in discrimination. Saucier v. McDonald's Restaurants of Mont., 2008 MT 63, 342 M 29, 179 P3d 481 (2008).

Pursuit of Discrimination or Tort Claim Based on Gravamen of Complaint: In determining whether a claimant has stated a tort claim or a discrimination claim, the Supreme Court looks to the gravamen of the complaint. When the gravamen is ascertained, the complaint is designated as either a tort action or a discrimination action. If the alleged conduct falls outside the definition of unlawful discrimination in this chapter, commonly known as the Montana Human Rights Act (MHRA), a plaintiff may maintain a tort action. However, because the MHRA establishes the exclusive means of legal redress for unlawful discrimination, the plaintiff may not simultaneously proceed in District Court with a discrimination claim based on the same allegations when it is determined that the complaint sounds in tort. Saucier v. McDonald's Restaurants of Mont., 2008 MT 63, 342 M 29, 179 P3d 481 (2008), distinguished in Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321, after 2007 amendment of Montana Human Rights Act. See also Harrison v. Chance, 244 M 215, 797 P2d 200 (1990).

Dismissal of Complaint When Proceedings Not Concluded Within Twelve Months of Filing of Complaint Absent Stipulation to Extend Time for Hearing: If the parties to a discrimination case mutually agree to allow the Department of Labor and Industry to retain jurisdiction under this chapter for a period of time that exceeds 12 months after a complaint is filed, then the parties must stipulate to that agreement. If no stipulation occurs and proceedings are not concluded within 12 months after a complaint is filed, the complaint is subject to dismissal. Indian Health Bd. of Billings, Inc. v. Dept. of Labor and Industry, 2008 MT 48, 341 M 411, 177 P3d 1029 (2008).

Human Rights Act Exclusive Remedy for Sexual Discrimination Complaint — Summary Dismissal by District Court Affirmed: Arthur filed a sexual discrimination complaint with the Montana Commission for Human Rights but failed to rebut a defendant's response, so the Commission sent Arthur a notice of dismissal and right to file a civil action in District Court. Arthur filed neither a timely objection to dismissal nor a timely action in District Court. Instead, Arthur filed a tort action against defendants, alleging various torts and requesting compensatory and punitive damages. An amended complaint filed 2 years later asserted: (1) failure to provide a safe workplace; (2) negligent retention of the employee who allegedly sexually harassed Arthur; (3) negligent supervision of the employee; (4) intentional infliction of emotional distress; (5) negligent infliction of emotional distress; and (6) sexual harassment under this chapter, commonly known as the Montana Human Rights Act. The District Court summarily dismissed the first five complaints as barred by the exclusive remedy provision of 49-2-509 (now repealed) and dismissed the sixth complaint as barred by the statute of limitations in 49-2-509 (now repealed). On appeal, the Supreme Court affirmed. Arthur's tort claims were a recharacterization of the initial sexual harassment claim, and pursuant to 49-2-509 (now repealed), the Montana Human Rights Act is the exclusive remedy for claims of sexual discrimination and precludes other tort claims that arise from underlying allegations of sexual discrimination or harassment. Further, under Hash v. U.S. W. Communication Serv., 268 M 326, 886 P2d 442 (1994), equitable tolling of the statute of limitations is not applicable in a discrimination case when a claimant does not have more than one legal remedy available, any one of which could be pursued in good faith. Rather, the claimant's exclusive remedy is under the Montana Human Rights Act. Arthur had knowledge of the vital facts underlying the sexual discrimination claim and could not claim inability to obtain the information in order to toll the statute of limitations. Arthur v. Pierre Ltd., 2004 MT 303, 323 M 453, 100 P3d 987 (2004), following Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), Bruner v. Yellowstone County, 272 M 261, 900 P2d 901 (1995), and Fandrich v. Capital Ford Lincoln Mercury, 272 M 425, 901 P2d 112 (1995).

Complaint Filed Prior to Amendment — Statutes of Limitations Met: Prior to amendment of 49-2-509 (now repealed) in 1987, the decision in Drinkwalter v. Shipton Supply Co., Inc., 225 M 380, 732 P2d 1335 (1987), allowed an individual alleging sexual harassment to file directly in District Court without first filing a complaint with the Human Rights Commission, in effect granting a victim of an alleged tort two legal remedies. The amendment effectively overruled Drinkwalter by mandating that this chapter, commonly known as the Montana Human Rights Act, was the sole and exclusive remedy for a sexual harassment cause of action. In this case, because the final alleged tort occurred on March 17, 1987, prior to the amendment, Harrison reasonably and in good faith pursued one of the two potential remedies, believing that the amended version of 49-2-509 (now repealed) either was inapplicable to her claims or, if applicable, would not apply because the alleged torts occurred prior to the effective date of the 1987 amendment. Harrison filed the complaint in District Court on September 28, 1987, well within the 3-year tort statute of limitations in 27-2-204 and also within the 180-day statute of limitations applicable to human rights cases that was triggered on the effective date of the amendment—April 16, 1987. Absent any evidence of prejudice by the delayed filing, equitable tolling, as discussed in Erickson v. Croft, 233 M 146, 760 P2d 706 (1988), was properly invoked and Harrison was entitled to a judgment as a matter of law. Chance v. Harrison, 272 M 52, 899 P2d 537, 52 St. Rep. 603 (1995), distinguishing Hash v. U.S. W. Communications Serv., 268 M 326, 886 P2d 442 (1994).

No Constitutional Right to Punitive Damages as Remedy for Discrimination: Fugate brought an action for sexual discrimination in employment before the Human Rights Commission. The Commission denied punitive damages. Citing Romero v. J.&J. Tire, 238 M 146, 777 P2d 292 (1989), the Supreme Court held that there is no constitutional right to an award of punitive damages. Moran v. Shotgun Willies, Inc., 270 M 47, 889 P2d 1185, 52 St. Rep. 71 (1995).

Exclusivity of Human Rights Act for Discrimination Claims — Doctrine of Equitable Tolling Inapplicable: The Legislature clearly intended that this chapter, commonly known as the Montana Human Rights Act, be the exclusive remedy for discrimination claims. To permit parties to delay filing with the Human Rights Commission until the filing time runs out and then to file directly in District Court would, in a sense, gut the Human Rights Act. Further, because the Act provides the exclusive remedy, the doctrine of equitable tolling, which applies when an injured person has several remedies and reasonably and in good faith pursues one, does not apply in discrimination cases when there is but one remedy. Hash v. U.S. W. Communications Serv., 268 M 326, 886 P2d 442, 51 St. Rep. 1404 (1994).

Sanctions at Hearing for Failure to Disclose: A ruling by the Human Rights Commission striking part of defendant's witnesses and exhibits was proper because of defendant's failure to disclose witnesses, exhibits, and documents relating to the stricken matters. Vainio v. Brookshire, 258 M 273, 852 P2d 596, 50 St. Rep. 529 (1993).

Commission as Exclusive Remedy for Discrimination in Employment — Retroactive Applicability: The 1987 amendment of 49-2-509 (now repealed) demonstrated a clear legislative intent to overrule Drinkwalter v. Shipton Supply Co., Inc., 225 M 380, 732 P2d 1335 (1987), and to allow the Commission for Human Rights to provide the exclusive remedy for discrimination in employment, including claims of sexual harassment. As set out in the applicability provisions of the 1987 law, the exclusive remedy provision applies to all cases pending on or filed after April 16, 1987, and may therefore be applied retroactively. Harrison v. Chance, 244 M 215, 797 P2d 200, 47 St. Rep. 1539 (1990), followed in Bruner v. Yellowstone County, 272 M 261, 900 P2d 901, 52 St. Rep. 699 (1995), and Fandrich v. Capital Ford Lincoln Mercury, 272 M 425, 901 P2d 112, 52 St. Rep. 806 (1995).

Delaying Access to Courts by Using Agency to Handle Racial Discrimination Complaints Not Unconstitutional: The defendant's suit in District Court alleging that his employment was terminated due to race was dismissed because by statute he was required to file his complaint with the Commission for Human Rights. The defendant filed an appeal, alleging that the requirement denied him due process and access to the courts. The Supreme Court held that the state's purpose of combating illegal discrimination was a rational basis for delaying access to the courts and therefore did not violate the federal or state constitution. Romero v. J&J Tire, 238 M 146, 777 P2d 292, 46 St. Rep. 1159 (1989).

Interpretation of Statutory Time Limits and Authority of Administrator: Section 49-2-509 (now repealed) provided that on request of either party, a right to sue letter should issue when 180 days have elapsed since the filing of the complaint without the completion of an informal settlement, and in addition, when 12 months have elapsed from the filing date so that a contested case hearing cannot be held within such 12-month period. Further, in determining when the 180-day period begins, 49-2-509 (now repealed) did not grant the Human Rights Commission administrator the authority or discretion to determine whether efforts at informal settlement have been successful. (See 1997 Amendment.) Univ. of Mont. Foundation v. Human Rights Comm'n, 223 M 389, 726 P2d 817, 43 St. Rep. 1814 (1986).

Discretion of Trial Court in Awarding Attorney Fees — Frivolous or Factually Baseless Claim of Discrimination: Under 49-2-509 (now repealed), reasonable attorney fees may be awarded to a prevailing party defendant in a suit alleging illegal discriminatory practices; however, it is in the trial court's discretion whether the suit successfully defended was frivolous or factually baseless. Absent such finding, the discretion of the trial court in denying defendant attorney fees will not be disturbed by the Supreme Court. Breese v. Steele Mtn. Enterprises, Inc., 220 M 454, 716 P2d 214, 43 St. Rep. 522 (1986).

Statutory Remedy Exclusive: The administrative remedy provided for victims of age discrimination by this part is exclusive. The purpose of the act forbidding discrimination was to eliminate discrimination in multiple respects, and to accomplish this, the Legislature did not authorize private suits. A private suit would not reveal the whole picture of discrimination that an inspection of the complaint by the Human Rights Commission could reveal. The purpose of a private suit is to get damage for an individual and not to eliminate discrimination by "conference, conciliation, and persuasion". If some relief other than a monetary award were to be granted in the private action, it would be a court and not a commission that would fashion the remedy and supervise its enforcement. Walker v. The Anaconda Co., 520 F. Supp. 1143, 38 St. Rep. 1557 (D.C. Mont. 1981). (However, under the 1985 amendment to 49-2-508, "a party" may petition the District Court to enforce a Commission order if the order is not obeyed.)

Date of Requested Rehearing — Running of Judicial Review Period: The 30-day period under 2-4-702 began to run when the Human Rights Commission issued its final order, not when the Commission denied a requested rehearing, since the Commission has no rule allowing a rehearing. Bradco Supply Co. v. Larsen, 183 M 97, 598 P2d 596 (1979).

Venue for Action Against Commission: In an action for a Writ of Prohibition in which plaintiffs' petition alleged that their constitutional right against self-incrimination was being infringed by the Commission's investigatory activities in Gallatin County, the cause of action arose and venue lay in Gallatin County, not Lewis and Clark County, the "decision-making hub" of the Commission. Venue must be determined on the basis of the plaintiffs' allegations, which addressed the exercise of the Commission's powers and not the powers themselves. School Districts v. Human Rights Comm'n, 173 M 113, 566 P2d 799 (1977).

49-2-501. Filing complaints.

Compiler's Comments

2007 Amendment: Chapter 28 in (1) at beginning substituted "A person" for "A complaint may be filed with the department by any party" and at end inserted "may file a complaint with the department"; in (2) near beginning after "behalf of a" substituted "person charging unlawful discrimination" for "party claiming to be aggrieved by a discriminatory practice" and in two places substituted reference to charging party for reference to aggrieved party; in (3) near middle after "party" deleted "educational institution, financial institution, or governmental entity or agency"; in (4)(b) at beginning of first sentence substituted "charging party" for "complainant"; deleted former (4)(c) that read: "(c) Any complaint not filed within the times set forth in this section may not be considered by the commission or the department"; inserted (5) regarding dismissal of an untimely complaint; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 467 in (1), after "filed", substituted "with the department by any party" for "by or on behalf of any person"; inserted (2) concerning filing of complaint on behalf of party; in (3) substituted "party" for "person" and deleted second sentence that read: "The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention"; in (4)(a) substituted "department" for "commission"; at end of (4)(c) inserted "or the department"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1997.

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

1991 Amendment: In (2)(a) inserted reference to 49-2-510; and made minor change in style.

1987 Amendment: At beginning of (2)(a) inserted exception clause; inserted (2)(b) regarding time limitations for filing grievance complaint; and made minor change in grammar.

Applicability: Section 4(2) provided that Ch. 415, L. 1987, applied to claims accruing after April 9, 1987.

Administrative Rules

Title 24, chapter 8, ARM Human Rights Bureau.

Case Notes

Discrimination Claim Untimely Filed — 180 Days to File Claim Commenced When Board Informed Medical Student It Would Not Offer Test-Taking Accommodations Rather Than Day Student Took Test — Dismissal Affirmed. Zolnikov v. Nat'l Bd. of Medical Examiners, 2023 MT 51, 411 Mont. 339, 526 P.3d 1088.

Plaintiff's Failure to File Accurate Complaint Not Detrimental — Defendant Had Notice of Nature of Claim: A tenant filed a complaint with the Human Rights Commission alleging that her landlord committed sexual harassment under the public accommodations provision in 49-2-304. The Commission determined that 49-2-304 was inapplicable, as the rental property was private property, but it allowed the tenant to pursue a claim based on the real estate transaction provision in 49-2-305. The landlord then petitioned the District Court for judicial review, reasoning that his due process rights would be violated if the tenant was allowed to pursue a claim under 49-2-305. The District Court agreed with the landlord and reversed the Commission, but the Supreme Court, in turn, reversed the District Court and determined that while the tenant could have been clearer in asserting a claim under 49-2-305, the landlord had sufficient notice of the nature of the claim and no evidence was presented showing that the landlord would have presented any additional evidence in a 49-2-305 defense. Bates v. Neva, 2013 MT 246, 371 Mont. 466, 308 P.3d 114.

Human Rights Complaint — Gravamen Test No Longer Applicable: The plain language of the Montana Human Rights Act, Title 49, ch. 2, after its 2007 amendments, states that a charging party may file a complaint in District Court once the Human Rights Bureau dismisses a complaint as long as the party complies with 49-2-511. Thus it is no longer necessary to apply a "gravamen" analysis when determining whether a suit may be filed in District Court following the notice of dismissal. A "gravamen" analysis may still be proper in a claim alleging discrimination that is filed in District Court without first filing a claim before the Human Rights Bureau and receiving a notice of dismissal. Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321.

Pursuit of Discrimination or Tort Claim Based on Gravamen of Complaint: In determining whether a claimant has stated a tort claim or a discrimination claim, the Supreme Court looks to the gravamen of the complaint. When the gravamen is ascertained, the complaint is designated as either a tort action or a discrimination action. If the alleged conduct falls outside the definition of unlawful discrimination in this chapter, commonly known as the Montana Human Rights Act (MHRA), a plaintiff may maintain a tort action. However, because the MHRA establishes the exclusive means of legal redress for unlawful discrimination, the plaintiff may not simultaneously proceed in District Court with a discrimination claim based on the same allegations when it is determined that the complaint sounds in tort. Saucier v. McDonald's Restaurants of Mont., 2008 MT 63, 342 M 29, 179 P3d 481 (2008), distinguished in Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321, after 2007 amendment of Montana Human Rights Act. See also Harrison v. Chance, 244 M 215, 797 P2d 200 (1990).

Full-Time Employment Wage Disparity Not Pleaded in Sex Discrimination Case — Improper Amendment of Pleadings by Hearings Examiner to Include Full-Time Employment Claim — Reversal of Commission Order Affirmed: Sprow brought an employment discrimination case, claiming that because of her sex, she was paid less than other employees at plaintiff's corporation. Sprow had started the job as a full-time employee, but received a pay decrease upon moving to part-time work, at which time she discovered the pay disparity between part-time employees and filed the claim. The hearings examiner reported that plaintiff had provided a legitimate nondiscriminatory reason for paying Sprow less as a part-time employee, but that Sprow had established that for full-time work, Sprow was as qualified as other workers. The hearings examiner concluded that plaintiff had discriminated against Sprow based on pay discrepancies in her full-time employment. In order to reach that conclusion, the hearings examiner amended the original pleadings, which only alleged discrimination regarding part-time employment. Plaintiff appealed to District Court, and the court reversed on grounds that the court had no jurisdiction to determine discrimination in full-time employment because Sprow's complaint concerned only part-time wage disparity. On appeal, the Supreme Court affirmed. Sprow never pleaded wage disparity in full-time employment, the hearings examiner erred by inserting the issue into the pleadings, and the Commission for Human Rights erred by concluding that Sprow had alleged full-time wage disparity based on the improperly amended pleadings. The District Court properly reversed in favor of plaintiff. Centech Corp. v. Sprow, 2006 MT 27, 331 M 98, 128 P3d 1036 (2006).

Entirety of Hostile Work Environment Claim Actionable — Claim When Environment Continues to Time Within Statutory Limit Considered Timely: The entirety of a hostile work environment claim is actionable even though an employee may reasonably have realized that there was an actionable claim at an earlier date, as long as the hostile work environment continued to a point in time that lies within the statutory time limits for filing a claim. In the present case, the hostile work environment continued to a point within the 180-day statute of limitations in this section, and the District Court did not err in holding that the claim was timely filed. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005), following Nat'l RR Passenger Corp. v. Morgan, 536 US 101 (2002).

Questioning Only Validity of Statute for First Time in District Court — Other Issues to Be Raised at Administrative Level: The Commission for Human Rights enjoined the Hilands Golf Club (Hilands) from engaging in future gender discrimination, ordered Hilands to create a three-person committee to review its policies and practices, required the promotion of greater numbers of female members, and ordered Hilands to pay Ashmore $750 in damages for emotional distress. Hilands petitioned for judicial review, and the Supreme Court denied a challenge to the validity of Hilands' appeal in Hilands Golf Club v. Ashmore, 277 M 324, 922 P2d 469 (1996). Following remand, Hilands moved to dismiss based on its contention that Ashmore lacked standing and that the claim was moot, and the District Court granted Hilands' motion. Ashmore appealed, contending that Hilands knew the facts that gave rise to its standing and mootness claims prior to the contested case hearing, but waived those arguments by not raising them at the administrative level. Hilands maintained that because both standing and mootness are jurisdictional issues, they can be raised at any stage of the proceedings. The Supreme Court noted that a District Court's authority to review administrative rulings is constrained by statute. A plain reading of 2-4-702(1)(b) indicates that a party may question the validity of a statute for the first time on judicial review to the District Court, but other than that exception, all other issues must be raised at the administrative level absent good cause. Because the Legislature created judicial review of administrative decisions and at the same time limited the scope of review, the general rule that justiciability questions can be raised at any time does not apply in these circumstances. Therefore, standing and mootness questions cannot be raised for the first time on judicial review of an administrative decision unless the District Court determines that there was good cause for the party's failure to raise the questions before the agency. Here, Hilands knew that the claims were viable issues that could be raised before the Commission, yet Hilands failed to raise them. If some event had occurred after the administrative hearing that raised the issues, Hilands would presumably be able to show good cause for failure to raise the issues, but the good cause exception did not exist here. Thus, the District Court erred in granting the motion to dismiss, and the Supreme Court remanded for further consideration of any substantive issues raised in the petition for judicial review. Hilands Golf Club v. Ashmore, 2002 MT 8, 308 M 111, 39 P3d 697 (2002), following Lincoln County v. Sanders County, 261 M 344, 862 P2d 1133 (1993), and distinguishing Shamrock Motors, Inc. v. Ford Motor Co., 1999 MT 21, 293 M 188, 974 P2d 1154 (1999), and Shamrock Motors, Inc. v. Chrysler Corp., 1999 MT 39, 293 M 317, 974 P2d 1154 (1999).

Improperly Working Commission for Human Rights Fax Machine Rendering Attempt to File Appeal Brief Untimely — Commission's Dismissal of Appeal Clearly Erroneous: Sprow contended that CenTech Corporation (CenTech) discriminated against her on the basis of gender, and filed a complaint with the Department of Labor and Industry. A contested case hearing was held, and the Department found in Sprow's favor. CenTech filed a timely notice of appeal with the Commission for Human Rights. The appeal brief was due May 15, 2000. CenTech attempted to fax the brief to the Commission on that date, but because of communication errors with the Commission's fax machine, only one page of the brief was received by the Commission. CenTech attempted to fax the brief again the next day, but again the fax equipment was not functioning. A CenTech representative contacted the Commission and was told that the communication error was likely due to the long-distance connection, so CenTech mailed the brief instead, but it was received 2 days after the filing deadline. Nevertheless, the Commission declined to consider CenTech's brief because it was considered untimely, and maintained that the Commission was not responsible for communication errors. CenTech appealed to District Court, and the court upheld the Commission's findings that numerous other faxes were received on May 15 and that the fax machine was working properly. The court concluded that by waiting until "almost literally the last minute" to file the brief, CenTech assumed the risk associated with the late filing and today's technology. CenTech appealed, and the Supreme Court reversed. Substantial evidence indicated that CenTech attempted to fax the entire brief within the allotted time but was prevented from doing so because of communication errors with the Commission's own fax machine. Thus, the District Court erred in holding that the Commission's findings and conclusions were not clearly erroneous in view of the reliable, probative, and substantial evidence on the record. Further, Commission regulations allow the suspension, waiver, or modification of its rules to prevent manifest injustice to a party, ensure a fair hearing, or afford substantial justice. Failure to do so in this case unreasonably elevated form over substance and prejudiced CenTech. CenTech did not have to assume the risk of a fax malfunction, and given its good faith effort to file the brief, justice required that its attempt be honored. CenTech Corp. v. Sprow, 2001 MT 298, 307 M 481, 38 P3d 812 (2001).

Failure to Timely File Discrimination Complaint With Commission — Prosecution in District Court Precluded: Skites filed a claim against her employer with the Montana Human Rights Commission 225 days after the most recent or continuing act of employment discrimination. Under this section, a complaint must be filed within 180 days after the unlawful discriminatory practice occurred or was discovered, and if the complaint is not timely filed, it may not be considered by the Commission. Further, pursuant to Hash v. U.S. W. Communications Serv., 268 M 326, 886 P2d 442 (1994), timely filing before the Commission is a prerequisite to filing an employment discrimination complaint in District Court because Title 49, ch. 2, commonly known as the Montana Human Rights Act, is the exclusive remedy for employment discrimination under Montana law. Skites' complaint was not timely filed with the Commission, thus her ability to prosecute the discrimination complaint in District Court was precluded. The District Court did not err in determining that no genuine issue of material fact existed that would preclude summary judgment for the employer. Skites v. Blue Cross Blue Shield of Mont., 1999 MT 301, 297 M 156, 991 P2d 955, 56 St. Rep. 1213 (1999).

Ability to Demonstrate Later Accrual of Action as Precluding Motion to Dismiss Based on Failure to State Claim — Human Rights Violation Claim: Powell was dismissed from his job with the Salvation Army on February 18, 1994, for the stated reason that he had been drinking on the job that day. Powell asserted that he learned months later that the dismissal was actually based on his past history of alcoholism, and he subsequently filed a grievance charge with the Human Rights Commission, alleging unlawful discrimination. The District Court granted a motion by the Salvation Army to dismiss for failure to state a claim for which relief could be granted for lack of jurisdiction based on Powell's failure to file a timely claim with the Commission. Under 27-2-102, the period of limitation applicable to any given cause of action begins to run when the claim or cause of action accrues, unless otherwise provided by statute. Pursuant to this section, a cause of action accrues under Title 49, ch. 2, commonly known as the Montana Human Rights Act, when the alleged unlawful discriminatory practice occurred or was discovered. Applying the principles in Hash v. U.S. W. Communication Serv., 268 M 326, 886 P2d 442 (1994), the Supreme Court found that Powell may well be able to demonstrate that his cause of action did not accrue until sometime after his termination and that he had thus complied with the applicable 300-day limitation period. The allegations in Powell's complaint were sufficient to withstand the Salvation Army's motion to dismiss, and the District Court erred in concluding otherwise. The case was remanded for further proceedings. Powell v. Salvation Army, 287 M 99, 951 P2d 1352, 54 St. Rep. 1518 (1997), following Willson v. Taylor, 194 M 123, 634 P2d 1180 (1981).

IDEA Complaint Held Subject to Exhaustion of Administrative Remedies Under Montana Human Rights Act: The Shieldses brought a civil action under 42 U.S.C. 1983 to enforce the rights of their son under the Individuals With Disabilities Education Act (IDEA) after he was excluded from a ski trip. The Shieldses had previously filed a grievance with the school, appealed the result of the grievance to the Superintendent of the Helena School District, and appealed the Superintendent's decision to the trustees of the School District. The District Court dismissed the section 1983 action, holding that the Shieldses failed to first file a complaint with the Human Rights Commission and thereby failed to exhaust their administrative remedies. The Shieldses argued that their case was a state tort action and did not fall within the jurisdiction of the Commission under Title 49, ch. 2, commonly known as the Montana Human Rights Act. Citing Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), the Supreme Court held that because the gravamen of the complaint was discrimination, the complaint fell under the Montana Human Rights Act and that the Shieldses were therefore required to file a written, verified complaint with the Commission. The Supreme Court held that only after exhausting that procedure could they then bring a complaint in District Court. Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999, 54 St. Rep. 815 (1997).

Right-to-Sue Letter Issued — Timely Filing of Complaint Prerequisite to Filing of Discrimination Suit: The issuance of a right-to-sue letter by the Human Rights Commission does not toll the statute of limitations, but rather constitutes the completion of the administrative process with regard to any complaint of discrimination in which a right-to-sue letter is issued. Moreover, the Human Rights Commission does not have the authority to establish jurisdiction in District Court. A right-to-sue letter is one mechanism permitting a claimant to proceed beyond the Human Rights Commission, assuming jurisdiction in the District Court is otherwise legally established. As held in Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), the timely filing of a complaint with the Commission is a prerequisite to filing suit on a discrimination complaint. Hash v. U.S. W. Communications Serv., 268 M 326, 886 P2d 442, 51 St. Rep. 1404 (1994).

Statute of Limitations in Employment Discrimination Case Triggered at Time of Notice of Elimination of Job: U.S. West notified Hash on June 19, 1991, that her position would be eliminated January 31, 1992. The job elimination occurred as scheduled. On June 5, 1992, Hash filed a discrimination complaint with the Human Rights Commission. At the subsequent trial, Hash argued that the statutory period started at the termination date because she had hoped and believed, up to the time of termination, that she would be given another position with the corporation. Nevertheless, her hopes and beliefs did not contradict the fact that she discovered the alleged discriminatory act on June 19, 1991, and her cause of action accrued on that date.

The District Court properly found that the filing period for Hash's complaint had expired. Hash v. U.S. W. Communications Serv., 268 M 326, 886 P2d 442, 51 St. Rep. 1404 (1994).

Unnamed Bar Owner Party to Action Due to Knowledge of Complaint: The District Court properly found that a bar owner who was aware of the complaint was properly notified of the complaint naming her bar and an employee, but not her, and was a party to the proceeding. Vainio v. Brookshire, 258 M 273, 852 P2d 596, 50 St. Rep. 529 (1993).

Workers' Compensation Not Exclusive Remedy for Sexual Harassment on the Job: Sexual harassment on the job is an intentional act not arising from an accident, and the Workers' Compensation Act is not an exclusive remedy for a claim for damages for emotional pain and suffering. Vainio v. Brookshire, 258 M 273, 852 P2d 596, 50 St. Rep. 529 (1993).

Amended Complaint for Retaliatory Termination as Relating Back to Employment Discrimination Complaint: After Simmons returned from a leave of absence from employment with Mountain Bell because of a back injury, she was demoted for absenteeism. She then filed a complaint with the Human Rights Commission, alleging employment discrimination. Later, Simmons was terminated for insubordination, whereupon she filed an amended complaint with the Commission, approximately 1 year after the filing of her original complaint, alleging retaliatory termination. A hearing examiner for the Commission held that the second complaint by Simmons was barred as being beyond the 180-day limit contained in this section. The District Court reversed, holding that the second complaint related back to the filing of the first. The Supreme Court affirmed, holding that under former Rule 15(c), M.R.Civ.P. (now superseded), the amended complaint for termination arose from the filing of the employment discrimination charge and thus arose from the same conduct for the purposes of computing time under former Rule 15(c). Simmons v. Mtn. Bell, 246 M 205, 806 P2d 6, 47 St. Rep. 1857 (1990).

No Vested Contract Right in Human Rights Discrimination Claim: Unlike a workers' compensation claimant, a claimant in a human rights discrimination action has no vested contract right to application of the laws in effect at the time of the injury. Even though the alleged discriminatory acts could be termed a breach of the implied employment contract, the gravamen of the claim is still discrimination. Because there is no vested contract right, the exclusive remedy provision of 49-2-509 (now repealed) does not violate the claimant's right to contract. Harrison v. Chance, 244 M 215, 797 P2d 200, 47 St. Rep. 1539 (1990), distinguishing Carmichael v. Workers' Comp. Court, 234 M 410, 763 P2d 1122 (1988).

No Constitutional Right to Jury Trial in Racial Discrimination Suit: In a racial discrimination suit, the plaintiff argued that a statute requiring him to file his complaint with the Commission for Human Rights denied him his constitutional right to a jury trial. The Supreme Court ruled that when the Legislature creates a new "public right", it can assign the adjudication of that right to an administrative agency without violating the constitutional mandate of preserving the jury trial in suits at common law. Romero v. J&J Tire, 238 M 146, 777 P2d 292, 46 St. Rep. 1159 (1989), followed in Vainio v. Brookshire, 258 M 273, 852 P2d 596, 50 St. Rep. 529 (1993).

Human Rights Act Not Exclusive Remedy for Sexual Harassment: When plaintiff failed to obtain a "right-to-sue" letter from the Commission for Human Rights prior to filing a civil suit alleging sexual harassment, the District Court granted summary judgment for defendants. On appeal, the Supreme Court reversed, ruling that the 180-day statute of limitations provision provided in 49-2-501 demonstrates legislative intent that the Human Rights Act not be the sole and exclusive remedy for acts which also give rise to an independent, common law cause of action. Drinkwalter v. Shipton Supply Co., Inc., 225 M 380, 732 P2d 1335, 44 St. Rep. 318 (1987), distinguished in Frigon v. Morrison-Maierle, Inc., 233 M 113, 760 P2d 57, 45 St. Rep. 1344 (1988), but see Harrison v. Chance, 244 M 215, 797 P2d 200, 47 St. Rep. 1539 (1990), in which the Supreme Court found that the 1987 amendment to 49-2-509 (now repealed) demonstrated a clear intent to legislatively overrule Drinkwalter and to allow the Commission for Human Rights to provide the exclusive remedy for discrimination in employment, including sexual harassment, and followed in Bruner v. Yellowstone County, 272 M 261, 900 P2d 901, 52 St. Rep. 699 (1995).

49-2-503. Temporary relief by court order.

Compiler's Comments

2007 Amendment: Chapter 28 near middle of first sentence after "commissioner" inserted "the department" and after "or the" substituted "charging party" for "complainant"; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 467 near middle of first sentence, after "application of", substituted "the commissioner" for "the commission". Amendment effective July 1, 1997.

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

1991 Amendment: Near beginning after "chapter", substituted language authorizing District Court, upon application by Commission or complainant, to enter preliminary injunction against respondent for former language that read: "alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs or in the county in which a respondent resides or transacts business seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint"; and deleted (2) that read: "(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices".

49-2-504. Informal investigation — conciliation — findings.

Compiler's Comments

2011 Amendment: Chapter 205 inserted (2)(b) pertaining to extension of investigation if parties enter into mediation; in (7) at beginning of second sentence inserted "Unless the time period is extended as provided in subsection (2)(b)"; and made minor changes in style. Amendment effective April 18, 2011.

2007 Amendment: Chapter 28 in (1) near middle after "impartially" substituted "to determine whether there is reasonable cause to believe that" for "If the department determines that"; inserted (2)(a) allowing mediation during the informal investigation process; in (2)(b) at beginning inserted "If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe that unlawful discrimination occurred, the department", after "complaint by" deleted "conference", and after "conciliation" substituted "in a manner" for "and persuasion"; in (4) at beginning of first sentence after "If" substituted "the department determines" for "a complaint is filed relative to an employment-related complaint and if the commissioner decides", after "or information" substituted "obtained by the department" for "contained in the complaint", and at end after "information" deleted "contained in the complaint"; in (7)(a) at beginning of first sentence substituted "After the informal investigation, the department shall issue a finding on whether there is reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of unlawful discrimination. The finding must be issued" for "The department shall make a finding regarding the merit or nonmerit of the complaint" and in second sentence after "shall" substituted "issue" for "make"; inserted (7)(b) concerning dismissal of the case; inserted (7)(c) regarding certification of the case for hearing; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 467 in first sentence of (1)(a), near beginning, substituted "department" for "commission staff", near beginning of second sentence substituted "department" for "staff", substituted "a preponderance of the evidence" for "substantial evidence", substituted "attempt to achieve a resolution of the complaint by conference, conciliation, and persuasion that, in addition to providing redress for the complaint, includes conditions that" for "immediately try to", and at end substituted "if any, identified in the investigation" for "by conference, conciliation, and persuasion", and inserted remainder of subsection concerning various notification; inserted (1)(b) concerning employment-related complaint; inserted (2) concerning answer to complaint; inserted (3) concerning commencement of proceedings; inserted (4) concerning finding of merit or nonmerit; and made minor changes in style. Amendment effective July 1, 1997.

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

Case Notes

Human Rights Action — Not Exclusively Administrative Remedy: Since the 2007 amendments to the Montana Human Rights Act, Title 49, ch. 2, claims are not exclusively an administrative remedy. A party may take a case to District Court for a trial on the merits if the action is dismissed by the Human Rights Bureau, and the District Court may provide the same relief as could have been granted in the administrative process. Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321.

Human Rights Complaint — Gravamen Test No Longer Applicable: The plain language of the Montana Human Rights Act, Title 49, ch. 2, after its 2007 amendments, states that a charging party may file a complaint in District Court once the Human Rights Bureau dismisses a complaint as long as the party complies with 49-2-511. Thus it is no longer necessary to apply a "gravamen" analysis when determining whether a suit may be filed in District Court following the notice of dismissal. A "gravamen" analysis may still be proper in a claim alleging discrimination that is filed in District Court without first filing a claim before the Human Rights Bureau and receiving a notice of dismissal. Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321.

Federal Law — Settlement Agreement — Subsequent Enforcement: The federal Equal Employment Opportunity Commission entered into a sex discrimination settlement agreement before making an independent investigation and reasonable cause determination. This agreement could not be the basis for a subsequent enforcement action, absent investigation and conciliation efforts by the Commission. Equal Employment Opportunity Comm'n v. Pierce Packing Co., 669 F2d 605 (9th Cir. 1982).

49-2-505. Contested case hearing — appeal to commission — final agency decision.

Compiler's Comments

2007 Amendment: Chapter 28 in (1) at beginning of first sentence deleted "If the informal efforts to eliminate the alleged discrimination are unsuccessful" and near middle after "complaint" inserted "that is certified for hearing under 49-2-504 or that is remanded for hearing by the commission or by a reviewing court"; in (2) near beginning of first sentence after "agree to" substituted "extend the time for hearing beyond" for "permit the department to retain jurisdiction of the case under this chapter for a period of time that exceeds", at end of second sentence after "case" inserted "in accordance with the stipulated schedule", and at beginning of third sentence substituted "After a hearing date is set" for "The case must be heard no later than 90 days after the date is set by the department"; in (3)(a) in first sentence after "party" deleted "charged in the complaint", in second sentence in two places substituted "charging party" for "complainant", and in third sentence near beginning after "hearing" deleted "and any subsequent proceedings under this chapter" and at end after "Procedure" deleted "as adopted by the department"; inserted (3)(c) requiring issuance of a decision after a hearing if a case is not resolved; in (4) near beginning after "officer" substituted "by filing an appeal" for "to the commission. A party shall provide notice of its appeal" and after "commission" substituted "within 14 days after the issuance" for "the department, and all parties within 10 business days of receipt"; in (5) in first sentence near end after "receipt of" substituted "an" for "notice of", inserted second sentence allowing the commission to affirm, reject, or modify the decision in whole or in part, and in third sentence after "render a" inserted "final agency"; in (7) at beginning after "The" inserted "department or the" and near end after "in a" deleted "contested case"; in (8) at end of first and second sentences after "fees" inserted "and costs"; inserted (9) concerning petition for judicial review of a final agency decision; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 467 in (1), in first sentence after "unsuccessful", substituted "the department shall hold a hearing on the complaint" for "the staff shall inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission" and inserted second sentence concerning service; inserted (2) concerning period of retention of jurisdiction and time of hearing; in (3)(a), in two places, substituted "department" for "commission", in first sentence, after "unless", substituted "a party" for "the person, institution, entity, or agency" and after "complaint" substituted "requests and is granted" for "or the commission requests", in second sentence, after "by", deleted "the staff", and in third sentence substituted "applicable portions of the Montana Rules of Civil Procedure as adopted by the department" for "Montana Administrative Procedure Act except as provided in 49-2-508"; inserted (3)(b) concerning presentation of evidence; inserted (4) concerning appeal of decision to Commission; inserted (5) concerning telephonic hearings; and made minor changes in style. Amendment effective July 1, 1997.

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

Administrative Rules

ARM 24.9.112 Filings with the commission.

Case Notes

Attorney Fees Reasonable — District Court's Use of Two-Step "Lodestar/Multiplier Test" and Consideration of Other Factors Appropriate. Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Montana Human Rights Act — Costs Correctly Awarded to Employer: The District Court correctly awarded costs to the employer clinic as the prevailing party and did not abuse its discretion in the award amount. A terminated employee argued that the District Court erred in awarding discretionary costs of $9,370.59 to the clinic pursuant to 49-2-505 and that an award of costs is not appropriate because it could dissuade other plaintiffs from bringing meritorious human rights suits. The Supreme Court determined that the District Court correctly concluded 49-2-505 governs its consideration of costs, giving it discretion to award the prevailing party reasonable costs. The District Court thoroughly considered the costs asserted by the employer and the employee's objections, specifically addressing filing fees, subpoena fees, transcript fees, witness fees, postage fees, and deposition fees, and it provided a detailed basis for the legal and factual authority supporting the costs it awarded. Bollinger v. Billings Clinic, 2019 MT 42, 394 Mont. 338, 434 P.3d 885.

Counsel's Failure to Discover Notice Insufficient Cause for Relief From Appeal Deadline: In a discrimination claim under the Human Rights Act, misplacement of a notice of appeal by counsel or counsel's staff did not constitute good cause for relief from the 14-day period for filing appeals under 49-2-505(3)(c) because untimely appeals may be excused only when the parties acted with reasonable diligence to preserve their legal rights but have been prevented from doing so by circumstances reasonably beyond their control. BNSF Ry. Co. v. Cringle, 2012 MT 143, 365 Mont. 304, 281 P.3d 203. See also BNSF Ry. Co. v. Cringle, 2010 MT 290, 359 Mont. 20, 247 P.3d 706, and St. v. Robertson, 2015 MT 341, 381 Mont. 520, 363 P.3d 427.

Statutory Filing Deadline Not Jurisdictional — District Court to Allow Equitable Relief Upon Remand — Separation of Powers Implicated: Because of a calendaring error, the plaintiff railway's counsel missed the deadline imposed by 49-2-505 for an appeal of a decision of the Human Rights Bureau to the Human Rights Commission but submitted an out-of-time appeal. The defendant argued that the 14-day deadline imposed by 49-2-505 was jurisdictional, and the Commission and the District Court, in issuing an order to enforce the order of the Human Rights Bureau, agreed. Citing Davis v. St., 2008 MT 226, 344 Mont. 300, 187 P.3d 654, Miller v. Eighteenth Jud. Dist., 2007 MT 149, 337 Mont. 488, 162 P.3d 121, and St. v. Johnston, 2008 MT 318, 346 Mont. 93, 193 P.3d 925, among other cases, for the proposition that "categorical time prescriptions" or filing deadlines do not withdraw subject matter jurisdiction from a District Court, the Supreme Court reversed. The Supreme Court held that the District Court was not deprived of jurisdiction and that, upon remand, the District Court should consider the issue of why the railway's counsel missed the deadline and should, if it finds good cause, exercise its equitable powers to allow the appeal. The dissent argued that the majority's opinion implicated the separation of powers doctrine because the majority had no authority to allow an exception to the statutory filing deadline. BNSF Ry. Co. v. Cringle, 2010 MT 290, 359 Mont. 20, 247 P.3d 706. See also BNSF Ry. Co. v. Cringle, 2012 MT 143, 365 Mont. 304, 281 P.3d 203, and St. v. Robertson, 2015 MT 341, 381 Mont. 520, 363 P.3d 427.

Application of Lodestar Approach to Determine Reasonable Attorney Fees in Human Rights Action — Reasonableness Required: Attorney Best represented five claimants in a human rights claim against Cascade County. Only one claimant was successful and therefore entitled to attorney fees. When the claimant petitioned for an award of attorney fees, Best acknowledged that the time spent on the case was for all the claimants but that because the work was all related to a single core set of facts and the same legal theories, it was impossible to separate the work done for the unsuccessful clients from the work done for the successful client. The county presented no evidence to the contrary but protested the award. The District Court decided that it had no other choice than to reduce the amount of the claimed fees, because Best had represented five clients and only one was entitled to attorney fees. Therefore, the court applied the lodestar approach to determine a reasonable fee, calculating the number of hours reasonably expended and multiplying it by a reasonable hourly rate, which resulted in a reduction of Best's fee for 74 hours worked for the other clients. On appeal, the Supreme Court concluded that the lodestar approach was an appropriate method to determine a reasonable fee but reversed because the final calculation was not reasonable. The county presented nothing for the District Court to rely on to reduce the hours claimed, and the lack of evidence resulted in an arbitrary decision by the

District Court constituting an abuse of discretion. The case was remanded for a recalculation of a reasonable amount of attorney fees. Edwards v. Cascade County, 2009 MT 229, 351 M 360, 212 P3d 289 (2009).

Erroneous Judgment Overpayment Properly Offset Against Attorney Fees: Plaintiff was awarded $40,948.83 in a human rights case against Cascade County. The county subsequently sent plaintiff another check for $28,062.95. Plaintiff's attorney inquired whether the check was a partial payment of fees and costs, and the County Attorney replied that the check was in response to the order of the Human Rights Bureau, which did not relate to fees. The county eventually contended that the check was sent in error and sought repayment through a reduction in attorney fees. Plaintiff asserted that the county released its claim for a refund. The District Court disagreed and ordered that the overpayment be offset against the attorney fees owed by the county. On appeal, the Supreme Court affirmed. The county, through the County Attorney, made a mistake in stating what the check was for, and the letter did not constitute an unequivocal release of a claim to recover the overpayment mistakenly made by the county, nor did the county release the claim through abandonment. Therefore, the District Court did not err in ordering that the county recover its overpayment by offsetting that amount against the attorney fees owed by the county to plaintiff as the prevailing party in the human rights action. Edwards v. Cascade County, 2009 MT 229, 351 M 360, 212 P3d 289 (2009).

Dismissal of Complaint When Proceedings Not Concluded Within Twelve Months of Filing of Complaint Absent Stipulation to Extend Time for Hearing: If the parties to a discrimination case mutually agree to allow the Department of Labor and Industry to retain jurisdiction under this chapter for a period of time that exceeds 12 months after a complaint is filed, then the parties must stipulate to that agreement. If no stipulation occurs and proceedings are not concluded within 12 months after a complaint is filed, the complaint is subject to dismissal. Indian Health Bd. of Billings, Inc. v. Dept. of Labor and Industry, 2008 MT 48, 341 M 411, 177 P3d 1029 (2008).

Court Deference to Hearings Examiner Rather Than Reweighing Evidence: A court reviewing an agency decision may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. As long as the court determines that substantial credible evidence exists to support the findings of the trier of fact, the court may not reweigh the evidence, but must instead defer to the hearings examiner. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005), followed in Denke v. Shoemaker, 2008 MT 418, 347 M 322, 198 P3d 284 (2008). See also Moran v. Shotgun Willies, Inc., 270 M 47, 889 P2d 1185 (1995).

Costs of Contested Employment Discrimination Administrative Hearing Not Allowed Absent Adoption of Rules of Civil Procedure by Agency: The Department of Labor and Industry conducted an administrative hearing to address plaintiff's employment discrimination claim. Defendants made an offer of judgment that plaintiff refused, but defendants ultimately prevailed and then contended that plaintiff was responsible for the costs of the hearing under 25-10-501, former Rule 68, M.R.Civ.P. (now superseded), and this section. The Department determined that the general legislative mandate to follow the Montana Rules of Civil Procedure did not empower the agency to award costs in a contested case hearing. The District Court agreed, and on appeal, the Supreme Court affirmed. Under this section, the Montana Rules of Civil Procedure apply only in agency hearings to the extent that the rules are adopted by the agency. Former Rule 68, M.R.Civ.P., which allows recovery of costs after a judgment, has not been adopted by the Department to apply in agency-conducted administrative hearings related to employment discrimination. Absent a statutory basis, the award of costs was not proper. Pannoni v. Browning School District No. 9 Bd. of Trustees, 2004 MT 130, 321 M 311, 90 P3d 438 (2004).

Offer of Judgment to State That Attorney Fees Not Included to Effect Waiver of Discretionary Attorney Fees: Plaintiff, a nonprofit corporation formed to protect and increase equal housing opportunities, filed an administrative complaint against defendants for violating this chapter, commonly known as the Human Rights Act, by denying equal housing opportunities based on familial status, age, and marital status. Following an administrative investigation, the Commission for Human Rights found that plaintiff's allegations were supported by substantial evidence and that there was reasonable cause to believe that defendants violated state fair housing laws. Defendants ultimately served plaintiff an offer of judgment pursuant to former Rule 68, M.R.Civ.P. (now superseded), which stipulated that judgment would be taken against defendants in the amount of $2,000 "together with costs only that accrued". Plaintiff accepted the offer, and judgment was entered against defendants. Plaintiff subsequently sought attorney fees as the prevailing party, but the request was denied by the District Court because the offer of judgment did not expressly include attorney fees, so plaintiff appealed. The Supreme Court noted that it is in the interests of both parties that an offer of judgment be clear and unambiguous in order to effect a waiver of attorney fees; however, the offer itself need not include the term "attorney fees" to effect a waiver. In the present case, the offer of judgment included costs, but it was not clear whether attorney fees were included, nor did the offer state that the sum to be paid was consideration for the resolution of all counts. Thus, it was ambiguous whether plaintiff, by accepting the offer, waived the right to attorney fees. The offer of judgment did not include a specific waiver of attorney fees, so the District Court erred in concluding that plaintiff's acceptance of the offer constituted a waiver of attorney fees. The Supreme Court remanded for a determination of whether to award plaintiff discretionary attorney fees under the Human Rights Act. Mont. Fair Housing, Inc. v. Barnes, 2002 MT 353, 313 M 409, 61 P3d 170 (2002), distinguished, with regard to an offer of full payment, in Wyant v. Kenda, 2004 MT 348, 324 M 342, 102 P3d 1260 (2004). See also Nordby v. Anchor Hocking Packaging Co., 199 F3d 390 (7th Cir. 1999).

Test for Determining Prevailing Party in Mixed Motive Employment Discrimination Case: Laudert suffered liver failure while employed by the Richland County Sheriff's Department (RCSD) and had to resign. Following Laudert's full recovery, his former position came open again and he applied but was not rehired. He filed a discrimination charge on grounds of age and disability. The hearings examiner found that questions asked by the RCSD interview panel constituted direct evidence that RCSD had unlawfully considered Laudert's disability, but did not award damages because Laudert would not have been hired even in the absence of any unlawful consideration of his disability. The District Court held that Laudert was not entitled to attorney fees because he did not prevail on the ultimate basis for his petition. Laudert appealed the denial of attorney fees, asserting that because the hearings examiner found that his disability had been unlawfully considered and because affirmative relief was awarded against RCSD in the form of an injunctive order requiring RCSD to submit a written policy regarding hiring procedures, including guidelines regarding future inquiry into applicant disabilities, he was the prevailing party. The Supreme Court held that the District Court erred in applying the "central issue" and "primary relief sought" tests for determining the prevailing party, analyses expressly repudiated in Tex. St. Teachers Ass'n v. Garland Independent School District, 489 US 782 (1989). Requiring plaintiff to prevail on the ultimate basis for a petition is an inappropriate test for determining whether attorney fees should be awarded under this section. Under Farrar v. Hobby, 506 US 103 (1992), a plaintiff prevails when actual relief on the merits of the claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff. Here, the order of affirmative injunctive relief clearly modified RCSD's behavior. However, the Supreme Court rejected the Farrar requirement that a plaintiff secure a direct benefit at the time of the judgment in order to be a prevailing party because that requirement would not further the purpose of awarding attorney fees under Title 49, ch. 2, commonly known as the Montana Human Rights Act. Complaints of civil rights abuses that successfully establish a finding of discrimination and an order of injunctive relief are the type of meritorious litigation that should be encouraged. The District Court's determination that Laudert did not prevail because RCSD proved it would have made the same hiring decision, despite its consideration of Laudert's disability, was reversible error. Laudert v. Richland County Sheriff's Dept., 2000 MT 218, 301 M 114, 7 P3d 386, 57 St. Rep. 872 (2000). See also Dolan v. School District No. 10, 195 M 340, 636 P2d 825 (1981), and Wagner v. Empire Dev. Corp., 228 M 370, 743 P2d 586 (1987). Following remand for determination of a reasonable fee award under this section, the District Court noted that Laudert was the prevailing party in the 2000 case, even though Laudert's request for damages was denied, and awarded Laudert's counsel fees for all time expended. The RCSD appealed, but the Supreme Court affirmed. The Supreme Court cited Pa. v. Del. Valley Citizens' Council for Clean Air, 478 US 546 (1986), for the strong presumption, given the rationale behind fee-shifting provisions, that the lodestar amount is a reasonable fee, noting that fee-shifting statutes were not designed to be windfalls for attorneys or to replicate the amount that an attorney would receive in other types of litigation, but rather to enable private parties to retain the legal assistance necessary to seek redress when their rights are violated. The court also applied the two-step approach in Hensley v. Eckerhart, 461 US 424 (1983), to address other considerations that may lead to a fee adjustment in cases when attorney fees are recoverable by a partially prevailing plaintiff in pursuit of unsuccessful claims. Under Hensley, an attorney should receive fees for the full services provided when plaintiff has obtained excellent results, even if plaintiff does not prevail on every claim. In this case, Laudert achieved the level of success necessary to support the award of the full amount of fees claimed, and the District Court did not err in awarding the full amount. Laudert v. Richland County Sheriff's Dept., 2001 MT 287, 307 M 403, 38 P3d 790 (2001). See also Ihler v. Chisholm, 2000 MT 37, 298 M 254, 995 P2d 439 (2000).

Sanctions at Hearing for Failure to Disclose: A ruling by the Human Rights Commission striking part of defendant's witnesses and exhibits was proper because of defendant's failure to disclose witnesses, exhibits, and documents relating to the stricken matters. Vainio v. Brookshire, 258 M 273, 852 P2d 596, 50 St. Rep. 529 (1993).

Test for Granting Prevailing Defendant Attorney Fees: Civil rights acts depend upon private individuals to uphold the public policy in the acts. To avoid discouraging the filing of meritorious claims before the Human Rights Commission under this chapter, commonly referred to as the Montana Human Rights Act, the Supreme Court, in a case of first impression, adopted as the standard for whether a prevailing defendant in a Commission hearing will be granted attorney fees the test that the claim must have been frivolous, unreasonable, or groundless or that plaintiff continued to litigate after the claim clearly became so. A plaintiff who establishes a prima facie case will generally prevail under the test. The fact that plaintiff here also pursued federal administrative proceedings, lost the commission hearing, and apparently refused a compromise offer from defendant did not make her claim unreasonable or in bad faith. Defendant's protest that it is a small school and will suffer a hardship if it has to pay its own attorney fees will not relieve it of that burden in light of the strong public policy of encouraging possibly meritorious claims. McCann v. Trustees, Dodson School District, 249 M 362, 816 P2d 435, 48 St. Rep. 762 (1991).

Standards of Judicial Review: In this case concerning a claim of sexual discrimination in employment, the Supreme Court held that the standards for judicial review of a determination by an administrative agency are set forth in this section. Findings of fact by an administrative agency are subject to the clearly erroneous standard of review, and conclusions of law are subject to the abuse of discretion standard of review. P.W. Berry Co., Inc. v. Freese, 239 M 183, 779 P2d 521, 46 St. Rep. 1605 (1989).

Failure to Award Statutory Attorney Fees — No Abuse of Discretion: Plaintiff was awarded restitution for successfully bringing an employment discrimination charge. Based on a contingent fee agreement, plaintiff paid her attorney one-third of the award and subsequently requested attorney fees as prevailing party under 49-2-505(4). Following an evidentiary hearing, the District Court denied the request. On appeal, the Supreme Court found no abuse in failing to award statutory attorney fees since there was sufficient evidence that plaintiff's attorney was adequately and reasonably compensated for her efforts under the contingent fee agreement, whether or not reference was made to federal fee shifting statutes. Wagner v. Empire Dev. Corp., 228 M 370, 743 P2d 586, 44 St. Rep. 1606 (1987).

Modification of Findings of Fact by Commission Held Proper: When the Human Rights Commission, in redetermining a backpay award, held a supplemental hearing and applied a different termination date from that applied by the hearing examiner and consequently modified two of the hearing examiner's findings of fact, without stating that the findings were not based on substantial evidence, the Supreme Court upheld the Commission's determination. Billings v. Mont. Human Rights Comm'n, 209 M 251, 681 P2d 33, 41 St. Rep. 688 (1984).

Substantial Evidence of Illegal Discrimination Found: When the evidence established that: (1) claimant was 71 years of age and therefore a member of a protected class; (2) claimant was qualified to perform the work and had done so for a number of years; (3) claimant was discharged despite his qualifications; (4) claimant was the only custodian on his shift who was more than 30 years of age; and (5) claimant's coworkers referred to him derogatorily as "grandpa" and "old man", and when claimant's testimony that his supervisory personnel had failed to prevent his harassment by coworkers was substantiated, the Supreme Court ruled that there was reliable, probative, and substantial evidence in the record to support the Commission's determination that claimant's employment problems were directly related to his coworkers' discriminatory actions, that those actions were based solely on claimant's age, and that the employer tolerated discriminatory actions and failed to maintain a work environment free of intimidation. Billings v. Mont. Human Rights Comm'n, 209 M 251, 681 P2d 33, 41 St. Rep. 688 (1984).

Standard of Review of Commission Decision: A District Court's choice of the substantial evidence standard as the proper standard of review of a decision of the Human Rights Commission was proper. Billings v. Mont. Human Rights Comm'n, 209 M 251, 681 P2d 33, 41 St. Rep. 688 (1984).

Discrimination — Reference to Federal Law Proper — Substantial Evidence Required: Petitioner filed an employment discrimination claim with the Human Rights Commission alleging that he was forced to resign from his position as a welder with respondent because of racial harassment. The hearing examiner found no discrimination, and petitioner appealed. The District Court and the Supreme Court affirmed the hearing examiner's determination and held that Title VII of the federal Civil Rights Act of 1964 and reference to pertinent federal case law in determining claims under Title 49 (MCA) are both useful and appropriate. Where the hearing examiner's findings were supported by substantial credible evidence and petitioner had failed to make a prima facie showing of discrimination, the court could not substitute its judgment and the hearing examiner's findings were upheld. Snell v. Montana-Dakota Util. Co., 198 M 56, 643 P2d 841, 39 St. Rep. 763 (1982).

Date of Requested Rehearing — Running of Judicial Review Period: The 30-day period under 2-4-702 began to run when the Human Rights Commission issued its final order, not when the Commission denied a requested rehearing, since the Commission has no rule allowing a rehearing. Bradco Supply Co. v. Larsen, 183 M 97, 598 P2d 596 (1979).

Attorney General's Opinions

Deliberations of Commission Open to Public: The deliberations of the Human Rights Commission following a contested case hearing are subject to the Montana open meeting law. They must be open to the public unless the presiding officer determines that the discussion relates to a matter of individual privacy and that the demands of individual privacy clearly exceed the merits of public disclosure. 38 A.G. Op. 33 (1979).

49-2-506. Procedure upon decision finding discrimination.

Compiler's Comments

2007 Amendment: Chapter 28 in (1) near beginning substituted "hearings officer" for "commission or the department, after a hearing" and near middle after "complaint" deleted "the commission or"; in (3) at beginning after "Whenever" substituted "an order" for "a commission or department order"; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 467 in (1), near beginning after "commission", substituted "or the department after a hearing, finds that a party" for "finds that a person, institution, entity, or agency" and after "commission" inserted "or the department"; in (3), near beginning after "commission", inserted "or department", after "inspection by" substituted "the department" for "the commission staff", and at end reduced time from 3 years to 1 year; and made minor changes in style. Amendment effective July 1, 1997.

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

1991 Amendment: At beginning of (2) inserted exception clause.

Case Notes

Guidance of Wrongful Discharge From Employment Act — Front-Pay Cap on Damages Not Arbitrary and Capricious in Discrimination Case if Supported by Record — Human Rights Commission's Front-Pay Damages Reinstated — Reversed and Remanded. Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Reduction in Damages for Discrimination and Retaliation: The plaintiff appealed the Human Rights Commission's reduction of the plaintiff's damages for discrimination from $175,000 to $80,000 and retaliation from $75,000 to $20,000. The Commission reduced the discrimination damages for three reasons: (1) the plaintiff originally requested $100,000 in damages; (2) the plaintiff did not report the discriminatory acts until 3 years after the acts started; and (3) the nature of the discriminatory acts did not support a large award. On appeal, the Supreme Court affirmed, concluding that the reasons were not arbitrary and were supported by the record and that the Commission had not exceeded its statutory authority in reducing the discrimination damages. In addition, the reduced retaliation damages reflected the minor nature of the retaliation. Mont. St. Univ.-N. v. Bachmeier, 2021 MT 26, 403 Mont. 136, 480 P.3d 233.

Husband Discriminated Against Based on Marital Status: Award of back pay to the husband was an appropriate remedy when a couple was fired due to the employer's dissatisfaction with the wife's job performance. The couple was hired as a management team, and there was no dissatisfaction with the husband's performance. Mercer v. McGee, 2008 MT 374, 346 M 484, 197 P3d 961 (2008).

No Finding of Malicious Prosecution, Abuse of Process, or Tortious Interference in Employment Discrimination Claim — Judgment as Matter of Law Proper: Lynch filed an employment discrimination claim against doctor Hughes for sexual harassment actions that Hughes took in a hospital in which Lynch was employed. The Commission for Human Rights determined that Hughes was not an employer or agent of an employer, so Hughes did not bear an employer's liability for sexual harassment. Hughes' behavior after Lynch filed the claim was determined to constitute illegal retaliation, but because Lynch did not claim retaliation, the claim was dismissed. Hughes then filed an action in District Court alleging malicious prosecution, abuse of process, and tortious interference. The court found that the claims could not be proved and granted Lynch judgment as a matter of law. Hughes appealed, but the Supreme Court examined each claim and affirmed. First, Hughes could not prove that there was a lack of probable cause for Lynch's action or that the proceeding favored Lynch, so the malicious prosecution claim failed. Second, nothing in the record showed that Lynch used abuse of process to coerce Hughes to do some collateral thing that Hughes could not be legally and regularly compelled to do, so the abuse of process claim also failed. Third, there was no evidence to suggest that Lynch's acts were calculated to damage Hughes, and Lynch was entitled to seek redress and damages for the alleged discrimination, so the tortious interference claim failed as well. Thus, the District Court correctly determined that no genuine issue of material fact existed and that Lynch was entitled to judgment as a matter of law. Hughes v. Lynch, 2007 MT 177, 338 M 214, 164 P3d 913 (2007), following Plouffe v. Dept. of Public Health and Human Services, 2002 MT 64, 309 M 184, 45 P3d 10 (2002), and Comm'n on Unauthorized Practice of Law v. O'Neil, 2006 MT 284, 334 M 311, 147 P3d 200 (2006), and followed in Judd v. Burlington N. & Santa Fe Ry. Co., 2008 MT 181, 343 M 416, 186 P3d 214 (2008), with regard to applicability of the probable cause standard for a malicious prosecution claim.

Court Reinstatement of Emotional Damage Award Following Arbitrary Reduction by Commission for Human Rights Affirmed: After finding that plaintiff was subjected to employment discrimination, the hearings examiner concluded that plaintiff was entitled to $75,000 in compensatory damages for emotional distress. The Commission for Human Rights reduced the award to $40,000, but the Commission did not cite any evidence to support the reduction, aside from the vague feeling of some Commissioners that the initial award was too high. The District Court reinstated the $75,000 award, and on appeal, the Supreme Court affirmed. The hearings examiner had authority to award compensatory damages, and the hearings examiner's findings were supported by testimony from plaintiff, plaintiff's experts, and others. The Commission's reduction was arbitrary, and the District Court did not err in reinstating the original compensatory award. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005).

No Error in Dismissal of Business Partner Uninvolved in Discrimination: Plaintiff sued a business, the business owner, the business manager, and the manager's husband for discrimination in employment. The hearings examiner found that it was the conduct of the business owner and the business manager that led to plaintiff's discharge from employment and dismissed the manager's husband from the suit. The District Court affirmed the finding, and on appeal, the Supreme Court agreed. The husband's conduct and apparent authority in the business were not sufficient to render him a de facto owner or operator of the business, and his dismissal from the suit was proper. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005).

No Error in Failure to Reduce Wage Loss Recovery in Human Rights Case for Failure to Mitigate: After finding that plaintiff was subjected to employment discrimination, the hearings examiner concluded that plaintiff was entitled to recover lost wages. Defendants contended that the wage loss should be reduced because plaintiff failed to take reasonable steps to mitigate the damages. The Supreme Court agreed that in a claim for lost wages before the Commission for Human Rights, a claimant must take reasonable steps toward mitigating damages. Citing Hulett v. Bozeman School District, 228 M 71, 740 P2d 1132 (1987), the court noted that plaintiff was not obligated to seek out all possible employment opportunities, but needed only to be reasonable in pursuing offers of employment. In this case, it was undisputed that plaintiff was emotionally debilitated, and although there was evidence of other reasons why plaintiff did not immediately seek new employment, plaintiff's medical testimony and testimony concerning plaintiff's loss of confidence, anxiety, and reluctance to meet new people supported the hearings examiner's findings, and the Supreme Court declined to disturb those findings. Benjamin v. Anderson, 2005 MT 123, 327 M 173, 112 P3d 1039 (2005).

Award of Lost Wages Without Offset of Unemployment Compensation Benefits Affirmed: The Commission for Human Rights found that Foss was discriminated against by his employer because of marital status and awarded Foss $2,400, plus interest, for backpay. During the period for which Foss received backpay, he also received $1,066 in unemployment compensation benefits. The employer contended that the discrimination award should have been offset by the amount of unemployment compensation that Foss received because failure to do so would result in a windfall to Foss. The District Court and the Supreme Court affirmed the award. The purpose of Title 49, ch. 2, commonly known as the Montana Human Rights Act, is to return employees who are victims of discrimination to the position that they would have occupied without the discrimination. When a collateral source mitigates an employee's loss, the courts must decide who should receive the benefit. In this case, between the employer whose actions caused the discharge and the employee who most likely suffered other noncompensable losses, the burden was placed on the employer. The Legislature did not intend, through unemployment insurance, to insure employers against an award of backpay in the event that the employer illegally discharges an employee in violation of the Human Rights Act. Vortex Fishing Sys., Inc. v. Foss, 2001 MT 312, 308 M 8, 38 P3d 836 (2001).

Marital Status Discrimination — Award for Emotional Damages Affirmed: For the most part, federal case law involving antidiscrimination statutes draws a distinction between emotional distress claims in tort versus those in discrimination complaints (see Bolden v. SE. Pa. Transp. Authority, 21 F3d 29 (3rd Cir. 1994), Walz v. Town of Smithtown, 46 F3d 162 (2nd Cir. 1995), and Chatman v. Slagle, 107 F3d 380 (6th Cir. 1997)). The standard of proof of independent actions for emotional distress in Sacco v. High Country Independent Press, Inc., 271 M 209, 896 P2d 411 (1995), that emotional distress damages may be awarded only if there is a substantial invasion of a legally protected interest that causes a significant impact upon the claimant, does not apply in a discrimination context pursuant to Title 49, ch. 2, commonly known as the Montana Human Rights Act. Rather, compensatory damages for human rights claims may be awarded for humiliation and emotional distress established by testimony or inferred from the circumstances, and the severity of the harm should govern the amount, not the availability, of recovery. Here, the record revealed that the claimant had difficulty finding employment after being illegally denied employment based on marital status, lost sleep because of economic hardship, had to move in with relatives, was hounded by collection agencies, had to borrow money, and had to sell an automobile for sustenance. The Commission for Human Rights' award of $2,500 for emotional damages was adequately supported by the record and was affirmed. Vortex Fishing Sys., Inc. v. Foss, 2001 MT 312, 308 M 8, 38 P3d 836 (2001).

Exhaustion of Remedies Under Individuals With Disabilities Act Not Required Upon Claim of Discrimination in Public Education Under Human Rights Act: Amanda Johnson suffered from Campomelic Syndrome and as a result was confined to a wheelchair. Prior to Amanda's enrollment at Great Falls High School, her family brought Amanda's access issues to the attention of the Great Falls School District. There was no elevator in the school, which precluded Amanda's access to second-floor classrooms and science labs. There were numerous other physical barriers as well, such as parking problems, snow-covered sidewalks, cafeteria restrictions, heavy doors, office countertops that were too high, and inaccessibility to restrooms, water fountains, vending machines, and public telephones. The district determined that it could not build an elevator and continue to provide educational services to the rest of the student body; however, the district did prepare individualized education programs for Amanda each year that attempted to accommodate her by scheduling her classes on the first floor, transporting her to another high school for science labs, fitting desks for her and providing special seating, making minor physical adjustments to the building, providing a parking space for her in the faculty lot, attempting to coordinate snow removal with her arrival, and assigning a staff member to help her use the cafeteria. Nevertheless, her family was dissatisfied with the district's efforts and brought an education discrimination claim, alleging that the district illegally discriminated against Amanda by failing to provide an accessible building in violation of Title 49, ch. 2, commonly known as the Montana Human Rights Act (MHRA), and specifically 49-2-307 and 49-2-308. A hearings examiner found that Amanda did have far less access to the school than her classmates, but concluded that the district had provided reasonable access in light of the resources available to meet Amanda's needs. The hearings examiner ordered the district to proactively monitor accommodations provided to students with physical disabilities and to take a number of steps to minimize the likelihood of future violations of the MHRA. The Commission for Human Rights adopted the hearings examiner's findings and conclusions, and the district filed for judicial review, arguing to the District Court that: (1) the Commission lacked jurisdiction to consider the complaint until Amanda exhausted the administrative remedies under the Individuals With Disabilities Education Act (IDEA) through the Office of Public Instruction; and (2) the relief granted exceeded the Commission's statutory authority. The District Court agreed and overruled the Commission's order, and the issues were appealed to the Supreme Court. On the first issue, the Supreme Court found that the gravamen of Amanda's claim was grounded in discrimination under the MHRA, not the right to a free appropriate public education under the IDEA. Disabled students can receive an appropriate education, as attested by Amanda's 3.7 grade point average, and still suffer discrimination when the physical premises of a school deprive them of basic human dignities. When claims involve the simple application of the IDEA exhaustion doctrine in the absence of a parallel state statutory remedy, the logic of the IDEA exhaustion may apply, but when, as here, state human rights laws provide an administrative remedy through the Commission for Human Rights, there is no compelling reason to preclude the MHRA claim by first requiring the IDEA exhaustion. The court found no legal basis for determining that the IDEA was intended to limit applicable state human rights discrimination claims. Thus, Amanda's claim could proceed prior to exhaustion of or without ever invoking the IDEA administrative remedies, and the District Court erred in holding otherwise. On the second issue, the Supreme Court found that the remedy ordered by the Commission—requiring the district to formalize its policy and procedure for addressing the special needs of disabled students—fell within the authority of this section and was reasonable in light of the relief requested. The District Court was reversed, and the Commission's order was reinstated. Great Falls Pub. Schools v. Johnson, 2001 MT 95, 305 M 200, 26 P3d 734 (2001), following Harrison v. Chance, 244 M 215, 797 P2d 200 (1990), and Shields v. Helena School District No. 1, 284 M 138, 943 P2d 999 (1997), and distinguishing Koopman v. Freemont County School District No. 1, 911 P2d 1049 (Wyo. 1996).

Commission for Human Rights Discretion to Award Compensatory Damages in Mixed Motives Cases: Laudert suffered liver failure while employed by the Richland County Sheriff's Department (RCSD) and had to resign. Following Laudert's full recovery, his former position came open again and he applied but was not rehired. He filed a discrimination charge on grounds of age and disability. The hearings examiner found that questions asked by the RCSD interview panel constituted direct evidence that RCSD had unlawfully considered Laudert's disability, but did not award damages because Laudert would not have been hired even in the absence of any unlawful consideration of his disability. RCSD maintained that Laudert was not hired because of his employment history. The hearings examiner properly determined that this was a "mixed motive" case. Whether Laudert was entitled to compensatory damages depended on whether RCSD proved by a preponderance of the evidence that it would have made the same decision in the absence of Laudert's disability, and Laudert's employment history provided substantial evidence proving that Laudert would not have been hired in any event. The Supreme Court found that the hearings examiner properly exercised the statutory discretion to preclude damages, and the court affirmed the authority of the Commission for Human Rights to limit compensatory damages in mixed motive cases pursuant to ARM 24.9.611 and Price Waterhouse v. Hopkins, 490 US 228 (1989). Laudert v. Richland County Sheriff's Dept., 2000 MT 218, 301 M 114, 7 P3d 386, 57 St. Rep. 872 (2000).

Authority to Award Damages — Delegation to Human Rights Commission: The grant of authority to the Human Rights Commission to award reasonable damages does not grant unbridled authority and does not constitute an unlawful delegation of judicial and legislative powers. Vainio v. Brookshire, 258 M 273, 852 P2d 596, 50 St. Rep. 529 (1993).

Corrective and Preventive Orders Not in Violation of Right to Jury Trial: The right to a jury trial is not violated by the provision contained in this section, which states that upon finding that a person or entity is engaged in discrimination, the Human Rights Commission must order an end to the conduct and may require any reasonable measure to correct the conduct and rectify any harm to the person discriminated against. Vainio v. Brookshire, 258 M 273, 852 P2d 596, 50 St. Rep. 529 (1993).

$20,000 Sexual Harassment Award Upheld: The District Court did not err in upholding the Human Rights Commission's $20,000 emotional distress damages award for sexual harassment of a bar employee by another employee, which included brushing up against her buttocks, putting his hand up her skirt, grabbing her breasts, and requesting sex. Vainio v. Brookshire, 258 M 273, 852 P2d 596, 50 St. Rep. 529 (1993).

No Constitutional Right to Punitive Damages: In a racial discrimination suit, the plaintiff argued that there was a fundamental right to claim punitive damages but cited no authority. The Supreme Court held that punitive damages are an extraordinary remedy outside the field of usual redress and to which there is no constitutional right. Romero v. J&J Tire, 238 M 146, 777 P2d 292, 46 St. Rep. 1159 (1989), followed in Moran v. Shotgun Willies, Inc., 270 M 47, 889 P2d 1185, 52 St. Rep. 71 (1995).

Human Rights Commission Award of Backpay Contrary to Legal Conclusion of Hearing Examiner: It was not error for the Montana Human Rights Commission to award backpay when the hearing examiner, as a matter of law, refused to do so. After reviewing the record, the Commission may, under 2-4-621, reject or modify an examiner's conclusions of law. The Commission also has the authority under 49-2-506 to use its discretion to rectify harm done a person discriminated against. Unless the conclusions of the Commission in awarding backpay are arbitrary or capricious, which was not the case here, neither the District Court nor the Supreme Court may alter them. European Health Spa v. Human Rights Comm'n, 212 M 319, 687 P2d 1029, 41 St. Rep. 1766 (1984).

49-2-508. Enforcement of commission or department order or conciliation agreement.

Compiler's Comments

2007 Amendment: Chapter 28 near beginning of first and second sentences after "commissioner" inserted "the department"; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendment: Chapter 467 in first sentence, near beginning, substituted "order issued under 49-2-506 is not obeyed, the commissioner or" for "commission's order is not obeyed, the commission staff or" and near end, before "order", inserted "or department's"; and inserted second sentence concerning breach of conciliation agreement. Amendment effective July 1, 1997.

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

1985 Amendment — Applicability: In second clause, after "staff", deleted "shall" and inserted "or a party may"; and at end after "order", substituted "by any appropriate order" for "by injunction".

Section 3(2), Ch. 539, L. 1985, provided: "This act applies to cases pending with the commission for human rights or the district court on its effective date and to cases filed with the commission for human rights on or after its effective date (effective April 18, 1985)."

Case Notes

Federal Law — Settlement Agreement — Subsequent Enforcement: The federal Equal Employment Opportunity Commission entered into a sex discrimination settlement agreement before making an independent investigation and reasonable cause determination. This agreement could not be the basis for a subsequent enforcement action, absent investigation and conciliation efforts by the Commission. Equal Employment Opportunity Comm'n v. Pierce Packing Co., 669 F2d 605 (9th Cir. 1982).

49-2-510. Procedures and remedies for enforcement of housing discrimination laws.

Compiler's Comments

2007 Amendment: Chapter 28 in (1) in two places substituted "person" for "party"; in (2) at beginning after "If" deleted "the department, on appeal, or the commission", after "49-2-505" inserted "the department", after "that a" substituted "person" for "party", and near middle after "department" deleted "or the commission"; in (3) near beginning after "case of" substituted "a decision" for "an order", near middle after "agency, the" substituted "department" for "commission", and after "order" substituted "send a copy of the decision" for "or, if the order is judicially reviewed, no later than 30 days after the order is affirmed send copies of the findings of fact, the conclusions of law, and the order"; in (4)(a) at beginning of first sentence substituted "Following completion of the informal investigation of" for "When" and after "49-2-305, a" substituted "charging party" for "complainant", in second sentence near beginning after "made" inserted "in writing", after "later than" substituted "30 days after the service" for "20 days after receipt by the electing person of service", after "notice of" deleted "certification for", and at end after "49-2-505" inserted "on the electing party", in third sentence at beginning after "The" deleted "person making the", after "all" deleted "complainants and", and after "other" substituted "parties" for "respondents", and in fourth and fifth sentences substituted "charging party" for "complainant"; in (4)(b) inserted second and third sentences regarding commencement of a civil action and allowing an aggrieved party to intervene in the action; in (6) in second sentence after "fees" inserted "and costs"; in (7) at beginning substituted "All civil damages and penalties, monetary or otherwise, awarded under this section to an organization that is not an aggrieved party" for "Except as provided in subsection (7)(b), all civil and administrative penalties and other revenue generated under this part"; deleted former (7)(b) that read: "(b) Damages or penalties, whether monetary or otherwise, may not inure to an organization unless the organization is an aggrieved party. This section does not affect any amount owed to an aggrieved party"; and made minor changes in style. Amendment effective July 1, 2007.

1997 Amendments — Composite Section: Chapter 422 in (7)(a) substituted "deposited in the state general fund" for "deposited in an account in the state special revenue fund to be used by the commission for housing discrimination enforcement"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 467 throughout section substituted "party" for "person"; in (1), in first sentence, substituted "department" for "commission" and in second sentence, after "form", inserted "verified by the aggrieved party", substituted "department" for "commission", and reduced time from 1 year to 180 days; in (2), at beginning, deleted "Except as provided in subsection (2)(b)", before "commission" inserted "department, on appeal, or the", after "finds that a" substituted "party" for "person, institution, entity, or agency", and after "49-2-305, the" inserted "department or the"; in (2)(a) and (2)(b), after "been", substituted "adjudged in any prior judicial or formal administrative proceeding(s)" for "found"; in (2)(b), before "complaint", inserted "written"; deleted (2)(a)(iii) and (2)(b) that read: "(iii) in an amount not exceeding $50,000 if the respondent has been found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the date of the filing of the complaint.

(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(ii) and (2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred"; in (3), before "affirmed", deleted "in substance"; deleted (3)(b) that read: "(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent"; in (4)(a), in first sentence after "respondent", deleted "or aggrieved person on whose behalf the complaint was filed", in third through sixth sentences substituted "department" for "commission", in fourth sentence substituted "complainant, the commissioner, or the aggrieved party may" for "commission shall", and in fourth and fifth sentences substituted "preponderance of the evidence" for "substantial evidence"; in (4)(b) substituted "department" for "commission"; in (5)(b), in two places, substituted "department" for "commission"; in (5)(c), after "commission", inserted "or the department" and substituted "filing" for "beginning of a trial"; in (5)(d), after "commission" inserted "or the department"; in (5)(e)(i) inserted "and the respondent"; in (5)(e)(ii), in first sentence, substituted "party" for "applicant" and inserted second sentence concerning financial hardship; deleted (5)(f) that read: "(f) Upon timely application, the commission may intervene in a civil action brought under this subsection (5) if the commission certifies that the case is of general public importance. Upon intervention, the commission may obtain the same relief that would be available to the commission under subsection (7)"; in (6), near beginning of first sentence after "that a", substituted "party" for "person, institution, entity, or agency", after "has" inserted "been adjudicated in a civil or formal administrative proceeding to have", and after "may" substituted "consistent with the provisions of subsection (2)" for "in addition to the other remedies and injunctive and other equitable relief provided under 49-2-506" and near end of second sentence inserted "substantively"; deleted former (7) that read: "(7)(a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance, the commission may commence a civil action in an appropriate district court. The commission may also commence a civil action in any appropriate district court for relief regarding breach of a conciliation agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the agreement.

(b) The commission may file a civil action under this subsection (7) within 18 months after the alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.

(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the respondent:

(i) in an amount not exceeding $50,000 for a first violation; and

(ii) in an amount not exceeding $100,000 for any subsequent violation.

(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person"; substituted (7)(a) concerning deposit of civil and administrative penalties in general fund for former text that read: "Civil penalties under this section must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be used by the commission for housing discrimination enforcement"; and made minor changes in style. Amendment effective July 1, 1997.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

Preamble: The preamble attached to Ch. 801, L. 1991, provided: "WHEREAS, the Legislature has previously included housing discrimination as a subject of discrimination law in the Montana Human Rights Act; and

WHEREAS, the housing discrimination laws in the Montana Human Rights Act were modeled after the federal Fair Housing Act of 1968; and

WHEREAS, in 1988, Congress substantially amended the federal Fair Housing Act, enforced by the Department of Housing and Urban Development; and

WHEREAS, the Montana Commission for Human Rights processes housing discrimination complaints in Montana that allege a violation of both the Montana Human Rights Act and the federal Fair Housing Act; and

WHEREAS, the Montana Commission for Human Rights receives a substantial portion of its funding from contracts with the Department of Housing and Urban Development for processing federal housing discrimination cases; and

WHEREAS, after January 13, 1992, the Department of Housing and Urban Development will no longer contract with any state fair housing agency that does not enforce a state law providing rights and remedies substantially equivalent to those provided by the federal Fair Housing Act; and

WHEREAS, the rights and remedies provided by the Montana Human Rights Act are not presently substantially equivalent to those provided by the federal Fair Housing Act.

THEREFORE, it is appropriate for the Legislature to amend the housing discrimination laws in the Montana Human Rights Act to maintain substantial equivalency with the federal Fair Housing Act."

Administrative Rules

Title 24, chapter 9, subchapter 15, ARM Housing discrimination procedures and definitions.

Case Notes

Plaintiff's Failure to File Accurate Complaint Not Detrimental — Defendant Had Notice of Nature of Claim: A tenant filed a complaint with the Human Rights Commission alleging that her landlord committed sexual harassment under the public accommodations provision in 49-2-304. The Commission determined that 49-2-304 was inapplicable, as the rental property was private property, but it allowed the tenant to pursue a claim based on the real estate transaction provision in 49-2-305. The landlord then petitioned the District Court for judicial review, reasoning that his due process rights would be violated if the tenant was allowed to pursue a claim under 49-2-305. The District Court agreed with the landlord and reversed the Commission, but the Supreme Court, in turn, reversed the District Court and determined that while the tenant could have been clearer in asserting a claim under 49-2-305, the landlord had sufficient notice of the nature of the claim and no evidence was presented showing that the landlord would have presented any additional evidence in a 49-2-305 defense. Bates v. Neva, 2013 MT 246, 371 Mont. 466, 308 P.3d 114.

Offer of Judgment to State That Attorney Fees Not Included to Effect Waiver of Discretionary Attorney Fees: Plaintiff, a nonprofit corporation formed to protect and increase equal housing opportunities, filed an administrative complaint against defendants for violating this chapter, commonly known as the Human Rights Act, by denying equal housing opportunities based on familial status, age, and marital status. Following an administrative investigation, the Commission for Human Rights found that plaintiff's allegations were supported by substantial evidence and that there was reasonable cause to believe that defendants violated state fair housing laws. Defendants ultimately served plaintiff an offer of judgment pursuant to former Rule 68, M.R.Civ.P. (now superseded), which stipulated that judgment would be taken against defendants in the amount of $2,000 "together with costs only that accrued". Plaintiff accepted the offer, and judgment was entered against defendants. Plaintiff subsequently sought attorney fees as the prevailing party, but the request was denied by the District Court because the offer of judgment did not expressly include attorney fees, so plaintiff appealed. The Supreme Court noted that it is in the interests of both parties that an offer of judgment be clear and unambiguous in order to effect a waiver of attorney fees; however, the offer itself need not include the term "attorney fees" to effect a waiver. In the present case, the offer of judgment included costs, but it was not clear whether attorney fees were included, nor did the offer state that the sum to be paid was consideration for the resolution of all counts. Thus, it was ambiguous whether plaintiff, by accepting the offer, waived the right to attorney fees. The offer of judgment did not include a specific waiver of attorney fees, so the District Court erred in concluding that plaintiff's acceptance of the offer constituted a waiver of attorney fees. The Supreme Court remanded for a determination of whether to award plaintiff discretionary attorney fees under the Human Rights Act. Mont. Fair Housing, Inc. v. Barnes, 2002 MT 353, 313 M 409, 61 P3d 170 (2002), distinguished, with regard to an offer of full payment, in Wyant v. Kenda, 2004 MT 348, 324 M 342, 102 P3d 1260 (2004). See also Nordby v. Anchor Hocking Packaging Co., 199 F3d 390 (7th Cir. 1999).

49-2-511. Dismissal after informal proceedings — filing of objections — procedures — action in district court.

Compiler's Comments

Effective Date: Section 12, Ch. 28, L. 2007, provided: "[This act] is effective July 1, 2007."

Administrative Rules

ARM 24.9.112 Filings with the commission.

Case Notes

Human Rights Action — Not Exclusively Administrative Remedy: Since the 2007 amendments to the Montana Human Rights Act, Title 49, ch. 2, claims are not exclusively an administrative remedy. A party may take a case to District Court for a trial on the merits if the action is dismissed by the Human Rights Bureau, and the District Court may provide the same relief as could have been granted in the administrative process. Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321.

Human Rights Complaint — Gravamen Test No Longer Applicable: The plain language of the Montana Human Rights Act, Title 49, ch. 2, after its 2007 amendments, states that a charging party may file a complaint in District Court once the Human Rights Bureau dismisses a complaint as long as the party complies with 49-2-511. Thus it is no longer necessary to apply a "gravamen" analysis when determining whether a suit may be filed in District Court following the notice of dismissal. A "gravamen" analysis may still be proper in a claim alleging discrimination that is filed in District Court without first filing a claim before the Human Rights Bureau and receiving a notice of dismissal. Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321.

49-2-512. Filing in district court — compliance with administrative procedures required.

Compiler's Comments

Effective Date: Section 12, Ch. 28, L. 2007, provided: "[This act] is effective July 1, 2007."

Case Notes

Review of Reasonable Accommodation Efforts: A county employee developed a debilitating hypersensitivity to fragrances. The employee participated sporadically with the county in developing a reasonable accommodation, filed a complaint with the Human Rights Bureau, resigned his job, and filed a complaint in District Court. The District Court did not consider allegations of ongoing discrimination that arose after the Human Rights Bureau complaint, reasoning that it can only review claims asserted before the Bureau, and entered summary judgment for the county. On appeal, the Supreme Court affirmed, explaining that a District Court is constrained by statute to entertain only those claims that the Human Rights Bureau adjudicates and that the county engaged in a good faith effort to develop a reasonable accommodation. Borges v. Missoula County Sheriff's Office, 2018 MT 14, 390 Mont. 161, 415 P.3d 976.

Human Rights Action — Not Exclusively Administrative Remedy: Since the 2007 amendments to the Montana Human Rights Act, Title 49, ch. 2, claims are not exclusively an administrative remedy. A party may take a case to District Court for a trial on the merits if the action is dismissed by the Human Rights Bureau, and the District Court may provide the same relief as could have been granted in the administrative process. Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321.

Human Rights Complaint — Gravamen Test No Longer Applicable: The plain language of the Montana Human Rights Act, Title 49, ch. 2, after its 2007 amendments, states that a charging party may file a complaint in District Court once the Human Rights Bureau dismisses a complaint as long as the party complies with 49-2-511. Thus it is no longer necessary to apply a "gravamen" analysis when determining whether a suit may be filed in District Court following the notice of dismissal. A "gravamen" analysis may still be proper in a claim alleging discrimination that is filed in District Court without first filing a claim before the Human Rights Bureau and receiving a notice of dismissal. Griffith v. Butte School Dist. No. 1, 2010 MT 246, 358 Mont. 193, 244 P.3d 321.

Human Rights Act Exclusive Remedy for Constitution-Based Political Discrimination Claims: The Montana Human Rights Act provides the exclusive remedy for constitution-based claims that are grounded in allegations of politically motivated employment discrimination. Edwards v. Cascade County Sheriff's Dept., 2009 MT 451, 354 M 307, 223 P3d 893 (2009).

Part 6
Penalties

49-2-602. Intimidation or interference in right to be free from housing discrimination — penalties.

Compiler's Comments

1993 Amendment: Chapter 407 throughout section substituted "disability" for "handicap"; and made minor changes in style.

Preamble: The preamble attached to Ch. 801, L. 1991, provided: "WHEREAS, the Legislature has previously included housing discrimination as a subject of discrimination law in the Montana Human Rights Act; and

WHEREAS, the housing discrimination laws in the Montana Human Rights Act were modeled after the federal Fair Housing Act of 1968; and

WHEREAS, in 1988, Congress substantially amended the federal Fair Housing Act, enforced by the Department of Housing and Urban Development; and

WHEREAS, the Montana Commission for Human Rights processes housing discrimination complaints in Montana that allege a violation of both the Montana Human Rights Act and the federal Fair Housing Act; and

WHEREAS, the Montana Commission for Human Rights receives a substantial portion of its funding from contracts with the Department of Housing and Urban Development for processing federal housing discrimination cases; and

WHEREAS, after January 13, 1992, the Department of Housing and Urban Development will no longer contract with any state fair housing agency that does not enforce a state law providing rights and remedies substantially equivalent to those provided by the federal Fair Housing Act; and

WHEREAS, the rights and remedies provided by the Montana Human Rights Act are not presently substantially equivalent to those provided by the federal Fair Housing Act.

THEREFORE, it is appropriate for the Legislature to amend the housing discrimination laws in the Montana Human Rights Act to maintain substantial equivalency with the federal Fair Housing Act."

CHAPTER 3
GOVERNMENTAL CODE OF FAIR PRACTICES

Chapter Compiler's Comments

Preamble: The preamble attached to Ch. 407, L. 1993, provided: "WHEREAS, many individuals with disabilities and many organizations representing individuals with disabilities object to the use of the terms "handicap" and "handicapped person"; and

WHEREAS, as with racial and ethnic terms, the choice of words used to describe a person with a disability is overlaid with stereotypes and emotional connotations; and

WHEREAS, it is important to use terminology most in line with the sensibilities of most persons with disabilities; and

WHEREAS, the current accepted terminology is "disability" rather than "handicap" and "person with a disability" rather than "handicapped person"; and

WHEREAS, the federal Americans with Disabilities Act of 1990 uses the terms "disability" and "individual with a disability" rather than the terms "handicap" or "handicapped person"; and

WHEREAS, making the state human rights laws consistent with the Americans with Disabilities Act will eliminate some confusion between state and federal laws.

THEREFORE, it is appropriate for the Legislature to revise the state human rights laws to replace the terms "handicap" and "handicapped person" with the terms "disability" and "person with a disability"."

Chapter Case Notes

Single Incident of Sexual Assault — Work Environment That Is Not Subjectively Objectionable Not Considered Type of Hostile Environment to Be Actionable Under Title VII — Standard of Review: Following a single incident of sexual assault by a coworker, Beaver brought a claim against the Department of Natural Resources and Conservation (DNRC) under the Montana governmental code of fair practices; Title 49, ch. 2, commonly known as the Montana Human Rights Act; and Title VII of the Civil Rights Act of 1964, asserting that the incident was sufficiently severe or pervasive to alter employment conditions and to create a hostile and abusive working environment. Under Harris v. Forklift Sys., Inc., 510 US 17 (1993), to be sufficiently severe or pervasive to violate Title VII and establish a claim, the misconduct must create a working environment that is both objectively and subjectively offensive and that a reasonable person and the victim perceive as hostile and abusive. The correct legal standard for determining whether an environment is hostile or abusive under Title VII is to review the totality of the circumstances, including: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct, whether it is physically threatening or humiliating or a mere offensive utterance; and (3) whether the conduct interferes with an employee's work performance. Psychological well-being is one factor among many in the determination. Here, the coworker was dismissed following the incident, and Beaver continued working for DNRC, testifying that conditions of employment did not change following the assault. Thus, the District Court correctly concluded that the work environment was not subjectively objectionable to Beaver and that the single incident of sexual assault did not create the type of hostile or abusive environment actionable under Title VII. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003). See also Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Attempt to Raise New Theory Five Days Before Trial Prejudicial: Allison brought a claim against the town of Clyde Park, alleging disability, sex, and age discrimination in employment. Five days before trial, Allison attempted to raise a new theory based on alleged violation of the governmental code of fair practices. The town moved to prohibit introduction of the new theory at trial, arguing that prejudice would result because of the lack of notice and the inability to prepare a defense. The District Court agreed and granted the town's motion to preclude introduction of the new theory. On appeal, Allison contended that the court erred in prohibiting raising of the new theory because the legal obligations in the governmental code of fair practices were not presented as a separate claim, but rather were intended as evidence of the discrimination claims. However, characterizing the newly alleged violations as evidence did not alter the fact that Allison attempted to introduce a new theory 5 days before trial. The court correctly found that the alleged violations were two distinct causes of action and that allowing introduction of the new cause of action so soon before trial would prejudice the town. Allison v. Clyde Park, 2000 MT 267, 302 M 55, 11 P3d 544, 57 St. Rep. 1119 (2000).

Mandatory Teacher Retirement Impliedly Repealed: In accordance with 20-4-203, the plaintiff, a tenured elementary school principal, received notification that because she was 65 years of age her contract would not be renewed. Because 20-4-203 permitted discrimination based solely on age with no qualifications or justifications bringing it within the limited exceptions of Title 49 and because the mandatory retirement provision bore no relationship to job performance, it was impliedly repealed by the adoption of 49-2-303 and 49-3-201. Dolan v. School District, 195 M 340, 636 P2d 825, 38 St. Rep. 1903 (1981), followed in Kenny v. Bd. of Trustees, 563 F. Supp. 95, 39 St. Rep. 1377 (D.C. Mont. 1982), and distinguished in Ross v. Great Falls, 1998 MT 276, 291 M 377, 967 P2d 1103, 55 St. Rep. 1127 (1998).

Chapter Law Review Articles

Applying Strict Scrutiny: An Empirical Analysis of Free Exercise Cases, Wolanek & Liu, 78 Mont. L. Rev. 275 (2017).

Part 1
General Provisions

49-3-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 28, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

1993 Amendment: Chapter 407 substituted "Physical or mental disability" for "Physical or mental handicap" as defined term and in two places in (b) substituted "disability" for "handicap"; and made minor changes in style.

1991 Amendment: Deleted former definition of mental handicap that read: ""Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence"; substituted present definition of physical or mental handicap for former definition of physical handicap that read: ""Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device"; and made minor changes in style.

Preamble: The preamble attached to Ch. 241, L. 1991, provided: "WHEREAS, the Legislature has previously included physical and mental handicaps as subjects of discrimination law in the Montana Human Rights Act and the Montana Governmental Code of Fair Practices; and

WHEREAS, the definitions previously adopted lack clarity and are inconsistent with definitions used in federal civil rights statutes and court interpretations on the subject; and

WHEREAS, federal handicap discrimination law requires reasonable accommodation for mental and physical handicaps.

THEREFORE, it is appropriate for the Legislature to redefine the terms "mental handicap" and "physical handicap" and to include the requirement of reasonable accommodation."

1983 Amendment: Inserted definitions of age, commission, mental handicap, and physical handicap; and rephrased definition of state or local governmental agency, leaving substance the same.

49-3-103. Permitted distinctions.

Compiler's Comments

1993 Amendments: Chapter 13 in (1), in introductory clause after "public", deleted "or private"; inserted (1)(d) to clarify that providing greater or additional contributions to a bona fide group insurance plan for employees with dependents does not constitute a violation of the Governmental Code of Fair Practices; and made minor changes in style. Amendment effective February 1, 1993.

Chapter 407 in (1)(a) substituted "disability" for "handicap".

1991 Amendment: In (2) inserted reference to 2-18-111 and 18-1-110.

Applicability: Section 7, Ch. 506, L. 1991, provided: "[This act] applies to hiring for vacancies in state agency or state construction project positions within an Indian reservation that occur after [the effective date of this act] [effective October 1, 1991]."

Termination Provision Repealed: Section 1, Ch. 12, L. 1991, repealed sec. 19, Ch. 646, L. 1989, which terminated the 1989 amendments to this section July 1, 1991. Repealer effective February 7, 1991.

1989 Amendment: In (2) inserted references to ch. 29 and to 39-29-101; and made minor changes in phraseology.

Severability: Section 18, Ch. 646, L. 1989, was a severability clause.

1983 Special Session Enactment: Language providing that employment preference recognized under the Montana Veterans' and Handicapped Persons' Employment Preference Act and the veterans' preference used in the selection of the superintendent of the Montana Veterans' Home are not violations of state human rights statutes was enacted as a separate section by Ch. 1, Sp. L. 1983. It is codified as subsection (2) of this section for convenience and logical organization.

1983 Regular Session Amendment: In (1) inserted "marital status".

Case Notes

Assignment of Particular Work Position Not Considered Marital or Sex-Plus Discrimination: Three temporary seasonal positions at the Department of Natural Resources and Conservation (DNRC) were eliminated, including Beaver's position, and three permanent seasonal positions were created, including two 8-month positions and one 6-month position. Beaver was given the 6-month position and later sued DNRC for marital and sex-plus discrimination, based in part on the comment by a supervisor that Beaver did not have to worry about getting the 6-month position because she had recently been married and now had a new husband to support her. DNRC contended that the positions were offered based on experience and training, and it was within the discretion of the District Court to determine the credibility of the witnesses and testimony. Although agreeing that the supervisor's statement was highly inappropriate, the

Supreme Court nevertheless held that based on the evidence, the employment decision did not involve marital or sex-plus discrimination and that DNRC did not discriminate against Beaver based on marital status. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003).

Gender — Bona Fide Occupational Qualification for Second School Guidance Counselor Position: Male applicant for school counselor position filed a sex discrimination complaint against school district that chose to consider only female applicants for a second counselor position when first position was already filled by a man. The Montana Human Rights Commission found in petitioner's favor and ordered payment of lost salary. The District Court reversed and ordered the Commission to vacate its findings and dismiss the charge of sex discrimination. The Supreme Court affirmed the District Court order and held that an employer can discriminate on the basis of gender when the reasonable demands of the position require a sex discrimination. The Supreme Court found that there was substantial credible evidence to support the District Court's finding that there was a compelling privacy interest in providing counselors of both sexes; therefore, gender was a bona fide occupational qualification for the position and the school district could discriminate on the basis of gender. Stone v. Belgrade School District, 217 M 309, 703 P2d 136, 41 St. Rep. 2436 (1984).

Jurisdiction to Determine if Employee Benefit Plan Is "Bona Fide": The Human Rights Commission has jurisdiction to determine if the sex-based survivor annuity mortality tables used by the Public Employees' Retirement Board are part of a bona fide employee benefit plan and not a subterfuge to evade the human rights laws. The Board must first exhaust its administrative remedies before it seeks judicial review. St. v. Human Rights Div., 184 M 103, 601 P2d 1190 (1979).

Attorney General's Opinions

Application of Nepotism Law to Rehiring of Tenured Teacher: The nepotism statutes (2-2-301 through 2-2-304) prohibit the rehiring of a tenured teacher if the teacher is within one of the prohibited relationships to a member of the school district board of trustees. The 1985 amendments of 49-2-303(3) and 49-3-201(5) overruled 39 A.G. Op. 67 (1982), insofar as it holds that the nepotism law does not apply to relationships by affinity. 41 A.G. Op. 57 (1986). (But see 1987 amendment to 2-2-302.)

Impliedly Repealed Nepotism Statute Not Revived by 1983 Amendments: The Attorney General issued an opinion (39 A.G. Op. 67 (1982)) that 2-2-302 had been impliedly repealed by the Human Rights Act. The 1983 amendments to the Human Rights Act and the Governmental Code of Fair Practices (which amendments permit assertion of the "reasonable demands" or "bona fide occupational qualification" defense to marital status discrimination) did not revive the impliedly repealed portion of 2-2-302 restricting employment on the basis of affinity. 40 A.G. Op. 40 (1984).

Nepotism Statute Subservient to Human Rights Law: The nepotism law clearly violates the intent of the human rights law because it permits discrimination in employment based solely on marital status. Applying the rule of construction that when two laws are in conflict, the later one supersedes the earlier, the human rights law must prevail. Thus, the Human Rights Act prohibits the Board of Trustees of a school district from enforcing the nepotism statute by refusing employment to a teacher solely on the basis of her relationship by affinity to a Board member. 39 A.G. Op. 67 (1982), overruled by 1985 amendment of this section, as declared by 41 A.G. Op 57 (1986) (see also 1987 amendment to 2-2-302).

49-3-106. Rulemaking authority.

Compiler's Comments

1991 Amendment: In (3), after "ruling", deleted "as provided in 49-3-105".

Statement of Intent: The statement of intent attached to Ch. 540, L. 1983, provided: "A statement of intent is required for this bill because it grants rulemaking authority to the Human Rights Commission in section 2 [49-3-106].

The intent of this bill is to eliminate a confusion which now exists between the Human Rights Act and the Governmental Code of Fair Practices by establishing general consistency in the enforcement of these two chapters by the Human Rights Commission. Therefore, it is the intent of the Legislature that the rules adopted by the Commission under the Governmental Code of Fair Practices be modeled after and be as consistent as practicable with the rules adopted by the Commission under the Human Rights Act."

Administrative Rules

Title 24, chapter 9, ARM Human Rights Commission.

Part 2
Duties of Governmental Agencies and Officials

Part Case Notes

Employment Rights Inapplicable to State Prison Inmates: Plaintiffs maintained that while they were male inmates at the state prison, they were employed in various capacities and paid wages substantially less than were paid female inmates for essentially the same jobs. They requested damages, claiming that as male prisoners they were economically discriminated against in favor of female prisoners. They also asked the District Court to describe conditions of work that would alleviate this sexual discrimination in the state prison system. However, the legislature specifically prohibited plaintiffs from receiving the relief they sought by providing that one of the penalties for being a prison inmate is that a prisoner does not have employment rights while serving a sentence in the state prison. The Supreme Court affirmed, holding the plaintiffs were precluded from recovering under both the sex discrimination statutes and the Fair Labor Standards Act. Quigg v. South, 234 M 218, 793 P2d 831, 47 St. Rep. 1176 (1990). See also Worsley v. Lash, 421 F.Supp. 556 (N.D. Ind. 1976).

49-3-201. Employment of state and local government personnel.

Compiler's Comments

2011 Amendment: Chapter 201 inserted (6) providing that employment does not include services by independent contractor; and made minor changes in style. Amendment effective April 15, 2011.

1993 Amendment: Chapter 407 in (1) substituted "disability" for "handicap"; and made minor changes in style.

1985 Amendment: Inserted (5) providing that compliance with state antinepotism statutes is not a violation of state and local government equal employment statute.

Administrative Rules

Title 2, chapter 21, subchapter 14, ARM Persons with disabilities employment preference policy.

Case Notes

Plaintiff Subject to McDonnell Douglas Test to Prove Employment Discrimination: Ray argued that his position as department head at Montana Tech of the University of Montana (now Montana Technological University) was not renewed because of his environmental activities and criticism of engineering students and also because of his marital status because one of the administrators was opposed to his being married to another member of the faculty. The Commission for Human Rights determined that the university had presented legitimate reasons for the nonrenewal and found for the school. The decision was upheld by the District Court. On appeal, Ray asserted that he was not subject to the McDonnell Douglas test adopted by the Montana Supreme Court in Martinez v. Yellowstone County Welfare Dept., 192 M 42, 626 P2d 242 (1981). The Supreme Court found that Ray had not presented any direct evidence that he was discriminated against based upon his political beliefs or marital status and therefore was subject to the test that provides that a plaintiff, relying on circumstantial evidence, has the initial burden of proving a prima facie case of discrimination. However, if the other party then meets its burden of rebutting the prima facie case, the burden reverts to the plaintiff. The Supreme Court agreed with the Commission for Human Rights that Ray had met the initial burden. However, the Supreme Court ruled that Montana Tech had then met its burden of showing legitimate reasons for the nonrenewal, which were supported by substantial credible evidence. The Supreme Court upheld the Commission's and District Court's findings that Montana Tech had presented reasons for the nonrenewal that were not pretextual, and that shifted the burden back to Ray who had not presented any convincing evidence that the reasons given for the nonrenewal were pretextual. Ray v. Mont. Tech of the Univ. of Mont., 2007 MT 21, 335 M 367, 152 P3d 122 (2007). See also Baumgart v. St., 2014 MT 194, 376 Mont. 1, 332 P.3d 225, holding that speculative and conclusory statements were insufficient to show the prima facie case for political affiliation discrimination.

Assignment of Particular Work Position Not Considered Marital or Sex-Plus Discrimination: Three temporary seasonal positions at the Department of Natural Resources and Conservation (DNRC) were eliminated, including Beaver's position, and three permanent seasonal positions were created, including two 8-month positions and one 6-month position. Beaver was given the 6-month position and later sued DNRC for marital and sex-plus discrimination, based in part on the comment by a supervisor that Beaver did not have to worry about getting the 6-month position because she had recently been married and now had a new husband to support her.

DNRC contended that the positions were offered based on experience and training, and it was within the discretion of the District Court to determine the credibility of the witnesses and testimony. Although agreeing that the supervisor's statement was highly inappropriate, the Supreme Court nevertheless held that based on the evidence, the employment decision did not involve marital or sex-plus discrimination and that DNRC did not discriminate against Beaver based on marital status. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003).

Single Incident of Sexual Assault — Work Environment That Is Not Subjectively Objectionable Not Considered Type of Hostile Environment to Be Actionable Under Title VII — Standard of Review: Following a single incident of sexual assault by a coworker, Beaver brought a claim against the Department of Natural Resources and Conservation (DNRC) under the Montana governmental code of fair practices; Title 49, ch. 2, commonly known as the Montana Human Rights Act; and Title VII of the Civil Rights Act of 1964, asserting that the incident was sufficiently severe or pervasive to alter employment conditions and to create a hostile and abusive working environment. Under Harris v. Forklift Sys., Inc., 510 US 17 (1993), to be sufficiently severe or pervasive to violate Title VII and establish a claim, the misconduct must create a working environment that is both objectively and subjectively offensive and that a reasonable person and the victim perceive as hostile and abusive. The correct legal standard for determining whether an environment is hostile or abusive under Title VII is to review the totality of the circumstances, including: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct, whether it is physically threatening or humiliating or a mere offensive utterance; and (3) whether the conduct interferes with an employee's work performance. Psychological well-being is one factor among many in the determination. Here, the coworker was dismissed following the incident, and Beaver continued working for DNRC, testifying that conditions of employment did not change following the assault. Thus, the District Court correctly concluded that the work environment was not subjectively objectionable to Beaver and that the single incident of sexual assault did not create the type of hostile or abusive environment actionable under Title VII. Beaver v. Dept. of Natural Resources and Conservation, 2003 MT 287, 318 M 35, 78 P3d 857 (2003). See also Norval Elec. Co-op, Inc. v. Lawson, 2022 MT 245, 411 Mont. 77, 523 P.3d 5.

Employment Discrimination Based on Political Beliefs: The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) did not hire plaintiff because of her support for certain legislation pending before the Legislature. The Supreme Court cited Pickering v. Bd. of Educ., 391 US 563, 20 L Ed 2d 811, 88 S Ct 1731 (1968), in holding that a public employee does not relinquish his first amendment right to comment on matters of public interest by virtue of government employment. Plaintiff's support of proposed legislation was a matter of public concern as to how government should be conducted and thus was an expression of her political ideas or beliefs. Failure to hire her because of those ideas or beliefs constituted illegal discrimination. Taliaferro v. Dept. of Social and Rehabilitation Services, 235 M 23, 764 P2d 860, 45 St. Rep. 2131 (1988).

Motion Not Timely Filed — Intrinsic Fraud Not Grounds for Motion: Appellant asserted sex- or race-based discrimination when the University of Montana (now University of Montana-Missoula) failed to renew her teaching contract. At trial, the head of appellant's department testified that there were no funds available to renew appellant's contract. The District Court determined no unlawful discrimination had occurred. Subsequently, the head of the department pleaded guilty to misuse of federal funds granted to the University and diversion of such funds far in excess of appellant's salary. Appellant filed a motion under former Rule 60, M.R.Civ.P. (now superseded), to vacate the judgment on the grounds of fraud. The District Court denied the motion and the Supreme Court affirmed. The Supreme Court found the claim was time-barred under the rule because it was filed after the 60-day time limit. The claim was not allowed under the residual clause in former Rule 60(b), M.R.Civ.P. (now superseded), because the fraud fell short of what is legally required to vacate a final judgment. The Supreme Court found the misappropriation of funds did not materially and directly affect the outcome of the case and the false in-court testimony was intrinsic fraud upon the court, rather than extrinsic, and therefore did not constitute sufficient grounds to vacate a judgment under the residual clause. Salway v. Arkava, 215 M 135, 695 P2d 1302, 42 St. Rep. 241 (1985).

Mandatory Game Warden Retirement Without Exception or Justification — Impliedly Repealed: Sections 49-2-303 and 49-3-201, making it unlawful for an employer to refuse employment or discriminate against an employee because of his age when the reasonable demands of the position do not require an age distinction and requiring state officials and personnel to recruit, appoint, treat, and promote personnel without regard to age, being later enacted statutes than the provision of 19-8-601 requiring compulsory retirement of game wardens at age 60, impliedly repealed the retirement provision in order to effectuate the clear intent of the Legislature to prevent all age discrimination in employment unless age is related to job performance. The antidiscrimination statutes are very broad prohibitions with very limited exceptions and indicate legislative intent to abolish all discrimination in employment except under the most limited circumstances. Furthermore, there must be justification for any age discrimination to bring it within the purview of a Title 49 exception to the antidiscrimination prohibitions, and the exceptions will be strictly construed. The game warden (now game wardens' and peace officers') retirement statute contains no justification or qualification. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983), distinguished in Ross v. Great Falls, 1998 MT 276, 291 M 377, 967 P2d 1103, 55 St. Rep. 1127 (1998).

Original Action Involving Interpretation of Statute Allowed Without Exhaustion of Administrative Remedies: Game warden mandatorily retired under 19-8-601 lost a complaint proceeding before the Montana Commission for Human Rights, did not pursue further administrative remedies, and brought a District Court action to declare the statute invalid. The exhaustion of administrative remedies doctrine did not preclude redress because: (1) the court action was an original action and not a judicial review of an administrative action, and (2) the Commission ruling was an interpretation of law that must be made by the judiciary. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983).

Valid Reason for Mandatory Retirement — Legislative, Not Judicial Task: Since compulsory game warden (now game wardens' and peace officers') retirement statute contained no qualifications or justification, it would be in excess of the authority of a court hearing a warden's suit challenging the statute's validity to hold a factfinding hearing to determine whether there was a basis for the age discrimination grounded in the reasonable demands of the position. Such a determination is a legislative function; the effort would be great; and the Legislature, not the courts, has the resources for such an undertaking. Taylor v. Dept. of Fish, Wildlife, & Parks, 205 M 85, 666 P2d 1228, 40 St. Rep. 1112 (1983).

Absolute Preference to Minimally Qualified Veterans Required — No Conflict With Other Laws: Where the plaintiff, who had been blind from birth, brought an action against the defendant state library for failing to hire her under 10-2-203 over other more qualified applicants, the District Court did not err in holding that 10-2-203 required an absolute preference for minimally qualified veterans and disabled civilians over other more qualified persons. Neither the language of the statute nor its history contains any qualifications limiting it to a relative preference over only those equally qualified. Nor does the statute conflict with the duties of governmental agencies to offer employment in a nondiscriminatory manner on the basis of merit. The statute is in the nature of an affirmative action program that agencies must implement and maintain in any event and simply requires the preference of veterans and disabled persons of any sex or race. Crabtree v. Mont. St. Library, 204 M 398, 665 P2d 231, 40 St. Rep. 963 (1983).

University Tenure System — Discrimination by Regents or College President Generally — State Action Violating Equal Protection: The Montana University tenure system is maintained under authority of state statutes by the Board of Regents and the presidents of the Montana University System's institutions. Therefore, any action by the Board or a president in regard to tenure is state action, and a discriminatory application of the tenure process would be a denial of equal protection. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Evaluations for Teacher Tenure — Equal Protection: The appellant teacher, who was denied tenure, claimed discrimination in that he had published an article and two candidates granted tenure had not published articles. Because the college evaluated tenure candidates in three basic areas, balancing all the factors, there was no equal protection violation. Differences in treatment of persons in regard to promotions do not all constitute deprivation of either due process or equal protection, particularly where the difference is one of evaluating facts rather than in resolving them. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Property Interest in Employment Benefit — Attributes: To have a property right or interest in an employment benefit that is entitled to due process protection, one must have more than an abstract need for it and more than a unilateral expectation of it. He must have a legitimate claim of entitlement to it founded, for example, in state law or in rules and understandings between the individual and his employer, and the right or interest must have become vested. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982), followed in State ex rel. Scanlon v. Nat'l Ass'n of Ins. Comm'rs, 265 M 184, 875 P2d 340, 51 St. Rep. 480 (1994), and, with respect to award of a public contract, in ISC Distrib., Inc. v. Trevor, 273 M 185, 903 P2d 170, 52 St. Rep.

894 (1995). The attributes of a property interest were also applied in Germann v. Stephens, 2006 MT 130, 332 M 303, 137 P3d 545 (2006).

Property Interest in Teacher Tenure — Codification of Tenure Matters Not Part of Contract: College's codification of rank and tenure matters, specifically drafted to clarify the faculty contract and a college handbook issued to the faculty, was by its nature a pseudoextension of the faculty contract but was not a part of the contract. Therefore, the codification could not be the source for a property interest in teacher tenure to which due process protection would attach. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Denial of Teacher Tenure — Due Process Property Right and Liberty Interest: The question of whether due process protections of a teacher denied tenure were violated would not be considered unless he established the existence of a property right or liberty interest that is accorded due process protection. Although denial of tenure would not benefit the teacher in his pursuit of other employment, it did not place such a stigma on him as to deprive him of a liberty interest. Neither did a vested property right protected by due process accrue to the teacher upon his meeting the eligibility for tenure standards of a requisite number of years of teaching and the rank of assistant professor, for beyond that, he was required by college policy to present evidence showing excellence in teaching, research, and public service. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Teacher Tenure Actions — Admissibility of Evidence — Decisions as to Other Teachers: Teachers' union member who was denied tenure offered evidence that union member who had resigned from the teachers' negotiating team shortly before he applied for tenure was granted tenure. The offered evidence was refused as irrelevant. On appeal, the Supreme Court stated that the evidence was relevant but affirmed the ruling below, saying that the evidence would only have shown that one union member was granted tenure and another was not. Akhtar v. Van De Wetering, 197 M 205, 642 P2d 149, 39 St. Rep. 470 (1982).

Mandatory Teacher Retirement Impliedly Repealed: In accordance with 20-4-203, the plaintiff, a tenured elementary school principal, received notification that because she was 65 years of age her contract would not be renewed. Because 20-4-203 permitted discrimination based solely on age with no qualifications or justifications bringing it within the limited exceptions of Title 49 and because the mandatory retirement provision bore no relationship to job performance, it was impliedly repealed by the adoption of 49-2-303 and 49-3-201. Dolan v. School District, 195 M 340, 636 P2d 825, 38 St. Rep. 1903 (1981), followed in Kenny v. Bd. of Trustees, 563 F. Supp. 95, 39 St. Rep. 1377 (D.C. Mont. 1982), and distinguished in Ross v. Great Falls, 1998 MT 276, 291 M 377, 967 P2d 1103, 55 St. Rep. 1127 (1998).

"Marital Status" Condition of Employment — Antinepotism Policy Discriminatory: Plaintiffs were employed as administrators in the Harlem schools. Their wives were teachers in the Harlem schools. After the school board adopted a policy that administrators could not have a spouse employed in any capacity in the Harlem school system, the board terminated one plaintiff and reduced the other to a teaching position. The board's policy was discriminatory, as the term "marital status" includes the identity and occupation of one spouse as well as whether one is married, single, widowed, or divorced. Thompson v. School District, 192 M 266, 627 P2d 1229, 38 St. Rep. 706 (1981).

Scienter of Employer Not Necessary: The director of a county welfare department denied the complainant's employment application based upon recommendations of his subordinates. The complainant was not required to prove that the director knew she was black when he denied her application. To require scienter on the part of an employer effectively destroys the rule developed in federal case law that once certain factual elements are proved prima facie, an inference of discrimination is created by law. A requirement of scienter is also contrary to the rationale expressed in Bd. of Trustees v. State ex rel. Bd. of Personnel Appeals, 185 M 89, 604 P2d 770 (1979), that employers relying upon tainted employee evaluations may not insulate themselves from charges of discrimination by claiming a lack of knowledge. Martinez v. Yellowstone County Welfare Dept., 192 M 42, 626 P2d 242, 38 St. Rep. 474 (1981).

Attorney General's Opinions

Application of Nepotism Law to Rehiring of Tenured Teacher: The nepotism statutes (2-2-301 through 2-2-304) prohibit the rehiring of a tenured teacher if the teacher is within one of the prohibited relationships to a member of the school district board of trustees. The 1985 amendments of 49-2-303(3) and 49-3-201(5) overruled 39 A.G. Op. 67 (1982), insofar as it holds that the nepotism law does not apply to relationships by affinity. 41 A.G. Op. 57 (1986). (But see 1987 amendment to 2-2-302.)

Impliedly Repealed Nepotism Statute Not Revived by 1983 Amendments: The Attorney General issued an opinion (39 A.G. Op. 67 (1982)) that 2-2-302 had been impliedly repealed by the Human Rights Act. The 1983 amendments to the Human Rights Act and the Governmental Code of Fair Practices (which amendments permit assertion of the "reasonable demands" or "bona fide occupational qualification" defense to marital status discrimination) did not revive the impliedly repealed portion of 2-2-302 restricting employment on the basis of affinity. 40 A.G. Op. 40 (1984).

Nepotism Statute Subservient to Human Rights Law: The nepotism law clearly violates the intent of the human rights law because it permits discrimination in employment based solely on marital status. Applying the rule of construction that when two laws are in conflict, the later one supersedes the earlier, the human rights law must prevail. Thus, the Human Rights Act prohibits the Board of Trustees of a school district from enforcing the nepotism statute by refusing employment to a teacher solely on the basis of her relationship by affinity to a board member. 39 A.G. Op. 67 (1982), overruled by 1985 amendment of this section, as declared by 41 A.G. Op. 57 (1986) (see also 1987 amendment to 2-2-302).

49-3-202. Employment referrals and placement services.

Compiler's Comments

1993 Amendment: Chapter 407 in (1) substituted "disability" for "handicap"; and made minor changes in style.

49-3-203. Educational, counseling, and training programs.

Compiler's Comments

1993 Amendment: Chapter 407 in first sentence substituted "disability" for "handicap" and in second sentence, near end after "educationally", deleted "handicapped"; and made minor changes in style.

Administrative Rules

Title 24, chapter 9, subchapter 10, ARM Sex discrimination in education.

49-3-204. Licensing.

Compiler's Comments

1995 Amendment: Chapter 546 in (1), in third sentence, substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 407 throughout section substituted "disability" for "handicap".

1991 Amendment: In (1) inserted last two sentences concerning consideration of factors in adoption proceedings and an agency affiliated with a religion. Amendment effective July 1, 1991.

Severability: Section 7, Ch. 682, L. 1991, was a severability clause.

1989 Amendment: Inserted (2) prohibiting issuance of an alcoholic beverage license to persons who discriminate, but excluding fraternal lodges. Amendment effective April 14, 1989.

Severability: Section 5, Ch. 543, L. 1989, was a severability clause.

Attorney General's Opinions

Age Limitation for Certification Repealed by Implication: The age limitation established in 20-4-104(1)(a) as a qualification for certification to teach is repealed by implication by 49-2-308 and 49-3-204. Age alone is not reasonable grounds to deny a teaching certificate to an otherwise qualified teacher. Based on the holding in Dolan v. School District, 195 M 340, 636 P2d 825, 38 St. Rep. 1903 (1981), 20-4-104(1)(a) is impliedly repealed by the Human Rights Act. 39 A.G. Op. 54 (1982).

49-3-205. Governmental services.

Compiler's Comments

1993 Amendment: Chapter 407 in (1) substituted "disability" for "handicap"; and made minor changes in style.

1991 Amendment: Inserted (4) concerning consideration of factors in adoption proceedings. Amendment effective July 1, 1991.

Severability: Section 7, Ch. 682, L. 1991, was a severability clause.

Case Notes

Failure to Establish Federal or State Claim of Political Discrimination — Petition for Injunction Properly Dismissed: Plaintiffs who were two minor party candidates sued the University System for political discrimination in violation of federal and state law because they were not included in gubernatorial debates on university campuses. The District Court dismissed the petition for failure to state a claim for which relief could be granted, and on appeal, the Supreme Court affirmed. A political discrimination claim based on 42 U.S.C. 1983 generally takes the form of deprivation of a property interest in government employment. Plaintiffs made no employment-based discrimination allegations, so that claim failed. Plaintiffs' political discrimination claim based on 42 U.S.C. 1985 was in the form of a common-law conspiracy, and to prove conspiracy under that section, a plaintiff must show that some racial or perhaps otherwise class-based, invidiously discriminatory animus lay behind the conspirator's action and that the conspiracy was aimed at interfering with the plaintiff's private and publicly protected rights. Plaintiffs could not show that they were members of a suspect class. A common-law conspiracy occurs in Montana when two or more persons, by some concerted action, intend to accomplish some unlawful objective for the purpose of harming another that results in damage, and it is not the conspiracy itself but torts committed or wrongs done in furtherance of the conspiracy that give rise to a claim. Even when viewed in a light most favorable to plaintiffs, in this case, the asserted facts would at most only breed a suspicion that plaintiffs might have had a right to relief, so that federal claim failed as well. Plaintiffs' state law claim under this section was denied because plaintiffs failed to exhaust administrative remedies prior to filing suit in District Court. Absent viable federal or state discrimination claims, the District Court properly dismissed plaintiffs' petition for injunctive relief. Jones v. Mont. Univ. Sys., 2007 MT 82, 337 M 1, 155 P3d 1247 (2007).

No Standing to Bring Political Discrimination Claim on Behalf of Others: Plaintiffs who were two minor party candidates sued the University System for political discrimination because they were not included in gubernatorial debates on university campuses. The claim was brought on behalf of "91,989 Montana hungry unregistered minors". The Supreme Court addressed the standing claim sua sponte. The general rule is that a litigant may assert only the litigant's own constitutional rights or immunities and must demonstrate a personal stake in the controversy and some injury that would be alleviated successfully by maintaining the action. Here, the alleged hungry minors possessed neither a stake in the outcome of plaintiffs' asserted civil rights violations nor suffered any injury that plaintiffs' complaint would alleviate, and plaintiffs were prohibited by the general rule from asserting constitutional rights on behalf of others. Jones v. Mont. Univ. Sys., 2007 MT 82, 337 M 1, 155 P3d 1247 (2007).

Attorney General's Opinions

Municipal Authority to Set Water and Sewer Service Rates — Applicability of Human Rights Act to Setting of Water and Sewer Rates: A provision in 7-13-4304 provides that the rates for municipal water and sewer charges may be fixed in advance and must be uniform for like services in all parts of the municipality. The city of Bozeman sought to provide discounts or preferential rates to senior citizens on water and wastewater charges. The question was whether the senior rates violated the statutory requirement for uniform or equitable rates. The Attorney General held that because water and sewer ratemaking is not an area affirmatively subject to state control, a local government with self-government powers may set rates for those services without regard to the requirements of 7-13-4304. However, the Attorney General noted that age discrimination does violate Title 49, ch. 2, commonly known as the Montana Human Rights Act, that Bozeman is subject to the Act despite its status as a self-governing municipality, and that discrimination in government services is affirmatively subject to state control. Without deciding whether Bozeman's proposed ordinance would meet the standard of strict construction of reasonable grounds based on age, the Attorney General nevertheless concluded that 49-2-308 of the Act did apply to the Bozeman ordinance setting senior rates for municipal water and sewer services. 50 A.G. Op. 10 (2004).

49-3-206. Distribution of governmental funds.

Compiler's Comments

1993 Amendment: Chapter 407 near beginning substituted "disability" for "handicap".

49-3-207. Nondiscrimination provision in all public contracts.

Compiler's Comments

1993 Amendment: Chapter 407 near end substituted "disability" for "handicap"; and made minor changes in style.

49-3-209. Retaliation prohibited.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Part 3
Enforcement and Remedies

Part Case Notes

Appointment of Thirty-Nine-Year-Old Part-Paid Firefighter to Full-Time Position Not Statutory Violation: Before Link was 34 years old, he was a part-paid firefighter and member of the Firefighters' Unified Retirement System (FURS). At age 39, he applied for a position as full-time firefighter. Despite the recommendation of the fire chief, who was granted authority pursuant to city ordinances and personnel rules to make appointments of part-paid firefighters, Link's appointment was denied by City Council members who feared a violation of 7-33-4107, which states that firefighters may not be more than 34 years of age at the time of original appointment. Link complained in District Court that the city discriminated against him on the basis of age. Relying on the language of 7-33-4106, the District Court granted summary judgment to the city, reasoning that because the Mayor and City Council did not have input into Link's appointment as a part-paid firefighter, his appointment to that position was not an original appointment under 7-33-4107. The Supreme Court reversed, holding that having delegated its authority to appoint part-paid firefighters, the city was now estopped from denying the validity of that delegation of authority. Noting a Montana Human Rights Commission decision in Elliott v. Helena, Cause No. 8701003108 (1989), that original appointment includes appointment as a part-time volunteer firefighter and that participation in FURS indicates a legislative intent that the maximum age provision apply to part-paid as well as full-time firefighters, the Supreme Court found that the narrow interpretation given to 7-33-4107 by the District Court resulted in the likelihood that the statute would violate age discrimination laws. Link v. Lewistown, 253 M 481, 833 P2d 1070, 49 St. Rep. 529 (1992). See also 44 A.G. Op. 8 (1991).

49-3-315. Enforcement and remedies.

Compiler's Comments

Applicability — Saving Clause: Section 20, Ch. 467, L. 1997, provided: "[This act] does not affect any administrative or judicial proceeding pending or commenced prior to [the effective date of this act] [effective July 1, 1997]. [This act] applies to complaints or proceedings filed on or after [the effective date of this act]."

Effective Date: Section 21, Ch. 467, L. 1997, provided: "[This act] is effective July 1, 1997."

CHAPTER 4
RIGHTS OF PERSONS WITH DISABILITIES

Chapter Compiler's Comments

Preamble: The preamble attached to Ch. 407, L. 1993, provided: "WHEREAS, many individuals with disabilities and many organizations representing individuals with disabilities object to the use of the terms "handicap" and "handicapped person"; and

WHEREAS, as with racial and ethnic terms, the choice of words used to describe a person with a disability is overlaid with stereotypes and emotional connotations; and

WHEREAS, it is important to use terminology most in line with the sensibilities of most persons with disabilities; and

WHEREAS, the current accepted terminology is "disability" rather than "handicap" and "person with a disability" rather than "handicapped person"; and

WHEREAS, the federal Americans with Disabilities Act of 1990 uses the terms "disability" and "individual with a disability" rather than the terms "handicap" or "handicapped person"; and

WHEREAS, making the state human rights laws consistent with the Americans with Disabilities Act will eliminate some confusion between state and federal laws.

THEREFORE, it is appropriate for the Legislature to revise the state human rights laws to replace the terms "handicap" and "handicapped person" with the terms "disability" and "person with a disability"."

Part 1
Discrimination in Employment

Part Administrative Rules

Title 24, chapter 9, ARM Human Rights Commission.

49-4-101. Discrimination prohibited.

Compiler's Comments

1993 Amendment: Chapter 407 in two places substituted "disability" for "handicap" and near end substituted a reference to a person with a disability for a reference to the handicapped; and made minor changes in style.

Case Notes

Temporary, Nonchronic Condition Not Considered Disability — Human Rights Act Claim Properly Dismissed: Adamson injured his shoulder off the job and was allowed to return to work with lifting restrictions, but the County Commission denied reinstatement to his former job. Adamson returned to work after 6 months with no restrictions, underwent surgery 3 months later, and was released to work 1 month later with restrictions, but again the County Commission denied his request to return to work until he had no restrictions. Adamson ultimately returned to work with a full release and worked until retirement, but subsequently filed a complaint with the Commission for Human Rights, claiming financial loss because of discrimination by the County Commission for his temporary disabilities. A hearings examiner and the Commission held for the county, and the District Court affirmed the decision after finding that Adamson was not disabled pursuant to Title 49, ch. 2, commonly known as the Montana Human Rights Act. On appeal, the Supreme Court affirmed. Noting that the determination of a disability is made on a case-by-case basis, the Supreme Court held that Adamson's temporary, nonchronic impairment of short duration, with little or no long-term permanent impact, was not a disability as defined in 49-2-303. Other similar impairments not considered to be disabilities may include but are not limited to broken hips, sprained joints, concussions, appendicitis, and influenza (see the interpretive guidelines in 29 CFR 1630.2(j)). Adamson v. Pondera County, 2004 MT 27, 319 M 378, 84 P3d 1048 (2004), distinguishing Martinell v. Mont. Power Co., 268 M 292, 886 P2d 421 (1994), and Butterfield v. Sidney Pub. Schools, 2001 MT 177, 306 M 179, 32 P3d 1243 (2001).

Mixed Motive Analysis Applicable When Parties Disagree on Reason for Refusing to Hire: Laudert suffered liver failure while employed by the Richland County Sheriff's Department (RCSD) and had to resign. Following Laudert's full recovery, his former position came open again and he applied but was not rehired. He filed a discrimination charge on grounds of age and disability. The hearings examiner found that questions asked by the RCSD interview panel constituted direct evidence that RCSD had unlawfully considered Laudert's disability, but did not award damages because Laudert would not have been hired even in the absence of any unlawful consideration of his disability. RCSD maintained that Laudert was not hired because of his employment history. The hearings examiner determined that this was a "mixed motive" case. On review, the District Court concluded that European Health Spa v. Human Rights Comm'n, 212 M 319, 687 P2d 1029 (1984), precluded it from applying the mixed motive approach, so the court instead applied the burden-shifting approach in McDonnell Douglas Corp. v. Green, 411 US 792 (1973). However, the McDonnell Douglas test applies to claims involving circumstantial evidence of unlawful discrimination or pretext, while in this case, Laudert presented direct evidence of discrimination, rendering the McDonnell Douglas test inapplicable under Trans World Airlines, Inc. v. Thurston, 469 US 111 (1985). On appeal, Laudert maintained that Reeves v. Dairy Queen, 1998 MT 13, 287 M 196, 953 P2d 703 (1998), should apply because that decision stated that when discrimination is proved by direct evidence, the employer must prove by a preponderance of the evidence that an unlawful motive played no role in the challenged action or that the direct evidence was not credible. However, the Reeves approach was not directly on point either, because Reeves pertains only to instances in which the parties do not dispute the employer's reasons for the challenged action. The Supreme Court held that the District Court should have applied the mixed motive analysis contained in Price Waterhouse v. Hopkins, 490 US 228 (1989), as suggested by the hearings examiner. Laudert v. Richland County Sheriff's Dept., 2000 MT 218, 301 M 114, 7 P3d 386, 57 St. Rep. 872 (2000).

Direct Evidence of Discriminatory Intent — Standard of Proof — Heiat Criteria Applicable to Cases Involving Circumstantial Evidence: The summary judgment burdens of proof discussed in Heiat v. E. Mont. College, 275 M 322, 912 P2d 787 (1996), are not limited only to cases of sex discrimination brought under federal law, but rather apply in all types of discrimination cases whether based on federal or state law. However, the Heiat test is confined to use in cases in which discriminatory intent can only be proved by circumstantial evidence. In a direct evidence case, one in which the parties do not dispute the reason for the employer's action but only whether that action is illegal discrimination, the standard is that the employer must prove by a preponderance of the evidence that an unlawful motive played no role in the challenged action or that the direct evidence of discrimination is not credible and is unworthy of belief. That method of proof, as set out in ARM 24.9.610(5), is the proper test in cases in which the plaintiff presents direct evidence of discrimination. Traditional summary judgment principles apply to direct evidence discrimination cases, requiring the moving party to establish that no material issues of fact exist and that the movant is entitled to judgment as a matter of law. If the employer is the moving party, the employer has the burden of showing that no issues of material fact remain and that plaintiff cannot prove a prima facie case of discrimination as a matter of law. Reeves v. Dairy Queen, Inc., 1998 MT 13, 287 M 196, 953 P2d 703, 55 St. Rep. 44 (1998), clarified and followed in Hafner v. Conoco, Inc., 1999 MT 68, 293 M 542, 977 P2d 330, 56 St. Rep. 277 (1999).

Disability Determination on Case-by-Case Basis — High Blood Pressure as Disability: Whether a person is disabled under Title 49, ch. 2, commonly known as the Montana Human Rights Act, cannot be decided as a matter of law, but rather requires a factual determination to be made on a case-by-case basis. Under this section, to establish a prima facie case of discrimination in employment, an employee must show that the employee belonged to a protected class, that the employee was otherwise qualified for continued employment and that the employment did not subject the employee or others to physical harm, and that continued employment was denied because of the employee's disability. A person is entitled to the protections of the Act not only if the person suffers from a substantially limiting impairment, but also if the person suffers from a condition that is regarded as such an impairment. High blood pressure is an example of a perceived disability. It is no more legal to discriminate against one who exhibits symptoms of a disease than to discriminate against one who suffers from the disease itself. In this case, Reeves was terminated because, in the employer's own words, "it was a combination of having high blood pressure and working in a position as a fast order cook working under conditions of pressure, stress and heat . . . and I decided this would be best for Donna". Reeves met the test for proving a prima facie case under this section. The District Court erred in summarily dismissing Reeves' claim, and the case was remanded for further proceedings. Reeves v. Dairy Queen, Inc., 1998 MT 13, 287 M 196, 953 P2d 703, 55 St. Rep. 44 (1998).

Risk of Future Injury as Nondiscriminatory Reason for Precluding Employment — Mantolete Standard: After plaintiff establishes a prima facie case of employment discrimination, the burden shifts to the employer to rebut the presumption of discrimination by producing a legitimate, nondiscriminatory reason for failure to hire. In Mantolete v. Bolger, 767 F2d 1416 (9th Cir. 1985), cited with approval in Hearing Aid Institute v. Rasmussen, 258 M 367, 852 P2d 628 (1993), the level to which risk of future injury must rise in order to stand as a nondiscriminatory reason disqualifying an applicant from employment must be based on a showing of a reasonable probability of substantial harm. The Supreme Court declined to cite the Mantolete standard as controlling because of the argument that any progressive condition may subject an employee to potential physical harm. However, the court agreed that the Mantolete standard provided useful guidance in relation to pretext. Because plaintiff established a genuine issue of material fact as to whether the employer's withdrawal of a job offer was pretextual, summary dismissal of the discrimination complaint constituted reversible error. Hafner v. Conoco, Inc., 268 M 396, 886 P2d 947, 51 St. Rep. 1391 (1994). Hafner having proved pretext under Hafner I, ibid., the burden then shifted to Conoco to prove absence of unlawful motive under the test in Reeves v. Dairy Queen, Inc., 1998 MT 13, 287 M 196, 953 P2d 703 (1998). In light of Reeves, the Supreme Court nevertheless applied the Mantolete standard, holding that when an employer defends an employment discrimination case by asserting risk of harm, the employer has a duty to independently assess that risk in accordance with ARM 24.9.606(8), regardless of whether the case arises under the McDonnell or Reeves burden-shifting tests and whether the alleged risk of harm is directed to the employee's initial qualifications or the existence of reasonable qualifications. In determining whether an employer has discharged its duty in this regard, a District Court must make specific findings concerning with whom the employer spoke about the risk of substantial harm and whether the employer took into account all relevant information concerning the risk of harm, including: (1) the seriousness of the employee's injury; (2) the employee's work history; (3) the employee's medical history; and (4) the existence of reasonable accommodations that could possibly reduce the risk of substantial harm to the employee. Failure to make specific findings constituted reversible error. Hafner v. Conoco, Inc., 1999 MT 68, 293 M 542, 977 P2d 330, 56 St. Rep. 277 (1999).

49-4-102. Penalty and civil remedy.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Commission for Human Rights Discretion to Award Compensatory Damages in Mixed Motives Cases: Laudert suffered liver failure while employed by the Richland County Sheriff's Department (RCSD) and had to resign. Following Laudert's full recovery, his former position came open again and he applied but was not rehired. He filed a discrimination charge on grounds of age and disability. The hearings examiner found that questions asked by the RCSD interview panel constituted direct evidence that RCSD had unlawfully considered Laudert's disability, but did not award damages because Laudert would not have been hired even in the absence of any unlawful consideration of his disability. RCSD maintained that Laudert was not hired because of his employment history. The hearings examiner properly determined that this was a "mixed motive" case. Whether Laudert was entitled to compensatory damages depended on whether RCSD proved by a preponderance of the evidence that it would have made the same decision in the absence of Laudert's disability, and Laudert's employment history provided substantial evidence proving that Laudert would not have been hired in any event. The Supreme Court found that the hearings examiner properly exercised the statutory discretion to preclude damages, and the court affirmed the authority of the Commission for Human Rights to limit compensatory damages in mixed motive cases pursuant to ARM 24.9.611 and Price Waterhouse v. Hopkins, 490 US 228 (1989). Laudert v. Richland County Sheriff's Dept., 2000 MT 218, 301 M 114, 7 P3d 386, 57 St. Rep. 872 (2000).

Punitive Damages Recoverable for Employment Discrimination Against Handicapped: A violation of 49-4-101 warrants a claim for punitive damages if such violation is shown to be intentional or reckless. Owens v. Parker Drilling Co., 207 M 446, 676 P2d 162, 41 St. Rep. 66 (1984).

Part 2
Rights of the Physically Disabled

49-4-202. Policy of the state.

Compiler's Comments

1993 Amendment: Chapter 407 in two places substituted "impaired" for "handicapped"; and made minor changes in style.

1981 Amendment: Inserted "the deaf" after "visually handicapped" in first and second sentences.

Administrative Rules

Title 2, chapter 21, subchapter 14, ARM Persons with disabilities employment preference policy.

49-4-203. Definitions.

Compiler's Comments

2019 Amendment: Chapter 361 in (2) near beginning substituted "miniature horse" for "other animal" and inserted last sentence concerning emotional support animals. Amendment effective October 1, 2019.

Preamble: The preamble attached to Ch. 361, L. 2019, provided: "WHEREAS, under the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., dogs that have been trained to do work or perform a task for the benefit of a person with a disability and whose work or task is directly related to the individual's disability meet the definition of a service animal; and

WHEREAS, properly trained service animals play a vital role in helping individuals with disabilities achieve and maintain independence, and the status of service animals is therefore protected by federal and state laws requiring places of public accommodation, including restaurants, theaters, stores, hospitals, and more to allow any animal that is presented as a service animal or a service animal in training into the place of public accommodation; and

WHEREAS, there is an increasing number of occurrences of people bringing pets, therapy animals, and emotional support animals into a place where the animal would otherwise not be allowed to enter by passing the animal off as a service animal or service animal in training, either by oral misrepresentation, placing a misleading vest or other article on the animal, or presenting a falsified certificate despite knowing that the animal is not a service animal; and

WHEREAS, the use of a misrepresented service animal erodes the public's trust of service animals that are well trained, adequately equipped, and fully serving the person with a disability they are entrusted to guide, aid, or protect."

1997 Amendment: Chapter 394 inserted definition of service animal; and made minor changes in style.

49-4-211. Right to use public places and accommodations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 163, L. 2023. Amendment effective April 19, 2023.

1993 Amendment: Chapter 407 in (1) and (2) substituted "impaired" for "handicapped".

1981 Amendment: Inserted "and the deaf" after "visually handicapped" in (1) and (2).

49-4-212. Access to housing accommodations.

Compiler's Comments

1993 Amendment: Chapter 407 near beginning substituted "impaired" for "handicapped".

1991 Amendment: Deleted (2) that read: "(2) Nothing in this section requires a person renting, leasing, or providing real property for compensation to modify his property in any way or provide a higher degree of care for a blind, visually handicapped, or deaf person than for a person who is not so disabled".

1981 Amendment: Inserted "and deaf" after "visually handicapped" in (1); inserted "or deaf" after "visually handicapped" in (2); and made minor changes in phraseology.

49-4-214. Right to be accompanied by service animal — identification for service animals in training.

Compiler's Comments

2019 Amendment: Chapter 361 in (4) in first sentence before "shall wear" deleted "that is a dog" and substituted "that the animal" for "that the dog" and deleted former second sentence that read: "Other service animals in training must also be identifiable by written identification as a service animal in training"; inserted (5) concerning requirements to bring a service animal into public places and accommodations; inserted (6) concerning when a service animal may be required to leave a place or accommodation; and inserted (7) requiring a place or accommodation that prohibits animals to indicate that a person may be accompanied by a service animal. Amendment effective October 1, 2019.

Preamble: The preamble attached to Ch. 361, L. 2019, provided: "WHEREAS, under the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., dogs that have been trained to do work or perform a task for the benefit of a person with a disability and whose work or task is directly related to the individual's disability meet the definition of a service animal; and

WHEREAS, properly trained service animals play a vital role in helping individuals with disabilities achieve and maintain independence, and the status of service animals is therefore protected by federal and state laws requiring places of public accommodation, including restaurants, theaters, stores, hospitals, and more to allow any animal that is presented as a service animal or a service animal in training into the place of public accommodation; and

WHEREAS, there is an increasing number of occurrences of people bringing pets, therapy animals, and emotional support animals into a place where the animal would otherwise not be allowed to enter by passing the animal off as a service animal or service animal in training, either by oral misrepresentation, placing a misleading vest or other article on the animal, or presenting a falsified certificate despite knowing that the animal is not a service animal; and

WHEREAS, the use of a misrepresented service animal erodes the public's trust of service animals that are well trained, adequately equipped, and fully serving the person with a disability they are entrusted to guide, aid, or protect."

1997 Amendment: Chapter 394 in (1) and (2), in five places, substituted "service animal" for "guide or hearing dog"; in (1) and (2), at beginning, substituted "A person with a disability" for "Every totally or partially blind or deaf person"; in (1), near middle of first sentence, substituted "or a service animal in training with identification complying with subsection (4)" for "especially trained for the purpose" and near end of second sentence substituted "property" for "premises or facility" and at end substituted "animal" for "dog"; inserted (3) concerning rights and responsibilities of person training service animal; inserted (4) requiring service animal in training to wear written identification; and made minor changes in style.

1981 Amendment: Inserted "or deaf" after "blind" near the beginning of (1) and (2); inserted "or hearing" between "guide" and "dog" throughout.

49-4-215. Penalty for violating rights.

Compiler's Comments

1981 Amendment: Inserted "deaf" after "blind" near the end of the section.

49-4-221. Misrepresentation of a service animal — complaint — investigation.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

Preamble: The preamble attached to Ch. 361, L. 2019, provided: "WHEREAS, under the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., dogs that have been trained to do work or perform a task for the benefit of a person with a disability and whose work or task is directly related to the individual's disability meet the definition of a service animal; and

WHEREAS, properly trained service animals play a vital role in helping individuals with disabilities achieve and maintain independence, and the status of service animals is therefore protected by federal and state laws requiring places of public accommodation, including restaurants, theaters, stores, hospitals, and more to allow any animal that is presented as a service animal or a service animal in training into the place of public accommodation; and

WHEREAS, there is an increasing number of occurrences of people bringing pets, therapy animals, and emotional support animals into a place where the animal would otherwise not be allowed to enter by passing the animal off as a service animal or service animal in training, either by oral misrepresentation, placing a misleading vest or other article on the animal, or presenting a falsified certificate despite knowing that the animal is not a service animal; and

WHEREAS, the use of a misrepresented service animal erodes the public's trust of service animals that are well trained, adequately equipped, and fully serving the person with a disability they are entrusted to guide, aid, or protect."

49-4-222. Misrepresentation of a service animal — misdemeanor — penalty.

Compiler's Comments

Effective Date: This section is effective October 1, 2019.

Code Commissioner Correction: In (3) the code commissioner substituted "subsection (2)" for "subsection (1)" to correct an erroneous internal reference.

Preamble: The preamble attached to Ch. 361, L. 2019, provided: "WHEREAS, under the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., dogs that have been trained to do work or perform a task for the benefit of a person with a disability and whose work or task is directly related to the individual's disability meet the definition of a service animal; and

WHEREAS, properly trained service animals play a vital role in helping individuals with disabilities achieve and maintain independence, and the status of service animals is therefore protected by federal and state laws requiring places of public accommodation, including restaurants, theaters, stores, hospitals, and more to allow any animal that is presented as a service animal or a service animal in training into the place of public accommodation; and

WHEREAS, there is an increasing number of occurrences of people bringing pets, therapy animals, and emotional support animals into a place where the animal would otherwise not be allowed to enter by passing the animal off as a service animal or service animal in training, either by oral misrepresentation, placing a misleading vest or other article on the animal, or presenting a falsified certificate despite knowing that the animal is not a service animal; and

WHEREAS, the use of a misrepresented service animal erodes the public's trust of service animals that are well trained, adequately equipped, and fully serving the person with a disability they are entrusted to guide, aid, or protect."

Part 3

Disability Parking Permits

Part Attorney General's Opinions

Drivers' Licenses: A person may operate a self-propelled wheelchair or similar vehicle under 49-4-311 (now repealed) without a driver's license but is subject to municipal regulation, which may include requiring a permit issued only upon a showing that the person can drive responsibly and will properly equip the vehicle. (See 61-8-506.) 36 A.G. Op. 86 (1976).

49-4-301. Eligibility for disability parking permit.

Compiler's Comments

2021 Amendment: Chapter 390 in (1) near beginning and in (3) near beginning substituted references to disability parking permits for references to special parking permits; in (2)(a) in one place and in (2)(b) in two places substituted "disability license plate" for "special license plate";

in (2)(a) and (2)(b) inserted "displaying a wheelchair"; and in (3) in second sentence substituted "accessible parking place" for "special parking place". Amendment effective October 1, 2021.

2005 Amendment — Coordination: Section 3, Ch. 507, L. 2005, a coordination section, provided that if both House Bill No. 671 and Ch. 507 were passed and approved, then 49-4-301 must be amended as follows: in (1) near end after "37-8-202" inserted "submits a certification to the department, by electronic or other means prescribed by the department, that the person"; in (2)(a) at end of first sentence substituted "61-3-332(9)" for "61-3-332(11)" and in second sentence near middle after "receipt of a" substituted "later paper or electronic" for "new"; inserted (2)(b) allowing a permanently disabled person to continue to be issued a special license plate without reapplication; and made minor changes in style. Amendment effective January 1, 2006.

House Bill No. 671 was approved May 6, 2005, as Ch. 596, L. 2005.

The amendments to this section made by sec. 1, Ch. 507, L. 2005, and sec. 28, Ch. 596, L. 2005, were rendered void by sec. 3, Ch. 507, L. 2005, a coordination section.

2003 Amendment: Chapter 399 in (2) at end of first sentence substituted "61-3-332(11)" for "61-3-332(10)(g)". Amendment effective January 1, 2004.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

1999 Amendment: Chapter 156 in throughout section inserted references to advanced practice registered nurse; and made minor changes in style. Amendment effective March 23, 1999.

Preamble: The preamble attached to Ch. 156, L. 1999, provided: "WHEREAS, advanced practice registered nurses (APRNs) provide care in a multitude of primary care settings; and

WHEREAS, APRNs in those settings provide care to people with disabilities; and

WHEREAS, for many patients, an APRN is often the only health care provider that they see regularly; and

WHEREAS, the determination of a disability for the purposes of issuing a special parking permit is based on specific predetermined criteria provided for in law; and

WHEREAS, it is within the scope and practical ability of APRNs to determine if a person meets any of the specified criteria."

1997 Amendment: Chapter 280 in (1) and (1)(g), after "licensed physician", inserted reference to licensed chiropractor; in two places in (2), after "physician", inserted "or chiropractor"; and made minor changes in style.

1995 Amendments: Chapter 202 inserted (3) authorizing issuance of special parking permits to agency or business providing transportation as service to disabled persons; and inserted exception clause at beginning of (4).

Chapter 392 substituted (1)(a) through (1)(g) concerning disability criteria necessary for obtaining a special parking permit for former (1)(a), (1)(b), and (1)(c) that read: "(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical disability that impairs mobility when not in a motor vehicle;

(b) regardless of whether the person holds a driver's license or owns a motor vehicle, has a permanent physical disability that impairs driving ability and impairs mobility when not in a motor vehicle to such an extent that the person needs to be driven by another person to a destination; or

(c) has a temporary physical disability that impairs driving ability or mobility when not in a motor vehicle to such an extent that the person needs to be driven by another person to a destination"; inserted (2) concerning the issuance of a temporary placard for a condition expected to improve within 6 months; and made minor changes in style.

1993 Amendment: Chapter 407 throughout section substituted "disability" for "handicap"; and made minor changes in style.

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

1983 Amendment: Inserted (1)(c) requiring the Department to issue special parking permit to person with temporary physical handicap impairing driving ability or mobility.

49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for accessible parking spaces.

Compiler's Comments

2021 Amendment: Chapter 390 in (1) near middle substituted "an accessible parking space designated for use by a" for "a special parking space reserved for a" and near end substituted "accessible parking space" for "special parking space"; in (2) near beginning after "A vehicle" substituted "or motorcycle may not stop, stand, or park within an accessible parking space designated for use by a person with a disability as provided in 49-4-304" for "may not be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by a person with a disability"; in (2)(a)(i) near beginning before "parking permit" inserted "disability" and near middle before "inscribed license plate" deleted "specially"; in (2)(a)(ii) near beginning substituted "designated accessible parking space" for "reserved parking space"; inserted (2)(b) concerning a vehicle used to transport a person with a disability that is temporarily stopped in an accessible parking space designated for use by a person with a disability; inserted (3) prohibiting a vehicle or motorcycle from stopping within an access aisle designated for use by a person with a disability; inserted (4) concerning notice requirements of a penalty for violation of this part; in (5) near beginning before "parking permit" inserted "disability" and before "inscribed license plates" inserted "specially"; in (6)(a) after "appropriate state agency" substituted "shall" for "may", substituted "applicable requirements set forth in 28 CFR 36 as of February 10, 2021," for "following requirements", substituted "accessible parking space" for "special parking space", and at end inserted "or in the right-of-way, as defined in 60-1-103"; inserted (6)(b) concerning the maintenance requirements of an accessible parking space and notice requirements before citation may be issued; deleted former (4)(a) through (4)(d) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2021.

2009 Amendment: Chapter 233 in (2)(a) near end and in (3) near middle after "issued under" substituted "61-3-458(4)(b) or (4)(i)" for "61-3-458(3)(b) or (3)(i)". Amendment effective January 1, 2010.

2007 Amendment: Chapter 59 in (2)(a) and (3) after "61-3-458(3)(b)" inserted "or (3)(i)". Amendment effective October 1, 2007.

2005 Amendment: Chapter 596 in (2)(a) and (3) substituted "61-3-332(9)" for "61-3-332(11)". Amendment effective January 1, 2006.

2003 Amendment: Chapter 399 in (2)(a) and (3) near end substituted "issued under 61-3-458(3)(b) or displaying a wheelchair as provided in 61-3-332(11)" for "issued under 61-3-332(10)(c)(i)(A) or (10)(g) or 61-3-426(2)". Amendment effective January 1, 2004.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

2001 Amendment: Chapter 539 in (2)(a) near end after "specially inscribed license plate" inserted "displaying the letters "DV""; and in (3) near middle of introductory clause after "specially inscribed license plates" inserted "displaying the letters "DV"". Amendment effective January 1, 2002.

1995 Amendments: Chapter 392 in (1), at end, inserted "when the person for whom the permit was issued is using the special parking space to enter or exit the vehicle"; in (2), near beginning after "vehicle", deleted "other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a person with a disability or one displaying a specially inscribed license plate issued under 61-3-332(10)(c)(i)(A) and conveying a 100% disabled veteran"; inserted (2)(a) and (2)(b) concerning the display of a parking permit, plate, or placard and the use of the reserved parking space; and in (3), after "61-3-332(10)(c)(i)(A)", inserted "or (10)(g)".

Chapter 489 in (2), at beginning after "vehicle", deleted "other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing license plate or placard for a person with a disability that was issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a person with a disability or one displaying a specially inscribed license plate issued under 61-3-332(10(c)(i)(A) and conveying a 100% disabled veteran"; inserted (2)(a) and (2)(b) allowing parking of a vehicle with a lawful Montana disability plate, a similar valid plate from a foreign jurisdiction, or a specially inscribed plate; in (3), near middle of introductory clause after "61-3-332(10)(c)(i)(A)", inserted "or 61-3-426(2)"; and made minor changes in style. Amendment effective January 1, 1996.

1993 Amendments: Chapter 209 in (2) and (3) substituted "61-3-332(10)(c)(i)(A)" for "61-3-332(10)(c)". Amendment effective January 1, 1994.

Chapter 406 in (4)(d), at end of first sentence, inserted "and stating the penalty for a violation" and inserted second sentence providing that signs existing as of October 1, 1993, may meet this requirement with a decal; and made minor changes in style.

Chapter 407 throughout section substituted references to a person with a disability for references to a handicapped person; and made minor changes in style.

1991 Amendment: In (2) and (3) substituted "61-3-332(10)(c)" for "61-3-451".

1987 Amendment: In (1), after "public property or", deleted "upon the request of the private property owner"; and in (4), in opening clause, inserted "In accordance with subsection (2)", after "county" inserted "or appropriate state agency", and at end substituted "or permitholders on ways of this state open to the public as defined in 61-8-101" for "on public or private property in accordance with subsection (2)".

1985 Amendments: Chapter 71 near middle of (2) inserted "or one displaying a specially inscribed license plate issued under 61-3-451 and conveying a 100% disabled veteran"; and near middle of (3) inserted "and vehicles lawfully displaying specially inscribed license plates issued under 61-3-451".

Chapter 203 near beginning of (2) inserted "or one displaying a distinguishing handicapped person's license plate or placard issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1)".

Chapter 616 inserted (4) permitting governing body of city, town, or county to impose requirements for special parking spaces constructed after September 30, 1985, and reserved for handicapped persons on public or private property.

1983 Amendment: In (1) after "handicapped persons", inserted remainder of subsection entitling permittee to park in special parking space reserved for handicapped persons whether on public property or, upon the request of the private property owner, on private property available for public use; inserted (2) prohibiting vehicle not displaying special parking permit from parking in space on public or private property marked by official sign as reserved for use by handicapped persons; and inserted (3) authorizing city, town, or county to exempt, with some exceptions, vehicles displaying special parking permits parked in public places along public streets from parking time limitations.

Source: Subsection 3, as inserted by sec. 2, Ch. 614, L. 1983, is based on Colo. Rev. Stat. 1973, sec. 42-4-1109.

Attorney General's Opinions

Private Property Owner's Request to Be Directed to Local Governing Body: Because the phrase "upon the request of the private property owner" is unclear, to ascertain the meaning of the phrase, the legislative history of this section must be examined. The legislative history indicates that the Legislature intended a request by a private property owner to be made to the governing body of the local government unit, which would include a county, city, or town. 40 A.G. Op. 34 (1984).

Municipality Possesses Enforcement Powers Without Enactment of Local Implementing Ordinances: Section 49-4-307 provides that it is a misdemeanor to violate this section's provision that "no vehicle other than one lawfully displaying a parking permit issued under this part and conveying a handicapped person may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons". (See 1995 amendment.) Therefore, municipal police officers are obligated to enforce this section on both public property and private property available for public use within their territorial jurisdiction. Further, no municipal ordinance is required to implement such enforcement powers. 40 A.G. Op. 34 (1984).

49-4-303. Issuance of interim disability parking permit.

Compiler's Comments

2021 Amendment: Chapter 390 in three places substituted "disability parking permit" for "special parking permit". Amendment effective October 1, 2021.

2005 Amendment: Chapter 596 substituted current text concerning issuance of interim special parking permit for former text that read: "(1) Applications for a special parking permit may be made to the department of justice on forms provided by the department that require sufficient information to determine eligibility for a permit. The application must be accompanied by:

(a) a certificate from a licensed physician, a licensed chiropractor, or a licensed advanced practice registered nurse, as provided in 37-8-202, describing the extent of the applicant's disability; and

(b) a fee of $1.

(2) Applications must be available at the office of the county treasurer in each county and directly from the department." Amendment effective January 1, 2006.

1999 Amendment: Chapter 156 in (1)(a) inserted reference to licensed advanced practice registered nurse; and made minor changes in style. Amendment effective March 23, 1999.

1997 Amendment: Chapter 280 in (1)(a), after "physician", inserted "or a licensed chiropractor"; and made minor changes in style.

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

49-4-304. Disability license plate or placard to be provided and displayed — additional placards allowed — rulemaking required.

Compiler's Comments

2021 Amendment: Chapter 390 in (1) in three places substituted "disability license plate" for "special license plate" and near middle of first sentence substituted "an accessible parking privilege" for "a special parking privilege"; and in (2) substituted "disability parking permit" for "special parking permit". Amendment effective October 1, 2021.

2017 Amendment: Chapter 323 throughout section substituted "placard" for "card"; in (2) at end substituted "may apply to the department for one or more placards" for "and who owns more than one motor vehicle may request and the department of justice shall provide additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person"; inserted (3) concerning issuance by department of up to two placards; and made minor changes in style. Amendment effective May 4, 2017.

2009 Amendment: Chapter 233 in (1) in first sentence before "indicating" substituted "61-3-458(4)(b) or (4)(i)" for "61-3-458(3)(b) or (3)(i)". Amendment effective January 1, 2010.

2007 Amendment: Chapter 59 in (1) near middle of first sentence after "61-3-458(3)(b)" inserted "or (3)(i)". Amendment effective October 1, 2007.

2005 Amendment: Chapter 596 in (1) in first sentence at beginning inserted exception clause and near middle substituted "61-3-332(9)" for "61-3-332(11)"; in (3) near beginning substituted "49-4-301" for "49-4-303"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 399 in (1) substituted "Unless the department of justice issued a special license plate under 61-3-332(11) or 61-3-458(3)(b) indicating a special parking privilege, the department shall provide a card" for "The department of justice shall provide a special license plate under 61-3-332(10)(g) or 61-3-426(1) or a card". Amendment effective January 1, 2004.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

1995 Amendment: Chapter 489 in (1), in first sentence after "61-3-332", substituted "(10)(g) or 61-3-426(1)" for "(10)(f)". Amendment effective January 1, 1996.

1993 Amendment: Chapter 407 throughout section substituted references to a person with a disability for references to a handicapped person; and made minor changes in style.

1991 Amendments: Chapter 456 inserted (2) requiring Department to issue additional parking privilege display cards to eligible handicapped person who owns more than one vehicle.

Chapter 724 in (1) substituted "61-3-332(10)(f)" for "61-3-445".

1985 Amendment: In (1) near beginning of first sentence, after "plate", inserted "under 61-3-445"; and in (3) after "The", deleted "special license plate or".

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

1983 Amendment: In (1), in first sentence inserted "special license" and changed "may be" to "to be", in second sentence required that the "special license plate shall be affixed to the vehicle according to 61-3-301" and at end inserted "by the handicapped person in a vehicle other than the one to which his special license plate is affixed", and changed phraseology; inserted (2) allowing handicapped person not holding driver's license or owning vehicle to apply to Division for card to be displayed in the windshield of conveying vehicle when special parking privilege is used; and inserted (3) requiring special license plate or card to bear wheelchair as symbol of handicapped person.

49-4-305. Expiration of permit.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 109 in (1)(a) at beginning substituted "5 years" for "3 years"; in (2) at end of introductory clause inserted "the earlier of"; inserted (2)(c) regarding October 1, 2022; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 390 in (1) in introductory clause near beginning substituted "disability parking permit" for "special parking permit"; in (1)(a) at beginning substituted "5 years" for "3 years"; inserted (2)(c) concerning an expiration date of October 1, 2022; and made minor changes in style. Amendment effective October 1, 2021.

2005 Amendment: Chapter 596 in (1) in exception clause inserted reference to 49-4-303 and before "permit" inserted "special parking"; and made minor changes in style. Amendment effective January 1, 2006.

1999 Amendment: Chapter 156 throughout section inserted references to licensed advanced practice registered nurse; and made minor changes in style. Amendment effective March 23, 1999.

1997 Amendment: Chapter 280 in first sentence in (1)(a), in (1)(b), and in (2)(b), after "physician", inserted "or a licensed chiropractor".

1995 Amendment: Chapter 392 in (1)(a), at beginning of first sentence, substituted "3 years" for "4 years" and after "issuance" inserted "unless the permit was issued to a person who has a condition expected to improve within 6 months" and at beginning of second sentence substituted "person" for "permittee", before "physician" inserted "licensed", and after "certifies" substituted "that the person's mobility disability still exists and that one of the criteria specified in 49-4-301 continues to be met" for "that the permittee's disability impairing mobility still exists"; in (1)(b), before "physician", inserted "licensed" and after "physician" substituted "that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met" for "that the permittee's disability impairing mobility no longer exists"; and in (2)(b), before "physician", inserted "licensed" and after "physician" substituted "that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met" for "that the permittee's disability impairing mobility no longer exists".

1993 Amendments — Composite Section: Chapter 406 inserted (1), (1)(a), and (1)(b) providing that except as provided in subsection (2), a permit expires 4 years after its issuance or on certification by a doctor that the disability no longer exists and that a permittee may renew a permit if a doctor certifies that the disability still exists; in (1)(a) substituted "disability" for "physical handicap"; and inserted (2) concerning applicability to permits issued before October 1, 1993.

Chapter 407 in (2)(b) substituted "disability" for "handicap"; and made minor changes in style. This amendment was rendered void by the amendment in Ch. 406.

1983 Amendment: Substituted (1), death of permittee, and (2), certification by a physician that physical handicap impairing mobility no longer exists, for "December 31 of the year of issue" as expiration date of special parking permit.

49-4-306. Department of justice to publicize permit.

Compiler's Comments

2021 Amendment: Chapter 390 in (1) at end substituted "disability parking permit" for "special parking permit". Amendment effective October 1, 2021.

Code Commissioner Correction: The Code Commissioner has substituted the department of justice for the division of motor vehicles in this section, because sec. 14, Ch. 503, L. 1985, repealed 2-15-2002, which had statutorily created the division, and sec. 1, Ch. 503 amended Title 61, Motor Vehicles, to substitute "department" for "division" throughout that title. The apparent intent was to eliminate the statutory status of the division, and therefore the Code Commissioner has changed statutory references accordingly (see 1-11-101(2)(g)).

49-4-307. Penalty.

Compiler's Comments

2021 Amendment: Chapter 390 near beginning of first sentence inserted "or motorcycle", near middle of second sentence substituted "3 business days" for "24 hours", and near end of second sentence substituted "disability parking permit" for "special parking permit". Amendment effective October 1, 2021.

1993 Amendment: Chapter 406 increased penalty from $50 to $100; and made minor changes in style.

1987 Amendment: Changed fine from "not less than $10 or more than $100" to "$50" and inserted second sentence providing an exception to conviction for illegally parking in special parking space if within 24 hours person charged produces a special parking permit issued and valid at time of arrest.

Attorney General's Opinions

Municipality Possesses Enforcement Powers Without Enactment of Local Implementing Ordinances: This section provides that it is a misdemeanor to violate the provision in 49-4-302 that "no vehicle other than one lawfully displaying a parking permit issued under this part and conveying a handicapped person may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons". (See 1995 amendment to 49-4-302.) Therefore, municipal police officers are obligated to enforce this section on both public property and private property available for public use within their territorial jurisdiction. Further, no municipal ordinance is required to implement such enforcement powers. 40 A.G. Op. 34 (1984).

49-4-310. Disability parking permit for long-term care facility.

Compiler's Comments

2021 Amendment: Chapter 390 near middle substituted "accessible parking spaces" for "special parking spaces". Amendment effective October 1, 2021.

Part 5
Interpreters for the Deaf in Official Proceedings

Part Compiler's Comments

Severability: Section 12, Ch. 245, L. 1979, provided: "If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications."

49-4-502. Definitions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment: Chapter 546 in definition of qualified interpreter substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Applicable Statutory Scheme for Providing Interpreter for Deaf Person in Criminal Proceeding — Payment of Interpreter's Fees: Alkire was arrested and charged in Municipal Court for criminal trespass to vehicles and was assigned representation by the Office of State Public Defender (OSPD). Because Alkire was hearing impaired, he requested and was granted a team of interpreters. A question then arose regarding whether the OSPD or the county was responsible for costs associated with the appointment of the team of interpreters. The court determined that, pursuant to 47-1-201, the OSPD was responsible for the costs. Alkire contended that 49-4-503 provided that the court was required to bear the costs. On a writ of supervisory control, the Supreme Court considered two possible statutory schemes for determining the entity responsible for the costs. Scheme no. 1 provides interpreters for the deaf in official proceedings pursuant to Title 49, ch. 4, part 5, and 49-4-509 requires the court to pay, from the county general fund, reasonable compensation for services plus travel and transportation expenses for an interpreter who is appointed in a criminal proceeding. Scheme no. 2 arises from a combination of Title 26, ch. 2, part 5, 46-15-116, and 47-1-201, and requires payment by the OSPD for witness and interpreter fees, including interpreter fees in a criminal proceeding. The Supreme Court concluded that scheme no. 1 was more specific because it pertained to providing an interpreter for a deaf person in a criminal proceeding, while scheme no. 2 was more general and pertained to the appointment of interpreters and translators generally and who are treated as witnesses. In this case, the more specific statutory scheme no. 1 for an interpreter for Alkire in the criminal proceeding prevailed over the general provisions of scheme no. 2, so the trial court erred in requiring that the OSPD bear the costs of the interpreters. Thus, the writ of supervisory control was granted, and the case was remanded to Municipal Court for further proceedings directing that the costs of the interpreters be paid from the county fund. Alkire v. Missoula Municipal Court, 2008 MT 223, 344 M 260, 186 P3d 1288 (2008).

49-4-504. Preliminary determination.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

49-4-505. Intermediary interpreter to be used.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

49-4-507. Coordination of interpreter requests.

Compiler's Comments

1995 Amendment: Chapter 546 in three places substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

49-4-508. Oath of interpreter.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

49-4-509. Compensation.

Compiler's Comments

2011 Amendment: Chapter 30 in third sentence near middle inserted "in a district court" and after "must be paid" substituted reference to office of court administrator and judicial branch policy for "out of the county general fund". Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Applicable Statutory Scheme for Providing Interpreter for Deaf Person in Criminal Proceeding — Payment of Interpreter's Fees: Alkire was arrested and charged in Municipal Court for criminal trespass to vehicles and was assigned representation by the Office of State Public Defender (OSPD). Because Alkire was hearing impaired, he requested and was granted a team of interpreters. A question then arose regarding whether the OSPD or the county was responsible for costs associated with the appointment of the team of interpreters. The court determined that, pursuant to 47-1-201, the OSPD was responsible for the costs. Alkire contended that 49-4-503 provided that the court was required to bear the costs. On a writ of supervisory control, the Supreme Court considered two possible statutory schemes for determining the entity responsible for the costs. Scheme no. 1 provides interpreters for the deaf in official proceedings pursuant to Title 49, ch. 4, part 5, and 49-4-509 requires the court to pay, from the county general fund, reasonable compensation for services plus travel and transportation expenses for an interpreter who is appointed in a criminal proceeding. Scheme no. 2 arises from a combination of Title 26, ch. 2, part 5, 46-15-116, and 47-1-201, and requires payment by the OSPD for witness and interpreter fees, including interpreter fees in a criminal proceeding. The Supreme Court concluded that scheme no. 1 was more specific because it pertained to providing an interpreter for a deaf person in a criminal proceeding, while scheme no. 2 was more general and pertained to the appointment of interpreters and translators generally and who are treated as witnesses. In this case, the more specific statutory scheme no. 1 for an interpreter for Alkire in the criminal proceeding prevailed over the general provisions of scheme no. 2, so the trial court erred in requiring that the OSPD bear the costs of the interpreters. Thus, the writ of supervisory control was granted, and the case was remanded to Municipal Court for further proceedings directing that the costs of the interpreters be paid from the county fund. Alkire v. Missoula Municipal Court, 2008 MT 223, 344 M 260, 186 P3d 1288 (2008).

Part 6
Discrimination in Anatomical Gifts and Organ Transplants

49-4-601. Legislative intent.

Compiler's Comments

Effective Date: Section 7, Ch. 487, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 12, 2021.

49-4-602. Definitions.

Compiler's Comments

Effective Date: Section 7, Ch. 487, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 12, 2021.

49-4-603. Discrimination in organ transplantation.

Compiler's Comments

Effective Date: Section 7, Ch. 487, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 12, 2021.

49-4-604. Enforcement.

Compiler's Comments

Effective Date: Section 7, Ch. 487, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 12, 2021.

TITLE 50
HEALTH AND SAFETY

CHAPTER 1
ADMINISTRATION OF PUBLIC HEALTH LAWS

Chapter Compiler's Comments

Severability Clause: Section 222, Ch. 197, L. 1967, was a severability clause.

Part 1
General Provisions

50-1-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 369, L. 2023. Amendment effective May 3, 2023.

2021 Amendment: Chapter 204 in definition of isolation substituted "who are infected with a communicable disease" for "who are infected or reasonably believed to be infected with a communicable disease or possibly communicable disease"; inserted definition of local governing body or governing body; in definition of quarantine substituted "who have been exposed to a communicable disease" for "who are or may have been exposed to a communicable disease or possibly communicable disease"; and made minor changes in style. Amendment effective April 16, 2021.

2007 Amendment: Chapter 150 in introductory clause inserted reference to chapter 2; inserted definitions of condition of public health importance, institutional controls, local board of health, local health officer, local public health agency, physician, public health services and functions, public health system, screening, and testing; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 391 substituted definition of communicable disease for former definition that read: ""Communicable disease" means a disease designated communicable by the department"; and inserted definitions of inanimate reservoir, isolation, and quarantine. Amendment effective April 17, 2003.

1995 Amendments — Composite Section: Chapter 418 in definition of Board substituted "board of public health" for "board of health and environmental sciences"; and in definition of Department substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 deleted definition of Board that read: ""Board" means the board of health and environmental sciences, provided for in 2-15-2104"; in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995. Because Ch. 546 repealed 2-15-2104, the Code Commissioner has reflected the deletion of Board.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

50-1-102. Legal adviser to department.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "adviser to the department" for "adviser to the board and department"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-1-103. Enforcement of public health laws.

Compiler's Comments

1995 Amendment: Chapter 546 in (2), in two places, substituted "administered by the department" for "administered by the board or the department" or "administered by the board or department". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-1-104. General penalty.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "adopted by the department" for "adopted by the board or the department"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-1-105. Policy — purpose.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

50-1-106. Collaboration and relationships within public health system.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

50-1-111. Asbestos disease account.

Compiler's Comments

Preamble: The preamble attached to Ch. 601, L. 2005, provided: "WHEREAS, hundreds of residents of Lincoln County, Montana, have been diagnosed with chronic asbestos-related diseases due to exposure to vermiculite from the Zonolite Mountain mine that was contaminated with tremolite asbestos, and this number continues to rise as more individuals are diagnosed; and

WHEREAS, these individuals, and many more, either now or in the future will need assistance both with paying medical expenses that are not covered by insurance and in meeting their own basic human needs due to the debilitating nature of asbestos-related diseases; and

WHEREAS, by providing case management and personal care assistance, many of these individuals will better utilize federal and private health care and social programs and be able to remain in their homes, creating savings to the state and county; and

WHEREAS, these individuals suffer from asbestos-related negative health impacts through no fault of their own; and

WHEREAS, there is still no permanent source of funding for medical and psychosocial care for Lincoln County asbestos patients, as the medical plan currently funded by W.R. Grace is voluntary and unregulated and federal grant funding that is currently paying for asbestos patient services is unlikely to be renewed; and

WHEREAS, there is currently no cure for either asbestosis or mesothelioma, and it is likely that autoimmune diseases, including rheumatoid arthritis and lupus, will be found to be linked to tremolite asbestos exposure, and there is no cure for these diseases either; and

WHEREAS, the unmet medical and social needs of asbestos patients in Lincoln County are disproportionate to the community's size and ability to meet these needs from county funds."

Effective Date: Section 4, Ch. 601, L. 2005, provided that this section is effective July 1, 2005.

50-1-115. Special revenue account — statutory appropriation.

Compiler's Comments

2021 Amendment: Chapter 548 in (2)(a) inserted reference to 50-1-117; and made minor changes in style. Amendment effective June 30, 2021.

Severability: Section 7, Ch. 548, L. 2021, was a severability clause.

Effective Date: Section 5, Ch. 291, L. 2015, provided that this section is effective July 1, 2015.

Termination: Section 6, Ch. 291, L. 2015, provided that this section terminates June 30, 2021.

50-1-116. Definitions.

Compiler's Comments

Effective Date: Section 8, Ch. 548, L. 2021, provided: "[This act] is effective June 30, 2021."

Severability: Section 7, Ch. 548, L. 2021, was a severability clause.

50-1-117. Prioritizations of public funds to health care entities — restrictions.

Compiler's Comments

Effective Date: Section 8, Ch. 548, L. 2021, provided: "[This act] is effective June 30, 2021."

Severability: Section 7, Ch. 548, L. 2021, was a severability clause.

50-1-118. Effect on appropriations.

Compiler's Comments

Effective Date: Section 8, Ch. 548, L. 2021, provided: "[This act] is effective June 30, 2021."

Applicability: Section 9, Ch. 548, L. 2021, provided: "[Section 3] [50-18-118] applies to Title X grant funds received after March 31, 2022."

Severability: Section 7, Ch. 548, L. 2021, was a severability clause.

50-1-119. Behavioral health system for future generations fund.

Compiler's Comments

Effective Date: Section 15, Ch. 739, L. 2023, provided that this section is effective on passage and approval. Approved May 22, 2023.

Part 2

Department

50-1-202. General powers and duties.

Compiler's Comments

Preamble: The preamble attached to Ch. 300, L. 2013, provided: "WHEREAS, current Montana law contains a complex food code with jurisdiction spread between multiple departments and levels of government; and

WHEREAS, there is a growing movement to support locally sourced and community-based food production, sometimes referred to as "cottage food", which benefits local communities, small businesses, public health, and environmental sustainability; and

WHEREAS, numerous states have passed laws that allow small business entrepreneurs to use their home kitchens to prepare for sale foods that are not potentially hazardous, while Montana has not; and

WHEREAS, new federal rules and regulations under the Food Safety Modernization Act will require updates to Montana food safety laws."

Montana Food Policy Modernization Project — Guidelines: Section 1, Ch. 300, L. 2013, required the departments of public health and human services, agriculture, and livestock to coordinate and conduct a project to assess Montana's food laws and develop a report for the economic affairs interim committee, including any proposed legislation for the 2015 legislature. Chapter 300 was effective April 25, 2013, and terminates June 30, 2014, or upon completion of the duties described in the chapter, whichever occurs first.

Preamble: The preamble attached to Ch. 415, L. 2009, provided: "WHEREAS, Montana law gives local public health agencies the authority and responsibility to undertake efforts to protect the public health and educate the public on health-related issues; and

WHEREAS, funding for local public health agencies varies widely across the state because of variations in local funding resources; and

WHEREAS, the National Association of County and City Health Officials, American Public Health Association, National Association of Local Boards of Health, and Association of State and Territorial Health Officials recognize that local public health agencies across the country are served by a system unique to each agency based on available financial, medical, and other resources; and

WHEREAS, these national public health organizations are developing a national accreditation program to guide the basic activities that local public health agencies should carry out regardless of the makeup of their local health systems."

Pilot Project for Implementing National Public Health Standards: Section 1, Ch. 415, L. 2009, provided: "(1) Subject to available funding, the department of public health and human services shall administer a pilot project to assist local public health agencies, as defined in 50-1-101, with preparing for national accreditation by using nationally recognized public health standards and guidelines that are based on the 10 essential public health services as outlined by the national association of county and city health officials, the centers for disease control and prevention, the public health accreditation board, and other national public health organizations. The public health standards and guidelines include but are not limited to the operational definition of a functional local health department and the national public health performance standards.

(2) The department shall:

(a) develop grant application and review criteria in accordance with this section;

(b) establish protocol, policy, goals, strategies, and timelines for the local public health agencies selected for the pilot project;

(c) establish evaluation criteria for the pilot project;

(d) provide materials and training to pilot project counties; and

(e) complete and submit a final report to the 2011 legislature as provided in 5-11-210.

(3) To the extent that it receives applications that meet grant review criteria established by the department in accordance with this section, the department shall award grants to eight local public health agencies, including a tribal health department. The grant awards must be made, in consultation with the public health system improvement task force established by the department, to:

(a) two local public health agencies in counties with populations of 40,000 or more residents;

(b) one local public health agency in a county with a population of between 20,000 and 40,000 residents;

(c) two local public health agencies in counties with populations of 5,000 to 20,000 residents; and

(d) three local public health agencies in counties with populations of fewer than 5,000 residents.

(4) A local public health agency selected for a grant shall demonstrate, through the application process, how it will use the funds to:

(a) prepare for national accreditation using the types of nationally recognized public health guidelines and standards described in subsection (1);

(b) effectively participate in a self-assessment of the local public health agency's capacity to deliver the 10 essential public health services as outlined in the nationally recognized public health guidelines and standards described in subsection (1);

(c) work with the department and the public health system improvement task force to ensure proper use of the grant, including participation in a process to evaluate the pilot project efforts; and

(d) complete measurement criteria established by the department and the public health system improvement task force.

(5) The department and the public health system improvement task force shall:

(a) serve as a resource for the local public health agencies selected for the pilot project as they prepare for national accreditation using nationally recognized public health standards and guidelines as described in subsection (1). In this capacity, the task force shall participate in:

(i) regularly scheduled conference calls; and

(ii) at least two meetings a year that are held in one of the counties in which the pilot project agencies are located;

(b) ensure that the technical assistance and training needs of the pilot project agencies are met; and

(c) assess the results of the pilot project.

(6) The public health system improvement task force and the pilot project agencies shall report the following information to the appropriate interim committees of the legislature by September 15, 2010:

(a) the estimated costs of becoming accredited agencies through the national accreditation program, based on their experiences in the pilot project, including information that explains how the costs were determined;

(b) their assessments of the ability of Montana's local public health agencies serving jurisdictions with varying population sizes in becoming accredited agencies through the national accreditation program, including funding and other resource management issues and challenges they encountered;

(c) suggestions for preparing local public health agencies for national accreditation that are relevant to the populations each pilot project agency serves;

(d) the public health benefits created by the pilot project activities for residents within each pilot project agency's jurisdiction;

(e) how their efforts met the nationally recognized public health standards and guidelines described in subsection (1); and

(f) recommendations for improving the local public health system and creating a sustainable model for local public health agencies in Montana." Effective July 1, 2009.

Allocation of Funds: Section 2, Ch. 415, L. 2009, provided: "(1) If funds are made available for the program in [section 1], then the funds must be allocated as follows:

(a) grants of $25,000 a year in each year of the biennium to each of eight local public health agencies selected as provided in [section 1]; and

(b) $50,000 for the biennium to pay for the department's expenses in administering the grant program, providing technical assistance to the local public health agencies, and reimbursing the costs of travel for members of the public health system improvement task force as provided in 2-18-501 through 2-18-503.

(2) If less than $450,000 is available for the program provided for in [section 1], then the funding must be prorated on the basis of the allocations in subsection (1)." Effective July 1, 2009.

2007 Amendment: Chapter 150 inserted (1) concerning collaboration; inserted (1)(a) concerning inspections and written orders; deleted former (1) that read: "(1) shall study conditions affecting the citizens of the state by making use of birth, death, and sickness records"; in (1)(b) at beginning deleted "shall make investigations", near middle substituted "other conditions" for "improvement", and at end substituted "importance" for "to persons, groups, or the public"; in (1)(c) substituted "accept funds for and" for "shall"; inserted (1)(d) through (1)(o) concerning conditions of public health importance, efforts to develop and fund programs or initiatives that identify and ameliorate health problems, training for members of the public health workforce, actions necessary to abate, restrain, or prosecute the violation of public health laws and rules, advising state agencies on matters relating to public buildings and facilities, activities for the protection and improvement of oral health, rules setting standards for the operation of programs to protect the health of mothers and children, health education programs, consultation to school and local public health personnel, rules setting standards for a program to provide services to children with special health care needs, consultation to local boards of health, and agreements with tribal entities; deleted former (4) through (17) that read: "(4) shall inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4), shall submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) shall advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) shall develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(8) shall develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) shall conduct health education programs;

(10) shall provide consultation to school and local community health nurses in the performance of their duties;

(11) shall consult with the superintendent of public instruction on health measures for schools;

(12) shall develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

(13) shall provide consultation to local boards of health;

(14) shall bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) shall accept and expend federal funds available for public health services;

(16) must have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) shall adopt rules imposing fees for the tests and services performed by the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services"; in (1)(p) at beginning deleted "shall"; in (1)(p)(i) at end inserted "and other conditions of public health importance"; inserted (1)(p)(ii) concerning fees; inserted (1)(p)(v) concerning public health requirements for school sites; in (1)(q) at beginning deleted "shall enact or" and near middle after "alleviate" substituted "threats to the public health" for "injury"; inserted (2) concerning use of local personnel and other public health services and functions; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 386 deleted former (21) that read: "(21) shall adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 391 in (18) after "regarding" deleted "the definition of communicable diseases and"; inserted (22) requiring the department to take measures to prevent and alleviate injury from the release of biological, chemical, or radiological agents capable of causing imminent infection, disability, or death; and made minor changes in style. Amendment effective April 17, 2003.

1999 Amendment Void: The amendment to this section made by Ch. 508, L. 1999, was rendered void by sec. 12, Ch. 508, L. 1999, a contingent voidness section.

1997 Amendments: Chapter 73 in (17), in first sentence, substituted "department's laboratory" for "laboratory of the department of environmental quality" and in second sentence, after "Fees", deleted "established on an annual basis"; inserted (20) concerning licensing laboratories that conduct analysis of public water systems; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 472 in (12), in introductory clause, substituted "children with disabilities" for "handicapped children".

1995 Amendments: Chapter 324 inserted (20) requiring Department to adopt and enforce minimum sanitation requirements for tattooing, including regulation of premises, equipment, and methods of operation to protect public health and prevent communicable disease; and made minor changes in style.

Chapter 546 in (5) substituted "director of the department of corrections" for "director of corrections and human services"; deleted former (7) that read: "(7) organize laboratory services and provide equipment and personnel for those services"; in (17), at beginning of first phrase, deleted "after consultation with the board" and at end, after "department", inserted "of environmental sciences" (pursuant to sec. 568, Ch. 546, L. 1995, a coordination section, the Code Commissioner substituted "department of environmental quality" for "department of environmental sciences"); and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment Instructions to Code Commissioner: The Code Commissioner changed "director of institutions" to "director of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1989 Amendment: At beginning of (18) inserted "after consultation with the board" and at end of first clause, after "department", deleted "except fees relating to water analysis, which are imposed by the board pursuant to 75-6-103(2)(b)". Amendment effective March 21, 1989.

1983 Amendments: Chapter 230, in (9), substituted "develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act" for former (9), which read: "develop and administer a program to protect the health of mothers and children;"; in (13), substituted "develop, adopt, and administer rules setting standards for a program to provide services to handicapped children, including standards for" for "develop and administer a program for services to handicapped children including diagnosis, medical, surgical, and corrective treatment, and after-care and related services;"; inserted (13)(d) relating to eligibility; in (18), at end of first sentence and in third sentence made the same changes as those made by Ch. 660, which are explained below.

Chapter 281, in (18), inserted "state" before "special revenue fund" at the end of the fourth sentence as that sentence reads after the Ch. 660 amendment.

Chapter 660, in (18), near end of first sentence after "department" inserted exception clause; inserted second sentence requiring fees to reflect actual costs of test or services; in third sentence made minor changes in phraseology; and at the end of the fourth sentence substituted "deposited in the special revenue fund for the use of the department in performing tests and services" for "deposited in the general fund". The changes in the first and third sentences are the same as those made by Ch. 230.

1983 Statement of Intent: Senate Bill 200 (Ch. 230, L. 1983) contained a statement of intent which read: "A statement of intent is required for Senate Bill 200 because it amends Section 50-1-202, MCA, to authorize the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to adopt rules implementing existing programs promoting maternal and child health and providing handicapped children's services.

The Department has since 1967 been mandated to develop and administer maternal and child health programs and handicapped children's services, programs which by their nature require standards to be set for such areas as appropriate medical treatment, eligibility for financial assistance and program participation, and reimbursement for services. Those programs presently include the Women, Infants, and Children (WIC) supplemental food program ensuring proper nutrition for young children and low-income pregnant and nursing women; the Child Care Food Program providing food assistance to children in day care; family planning; the Improved Pregnancy Outcome Project; and the Handicapped Children's Program. In addition, all of the present programs receive federal funding and are subject to federal program requirements which mandate standards be set for fair hearings, property management, etc. The Department has, therefore, had to set the required standards for those programs without having the authority under state law to adopt binding rules for them.

Consequently, it is the intent of the legislature that the Department be expressly authorized to adopt rules covering the following:

1. Eligibility criteria for program participation, e.g. income levels, nutritional status, and age;
2. Criteria which must be met by providers of care as a condition of reimbursement, including professional qualification;
3. Conditions included or excluded for coverage;
4. Policies included in state plans, such as the allocation of funds within a program, evaluation procedures and reporting procedures relating to fiscal and programmatic responsibilities;
5. Standards to ensure quality of care, such as care plans and objectives;
6. Fair hearing procedures;
7. Reimbursement rates;
8. Eligibility standards for food program providers;
9. Property management requirements."

Saving Clause: Section 2, Ch. 230, L. 1983, was a saving clause.

Severability: Section 3, Ch. 230, L. 1983, was a severability clause.

1979 Statement of Intent: The statement of intent adopted with Ch. 219, L. 1979, provided: "A statement of intent is required for this bill because it amends section 50-1-202, MCA, to confirm the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] rulemaking authority regarding communicable diseases and the transportation of dead human bodies.

HB 166 intends that the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] have the authority to require by rule, in accordance with the Montana Administrative Procedure Act, the reporting to public health officials of communicable diseases by persons having knowledge of the occurrence of a case or suspected case, so that appropriate investigations and control measures may be specified and implemented to protect the public health. In addition, the Department shall also have the authority to amend and update existing rules, and to adopt new rules, in accordance with the Montana Administrative Procedure Act, as may be needed to ensure that reporting and methods of control of communicable diseases meet the standards of current, preferred medical and public health practice.

In this same spirit, the Department shall also adopt rules to protect the public against possible communicable hazards of dead human bodies.

By way of illustration, the following categories of rules are examples of topics that need to be addressed:

1. Definitions (For example, the terms carrier, quarantine, immunization, etc. need specific definitions.)
2. Designation of communicable diseases to be reported. (For example, measles, legionnaires disease, influenza, typhoid, etc.)
3. Form and procedure for reporting communicable diseases.
4. Confidentiality and access to records.
5. Types of quarantine and isolation.
6. Procedures for establishing and removing quarantine.
7. Conduct of transport, funeral, and burial of dead human bodies.
8. Specific control measures for specific diseases (for example, control measures for measles would be different from dysentery.)"

Administrative Rules

Title 37, chapter 8, ARM Records and statistics.
Title 37, chapter 10, ARM Emergency health services.
Title 37, chapter 12, ARM Laboratories.
Title 37, chapter 19, ARM Family planning programs.
Title 37, chapter 21, ARM Documentation and study of abortion.
Title 37, chapter 55, ARM End stage renal disease.
Title 37, chapter 57, ARM Maternal and child health.
Title 37, chapter 59, ARM Special supplemental nutrition program for women, infants, and children.
Title 37, chapter 98, ARM Outdoor behavioral program.
Title 37, chapter 100, ARM Licensure of community residences.
Title 37, chapter 104, ARM Emergency medical services.
Title 37, chapter 106, ARM Health care facilities.
Title 37, chapter 109, ARM Montana Community Health Center Support Act.
Title 37, chapter 110, ARM Food and drug standards.
Title 37, chapter 111, ARM Public accommodations.
Title 37, chapter 112, ARM Body art and cosmetics.
Title 37, chapter 113, ARM Montana Clean Indoor Air Act.
Title 37, chapter 114, ARM Communicable disease control.
Title 37, chapter 115, ARM Pools, spas, and other water features.
Title 37, chapter 116, ARM Dead human bodies.

Case Notes

Inspection of Libby Vermiculite Mine — State's Duty to Miners — Statutory Construction — Release of Inspection Records — Application of Public Duty Doctrine — No Federal Preemption: Several miners who had worked in a vermiculite mine in Libby, Montana, brought suit against the state, claiming that in spite of numerous state inspections beginning in 1956, the state negligently failed to warn the miners that the vermiculite was a carcinogen. The miners claimed that as a result, they developed asbestosis and other diseases and, in some cases, died of their illnesses. The Supreme Court held that: (1) 50-70-105(7) (now repealed) and subsection (2) of this section imposed a duty upon the state to conduct investigations of health conditions and make the resulting written reports available to the public (see 2007 amendment). The Supreme Court traced the predecessors of the statutes and, applying the statutory construction rule of the "last antecedent" and citing State ex rel. Peck v. Anderson, 92 M 298, 13 P2d 231 (1932), and Butte-Silver Bow Local Gov't v. St., 235 M 398, 768 P2d 327 (1989), interpreted the statutes as providing that the State Board of Health and its successor agencies had a mandatory duty to make investigations of the health conditions at the mine and report the results to the miners, and the fact that these statutes did not specifically mention "mines" or "miners" made no difference. (2) a previous Montana Attorney General opinion, concluding that the reports of the inspections could not be released because a statute (section 69-201-208, R.C.M. 1947) prevented dissemination of private medical records, was a non sequitur and could not be relied upon as a basis for keeping the results of the workplace investigations by the Board of Health confidential; (3) because there is a "special relationship", as required in Nelson v. Driscoll, 1999 MT 193, 295 M 363, 983 P2d 972 (1999), between the State of Montana and the miners, the public duty doctrine, as discussed in Nelson, does not shield the state in its responsibility to conduct the inspections for the miners. The doctrine does not shield the state because the statutes requiring the inspections of the workplace and dissemination of the results of the inspections treat the miners as a special class of persons to whom the state owes a duty, the state undertook numerous inspections of the mine and those inspections qualify as "specific actions to protect a person", as required by Nelson, and according to affidavits filed by the miners, the miners relied on those inspections and the state to shield them from occupational diseases. (4) federal law, particularly the Federal Metal and Non-metallic Mine Safety Act (FMNMSA), did not preempt the Montana state statutes imposing a duty upon the state because there were no federal statutes governing occupational diseases before 1966 and after that date, the FMNMSA and amendments to it applied, which, by their very terms in 30 U.S.C. 738(a), expressly did not supersede state law. In its evaluation of the federal preemption issue, the Supreme Court cited Sleath v. West Mont Home Health Serv., Inc., 2000 MT 381, 304 M 1, 16 P3d 1042 (2000), and Favel v. Am. Renovation & Constr. Co., 2002 MT 266, 312 M 285, 59 P3d 412 (2002). Orr v. St., 2004 MT 354, 324 M 391, 106 P3d 100 (2004).

Attorney General's Opinions

No Authority for Board to Require Fluoridation: The Montana State Board of Health (duties transferred to Department of Public Health and Human Sciences) does not have legal authority to require fluoridation of municipal water supplies. 33 A.G. Op. 16 (1970).

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-1-203. Public health inspections.

Compiler's Comments

1999 Amendment Void: The amendment to this section made by Ch. 508, L. 1999, was rendered void by sec. 12, Ch. 508, L. 1999, a contingent voidness section.

1995 Amendment: Chapter 383 in first sentence of (1) substituted "may" for "shall" and substituted "public health inspections" for "sanitary inspections", at beginning of second sentence substituted "If public health deficiencies are found in the facility" for "If the facility is found unsanitary" and substituted "may" for "shall", and deleted third sentence that read: "If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance"; and in (2), near beginning, substituted "may" for "shall", after "action" inserted "including an action for injunctive relief", and at end substituted "public health deficiencies" for "unsanitary conditions in the way provided by law for abating a public nuisance".

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-1-204. Quarantine and isolation measures.

Compiler's Comments

2003 Amendment: Chapter 391 in first sentence after "quarantine" inserted "or isolation" and after "measures" deleted "against a state, county, or municipality"; and made minor changes in style. Amendment effective April 17, 2003.

1987 Amendment: In last sentence, after "fines", inserted "except justice's court fines".

Administrative Rules

Title 37, chapter 114, ARM Communicable disease control.

Attorney General's Opinions

Public Schools — Quarantines: The Department of Health and Environmental Sciences (now Department of Public Health and Human Services) has the power to stem the outbreak of communicable disease by imposing a quarantine on a particular school. 37 A.G. Op. 132 (1978).

50-1-206. Regulation of schools in matters of health.

Administrative Rules

Title 37, chapter 111, subchapter 8, ARM Public accommodations — schools.

50-1-207. Nonopioid alternatives to opioid prescriptions — educational materials.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

50-1-210. Licensing of laboratories.

Compiler's Comments

Effective Date: Section 14, Ch. 73, L. 1997, provided: "[This act] is effective July 1, 1997."

Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.

Title 37, chapter 12, subchapter 3, ARM Licensure of laboratories conducting analyses of public water supplies.

CHAPTER 2
LOCAL BOARDS OF HEALTH

Part 1
General Provisions

Part Compiler's Comments

Preamble: The preamble attached to Ch. 415, L. 2009, provided: "WHEREAS, Montana law gives local public health agencies the authority and responsibility to undertake efforts to protect the public health and educate the public on health-related issues; and

WHEREAS, funding for local public health agencies varies widely across the state because of variations in local funding resources; and

WHEREAS, the National Association of County and City Health Officials, American Public Health Association, National Association of Local Boards of Health, and Association of State and Territorial Health Officials recognize that local public health agencies across the country are served by a system unique to each agency based on available financial, medical, and other resources; and

WHEREAS, these national public health organizations are developing a national accreditation program to guide the basic activities that local public health agencies should carry out regardless of the makeup of their local health systems."

Pilot Project for Implementing National Public Health Standards: Section 1, Ch. 415, L. 2009, provided: "(1) Subject to available funding, the department of public health and human services shall administer a pilot project to assist local public health agencies, as defined in 50-1-101, with preparing for national accreditation by using nationally recognized public health standards and guidelines that are based on the 10 essential public health services as outlined by the national association of county and city health officials, the centers for disease control and prevention, the public health accreditation board, and other national public health organizations. The public health standards and guidelines include but are not limited to the operational definition of a functional local health department and the national public health performance standards.

(2) The department shall:

(a) develop grant application and review criteria in accordance with this section;

(b) establish protocol, policy, goals, strategies, and timelines for the local public health agencies selected for the pilot project;

(c) establish evaluation criteria for the pilot project;

(d) provide materials and training to pilot project counties; and

(e) complete and submit a final report to the 2011 legislature as provided in 5-11-210.

(3) To the extent that it receives applications that meet grant review criteria established by the department in accordance with this section, the department shall award grants to eight local public health agencies, including a tribal health department. The grant awards must be made, in consultation with the public health system improvement task force established by the department, to:

(a) two local public health agencies in counties with populations of 40,000 or more residents;

(b) one local public health agency in a county with a population of between 20,000 and 40,000 residents;

(c) two local public health agencies in counties with populations of 5,000 to 20,000 residents; and

(d) three local public health agencies in counties with populations of fewer than 5,000 residents.

(4) A local public health agency selected for a grant shall demonstrate, through the application process, how it will use the funds to:

(a) prepare for national accreditation using the types of nationally recognized public health guidelines and standards described in subsection (1);

(b) effectively participate in a self-assessment of the local public health agency's capacity to deliver the 10 essential public health services as outlined in the nationally recognized public health guidelines and standards described in subsection (1);

(c) work with the department and the public health system improvement task force to ensure proper use of the grant, including participation in a process to evaluate the pilot project efforts; and

(d) complete measurement criteria established by the department and the public health system improvement task force.

(5) The department and the public health system improvement task force shall:

(a) serve as a resource for the local public health agencies selected for the pilot project as they prepare for national accreditation using nationally recognized public health standards and guidelines as described in subsection (1). In this capacity, the task force shall participate in:

(i) regularly scheduled conference calls; and

(ii) at least two meetings a year that are held in one of the counties in which the pilot project agencies are located;

(b) ensure that the technical assistance and training needs of the pilot project agencies are met; and

(c) assess the results of the pilot project.

(6) The public health system improvement task force and the pilot project agencies shall report the following information to the appropriate interim committees of the legislature by September 15, 2010:

(a) the estimated costs of becoming accredited agencies through the national accreditation program, based on their experiences in the pilot project, including information that explains how the costs were determined;

(b) their assessments of the ability of Montana's local public health agencies serving jurisdictions with varying population sizes in becoming accredited agencies through the national accreditation program, including funding and other resource management issues and challenges they encountered;

(c) suggestions for preparing local public health agencies for national accreditation that are relevant to the populations each pilot project agency serves;

(d) the public health benefits created by the pilot project activities for residents within each pilot project agency's jurisdiction;

(e) how their efforts met the nationally recognized public health standards and guidelines described in subsection (1); and

(f) recommendations for improving the local public health system and creating a sustainable model for local public health agencies in Montana." Effective July 1, 2009.

Allocation of Funds: Section 2, Ch. 415, L. 2009, provided: "(1) If funds are made available for the program in [section 1], then the funds must be allocated as follows:

(a) grants of $25,000 a year in each year of the biennium to each of eight local public health agencies selected as provided in [section 1]; and

(b) $50,000 for the biennium to pay for the department's expenses in administering the grant program, providing technical assistance to the local public health agencies, and reimbursing the costs of travel for members of the public health system improvement task force as provided in 2-18-501 through 2-18-503.

(2) If less than $450,000 is available for the program provided for in [section 1], then the funding must be prorated on the basis of the allocations in subsection (1)." Effective July 1, 2009.

50-2-104. County boards of health.

Compiler's Comments

1999 Amendment: Chapter 163 at beginning of (1)(b) before "five persons" inserted "a minimum of"; and made minor changes in style. Amendment effective October 1, 1999.

Case Notes

Constitutionality of Former Sections — Rulemaking: Section 69-809, R.C.M. 1947 (now repealed), giving full-time County and District Boards of Health power to enact rules, was unconstitutional as invalid delegation of legislative power; section 69-813, R.C.M. 1947 (now repealed), setting forth a penalty for violation of act or rules thereunder, was unconstitutional insofar as it applied to rules promulgated under section 69-809, R.C.M. 1947 (now repealed). Bacus v. Lake County, 138 M 69, 354 P2d 1056 (1960).

Political Subdivisions: Under section 69-805, R.C.M. 1947 (now repealed), authorizing adjacent counties and first-class cities located therein to form a district health unit, the counties themselves were still the political subdivisions of the state that entered into cooperative measure. Bacus v. Lake County, 138 M 69, 354 P2d 1056 (1960).

Abatement of Nuisances: County health officer had no power to take steps for abatement of nuisances or removal of sources of filth and to incur expense in connection therewith without prior authorization from County Health Board. Pue v. County of Lewis and Clark, 75 M 207, 243 P 573 (1926).

Attorney General's Opinions

Local Health Boards Required to Inspect Food Establishments and Participate in Enforcement: In light of clear statutory provisions that place a mandatory duty upon a local health board and its officer to participate in inspection and enforcement of health laws regarding food establishments, the discretionary language of 50-50-305 simply allows an inspection program to be more accountable by permitting the Department to restrict funds going to the local board if it is not a functioning board or if it is not conducting inspections or enforcing legal provisions in a satisfactory manner. The language does not imply that the inspection and enforcement duties are discretionary. Therefore, local boards of health are required to inspect food establishments and to participate in enforcing state laws that govern those establishments. 46 A.G. Op. 3 (1995).

District Boards of Health — Formation and Insurance — County Attorney Not Legal Advisor: A District Board of Health formed pursuant to 50-2-107 stands in place of the County Board of Health in those counties that formed the District Board of Health. Once a county joins a District Board of Health, there is no need for the county to maintain a County Board of Health. The District Board of Health has the responsibility of providing its own legal advisor because there is no specific statutory mandate that the County Attorney act as legal advisor to the District Board of Health. The counties creating a District Board of Health are responsible for providing liability insurance for their District Board of Health. 41 A.G. Op. 22 (1985).

50-2-105. City boards of health.

Attorney General's Opinions

Interlocal Cooperation Agreements: Since cities may provide for a Board of Health and each county has a Board of Health and notwithstanding the fact that cities other than first- and second-class cities cannot participate in district boards, all cities and counties may enter into contracts for the provision of common services. 35 A.G. Op. 48 (1973).

Only First- and Second-Class Cities Required to Have Boards of Health: This section requires only first- and second-class cities to establish city Boards of Health. Other classes of cities are not required to establish Boards. They are authorized to do so by 7-31-4101. 35 A.G. Op. 48 (1973).

50-2-106. City-county boards of health.

Compiler's Comments

1999 Amendment: Chapter 47 in (1) after "governing body of the city" inserted "or cities" and after "county and a" deleted "first- or second-class"; in (4) near middle after "governing body of the city" inserted "or cities"; and made minor changes in style. Amendment effective October 1, 1999.

Case Notes

Local Board of Health Not Considered Governing Body Despite Interlocal Agreement: Despite the fact that a county board of health was created by interlocal agreement, the District Court erred in concluding that a local board of health is considered a governing body by definition under 76-3-103. The Montana Subdivision and Platting Act does not, under 76-3-501 and 76-3-504, authorize local boards of health to adopt and enforce regulations governing sanitation in subdivisions, regardless of size. The authority of a local board of health to regulate subdivisions derives from 50-2-116, not from the Montana Subdivision and Platting Act. Skinner Enterprises, Inc. v. Lewis & Clark County Bd. of Health, 286 M 256, 950 P2d 733, 54 St. Rep. 1398 (1997).

Review, Not Regulatory, Function Applicable to Local Board of Health Control of Minor Subdivision: This section, when read in conjunction with 76-4-104, does not authorize a local board of health to regulate sanitation in minor subdivisions containing five or fewer parcels. By its plain language, 76-4-104 delegates to local boards of health the power to review select subdivisions but not the power to promulgate regulations. As a reviewing authority, the board's function is limited to reviewing the proposed water supply, sewage, and solid waste disposal facilities and advising the Department of Environmental Quality of its recommendation for approval or disapproval of the subdivision. However, 50-2-116 explicitly authorizes a local board of health to regulate sewage control and disposal that is not regulated by the Montana Subdivision and Platting Act. The Act limits state sanitation regulation to subdivisions containing parcels of fewer than 20 acres each and precludes regulation of subdivisions in which each parcel of land contains more than 20 acres. Thus, the regulation of sanitation in subdivisions containing parcels of more than 20 acres each is clearly the responsibility of local boards of health. Nevertheless, 76-4-122 requires both state and local approval before filing a subdivision plat with the County Clerk and Recorder, and to hold that approval by the local board of health is a ministerial, nondiscretionary act would render 76-4-122 inoperative. Giving effect to the purpose of all the applicable statutes and examining the legislative history of 50-2-116, the Supreme Court held that the 1991 enactment of 50-2-116(1)(i) revealed a legislative intent to expand, rather than diminish, the authority of local boards of health to regulate subdivision sanitation. Thus, local boards of health have discretionary statutory authority to regulate all subdivisions, regardless of size, notwithstanding the state's authority to regulate certain subdivisions under the Montana Subdivision and Platting Act. Skinner Enterprises, Inc. v. Lewis & Clark County Bd. of Health, 286 M 256, 950 P2d 733, 54 St. Rep. 1398 (1997).

Attorney General's Opinions

Setting of Compensation for Health Board Employees — Approval Required: A city-county health board may not set the level of compensation of board employees without the approval of the Board of County Commissioners and of the governing body of the city. 47 A.G. Op. 11 (1998). See also 38 A.G. Op. 35 (1979).

Interlocal Cooperation Agreements: Since cities may provide for a Board of Health and each county has a Board of Health and notwithstanding the fact that cities other than first- and second-class cities cannot participate in district boards, all cities and counties may enter into contracts for the provision of common services. (See 1999 amendment.) 35 A.G. Op. 48 (1973).

Only First- and Second-Class Cities Required to Have Boards of Health: Section 50-2-105 requires only first- and second-class cities to establish city Boards of Health. Other classes of cities are not required to establish Boards. They are authorized to do so by 7-31-4101. (See 1999 amendment.) 35 A.G. Op. 48 (1973).

50-2-107. District boards of health.

Attorney General's Opinions

District Boards of Health — Formation and Insurance — County Attorney Not Legal Advisor: A District Board of Health formed pursuant to this section stands in place of the County Board of Health in those counties that formed the District Board of Health. Once a county joins a District Board of Health, there is no need for the county to maintain a County Board of Health. The District Board of Health has the responsibility of providing its own legal advisor because there is no specific statutory mandate that the County Attorney act as legal advisor to the District Board of Health. The counties creating a District Board of Health are responsible for providing liability insurance for their District Board of Health. 41 A.G. Op. 22 (1985).

Interlocal Cooperation Agreements: Since cities may provide for a Board of Health and each county has a Board of Health and notwithstanding the fact that cities other than first- and second-class cities cannot participate in district boards, all cities and counties may enter into contracts for the provision of common services. (See 1999 amendment to 50-2-106.) 35 A.G. Op. 48 (1973).

Only First- and Second-Class Cities Required to Have Boards of Health: Section 50-2-105 requires only first- and second-class cities to establish city Boards of Health. Other classes of cities are not required to establish Boards. They are authorized to do so by 7-31-4101. (See 1999 amendment to 50-2-106.) 35 A.G. Op. 48 (1973).

50-2-108. Financing of local boards — inspection fund.

Compiler's Comments

1983 Enactment — Amendment: Subsection (2) was enacted as a separate section by sec. 4, Ch. 336; it is codified with this section for convenience.

Chapter 281, in (2), substituted "state special revenue fund" for "earmarked revenue fund".

50-2-109. County board appropriations.

Compiler's Comments

2015 Amendment: Chapter 55 at end substituted "part 40" for "part 23". Amendment effective October 1, 2015.

50-2-111. City-county board appropriations.

Compiler's Comments

2005 Amendment: Chapter 453 deleted former (2)(e) that read: "(e) The levies authorized by this subsection (2) are in addition to all other levies authorized by law." Amendment effective July 1, 2005.

2003 Amendment: Chapter 114 in (2)(c) removed brackets from around word "value" because the word was inadvertently omitted by Ch. 574, L. 2001, and was inserted in brackets during the 2001 codification process. Amendment effective October 1, 2003.

2001 Amendment: Chapter 574 in (2)(b) near beginning of first sentence after "financed by a" substituted "levy on the taxable value of all taxable property" for "special levy of not more than

5 mills on the taxable valuation of all property" and near beginning of second sentence before "levy" deleted "5-mill"; in (2)(c) after "financed by a" substituted "levy on the taxable [value] of all taxable property" for "special levy of not more than 5 mills on the taxable valuation of all property"; in (2)(e) before "levies" deleted "special"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 in (2)(b) and (2)(c) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendment: Chapter 83 at beginning of (2)(a) deleted "In first- and second-class counties"; and made minor changes in style. Amendment effective July 1, 1997.

Attorney General's Opinions

Setting of Compensation for Health Board Employees — Approval Required: A city-county health board may not set the level of compensation of board employees without the approval of the Board of County Commissioners and of the governing body of the city. 47 A.G. Op. 11 (1998). See also 38 A.G. Op. 35 (1979).

Effect of Property Tax Freeze on City-County Board Appropriations and Special Mill Levy: If the conditions in 15-10-412(11)(b)(i) (now repealed) are met, the limits on the amount of taxes that may be levied, as established in Title 15, ch. 10, do not apply to either the special 1-mill levy under 50-2-114 (now repealed) or the special 5-mill levy under this section (see 2001 amendment). 45 A.G. Op. 25 (1994).

50-2-116. Powers and duties of local boards of health.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 166, L. 2023. Amendment effective October 1, 2023.

2021 Amendments — Composite Section — Coordination — Code Commissioner Correction: Chapter 324 in (1)(j) in middle of second sentence after "promulgated by the" substituted "department of environmental quality" for "board of environmental review" and near end of second sentence substituted "department of environmental quality" for "department". Amendment effective July 1, 2021.

Chapter 408 in (1) at beginning inserted an exception clause; in (1)(a) at beginning substituted "recommend to the governing body the appointment" for "appoint and fix the salary"; deleted (1)(c) mandating to the board to employ qualified staff; in (1)(j) near beginning substituted "propose for adoption by the local governing body" for "adopt"; in (2)(b) and (2)(c) at beginning substituted "propose for adoption by the local governing body" for "adopt"; inserted (2)(d) allowing the board to adopt rules to implement regulations; inserted (4) concerning a directive, mandate, or order issued in response to a declaration of emergency; inserted (5) placing restrictions on regulations that apply to an entire jurisdictional area; inserted (6) and (7) providing that prohibitions do not apply in certain cases; inserted (8) defining private business; and made minor changes in style. Amendment effective May 7, 2021.

The amendments made to this section by sec. 2, Ch. 204, L. 2021, and sec. 8, Ch. 408, L. 2021, were replaced by sec. 12, Ch. 408, L. 2021, a coordination section.

The Code Commissioner inserted brackets around "10-3-302 and" in (4) to reflect the repeal of that section by sec. 13, Ch. 504, L. 2021.

Retroactive Applicability: Section 17, Ch. 408, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to local ordinances, resolutions, orders, regulations, mandates, directives, programs, and plans enacted, adopted, or in force on or after May 1, 2021."

2017 Amendment: Chapter 28 in (2)(c) inserted reference to 50-50-126; and made minor changes in style. Amendment effective February 17, 2017.

2013 Amendment: Chapter 195 in (1)(k) inserted last sentence concerning water well drilling regulations. Amendment effective October 1, 2013.

Saving Clause: Section 5, Ch. 195, L. 2013, was a saving clause.

2007 Amendment: Chapter 150 substituted (1) concerning local board of health collaboration for "Local boards shall"; in (1)(a) after "appoint" inserted "and fix the salary of"; in (1)(a)(iii) substituted "equivalent education and experience" for "equivalent and with appropriate experience" and at end deleted "and shall fix the health officer's salary"; in (1)(c) after "employ" deleted "necessary"; substituted (1)(f) concerning conditions of public health importance for former text that read: "supervise destruction and removal of all sources of filth that cause disease"; substituted (1)(g) concerning communicable disease and other conditions of public health importance for "guard against the introduction of communicable disease"; substituted (1)(h) concerning inspections for "supervise inspections of public establishments for sanitary conditions"; inserted (1)(i) concerning actions and orders; inserted (1)(j) concerning administrative liaison; in (1)(k) near end of first sentence after "buildings" inserted "and facilities"; deleted former (2)(a) through (2)(d) that read: "(a) adopt and enforce isolation and quarantine measures to prevent the spread of communicable diseases;

(b) furnish treatment for persons who have communicable diseases;

(c) prohibit the use of places that are infected with communicable diseases;

(d) require and provide means for disinfecting places that are infected with communicable diseases"; in (2)(a) at end inserted "or entities"; deleted former (2)(f) through (2)(h) that read: "(f) contract with another local board for all or a part of local health services;

(g) reimburse local health officers for necessary expenses incurred in official duties;

(h) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules"; in (2)(b) at end inserted "and facilities" and deleted former second sentence that read: "The fees must be deposited with the county treasurer"; in (2)(c) substituted "regulations" for "rules"; in (2)(c)(iii) after "50-2-130" substituted "for" for "on", after "public" inserted "and private", after "buildings" inserted "and facilities", and at end inserted "and for the maintenance of sewage treatment systems that do not discharge effluent directly into state water and that are not required to have an operating permit as required by rules adopted under 75-5-401"; deleted former (2)(j)(iv) and (2)(j)(v) that read: "(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and

(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401"; in (2)(c)(iv) after "chapter 48" substituted "for tattooing and body-piercing establishments and" for "adopt necessary regulations"; in (2)(c)(v) at beginning deleted "adopt regulations"; inserted (2)(c)(vi) concerning implementation of public health laws; inserted (2)(d) concerning cooperation and collaborative agreements; inserted (3) concerning public health services and functions; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 386 in (2)(k) substituted text authorizing local boards, subject to 50-2-130 and Title 50, chapter 48, to adopt regulations that are not less stringent than state standards for tattooing and body-piercing establishments for former (2)(j)(vi) that read: "(vi) for the regulation, as necessary, of the practice of tattooing, which may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant to 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 391 in (2)(a) at beginning inserted "adopt and enforce isolation and" and after "quarantine" substituted "measures to prevent the spread of" for "persons who have"; deleted former (2)(b) that read: "(b) require isolation of persons or things that are infected with communicable diseases"; and made minor changes in style. Amendment effective April 17, 2003.

1999 Amendment: Chapter 137 inserted (2)(l) providing for adoption of regulations for establishment of institutional controls; and made minor changes in style. Amendment effective March 23, 1999.

1995 Amendments: Chapter 324 inserted (2)(k)(vi) authorizing local boards to adopt rules compatible with Department rules to regulate the practice of tattooing; and made minor changes in style.

Chapter 418 in (1)(i), in first full sentence, substituted "board of environmental review" for "board of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 471 at beginning of (1)(i), (2)(k)(iii), and (2)(k)(v) inserted "subject to the provisions of 50-2-130". Amendment effective April 14, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Applicability: Section 22(3), Ch. 471, L. 1995, provided: "(3) [This act] does not apply to the establishment of fees or public participation requirements."

1991 Amendment: Inserted (1)(i) requiring a local board to adopt regulations pertaining to control and disposal of sewage from certain public and private buildings; in (2)(j), before "fees", deleted "regulations and", after "fees" inserted "to administer regulations", and after "buildings" deleted "not currently connected to any municipal system"; in (2)(k)(v) deleted local board option for the adoption of rules for control and disposal of sewage from private and public buildings and before "treatment" inserted "sewage"; and made minor changes in style.

Applicability: Section 3, Ch. 479, L. 1991, provided: "[This act] applies to proceedings begun after October 1, 1991."

1985 Amendment: Inserted (2)(k)(v) relating to control and disposal of sewage from private and public buildings and maintenance of treatment systems not discharging into state waters.

Administrative Rules

Title 37, chapter 114, ARM Communicable disease control.

Case Notes

Failure to Exhaust Administrative Remedies — Petition for Writ of Mandate Properly Quashed: The plaintiff filed a petition for a writ of mandate to allow him to install a septic system on a flood plain after the new county sanitarian voided his previously issued permit. The District Court quashed the petition. On appeal, the Supreme Court affirmed, holding that the plaintiff was not entitled to mandamus relief and that he had failed to exhaust administrative remedies, which included appealing to the Department of Environmental Quality. Boehm v. Park County, 2018 MT 165, 392 Mont. 72, 421 P.3d 789.

Local Board of Health Not Considered Governing Body Despite Interlocal Agreement: Despite the fact that a county board of health was created by interlocal agreement, the District Court erred in concluding that a local board of health is considered a governing body by definition under 76-3-103. The Montana Subdivision and Platting Act does not, under 76-3-501 and 76-3-504, authorize local boards of health to adopt and enforce regulations governing sanitation in subdivisions, regardless of size. The authority of a local board of health to regulate subdivisions derives from this section, not from the Montana Subdivision and Platting Act. Skinner Enterprises, Inc. v. Lewis & Clark County Bd. of Health, 286 M 256, 950 P2d 733, 54 St. Rep. 1398 (1997).

No Mandatory Application of Wastewater Treatment Regulation by Local Board of Health: Under 76-3-501, review and approval or disapproval of a subdivision under the Montana Subdivision and Platting Act may occur only under regulations in effect at the time that an application is submitted to the governing body. The Lewis and Clark County Commission approved the Green Acres subdivision in July 1990, at which time the Lewis and Clark County Board of Health's onsite wastewater treatment regulations mandated shallow standard treatment systems, rather than the present regulation requiring intermittent sand filters. Skinner Enterprises, Inc., argued that the 1990 regulation should be applied pursuant to 76-3-501. However, local boards of health derive authority to regulate subdivisions from this section, not from the Montana Subdivision and Platting Act. Therefore, the local board's own onsite wastewater treatment regulations did not obligate the local board to apply the 1990 regulation. Further, 50-2-130 allows local boards of health to promulgate regulations that are more stringent than comparable state regulations, notwithstanding the provisions of 7-1-113 prohibiting a local government from exercising any power inconsistent with state law or administrative regulations. The facts regarding whether shallow-capped drainfields or intermittent sand filters are considered more stringent were not the subject of the present appeal. The discretionary authority of the local board of health to regulate subdivision sanitation by requiring intermittent sand filters was affirmed. Skinner Enterprises, Inc. v. Lewis & Clark County Bd. of Health, 286 M 256, 950 P2d 733, 54 St. Rep. 1398 (1997).

Review, Not Regulatory, Function Applicable to Local Board of Health Control of Minor Subdivision: Section 50-2-106, when read in conjunction with 76-4-104, does not authorize a local board of health to regulate sanitation in minor subdivisions containing five or fewer parcels. By its plain language, 76-4-104 delegates to local boards of health the power to review select subdivisions but not the power to promulgate regulations. As a reviewing authority, the board's function is limited to reviewing the proposed water supply, sewage, and solid waste disposal facilities and advising the Department of Environmental Quality of its recommendation for approval or disapproval of the subdivision. However, this section explicitly authorizes a local board of health to regulate sewage control and disposal that is not regulated by the Montana Subdivision and Platting Act. The Act limits state sanitation regulation to subdivisions containing parcels of fewer than 20 acres each and precludes regulation of subdivisions in which each parcel of land contains more than 20 acres. Thus, the regulation of sanitation in subdivisions containing parcels of more than 20 acres each is clearly the responsibility of local boards of health. Nevertheless, 76-4-122 requires both state and local approval before filing a subdivision plat with the County Clerk and Recorder, and to hold that approval by the local board of health is a ministerial, nondiscretionary act would render 76-4-122 inoperative. Giving effect to the purpose of all the applicable statutes and examining the legislative history of this section, the Supreme Court held that the 1991 enactment of subsection (1)(i) of this section revealed a legislative intent to expand, rather than diminish, the authority of local boards of health to regulate subdivision sanitation. Thus, local boards of health have discretionary statutory authority to regulate all subdivisions, regardless of size, notwithstanding the state's authority to regulate certain subdivisions under the Montana Subdivision and Platting Act. Skinner Enterprises, Inc. v. Lewis & Clark County Bd. of Health, 286 M 256, 950 P2d 733, 54 St. Rep. 1398 (1997).

Constitutionality of Former Sections — Rulemaking: Section 69-809, R.C.M. 1947 (now repealed), giving full-time County and District Boards of Health power to enact rules, was unconstitutional as invalid delegation of legislative power; section 69-813, R.C.M. 1947 (now repealed), setting forth a penalty for violation of act or rules thereunder, was unconstitutional insofar as it applied to rules promulgated under section 69-809, R.C.M. 1947 (now repealed). Bacus v. Lake County, 138 M 69, 354 P2d 1056 (1960).

Deputy Health Officer: Section 69-604, R.C.M. 1947 (now repealed), making provision for a local health officer, did not provide for a deputy health officer. Pue v. County of Lewis and Clark, 75 M 207, 243 P 573 (1926).

Attorney General's Opinions

Setting of Compensation for Health Board Employees — Approval Required: A city-county health board may not set the level of compensation of board employees without the approval of the Board of County Commissioners and of the governing body of the city. 47 A.G. Op. 11 (1998). See also 38 A.G. Op. 35 (1979).

Local Health Boards Required to Inspect Food Establishments and Participate in Enforcement: In light of clear statutory provisions that place a mandatory duty upon a local health board and its officer to participate in inspection and enforcement of health laws regarding food establishments, the discretionary language of 50-50-305 simply allows an inspection program to be more accountable by permitting the Department to restrict funds going to the local board if it is not a functioning board or if it is not conducting inspections or enforcing legal provisions in a satisfactory manner. The language does not imply that the inspection and enforcement duties are discretionary. Therefore, local boards of health are required to inspect food establishments and to participate in enforcing state laws that govern those establishments. 46 A.G. Op. 3 (1995).

Regulation of Firearms as Health Ordinance Not Permitted: A city ordinance regulating the discharge of firearms outside the city limits may not be enacted as a health ordinance under this section and enforced pursuant to the extraterritorial powers granted to the mayor by 7-4-4306. 42 A.G. Op. 8 (1987).

District Boards of Health — Licensing Authority: District Boards of Health have statutory authority to license contractors who perform work on sewage disposal systems that are not connected to a municipal sewage system. (See 1991 amendment.) 37 A.G. Op. 177 (1978).

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-2-117. Appointment of local health officer by department when not made by local health board.

Compiler's Comments

1983 Amendment: Throughout section, substituted "local health board" for "county commissioners or governing body of a city".

50-2-118. Powers and duties of local health officers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 166, L. 2023. Amendment effective October 1, 2023.

2021 Amendment — Coordination — Code Commissioner Correction: Chapter 408 in (1) at beginning inserted an exception clause; inserted (2) concerning a directive, mandate, or order issued in response to a declaration of emergency; inserted (3) limiting substance of order; inserted (4) providing that prohibitions do not restrict certain actions; and made minor changes in style. Amendment effective May 7, 2021.

The amendments made to this section by sec. 3, Ch. 204, L. 2021, and sec. 9, Ch. 408, L. 2021, were replaced by sec. 13, Ch. 408, L. 2021, a coordination section.

The Code Commissioner inserted brackets around "10-3-302 and" in (2) to reflect the repeal of that section by sec. 13, Ch. 504, L. 2021.

Retroactive Applicability: Section 17, Ch. 408, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to local ordinances, resolutions, orders, regulations, mandates, directives, programs, and plans enacted, adopted, or in force on or after May 1, 2021."

2007 Amendment: Chapter 150 in introductory clause at beginning inserted "In order to carry out the purpose of the public health system, in collaboration with federal, state, and local partners"; in (1) at end substituted "conditions of public health importance and issue written orders for compliance or for correction, destruction, or removal of the condition" for "sanitary conditions"; deleted former (1)(b) that read: "(b) as directed by the local board, issue written orders for the destruction and removal of filth that might cause disease"; substituted (2) concerning steps to limit contact for former text that read: "with written approval of the department, order buildings or facilities where people congregate closed during epidemics"; in (3) at beginning deleted "on forms provided by the department" and at end substituted "as required by rule" for "each week"; deleted former (1)(e) and (1)(f) that read: "(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) to the department"; in (4) near middle substituted "adopted" for "enacted"; deleted former (1)(h) and (1)(i) that read: "(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of the local health officer's appointment and changes in membership of the local board"; in (5) at beginning substituted "pursue action" for "file a complaint"; deleted former (1)(k) that read: "(k) validate state licenses issued by the department in accordance with chapters 50 through 53 and 57 of this title"; deleted former (2) through (4) that read: "(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician may not act as a physician to anyone"; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendments — Composite Section: Chapter 391 in (1)(g) at beginning deleted "as prescribed by rules adopted by the department" and after "maintain" substituted "quarantine and isolation measures as enacted by the local board of health" for "quarantines"; and made minor changes in style. Amendment effective April 17, 2003.

Chapter 474 in (1)(k) inserted reference to chapter 57; and made minor changes in style. Amendment effective January 1, 2004.

1999 Amendment Void: The amendment to this section made by Ch. 508, L. 1999, was rendered void by sec. 12, Ch. 508, L. 1999, a contingent voidness section.

1991 Amendment: In (1)(k), after "50", substituted "through 53" for "51, and 52". Amendment effective January 1, 1992.

Administrative Rules

Title 37, chapter 110, ARM Food and drug standards.
Title 37, chapter 111, ARM Public accommodations.
Title 37, chapter 113, ARM Montana Clean Indoor Air Act.
Title 37, chapter 114, ARM Communicable disease control.

Case Notes

Abatement of Nuisances: County health officer had no power to take steps for abatement of nuisances or removal of sources of filth and to incur expense in connection therewith without prior authorization from County Health Board. Pue v. County of Lewis and Clark, 75 M 207, 243 P 573 (1926).

Attorney General's Opinions

Local Health Boards Required to Inspect Food Establishments and Participate in Enforcement: In light of clear statutory provisions that place a mandatory duty upon a local health board and its officer to participate in inspection and enforcement of health laws regarding food establishments, the discretionary language of 50-50-305 simply allows an inspection program to be more accountable by permitting the Department to restrict funds going to the local board if it is not a functioning board or if it is not conducting inspections or enforcing legal provisions in a satisfactory manner. The language does not imply that the inspection and enforcement duties are discretionary. Therefore, local boards of health are required to inspect food establishments and to participate in enforcing state laws that govern those establishments. 46 A.G. Op. 3 (1995).

50-2-119. Nursing services.

Attorney General's Opinions

Home Nursing Service Not Authorized by Statute: This section authorizes a local Board of Health only to hire or employ a qualified nurse for nursing services. It does not authorize a Board to establish home nursing service. 33 A.G. Op. 17 (1970).

50-2-120. Assistance from law enforcement officials.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 41 at beginning substituted "A local health officer" for "A state or local health officer". Amendment effective October 1, 2021.

Chapters 41 and 97 deleted last sentence that read: "If the officer does not render the service, the officer is guilty of a misdemeanor and may be removed from office." Chapter 41 amendment effective October 1, 2021. Chapter 97 amendment effective March 26, 2021.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Case Notes

Killing of Rabid Dog: Police officers were not liable to a dog owner for damages when the dog was killed by the officers acting under an emergency quarantine measure that was passed to meet a threatening situation involving rabies. Ruona v. Billings, 136 M 554, 323 P2d 29 (1958).

50-2-121. Removal of diseased prisoner from jail by local health officer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-2-122. Obstructing local health officer in the performance of duties unlawful.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

50-2-123. Compliance order authorized.

Compiler's Comments

2021 Amendment: The amendments made to this section by sec. 10, Ch. 408, L. 2021, were replaced by sec. 15, Ch. 408, L. 2021, a coordination section. Chapter 408 inserted (2) prohibiting the initiation of an order of compliance in certain cases; and made minor changes in style. Amendment effective May 7, 2021.

Retroactive Applicability: Section 17, Ch. 408, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to local ordinances, resolutions, orders, regulations, mandates, directives, programs, and plans enacted, adopted, or in force on or after May 1, 2021."

50-2-124. Penalties for violations.

Compiler's Comments

2021 Amendment — Coordination: Chapter 408 in (1) inserted current language and deleted former text (see 2021 Session Law for former text); inserted (4) concerning civil penalties; inserted (6) defining business entity; and made minor changes in style. Amendment effective May 7, 2021.

The amendments made to this section by sec. 3, Ch. 204, L. 2021, and sec. 11, Ch. 408, L. 2021, were replaced by sec. 14, Ch. 408, L. 2021, a coordination section.

Retroactive Applicability: Section 17, Ch. 408, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to local ordinances, resolutions, orders, regulations, mandates, directives, programs, and plans enacted, adopted, or in force on or after May 1, 2021."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In (4), after "Fines", inserted "except justice's court fines".

1985 Amendment: In (1) increased maximum fine from $50 to $200.

50-2-130. Local regulations no more stringent than state regulations or guidelines.

Compiler's Comments

2021 Amendment — Code Commissioner Correction: Chapter 204 in (1) near middle substituted "may not propose for adoption by the local governing body" for "may not adopt"; and in (2) near beginning substituted "may propose for adoption by the local governing body" for "may adopt". Amendment effective April 16, 2021.

In (1) and (2), the Code Commissioner changed "50-2-116(2)(j), (3)(c)(iii), or (3)(c)(iv)" to "50-2-116(1)(j), (2)(c)(iii), or (2)(c)(iv)" to reflect changes to 50-2-116 made by Ch. 408, L. 2021.

2007 Amendment: Chapter 150 in (1) and (2) near middle substituted "50-2-116(1)(k), (2)(c)(iii), or (2)(c)(iv)" for "50-2-116(1)(i), (2)(j)(iii), (2)(j)(v), or (2)(k)". Amendment effective October 1, 2007.

2005 Amendment: Chapter 386 in (1) and (2) inserted reference to subsection (2)(k) of 50-2-116; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 391 in (1) near middle of first sentence after "50-2-116(1)(i)" substituted "(2)(j)(iii), or (2)(j)(v)" for "(2)(k)(iii), or (2)(k)(v)"; in (2) near beginning of introductory clause after "50-2-116(1)(i)" substituted "(2)(j)(iii), or (2)(j)(v)" for "(2)(k)(iii), or (2)(k)(v)"; and made minor changes in style. Amendment effective April 17, 2003.

Preamble: The preamble attached to Ch. 471, L. 1995, provided: "WHEREAS, the federal government frequently regulates areas that are also subject to state regulation; and

WHEREAS, differing state and federal policy goals and unique state prerogatives frequently result in different levels of regulation, different standards, and different requirements being imposed by state and federal programs covering the same subject matter; and

WHEREAS, Montana must simultaneously move toward reducing redundant and unnecessary regulation that dulls the state's competitive advantage while being ever vigilant in the protection of the public's health, safety, and welfare; and

WHEREAS, Montana's administrative agencies should consider applicable federal standards when adopting, readopting, or amending rules with analogous federal counterparts; and

WHEREAS, Montana's administrative agencies should analyze whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana's citizens; and

WHEREAS, as part of the formal rulemaking process, the public should be advised of the agencies' conclusions about whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana citizens."

1995 Statement of Intent: The statement of intent attached to Ch. 471, L. 1995, provided: "A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences [now board of environmental review], the department of health and environmental sciences [now department of public health and human services], and local units of government in complying with [this act].

The legislature intends that in addition to all requirements imposed by existing law and rules, the board or the department include as part of the initial publication and all subsequent publications of a rule a written finding if the rule in question contains any standards or requirements that exceed the standards or requirements imposed by comparable federal law.

If the rules are more stringent than comparable federal law, the written finding must include but is not limited to a discussion of the policy reasons and an analysis that supports the board's or department's decision that the proposed state standards or requirements protect public health or the environment of the state and that the state standards or requirements to be imposed can mitigate harm to the public health or the environment and are achievable under current technology. The department is not required to show that the federal regulation is inadequate to protect public health. The written finding must also include information from the hearing record regarding the costs to the regulated community directly attributable to the proposed state standard or requirement."

Effective Date: Section 23, Ch. 471, L. 1995, provided that this section is effective on passage and approval. Approved April 14, 1995.

Applicability: Section 22(2) and (3), Ch. 471, L. 1995, provided: "(2) [Sections 4 and 5] [50-2-130 and 76-3-511] apply to local units of government when they attempt to regulate the control and disposal of sewage from private and public buildings.

(3) [This act] does not apply to the establishment of fees or public participation requirements."

Case Notes

No Mandatory Application of Wastewater Treatment Regulation by Local Board of Health: Under 76-3-501, review and approval or disapproval of a subdivision under the Montana Subdivision and Platting Act may occur only under regulations in effect at the time that an application is submitted to the governing body. The Lewis and Clark County Commission approved the Green Acres subdivision in July 1990, at which time the Lewis and Clark County Board of Health's onsite wastewater treatment regulations mandated shallow standard treatment systems, rather than the present regulation requiring intermittent sand filters. Skinner Enterprises, Inc., argued that the 1990 regulation should be applied pursuant to 76-3-501. However, local boards of health derive authority to regulate subdivisions from 50-2-116, not from the Montana Subdivision and Platting Act. Therefore, the local board's own onsite wastewater treatment regulations did not obligate the local board to apply the 1990 regulation. Further, this section allows local boards of health to promulgate regulations that are more stringent than comparable state regulations, notwithstanding the provisions of 7-1-113 prohibiting a local government from exercising any power inconsistent with state law or administrative regulations. The facts regarding whether shallow-capped drainfields or intermittent sand filters are considered more stringent were not the subject of the present appeal. The discretionary authority of the local board of health to regulate subdivision sanitation by requiring intermittent sand filters was affirmed. Skinner Enterprises, Inc. v. Lewis & Clark County Bd. of Health, 286 M 256, 950 P2d 733, 54 St. Rep. 1398 (1997). In early 1998, prior to trial, the Board again amended the onsite wastewater treatment regulations, superseding the 1995 regulations to which Skinner objected. As a result, the legality of the 1995 amendments were no longer of any practical consequence to the parties and Skinner's objections to the process by which the 1995 amendments were adopted were moot and properly dismissed. Skinner Enterprises, Inc. v. Lewis & Clark City-County Health Dept., 1999 MT 106, 294 M 310, 980 P2d 1049, 56 St. Rep. 438 (1999).

CHAPTER 3
STATE FIRE PREVENTION AND INVESTIGATION PROGRAM

Chapter Administrative Rules

Title 23, chapter 12, subchapter 4, ARM Fire safety.

Title 23, chapter 12, subchapter 6, ARM Uniform Fire Code.

Title 24, chapter 144, ARM Fire prevention and investigation and fireworks wholesalers.

Part 1
General Provisions

50-3-101. Definitions.

Compiler's Comments

2007 Amendment: Chapter 449 in two places after "investigation" substituted "section" for "program". Amendment effective June 1, 2007.

1991 Amendment: Substituted definitions of Department and fire prevention and investigation program for former definition that read: "In this chapter "fire marshal" or "state fire marshal" means the state fire marshal provided for in 2-15-2005". Amendment effective April 29, 1991.

Code Commissioner Correction: The definition of "bureau" as meaning the fire marshal bureau created by 2-15-2005 was deleted because sections 3 and 4 of Ch. 503, L. 1985, deleted language creating the bureau.

50-3-102. Powers and duties of department regarding state fire prevention and investigation — rules.

Compiler's Comments

2007 Amendment: Chapter 449 in (1)(c) near beginning after "local" substituted "governmental fire agencies organized under Title 7, chapter 33, in fire" for "fire and law enforcement authorities in arson"; in (2) at end after "state" inserted "if the rules do not conflict with building regulations adopted by the department of labor and industry"; and in (4) near middle after "portion" substituted "an existing" for "a". Amendment effective June 1, 2007.

2003 Amendment: Chapter 387 in (1)(a) near beginning of first sentence after "as often as" deleted "its budget and other inspection"; deleted former (1)(h) that read: "(h) keep a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating to the fires that have been determined by investigations under the provisions of chapter 63. Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, the record must be open at all times to public inspection"; inserted (5) concerning records that must be open at all times to public inspection; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 546 in (1)(a), in three places, substituted references to Department of Corrections for references to Department of Corrections and Human Services and immediately after inserted references to Department of Public Health and Human Services; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 706 in (1) through (4), near beginning, substituted "department" for "state fire marshal"; substituted (1)(a) requiring inspection of state buildings for former (1)(a) and (1)(b) that read: "(a) make at least one inspection a year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

(b) make at least one inspection a year of each unit of the Montana university system and submit a copy of the report to the commissioner of higher education with recommendations in regard to fire prevention, fire protection, and public safety"; in (1)(b), after "buildings", inserted "as provided in chapter 61"; in (1)(c), before "supervise", inserted "may initiate or" and before "supervision" inserted "the initiation or"; deleted former (1)(e) that read: "(e) review all training programs on investigation of accidental and incendiary fires"; deleted former (1)(g) that read: "(g) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards"; in (1)(e), after "level", deleted "and to represent the state in structural fire matters"; in (1)(f) substituted "fire prevention matters" for "structural fire matters"; in (1)(h), after "50-63-403", inserted "and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5"; deleted (1)(l) that read: "(l) make an annual report to the attorney general containing a detailed statement of his official action and the transactions of his department, and the attorney general shall, in turn, submit the report to the governor with such recommendations and comments thereon as he considers necessary"; and made minor changes in style. Amendment effective April 29, 1991.

1985 Amendment: In (2) after "hazards of fire" deleted "and explosion"; inserted (3) requiring adoption of rules concerning explosives; and made minor changes in arrangement and phraseology.

Statement of Intent: The statement of intent attached to Ch. 187, L. 1985, provided: "A statement of intent is required for this bill because section 2 [amending 50-3-102] requires the state fire marshal [now department of justice] to adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with explosives.

It is the intent of the legislature that the fire marshal [now department of justice] adopt rules based on article 77 of the Uniform Fire Code, international conference of building officials. However, any changes in the Uniform Fire Code must be included in the fire marshal's [now department of justice's] rules, by amendment, if the fire marshal [now department of justice] considers the changes appropriate."

Administrative Rules

Title 23, chapter 12, subchapter 4, ARM Fire safety.

Title 24, chapter 144, ARM Fire protection and fireworks wholesalers.

Case Notes

CASES DECIDED UNDER FORMER EXPLOSIVES LAW
TITLE 50, CH. 38

Injured Employee's Remedies: Despite blasting company's violation of former chapter 38, it could not be held liable under common-law action for negligence without an allegation of intentional injury by the defendant by deliberate infliction of harm where otherwise the remedy is within the workers' compensation law. Enberg v. Anaconda Co., 158 M 135, 489 P2d 1036 (1971).

Crude Oil and Its Products Not Within Prohibition: The term "explosives" has no application to gasoline or other products of crude oil, despite the contention that former chapter 38 prohibited the erection of an oil refinery within a residential district. Purcell v. Davis, 100 M 480, 50 P2d 255 (1935).

Negligence Per Se:

An allegation of negligence in storing dynamite in a mine, in a quantity greater than 3,000 pounds, or in storing that or any other explosive in a mine where, should an explosion accidentally take place, escape by those working in the mine would be cut off, charges the violation of a specific duty imposed by former chapter 38, and such a violation is negligence per se. Westlake v. Keating Gold Min. Co., 48 M 120, 136 P 38 (1913).

Plaintiff who, at time of explosion of dynamite stored in a mine contrary to former chapter 38, was not so situated as to have his escape from the mine cut off by it could not charge as an act of negligence the storage of the powder in a place where, in case of accidental discharge, escape by those working in the mine would be cut off, since the causal connection between his injuries and the stoppage of egress from the mine would be lacking. Westlake v. Keating Gold Min. Co., 48 M 120, 136 P 38 (1913).

Attorney General's Opinions

"Explosives" Not to Include Small Arms Ammunition or Fireworks: The term "explosives" in 45-5-623 does not include small arms ammunition or fireworks permitted to be sold to the public under 50-37-104. 42 A.G. Op. 83 (1988).

Fire Code — Key Lock Gas Stations: Under the uniform fire code adopted pursuant to this section and 50-3-103, service stations may operate unattended key lock systems for commercial, industrial, governmental, and manufacturing establishments during the hours they are not open to the public. 39 A.G. Op. 16 (1981).

Method of Enforcement as to Public Buildings: If public buildings do not comply with the fire safety rules promulgated by the Fire Marshal Bureau (now Department of Justice), those rules may be enforced by judicial action enjoining the use of buildings or portions of buildings until there is compliance. (Annotator's note: Chapter 503, L. 1985, changed the term "fire marshal bureau" to "department of justice".) 35 A.G. Op. 45 (1973).

Authorization to Seek Closure of Buildings Not in Compliance: If a state institution, unit of the state University System, or state-owned building is maintained in violation of 50-3-102 or its implementing rules, the State Fire Marshal Bureau (now Department of Justice) may obtain a court order enjoining use of the building until the violation is corrected. 33 A.G. Op. 45 (1973).

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-3-103. Rules promulgated by department.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 387 deleted former (1)(f) through (1)(j) that read: "(f) flue and chimney construction;

(g) heating devices;

(h) electrical wiring and equipment;

(i) air conditioning, ventilating, and other duct systems;

(j) refrigeration systems"; deleted former (1)(l) that read: "(l) oil and gas wells"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 443 in (2) near middle after "by the state" substituted "building code or a county, city, or town building code" for "or a municipal building code". Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in (2) near end after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendments: Chapter 116 inserted (5) concerning installation of aboveground tank in community with population of 1,500 or less; and made minor changes in style. Amendment effective March 20, 1997.

Chapter 201 inserted (6) regarding restrictions on rules for storage tanks containing class I or class II liquids; and made minor changes in style. Amendment effective April 4, 1997.

1991 Amendment: In (1), near beginning of first sentence, substituted "department" for "state fire marshal" and near middle of second sentence inserted "fire extinguishers" and near end, after "chemicals", inserted "or materials"; in (3), at beginning, substituted "Federal or other nationally recognized standards for fire protection" for "Standards of the national fire protection association, United States bureau of standards, and American insurance association"; and made minor changes in style. Amendment effective April 29, 1991.

1989 Amendment: Near end of (1), after "protection", inserted "storage of smokeless powder and small arms primers". See contingent effective date compiler's comment.

Contingent Effective Date: Section 9, Ch. 506, L. 1989, was a contingency section that provided: "(1) [This act] is void if:

(a) the western fire chiefs association adopts at its annual meeting in August 1989 the proposed changes to article 77 of the uniform fire code that are specifically referred to as amendments to division II "storage", regarding smokeless powder and small arms primers for retail sales;

(b) the proposed changes are no more restrictive than the terms of [this act]; and

(c) the state fire marshal [now department of justice] adopts the amended provisions for storage of smokeless powder and small arms primers for retail sales by March 31, 1990.

(2) [This act] is effective April 1, 1990." The contingency did not occur, so the 1989 amendment became effective April 1, 1990.

1985 Amendment: In (2) changed "department of administration" to "department of commerce".

Composite Section: This section was amended twice in 1977, once by Ch. 187 and once by Ch. 519. The Code Commissioner has made a composite section embodying some but not all of the changes made by both amendments.

Attorney General's Opinions

Designation of Fire Service Organization as First Responder to Hazardous Materials Incident: The designation of a fire service organization as first responder to a hazardous materials incident is a matter to be included in the state and local disaster and emergency plans. 42 A.G. Op. 104 (1988).

Response by Fire Service Organizations to Hazardous Materials Incidents: Unless otherwise provided by law, the decision to order a firefighter to respond to or investigate a hazardous materials incident is within the discretion of the supervising entity of each fire service organization. The State Fire Marshal (now Department of Justice) does not have specific rulemaking authority to prescribe which fire service organization should respond to such incidents. 42 A.G. Op. 104 (1988).

Fire Code — Key Lock Gas Stations: Under the uniform fire code adopted pursuant to this section and 50-3-102, service stations may operate unattended key lock systems for commercial, industrial, governmental, and manufacturing establishments during the hours they are not open to the public. 39 A.G. Op. 16 (1981).

Method of Enforcement as to Public Buildings: If public buildings do not comply with the fire safety rules promulgated by the Fire Marshal Bureau (now Department of Justice), those rules may be enforced by judicial action enjoining the use of buildings or portions of buildings until there is compliance. (Annotator's note: Chapter 503, L. 1985, changed the term "fire marshal bureau" to "department of justice".) 35 A.G. Op. 45 (1973).

Authorization to Seek Closure of Buildings Not in Compliance: If a state institution, unit of the state University System, or state-owned building is maintained in violation of 50-3-102 or its implementing rules, the State Fire Marshal Bureau (now Department of Justice) may obtain a court order enjoining use of the building until the violation is corrected. 33 A.G. Op. 45 (1973).

50-3-106. Appointment of special fire inspectors.

Compiler's Comments

2007 Amendment: Chapter 449 near middle after "any" substituted "inspection" for "function" and at end after "investigation" substituted "section" for "program"; deleted former (2) that read: "(2) When performing these duties or attending a training course approved by the department, special fire inspectors may be paid at a rate not to exceed $56 a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended"; and made minor changes in style. Amendment effective June 1, 2007.

1991 Amendment: Substituted present (1) regarding appointment and duties of special fire inspectors for former language that read: "(1) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties"; in (2), after "course", substituted "approved by the department" for "conducted by the state fire marshal" and after "special" substituted "fire inspectors" for "deputy fire marshals". Amendment effective April 29, 1991.

50-3-109. Tax on fire insurance premiums.

Compiler's Comments

2003 Amendment: Chapter 380 at end of (1) substituted "33-2-708" for "17-2-121". Amendment effective October 1, 2003.

1999 Amendment: Chapter 51 in (1) at end substituted language providing for deposit of 2½% of tax in the general fund for former language that read: "The taxes are:

(a) 1% to be deposited as provided in 17-2-121; and

(b) 1½% to be used for purposes of supplemental pensions"; and made minor changes in style. Amendment effective March 15, 1999.

1997 Amendment: Chapter 532 in (1), near beginning after "enumerated in", substituted "subsection (2)" for "19-18-512", near middle, after "auditor", deleted "and commissioner of insurance ex officio", and after "paid by it" substituted "taxes" for "a tax of 1%"; inserted (1)(a) and (1)(b) setting the tax rates; inserted (2) clarifying risks; and made minor changes in style. Amendment effective July 1, 1997.

Code Commissioner Correction: In (1)(b), at end, the Code Commissioner substituted "supplemental pensions" for "19-13-1006" because all code sections referring to supplemental pensions were repealed.

1991 Amendment: Near middle increased tax on fire insurance premiums from 3/4 of 1% to 1%. Amendment effective July 1, 1991.

CHAPTER 4
HEALTH CARE POLICY

Chapter Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 606, L. 1993, provided: "(1) A statement of legislative intent is required for this bill because:

(a) [section 4] [50-4-202] [now repealed] authorizes the Montana health care authority to adopt rules necessary to implement [sections 1 through 20] [Title 50, ch. 4, parts 1 through 5]. In addition to those rulemaking matters addressed below, the authority may adopt rules governing such matters as its meetings, public hearings, and rules of procedure and rules of ethical conduct governing its members.

(b) [section 17] [50-4-401] [now repealed] requires the Montana health care authority to adopt rules to establish regional health care planning boards within the health care planning regions established in [section 17] [50-4-401] [now repealed] and to establish a procedure for selection of regional board members. The rules establishing the boards must specify the number of members, any relevant qualifications, and the operations and duties of the boards and must provide for a funding mechanism by grant from the authority. In addition, the rules must provide for consideration of a balance between rural and urban interests in the selection of regional board members. The procedure for selection of the board members must provide for public notice of the selection process.

(c) [section 10] [50-4-501] [now repealed] grants the commissioner of insurance the authority to adopt rules specifying uniform health insurance claim forms and procedures. The forms should be based upon existing formats, be as short as possible, and be compatible with electronic data transmission.

(d) [section 19] [50-4-502] [now repealed] requires the authority to adopt rules relating to the unified health care data base. The authority's rules must specify in comprehensive detail what information is required to be provided by health care providers and the times at which the information is to be provided. The rules must also provide for audit procedures to determine the accuracy of the filed data. The confidentiality provisions must be consistent with other state laws governing the confidentiality of public records, including medical records, and must apply to employees of the authority and to others receiving or using records in the data base.

(e) [sections 23, 26, 27, 30, 31, and 34 through 36] [33-22-1802, 33-22-1808, 33-22-1809, 33-22-1812 [now repealed], 33-22-1813, 33-22-1814, 33-22-1818 [now repealed], 33-22-1819 [now repealed], and 33-22-1822] require the commissioner of insurance to adopt rules governing small employer group health plans. In determining the basic benefits package, the commissioner shall make objective determinations, supported by available data, concerning the type of benefits required and shall determine that the benefits to be required are cost-effective pursuant to the Small Employer Health Insurance Availability Act. The commissioner may adopt rules providing for a transition period to allow small employer carriers to comply with certain provisions of the act. The commissioner may approve the establishment of additional classes of businesses only if the commissioner determines that the additional classes would enhance the efficiency and fairness of the small employer health insurance market. The commissioner is required under the act to adopt rules to implement and administer the act.

(f) [section 44] [50-4-612] requires the authority to adopt rules implementing [sections 37 through 44] [Title 50, ch. 4, part 6, now repealed]. The rules adopted by the authority must specify the form and content of applications for certificates of public advantage; details of the reconsideration, revocation, hearing, and appeal processes; and other matters as the authority determines necessary. The rules that are adopted by the authority must also provide the authority with direct supervision and control over the implementation of cooperative agreements between facilities.

(2) In preparing the plan required by [section 5] [50-4-301] [now repealed], the authority shall consider the following matters for the following features of the plan:

(a) a unified health care budget. The authority shall consider the development of a state health care budget based upon the budgets submitted by the regional health care planning boards.

(b) caps for provider expenditures. The authority shall consider a process for adopting mandatory limits on provider expenses, including fees and salaries.

(c) global budgeting for all health care spending. The authority shall consider adopting a budgeting process, with public involvement, by which a unified health care budget is determined.

(d) controlled capital expenditures. The authority shall consider adopting a system to control capital expenditures.

(e) binding cap on overall expenditures. The authority shall consider adopting mandatory limits on all types of expenditures of health care providers, including capital expenditures, small equipment purchases, personnel costs, and all other types of operating costs."

Severability: Section 46, Ch. 606, L. 1993, was a severability clause.

Effective Date: Section 47(1), Ch. 606, L. 1993, provided: "[Sections 1 through 20 . . .] [50-4-101, 50-4-102, 50-4-201, 50-4-202, 50-4-301 through 50-4-311, 50-4-401, 50-4-402, and 50-4-501 through 50-4-503] [all now repealed] are effective on passage and approval." Approved May 3, 1993.

Part 1
General Provisions

50-4-104. State health care policy.

Compiler's Comments

Termination Date Extended: Section 3, Ch. 517, L. 1997, amended sec. 25, Ch. 378, L. 1995, by extending the termination date of subsection (4) from June 30, 1997, to June 30, 2001.

Effective Date — Termination: Section 24(1), Ch. 378, L. 1995, provided that this section is effective on passage and approval (approved April 12, 1995), and sec. 25, Ch. 378, L. 1995, provided that subsection (4) of this section terminates June 30, 1997.

50-4-105. Limitations of provider agreements — exception.

Compiler's Comments

2021 Amendment — Code Commissioner Correction: Chapter 262 inserted (5) exempting direct patient care agreements established pursuant to 50-4-107. Amendment effective October 1, 2021.

Chapter 262 in (5) referred to "[section 1]". However, the apparent intent of the original bill was to refer to sec. 2, Ch. 262, and the Code Commissioner has changed the final statutory reference in (5) accordingly.

Severability: Section 3, Ch. 420, L. 2013, was a severability clause.

Effective Date: Section 4, Ch. 420, L. 2013, provided: "[This act] is effective on passage and approval." Chapter 420, L. 2013, was enacted into law without the governor's signature on May 6, 2013.

50-4-106. Definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

2021 Code Commissioner Correction: In the definition of direct patient care in the last sentence, the Code Commissioner substituted "telehealth" for "telemedicine" to reflect the change to the defined term contained in Ch. 242, L. 2021, which substituted the definition of telehealth for the definition of telemedicine.

50-4-107. Direct patient care agreements — requirements — prohibition.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 701, L. 2023. Amendment effective May 19, 2023.

Retroactive Applicability: Section 12, Ch. 701, L. 2023, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2022.

Effective Date: This section is effective October 1, 2021.

50-4-108. Disclosure required.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

50-4-109. Interference prohibited.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

50-4-111. Health care sharing ministry — definition — requirements.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

Part 5
Patient's Right to Know

50-4-504. Definitions.

Compiler's Comments

2011 Amendment: Chapter 19 deleted definition that read: ""Department" means the department of public health and human services provided for in Title 2, chapter 15, part 22"; deleted definition that read: ""Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in the definition of health care facility contained in 50-5-101. The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing"; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendments — Composite Section: Chapter 114 deleted former definition of health care advisory council that read: ""Health care advisory council" means the council provided for in 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 206 deleted former definition of database that read: ""Database" means the health care database created pursuant to 50-4-502"; deleted former definition of health care advisory council that read: ""Health care advisory council" means the council provided for in 50-4-103, 50-4-104, 50-4-203 through 50-4-206, and 50-4-403"; and made minor changes in style. Amendment effective April 2, 2003.

1997 Amendments: Chapter 42 in definition of health care facility substituted "institutions included in the definition of health care facility contained in 50-5-101" for "institutions included in 50-5-101(19)". Amendment effective March 12, 1997.

Chapter 188 in definition of health care facility, in second sentence, substituted "50-5-101(18)" for "50-5-101(19)" (voided by Ch. 42).

Effective Date: Section 24(2), Ch. 378, L. 1995, provided that this section is effective July 1, 1995.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

50-4-505. Uniform claim forms and procedures.

Compiler's Comments

2003 Amendments — Composite Section: Chapters 114 and 206 at beginning after "The commissioner of insurance" deleted "after consultation with the health care advisory council". Amendment effective October 1, 2003.

Severability: Section 46, Ch. 531, L. 1997, was a severability clause.

50-4-510. Short title.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

50-4-511. Legislative purpose.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

50-4-512. Disclosures required of health care providers.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

50-4-516. Short title.

Compiler's Comments

Effective Date: Section 7, Ch. 207, L. 2009, provided that this section is effective January 1, 2010.

50-4-517. Legislative purpose.

Compiler's Comments

Effective Date: Section 7, Ch. 207, L. 2009, provided that this section is effective January 1, 2010.

50-4-518. Disclosures required of health insurers — limitations.

Compiler's Comments

Effective Date: Section 7, Ch. 207, L. 2009, provided that this section is effective January 1, 2010.

Part 7

Conversion of Nonprofit Health Entity to For-Profit or Mutual Benefit Corporation

Part Compiler's Comments

Effective Date: Section 23, Ch. 214, L. 2005, provided that this part is effective on passage and approval. Approved April 8, 2005.

Applicability: Section 24, Ch. 214, L. 2005, provided: "[This act] applies prospectively to and may not be applied or interpreted to have an effect on a conversion transaction or any individual transaction or series of transactions completed before [the effective date of this act], except that a transaction or series of transactions made prior to [the effective date of this act] may be considered in any application for a conversion transaction made after [the effective date of this act]." Effective April 8, 2005.

50-4-703. Rulemaking authority.

Compiler's Comments

2007 Amendment: Chapter 399 in introductory clause after "general" substituted "may" for "shall". Amendment effective May 3, 2007.

50-4-704. Rights and powers.

Compiler's Comments

Code Commissioner Correction: Pursuant to sec. 28, Ch. 123, L. 2013, the Code Commissioner in (1)(a) has substituted "72-38-820 through 72-38-826" for "Title 72, chapter 33, part 5" to correct reference rendered erroneous when Title 72, chapter 33, part 5, was repealed and replaced as part of the Montana Uniform Trust Code enacted by Ch. 264, L. 2013.

Part 8

Community Health Center Support

Part Compiler's Comments

Preamble: The preamble attached to Ch. 436, L. 2007, provided: "WHEREAS, approximately one-fifth of Montana's population has no public or private health insurance; and

WHEREAS, many Montanans who are uninsured or underinsured experience difficulty in accessing medical and dental services; and

WHEREAS, uninsured and underinsured people are more likely than those with adequate insurance to be hospitalized for conditions that could have been avoided, to be diagnosed with acute conditions resulting in higher rates of disability and death, or to postpone recommended tests or treatment."

Effective Date: Section 13, Ch. 436, L. 2007, provided that this part is effective July 1, 2007.

50-4-803. Definitions.

Compiler's Comments

2017 Amendment: Chapter 81 deleted definition that read: ""Advisory group" means the community health centers advisory group provided for in 50-4-810"; and made minor changes in style. Amendment effective July 1, 2017.

50-4-804. Rulemaking authority.

Administrative Rules

Title 37, chapter 109, ARM Montana Community Health Center Support Act.

50-4-805. Program expenditures.

Compiler's Comments

2017 Amendment: Chapter 81 deleted former (5) that read: "(5) The department shall report to the legislature, as provided for in 5-11-210, the following information for each year of the biennium:

(a) the status of the expenditures made pursuant to this part;

(b) the number of people served by the expenditure of funds; and

(c) the costs to the state of the services provided pursuant to this part." Amendment effective July 1, 2017.

2013 Amendment: Chapter 120 deleted former (5)(a) that read: "(a) The department shall provide regular interim reports on the status of the program and program expenditures to the legislative finance committee and the children, families, health, and human services interim committee"; and made minor changes in style. Amendment effective July 1, 2013.

2009 Amendment: Chapter 336 in (2)(a) in first sentence after "centers" inserted "with state funding for a maximum of 6 years or". Amendment effective July 1, 2009.

Part 9
Montana Health Care Freedom Act

Part Compiler's Comments

Effective Date: Section 4, Ch. 310, L. 2011, provided: "If approved by the electorate, [this act] is effective January 1, 2013." Approved November 6, 2012.

Part 10
Youth Health Protection Act

Part Compiler's Comments

Effective Date: This part is effective October 1, 2023.

Severability: Section 10, Ch. 306, L. 2023, was a severability clause.

Part 11
Protection for Right of Conscience

Part Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Applicability: Section 12, Ch. 376, L. 2023, provided: "[This act] applies to insurance policies issued on or after [the effective date of this act]." Effective October 1, 2023.

Severability: Section 11, Ch. 376, L. 2023, was a severability clause.

CHAPTER 5
HOSPITALS AND RELATED FACILITIES

Chapter Compiler's Comments

Saving Clause: Section 24, Ch. 347, L. 1979, provided: "This act does not affect certificate of need applications received and declared complete or granted by the department before the effective date of this act."

Severability Clause: Section 25, Ch. 347, L. 1979, was a severability clause.

Chapter Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.

Part 1
General Provisions

50-5-101. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 131, L. 2023, deleted definitions of accreditation association for ambulatory health care, college of American pathologists, commission on accreditation of rehabilitation facilities, council on accreditation, DNV healthcare, inc., healthcare facilities accreditation program, and the joint commission (see sec. 2, Ch. 131, L. 2023, for former text); and made minor changes in style. Amendment effective April 18, 2023.

Section 5, Ch. 492, L. 2023, in definition of health care facility in (a) near beginning of second sentence inserted "abortion clinics as defined in 50-20-901". Amendment effective October 1, 2023.

Section 5, Ch. 602, L. 2023, in definition of health care facility in (a) at end inserted "and rural emergency hospitals"; inserted definition of rural emergency hospital; and made minor changes in style. Amendment effective July 1, 2023.

2021 Amendments — Composite Section: Chapter 339 in definition of long-term care facility in (b) near end before "correctional facilities" deleted "juvenile and adult"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 477 in definition of affected person in three places substituted references to long-term care facility for reference to health care facility; in definition of capital expenditure in (a) substituted "long-term care" for "health care"; in definition of construction after "physical erection of a" inserted "new" and inserted (b) concerning a long-term care facility as defined in 50-5-301; substituted state long-term care facilities plan for state health care facilities plan as defined term and in definition substituted "long-term care facilities" for "health care facilities"; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 345 inserted definition of eating disorder center; in definition of health care facility inserted reference to eating disorder centers; and made minor changes in style. Amendment effective October 1, 2017.

2013 Amendment: Chapter 157 inserted definitions of DNV healthcare, inc. and healthcare facilities accreditation program; substituted definition of the joint commission for identical definition of joint commission on accreditation of healthcare organizations; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendments — Composite Section: Chapter 2 in definition of accreditation association for ambulatory health care in two places substituted "outpatient centers for surgical services" for "ambulatory surgical centers". Amendment effective October 1, 2009.

Chapter 456 in definition of hospital in second sentence after "services provided" substituted "must include medical personnel available to provide emergency care onsite 24 hours a day and may include any other service" for "may or may not include obstetrical care, emergency care, or any other service" and inserted (c) related to meeting of emergency care requirement by certain hospitals. Amendment effective July 1, 2009.

2007 Amendment: Chapter 466 in definition of specialty hospital after "means a" substituted introductory clause and (a)(i) relating to cardiac condition, (a)(ii) relating to orthopedic condition, (a)(iii) relating to surgical procedure, and (a)(iv) relating to cancer for "specialty hospital as defined in 50-5-245", inserted (b) allowing provision of other services on stated condition, and inserted (c) listing exceptions to definition; and made minor changes in style. Amendment effective May 8, 2007.

Termination Provision Repealed: Section 4, Ch. 466, L. 2007, repealed sec. 6, Ch. 365, L. 2005, which terminated this section July 1, 2007. Effective May 8, 2007.

Applicability: Section 6, Ch. 466, L. 2007, provided: "[This act] does not apply to a hospital existing prior to [the effective date of this act]." Effective May 8, 2007.

2005 Amendments — Composite Section: Chapter 365 in definition of hospital at beginning of second sentence inserted exception clause and inserted (a)(ii) regarding specialty hospitals; inserted definition of specialty hospital; and made minor changes in style. Amendment effective on occurrence of contingency and terminates July 1, 2007. Contingency occurred June 8, 2005.

Chapter 519 in definitions of licensed health care professional and medical assistance facility in (a) substituted "physician assistant" for "physician assistant-certified". Amendment effective October 1, 2005.

Applicability: Section 5, Ch. 365, L. 2005, provided: "[This act] applies to specialty hospitals to be established after the moratorium on referrals to specialty hospitals referred to in [section 4] [not codified] expires."

Contingent Effective Date: Section 4, Ch. 365, L. 2005, provided: "[This act] is effective upon certification by the director of public health and human services to the secretary of state that the moratorium on referrals by medical doctors to specialty hospitals provided for in section 507 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173 (42 U.S.C. 1395nn), has expired and not been continued. The director shall certify the date of the expiration as soon as the expiration is effective and shall send a copy of the certification to the code commissioner." In a letter dated June 28, 2005, the director of public health and human services certified that the moratorium expired on June 8, 2005, and was not continued.

2003 Amendments — Composite Section: Chapter 54 inserted definitions of activities of daily living, assisted living facility, congregate, licensed health care professional, and practitioner; deleted definition of personal-care facility that read: ""Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227"; in definition of residential care facility near middle substituted "an assisted living facility" for "a personal-care facility"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 114 in definition of health care facility in (b) substituted "licensed addiction" for "chemical dependency". Amendment effective October 1, 2003.

Chapter 348 inserted definition of outdoor behavioral program; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 401 inserted definition of accreditation association for ambulatory health care; inserted definition of council on accreditation; in definition of health care facility or facility in second sentence after "dialysis facilities" deleted "health maintenance organizations"; deleted definition of health maintenance organization that read: ""Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 403 in definition of health care facility or facility in second sentence after "dialysis facilities" deleted "health maintenance organizations" and after "long-term care facilities" inserted "intermediate care facilities for the developmentally disabled"; deleted definition of health maintenance organization that read: ""Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers"; in definition of hospital in third sentence substituted "developmentally disabled" for "mentally retarded"; inserted definition of intermediate care facility for the developmentally disabled; in definition of intermediate developmental disability care before "nursing" inserted "intermediate"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendments — Composite Section: Chapter 192 inserted definition of critical access hospital; in definition of health care facility in third sentence near beginning after "chemical dependency facilities" inserted "critical access hospitals"; in definition of hospital in fourth sentence at end after "tubercular patients" inserted "but does not include critical access hospitals"; inserted definition of swing bed; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 366 in introductory clause substituted "parts 1 through 3" for "parts 1 through 4"; deleted definition of observation bed that read: ""Observation bed" means a bed occupied by a patient recovering from surgery or other treatment"; in definition of outpatient center for surgical services at end substituted "recovery care beds" for "observation beds"; inserted definition of recovery care bed; and made minor changes in style. Amendment effective April 23, 2001.

Applicability: Section 5, Ch. 366, L. 2001, provided: "[This act] applies to a health care facility license for an outpatient center for surgical services that is issued or renewed after [the effective date of this act]." Effective April 23, 2001.

1999 Amendments — Composite Section: Chapter 98 deleted definition of ambulatory surgical facility that read: ""Ambulatory surgical facility" means a facility that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment"; in definition of health care facility in second sentence inserted "other physical or mental health care workers regulated under Title 37, including chemical dependency counselors" and in third sentence after "The term includes" deleted "ambulatory surgical facilities" and near end substituted "outpatient centers for primary care" and "outpatient centers for surgical services" for "outpatient facilities"; in definition of medical assistance facility in last sentence of (a) inserted "retroactively and" and at end inserted "if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual"; substituted definition of outpatient center for primary care for definition of outpatient facility that read: ""Outpatient facility" means a facility, located in or apart from a hospital, that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds. An ambulatory surgical facility is also an outpatient facility"; inserted definition of outpatient center for surgical services; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 133 in definition of adult foster care home after "private home" inserted "or other facility", after "offers" inserted exception clause, and at end substituted "related to the owner or manager of the home by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager" for "related by blood or marriage to the owner of the home". Amendment effective July 1, 1999.

Saving Clause: Section 6, Ch. 98, L. 1999, was a saving clause.

Applicability: Section 7, Ch. 98, L. 1999, provided: "[This act] applies to health care facility licenses or certificates of need issued pursuant to Title 50, chapter 5, after October 1, 1999."

1997 Amendments: Chapter 42 in definition of intermediate developmental disability care deleted reference to subsection (4) of 53-20-102; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 93 in definition of health care facility, in third sentence after "outpatient facilities", deleted "public health centers"; substituted joint commission on accreditation of healthcare organizations for joint commission on accreditation of hospitals as defined term; deleted definition of major medical equipment that read: ""Major medical equipment" means a single unit of medical equipment or a single system of components with related functions that is used to provide medical or other health services and that costs a substantial sum of money"; in definition of outpatient facility inserted third sentence providing that an ambulatory surgical facility is also an outpatient facility; deleted definition of public health center that read: ""Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices"; substituted state health care facilities plan for state health plan as defined term and after "approved by" substituted "the governor and a statewide health coordinating council appointed by the director of the department" for "the statewide health coordinating council and the governor"; and made minor changes in style. Amendment effective March 19, 1997.

Chapter 99 near beginning of definition of medical assistance facility inserted "meets both of the following" and in (a), after "96 hours", inserted language authorizing Department to waive the 96-hour restriction if transfer precluded due to inclement weather or emergency condition and inserted last sentence concerning case-by-case determination; and made minor changes in style. Amendment effective March 19, 1997.

Chapter 171 in definition of state health plan, after "approved by", deleted "the statewide health coordinating council and".

Chapter 188 in definition of College of American Pathologists, after "name", deleted "with headquarters in Traverse City, Michigan"; inserted definition of Commission on Accreditation of Rehabilitation Facilities; substituted definition of Joint Commission on Accreditation of Healthcare Organizations for definition of Joint Commission on Accreditation of Hospitals and in definition, after "name", deleted "with headquarters in Chicago, Illinois"; and made minor changes in style.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

1995 Amendments — Phrase Change — Composite Section: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (a) and (d) of the definition of long-term care facility, the Code Commissioner has made the change.

Chapter 366 in definition of adult day-care center, near middle, substituted "a regularly scheduled" for "an intermittent" and at end inserted "but that does not provide overnight care"; inserted definitions of adult foster care home, aged person, custodial care, disabled adult, and light personal care; in definition of ambulatory surgical facility, in first sentence after "a facility", deleted "not part of a hospital"; inserted definition of end-stage renal dialysis facility; in definition of health care facility, in third sentence after "includes", deleted "but is not limited to", after "surgical facilities" inserted "chemical dependency facilities, end-stage renal dialysis facilities", after "home health agencies" inserted "home infusion therapy agencies", after "infirmaries" deleted "kidney treatment centers", after "rehabilitation facilities" inserted "residential care facilities, and", and at end deleted "and adult day-care centers"; inserted definitions of home infusion therapy agency and home infusion therapy services; deleted definition of kidney treatment center that read: ""Kidney treatment center" means a facility that specializes in treatment of kidney diseases, including freestanding hemodialysis units"; in definition of long-term care facility, in first sentence after "skilled nursing care", inserted "residential care" and in second sentence, near beginning after "include", deleted "adult foster care licensed under 52-3-303"; inserted definition of personal care facility; in definition of resident, at end, substituted "or in a residential care facility" for "for intermediate or personal care"; inserted definitions of residential care facility and retirement home; and made minor changes in style.

Chapter 398 in definition of affected person, after "need", deleted "a member of the public who will be served by the proposal" and at end deleted "an agency that plans or assists in planning for health care facilities"; in definition of ambulatory surgical facility, after "means a facility", deleted "not part of a hospital"; deleted definition of batch, which was those letters of intent to seek approval for new beds or major medical equipment that were accumulated during a single batching period; deleted definition of batching period, which was a period, not exceeding a month, established by Department rule, during which letters of intent to seek approval for new beds or major medical equipment were accumulated pending further processing of all letters of intent within the batch; deleted definition of challenge period, which was a period, not exceeding a month, established by Department rule, during which a person could apply for comparative review with an applicant whose letter of intent was received during the preceding batching period; and in definition of observation bed, after "means a bed occupied", deleted "for not more than 6 hours". Amendment effective April 12, 1995.

Chapter 418 in definition of Board substituted "board of public health" for "board of health and environmental sciences"; in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 deleted definition of Board that read: ""Board" means the board of health and environmental sciences, provided for in 2-15-2104"; in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21"; in definition of long-term care facility, at end, substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Because of the repeal of 2-15-2104, the Code Commissioner has codified the deletion of the Board, and because of the deletion of adult day-care centers, in the definition of health care facility, the Code Commissioner has not inserted the alphabetized relocation of adult day-care centers contained in Ch. 418.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments: Chapter 151 in definition of hospice inserted (a) clarifying definition of inpatient hospice facility and (b) clarifying definition of residential hospice facility; and made minor changes in style.

Chapter 590 throughout section substituted references to individuals for references to persons; in definition of long-term care facility, at end of first sentence after "personal care", deleted "to more than four persons who are not related to the owner or administrator by blood or marriage"; in definition of personal care, after "care", deleted "which do not require nursing skills"; and made minor changes in style. Amendment effective July 1, 1994.

1993 Statement of Intent: The statement of intent attached to Ch. 151, L. 1993, provided: "A statement of intent is necessary for this bill because it grants the department of health and environmental sciences [now department of public health and human services] the authority to adopt by rule specific licensing standards for residential hospice and inpatient hospice facilities.

It is the intent of the legislature that the department adopt rules for licensure of residential and inpatient hospice facilities to ensure that:

(1) hospice facilities are constrained to a certain standard of care;

(2) hospice facilities are managed and operated by hospice-trained staff or volunteers; and

(3) policies and procedures are in keeping with the hospice approach to care and with current trends in hospice care.

It is the intent of the legislature that the department adopt rules for inpatient hospice facilities that reflect applicable, current federal regulations and that the department go beyond adoption of existing relevant federal regulations for inpatient hospice facilities and provide for two levels of site-based hospice services. It is the intent of the legislature to ensure that residential and inpatient hospice facilities are integrated within a comprehensive, licensed hospice program."

Applicability: Section 7, Ch. 590, L. 1993, provided: "[Sections 1 through 4] [50-5-101, 50-5-226, 50-5-227, and 50-5-301] and the rules of the department of health and environmental sciences [now department of public health and human services] adopted pursuant to [sections 2 and 3] [50-5-226 and 50-5-227] apply to licenses for personal-care facilities issued or renewed after July 1, 1994."

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 764 inserted definition of residential psychiatric care; and in definition of residential treatment facility, after "a facility", deleted "of not less than 30 beds that is", after "operated" deleted "by a nonprofit corporation or association", and after "providing" substituted "residential psychiatric care" for "long-term treatment services for mental illness in a nonhospital-based residential setting". Amendment effective July 1, 1991.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

1989 Amendments: Chapter 330 in definition of long-term care facility substituted "persons with severe disabilities" for "physically disabled persons" and after "under" substituted "53-19-203" (renumbered 52-4-203) for "53-19-111". Amendment effective July 1, 1989.

Chapter 616 near end of definition of health care facility or facility inserted "residential treatment facilities"; and inserted definition of residential treatment facility. Amendment effective July 1, 1989.

Termination Extension: Sections 2 and 3, Ch. 377, L. 1989, amended the provisions that would terminate the temporary version of this section to extend the temporary version until July 1, 1991.

1987 Amendments: Chapter 370 in definition of long-term care facility, near middle of second sentence, substituted "youth care facilities" for "boarding or foster homes for children".

Chapter 450 in definition of health care facility added "medical assistance facilities"; and inserted definition of medical assistance facility.

Chapter 477 in definition of affected person, after "applicant", inserted "for certificate of need" and at end deleted "including any agency qualifying as a health systems agency pursuant to Title XV of the Public Health Service Act"; in definition of batch, after "intent", substituted "to seek approval for new beds or major medical equipment" for "and applications of a specified category and within a specified region of the state, as established by department rule"; in definition of batching period, after "intent", substituted "to seek approval for new beds or major medical equipment are" for "for specified categories of new institutional health services and for specified regions of the state may be"; in definition of capital expenditure inserted (b) that reads: "a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands"; inserted definition of chemical dependency facility; in definition of comparative review, following "need applications", deleted "within a given batch"; in definition of health maintenance organization, after "means", substituted language that reads: "a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers" for former language that read: "a public or private organization organized as defined in 42 U.S.C. 300e, as amended"; deleted definition of health systems agency; at end of definition of major medical equipment inserted "and costs a substantial sum of money"; at end of definition of state health plan, after "department", substituted remainder of subsection that reads: "to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor" for "pursuant to 42 U.S.C. 300m 2(a)(2)"; and made minor changes in phraseology.

Saving Clause: Section 12, Ch. 477, L. 1987, was a saving clause.

Severability: Section 13, Ch. 477, L. 1987, was a severability section.

1985 Amendment: In definition of "Long-term care facility", near middle after "53-20-305" inserted "community homes for physically disabled persons licensed under 53-19-111", and after "for children licensed under" substituted "41-3-1142" for "41-3-503".

1983 Amendments: Chapter 324, in definition of "Health care facility" in third sentence following "home health agencies" inserted "hospices,"; and inserted definition of "Hospice" in both versions of section.

Chapter 329, near middle of definition of "Affected persons" in temporary version, after "facilities" inserted "third-party payers who reimburse health care facilities in the area affected by the proposal,"; inserted definitions of "Batch", "Batching period", "capital expenditure", "challenge period", and "comparative review" in temporary version; at end of definition of "construction" in temporary version, inserted "or remodeling, replacement, or renovation of an existing health care facility"; in both versions after definition of ""Health care facility"" inserted "or "facility""; inserted definition of "Health systems agency" in both versions; deleted from both versions definition, which read: ""New institutional health services" means:

(a) the construction, development, or other establishment of a health care facility which did not previously exist;

(b) any expenditure by or on behalf of a health care facility within a 12-month period in excess of $150,000, which, under generally accepted accounting principles consistently applied, is a capital expenditure. Whenever a health care facility or a person on behalf of a health care facility makes an acquisition under lease or comparable arrangement or through donation, which would have required review if the acquisition had been by purchase, such acquisition shall be considered a capital expenditure subject to review.

(c) a change in bed capacity of a health care facility which increases or decreases the total number of beds, redistributes beds among various service categories, or relocates such beds from one physical facility or site to another over a 2-year period by more than 10 beds or 10% of the total licensed bed capacity, whichever is less;

(d) health services which are offered in or through a health care facility and which were not offered on a regular basis in or through such health care facility within the 12-month period prior to the time such services would be offered or the deletion by a health care facility of a service previously offered;

(e) the expansion of a geographic service area of a home health agency."; inserted definition of "Major medical equipment" in temporary version; deleted from both versions definition, which read: ""State plan" means the state medical facility plan provided for in part 4."; and inserted definition of "State health plan" in both versions.

Section 13(3) of Ch. 329 provides that on July 1, 1987, the following definitions are deleted: "Affected persons", "Batch", "Batching period", "Capital expenditure", "Certificate of need", "Challenge period", "Comparative review", "Construction", "Major medical equipment".

Chapter 597, in definition of "Long-term care facility" in both versions, increased number of persons not related to owner or administrator from three to four.

Chapter 641, in (a) of definition of "Long-term care facility" in both versions after "intermediate nursing care" inserted "or intermediate developmental disability care"; after "blood or marriage" deleted "with those degrees of care defined as follows" and inserted last sentence beginning "The term does not ..."; inserted (d) defining "Intermediate developmental disability care"; and deleted former (b), which read: "Hotels, motels, boarding homes, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not long-term care facilities."

1983 Statement of Intent: The statement of intent attached to HB 299 (Ch. 641, L. 1983) provided: "A statement of intent is necessary for House Bill 299 because it grants the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] the authority to adopt, by rule, specific licensing standards for facilities providing nursing care, as well as other services, to the developmentally disabled.

It is the intent of the Legislature that the standards adopted for such facilities be substantially the same as those federal standards contained in 42 Code of Federal Regulations, Part 442, Subpart G, "Standards for Intermediate Care Facilities for the Mentally Retarded". Those standards include necessary administrative policies and procedures; admission and release criteria; personnel policies; resident living standards; requirements for professional and special programs and services; dental service requirements; necessary administrative services; safety and sanitation requirement; required recordkeeping; and requirements for services in the following areas: training and habilitation, food and nutrition, medical services, nursing, pharmacy, physical and occupational therapy, psychological services, recreation, social services, speech pathology, and audiology."

1981 Amendments: Chapter 432 added definitions of "accreditation" and "joint commission on accreditation of hospitals".

Chapter 433 added definitions of "accreditation", "clinical laboratory", and "college of American pathologists".

Both chapters added an identical definition of "accreditation".

Case Notes

Outpatient Clinic Not Considered Hospital for Property Tax Exemption Purposes: Applying the definitions set out in this section, the District Court properly found (prior to the 1999 amendment of this section) that an outpatient clinic was not a hospital and was not entitled to property tax exemptions under 15-6-201 for property used "for hospital purposes". Dept. of Revenue v. Gallatin Outpatient Clinic, Inc., 234 M 425, 763 P2d 1128, 45 St. Rep. 2025 (1988).

Attorney General's Opinions

Funding of Private, Nonprofit Nursing Home by Hospital District Allowed: A hospital district may fund a private, nonprofit nursing home operating for the benefit of county residents if the home complies with the admission standards set out in 7-34-2123, provides the kinds of facilities that are reasonable and appropriate in advancing public health as outlined in this section, and meets other legal requirements concerning the operation of a long-term care facility. 43 A.G. Op. 70 (1990).

50-5-103. Rules and standards — accreditation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 131, L. 2023. Amendment effective April 18, 2023.

2013 Amendment: Chapter 157 in (4)(a) substituted "an entity listed in subsection (4)(b)" for "the joint commission on accreditation of health care organizations"; inserted (4)(b) concerning a hospital's evidence of its accreditation; in (5) after "the joint commission" deleted "on accreditation of healthcare organizations"; and made minor changes in style. Amendment effective October 1, 2013.

2003 Amendment: Chapter 401 inserted (7) authorizing department to consider for license eligibility during accreditation period any outpatient center for surgical services that provides written evidence of accreditation by ambulatory health care accreditation association and authorizing inspection to ensure compliance with state standards; inserted (8) authorizing department to consider for license eligibility during accreditation period any behavioral treatment program, chemical dependency treatment program, residential treatment facility, or mental health center that provides written evidence of accreditation by ambulatory health care accreditation association and authorizing inspection to ensure compliance with state standards; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendments: Chapter 99 in first sentence of (4) and (5) inserted "located in this state"; and made minor changes in style. Amendment effective March 19, 1997.

Chapter 188 inserted (6) regarding consideration of licensure eligibility during the accreditation period and inspection of a facility to ensure compliance with state standards; and made minor changes in style.

1995 Amendment: Chapter 366 in (4), near beginning after "evidence", inserted "required by the department".

1993 Amendment: Chapter 415 in (1) and (3), at end, substituted "parts 1 and 2" for "parts 1 through 4"; in (4), in first sentence after "accreditation of", substituted "health care organizations" for "hospitals" and at end inserted "for purposes of the licensing process", in second sentence, near beginning after "may", inserted "in addition to its inspection authority in 50-5-116", and in third sentence, near middle, substituted "specific complaint made in writing pertaining to licensing requirements" for "such complaint"; and made minor changes in style.

1991 Amendment: Inserted (5) authorizing Department to consider as eligible for licensure any health care facility, other than a hospital, accredited by the Joint Commission on Accreditation of Health Care Organizations. Amendment effective July 1, 1991.

1981 Amendment: Added (4) relating to eligibility for licensure and exemption from inspection for hospitals accredited by the Joint Commission on Accreditation of Hospitals.

Statement of Intent: The statement of intent adopted with Ch. 347, L. 1979, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Health and Environmental Sciences [now Department of Public Health and Human Services]. This bill is intended to expand the authority of the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to license health care facilities in order to cover additional health care facilities, and to revise the requirements of specific health care facilities to obtain a certificate of need. Generally the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] is intended to have the authority to amend and update existing licensure rules and to adopt new rules for licensure to conform with the mandates of P.L. 92-603 and the Social Security Act, titles V, XVIII, and XIX.

In the same spirit, the Department may write and adopt rules, in accordance with the Montana Administrative Procedure Act, to insure the implementation of a state certificate of need program which meets the minimum standards of P.L. 93-641, the National Health Planning and Resources Development Act, and which is acceptable to the Secretary of the Department of Health, Education and Welfare. This program is aimed at insuring that only new institutional health services, expenditures in excess of $150,000 made to prepare for a new institutional health service, or arrangements and commitments made to finance a new institutional health service which are found by the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to be needed may be granted a certificate of need and that only those services which are granted a certificate of need may be offered to the public.

Section 2 is the primary, broad-based source of rulemaking authority for the entire chapter. Insofar as licensing and certification of health care facilities are concerned (Title 50, chapter 5, part 2), this section does not add any new discretionary authority beyond that already authorized for the Department, with the exception that this section is intended to allow the setting of certification standards for additional types of health care facilities, such as health maintenance organizations and adult day care centers not currently covered by law. This section is not intended to expand the existing rulemaking authority under part 4 except for rules specific to the additional health care facilities that will be covered.

Section 2 is intended to clearly authorize rulemaking authority to implement part 3. As a minimum, it is intended that the Department may adopt rules covering the following:

1. procedures and assurances required by 42 CFR 123.401 through 42 CFR 123.411 and any subsequent rules replacing or augmenting them;
2. procedures to be followed during the review process, including any interrelationships with review being conducted by a health systems agency; and
3. the effect on an application for certificate of need if the Department fails to decide whether to approve or disapprove the application within the time period set for review.

Section 5 is intended to allow the Department to require health care facilities to keep records and file reports with the Department containing information relevant to licensing, certification, statewide health planning, and resources development.

Section 9 is not intended to be construed to add new rulemaking authority beyond what is currently authorized for the Department. The rules referred to in the section refer to federal rules implementing the federal statute cited in this section.

Section 10 is intended to retain existing authority to set licensing standards except that these standards may be set for the new types of health care facilities added by this bill.

Section 13 is intended to authorize the Department to prescribe by rule the form of letters of intent and applications for certificate of need and to specify what information should be provided in each. This is further specific authority for rules governing a portion of the review process. The procedure for the entire review process is intended to be detailed under the authority delegated by Section 2.

Section 14 is explicit as to what review criteria, required findings, and standards must be included in Department rules adopted to implement the act; however, the Department may, within the scope of this section, adopt rules to more clearly define the criteria enumerated in this section.

Section 15 allows the Department to establish by rule what will constitute 'good cause' to extend the period for which a certificate of need is valid.

Section 16 is intended to permit the Department to define what will constitute 'good cause' to grant a reconsideration hearing, in order to prevent hearings based on frivolous grounds and to contain administrative costs. This section is also intended to authorize additional specific procedures for administrative hearings, at both the Department and Board levels, than are provided in the Montana Administrative Procedure Act but which are consistent with the provisions of MAPA.

Section 20 is intended to apply specifically to Title 50, chapter 5, part 4, and does not broaden existing rulemaking authority except where it applies to the new types of health care facilities added by this bill."

Administrative Rules

Title 37, chapter 106, ARM Health care facilities.

50-5-104. Certain exemptions for spiritual healing institution.

Case Notes

Sterilization — Doctor Subject to Hospital Morality Rules: With respect to the issue of voluntary sterilization, although the physician has exclusive direction over his patient, he is subject to hospital rules based upon religious or moral tenets. Ham v. Holy Rosary Hosp., 165 M 369, 529 P2d 361 (1974).

50-5-105. Discrimination prohibited.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 29, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

Termination Provision Repealed: Section 3, Ch. 310, L. 2009, repealed sec. 6, Ch. 351, L. 2007, which terminated the 2007 amendments to this section June 30, 2009. Effective April 19, 2009.

2007 Amendment: Chapter 351 deleted (5) that read: "(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria." Amendment effective April 28, 2007, and terminates June 30, 2009.

2003 Amendment: Chapter 224 at end of (4) after "chapter" deleted "5 or". Amendment effective July 1, 2003.

Severability: Section 34, Ch. 224, L. 2003, was a severability clause.

Saving Clause: Section 35, Ch. 224, L. 2003, was a saving clause.

1997 Amendment: Chapter 472 in (1), near end, substituted "disability" for "handicap"; and made minor changes in style.

1989 Amendments: Chapter 152 inserted (2) relating to HIV and HIV-related conditions; and made minor change in grammar.

Chapter 309 inserted (4) prohibiting denial of hospital privileges to osteopaths and podiatrists, except for hospitals that employ their own medical staff; and inserted (5) to allow limitation of hospital membership or privileges under certain circumstances.

Severability: Section 3, Ch. 509, L. 1989, was a severability clause.

Case Notes

Sterilization — Doctor Subject to Hospital Morality Rules: With respect to the issue of voluntary sterilization, although the physician has exclusive direction over his patient, he is subject to hospital rules based upon religious or moral tenets. Ham v. Holy Rosary Hosp., 165 M 369, 529 P2d 361 (1974).

50-5-106. Records and reports required of health care facilities — confidentiality.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 364, L. 2023. Amendment effective October 1, 2023.

Transition: Section 5, Ch. 364, L. 2023, provided: "(1) The department of public health and human services may not require the submission of the financial assistance policy and community benefit report required under [this act] until the department has adopted rules specifying the information to be reported.

(2) A hospital financial assistance policy required under [this act] may comply with only federal financial assistance standards until the department of public health and human services has adopted rules specifying state standards for the policy."

2003 Amendment: Chapter 396 in fifth sentence near middle after "50-16-551" inserted "if applicable" and after "authorized" substituted "as permitted by law" for "in writing by the patient, the patient's guardian, or the patient's agent in accordance with Title 50, chapter 16, part 5". Amendment effective April 18, 2003.

1995 Amendment: Chapter 546 in fourth sentence, after "department", deleted "or board"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Termination Extension: Sections 2 and 3, Ch. 377, L. 1989, amended the provisions that would terminate the temporary version of this section to extend the temporary version until July 1, 1991.

1987 Amendment: In fifth sentence inserted references to 50-16-551 and Title 50, chapter 16, part 5.

Effective Date of 1983 Amendment: Section 9, Ch. 477, L. 1987, amended the effective date of the amendment of this section by Ch. 329, L. 1983, to provide a delayed effective date of July 1, 1989.

1983 Amendment: Deleted former last sentence, which read: "Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, shall be accessible to the public." Amendment effective July 1, 1987 (sec. 13(4), Ch. 329, L. 1983), but see 1987 amendment.

50-5-108. Injunction.

Compiler's Comments

1993 Amendment: Chapter 415 at beginning, after "The department", deleted "on advice of the attorney general"; and substituted (1) through (3) describing the activities for which an action may be brought for former text that read: "restrain or prevent the establishment, conduct, management, or operation of a facility which is in violation of any provision of parts 1 or 4 of this chapter".

50-5-110. Patient bill of rights.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

50-5-112. Civil penalties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 364, L. 2023. Amendment effective October 1, 2023.

Transition: Section 5, Ch. 364, L. 2023, provided: "(1) The department of public health and human services may not require the submission of the financial assistance policy and community benefit report required under [this act] until the department has adopted rules specifying the information to be reported.

(2) A hospital financial assistance policy required under [this act] may comply with only federal financial assistance standards until the department of public health and human services has adopted rules specifying state standards for the policy."

2021 Amendment: Chapter 535 in (1) at end deleted "or in the first judicial district". Amendment effective October 1, 2021.

1997 Amendment: Chapter 422 in (3) substituted "state general fund" for "patient protection account provided for in 50-5-232"; and made minor changes in style. Amendment effective July 1, 1997.

50-5-113. Criminal penalties.

Compiler's Comments

2021 Amendment: Chapter 535 in (5) at end deleted "or in the first judicial district". Amendment effective October 1, 2021.

1997 Amendment: Chapter 422 in (6) substituted "state general fund" for "patient protection account provided for in 50-5-232"; and made minor changes in style. Amendment effective July 1, 1997.

50-5-114. Administrative enforcement — notice — order for corrective action.

Compiler's Comments

1995 Amendment: Chapter 546 throughout section substituted "department" for "board"; and at end of (2), before "order", deleted "department". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-5-115. Receiverships.

Compiler's Comments

1995 Amendment: Chapter 514 in (2), near beginning after "believes", inserted "or has received notice from the department of justice that"; and made minor changes in style. Amendment effective July 1, 1995.

50-5-116. Facility inspections.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-5-117. Economic credentialing of physicians prohibited — definitions.

Compiler's Comments

2009 Amendment: Chapter 310 in (1) at beginning inserted exception clause; in (1), (1)(a) in two places, (2), (3)(c)(i), and (3)(c)(ii) after "hospital" inserted reference to outpatient center for surgical services; in (1)(a) at beginning deleted "except as may be required for medicare certification or for accreditation by the joint commission on accreditation of healthcare organizations"; in (1)(c) near beginning substituted "or outpatient center for surgical services health plan to a physician who has medical staff privileges" for "to a physician or a partner, associate, or employee of the physician"; in (2) near beginning after "may" substituted language requiring recusal of individuals having a conflict of interest for "refuse to appoint a physician to the governing body of the hospital or to the position of president of the medical staff or presiding officer of a medical staff committee if the physician or a partner or employee of the physician provides medical or health care services at, has an ownership interest in, or occupies a leadership position on the medical staff of a different hospital, hospital system, or health care facility"; in (3) inserted definitions of board and conflict of interest; in (3)(c)(i) following "individual's" inserted "education"; in (3)(c)(ii)(A) at end following "physicians" inserted "if the contracts do not violate the unfair trade practices provisions of Title 30, chapter 14, part 2"; in (3)(c)(ii)(B) at end following "requirements" inserted "if the on-call requirements do not violate the unfair trade practices and consumer protection provisions of 30-14-103 or Title 30, chapter 14, part 2"; in (3)(d) at end following "50-5-101" deleted "and includes diagnostic facilities"; deleted former (4) that read: "For the purposes of this section, the provisions of 50-5-207 do not apply"; and made minor changes in style. Amendment effective April 19, 2009.

Termination Provision Repealed: Section 3, Ch. 310, L. 2009, repealed sec. 6, Ch. 351, L. 2007, which terminated this section June 30, 2009. Effective April 19, 2009.

Effective Date: Section 5, Ch. 351, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 28, 2007.

Termination: Section 6, Ch. 351, L. 2007, provided: "[This act] terminates June 30, 2009."

50-5-121. Hospital discrimination based on ability to pay prohibited — community benefit and financial assistance requirements — rulemaking authority.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 364, L. 2023. Amendment effective October 1, 2023.

Transition: Section 5, Ch. 364, L. 2023, provided: "(1) The department of public health and human services may not require the submission of the financial assistance policy and community benefit report required under [this act] until the department has adopted rules specifying the information to be reported.

(2) A hospital financial assistance policy required under [this act] may comply with only federal financial assistance standards until the department of public health and human services has adopted rules specifying state standards for the policy."

Effective Date: Section 8, Ch. 456, L. 2009, provided that this section is effective July 1, 2009.

50-5-122. Transfer of hospital patients.

Compiler's Comments

Effective Date: Section 8, Ch. 456, L. 2009, provided that this section is effective July 1, 2009.

Part 2
Licensing

Part Administrative Rules

Title 37, chapter 106, ARM Health care facilities.

50-5-201. License requirements.

Compiler's Comments

1993 Amendment: Chapter 415 in (1), at beginning, inserted "facility or"; and made minor changes in style.

1991 Amendment: In (2), at end of second sentence, substituted "may be issued for a period of 1 to 3 years in duration" for "shall be for 1 year unless issued for a shorter period".

Case Notes

No Abuse of Discretion in Denial of Hospital's Request for Preliminary Injunction Against Opening Other Hospital Based on Lack of Irreparable Injury and Public Participation: Plaintiff hospital sought a preliminary injunction against defendant partnership to keep the partnership from opening another hospital in Great Falls, based on potential irreparable injury and on the lack of public participation in the licensing process. The District Court denied the injunction. On appeal, the Supreme Court found that plaintiff failed to present evidence demonstrating that plaintiff would suffer some injury that would be irremediable by a future award of legal or other equitable relief. Additionally, the District Court relied on Kadillak v. The Anaconda Co., 184 M 127, 602 P2d 147 (1979), for the proposition that there is no independent right of public participation in an agency's decisionmaking process when the Legislature has not provided for participation. The Supreme Court noted that the state has been given very limited statutory direction in licensing hospitals and that there is no express statutory requirement for the state to permit public participation in licensing matters, concluding that whatever the state's obligations are in evaluating hospital license applications, plaintiff did not demonstrate that those obligations were clearly violated. Staying within the limits of review of a denial of a request for a preliminary injunction without reaching the merits of the underlying case, the Supreme Court concluded that the District Court did not manifestly abuse its discretion in denying the preliminary injunction, and the District Court was affirmed. Benefis Healthcare v. Great Falls Clinic, LLP, 2006 MT 254, 334 M 86, 146 P3d 714 (2006).

50-5-203. Application for license.

Compiler's Comments

2007 Amendment: Chapter 466 inserted (3) requiring inclusion of attestation or supporting documentation. Amendment effective May 8, 2007.

Applicability: Section 6, Ch. 466, L. 2007, provided: "[This act] does not apply to a hospital existing prior to [the effective date of this act]." Effective May 8, 2007.

1991 Amendment: Near middle of (1), after "facility and", substituted "after that no later than the expiration date of the license" for "annually thereafter".

50-5-204. Issuance and renewal of licenses — inspections.

Compiler's Comments

1995 Amendment: Chapter 366 in (1), near beginning after "application", inserted "and notice that the facility is ready to be inspected"; and made minor changes in style.

1991 Amendment: In (1), near beginning after "new", deleted "or renewal" and at end substituted "conduct an initial inspection of the facility within 45 days" for "inspect the facility without prior notice to the operator or staff"; inserted (2) governing inspection after receipt of an application; and at end of (3) substituted "a period of 1 to 3 years in duration" for "1 year".

1987 Amendment: At end of (1) inserted "without prior notice to the operator or staff".

1985 Amendment: Substituted (1) through (4) relating to the issuance and renewal of licenses for former (1) that read: "After receipt of a new or renewal application and a determination by the department that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for 1 year. If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community. The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in 42 U.S.C. 1395 x(o), as amended, and in rules implementing it which add minimum standards"; deleted former (2) and (3) that read: "(2) The department must inspect a new facility before an initial license is granted.

(3) An application for renewal of a license must be accompanied by a report, on forms provided by the department, containing such information as the department considers necessary to determine whether minimum standards are being met"; and substituted (5) relating to the time of inspection and access requirements for former (4) that read: "The department may inspect a licensed health care facility whenever it considers it necessary and shall inspect each licensed facility at least once within the 3 years following the date of its last inspection. The entire premises of a licensed facility shall be open to inspection, and access to all records shall be granted at all reasonable times."

1981 Special Session Amendment: Substituted first sentence of (1) that read: "After receipt of a new or renewal application and a determination by the department that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for 1 year" for "On receipt of a new or renewal application, the department or its authorized agent shall inspect the facility. If minimum standards are met and the proposed staff is qualified, the department shall issue a license for 1 year"; inserted (2) and (3) (see 1985 amendment note for text); inserted (4), which read: "The department may inspect a licensed health care facility whenever it considers it necessary and shall inspect each licensed facility at least once within the 3 years following the date of its last inspection. The entire premises of a licensed facility shall be open to inspection, and access to all records shall be granted at all reasonable times"; inserted language from former (2) as last sentence of (4); and substituted "The entire premises of a licensed facility" for "Licensed premises" in last sentence of (4).

Administrative Rules

Title 37, chapter 106, subchapter 3, ARM Construction and minimum standards for all health care facilities.

50-5-207. Denial, suspension, or revocation of health care facility license — provisional license.

Compiler's Comments

2009 Amendment: Chapter 310 in (1)(h) near middle after "3" deleted "except 50-5-117". Amendment effective April 19, 2009.

Termination Provision Repealed: Section 3, Ch. 310, L. 2009, repealed sec. 6, Ch. 351, L. 2007, which terminated the 2007 amendments to this section June 30, 2009. Effective April 19, 2009.

2007 Amendment: Chapter 351 in (1)(h) inserted exception clause; and made minor changes in style. Amendment effective April 28, 2007, and terminates June 30, 2009.

1995 Amendment: Chapter 546 at end of (4) substituted "by the court" for "by the board or court"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 415 in (2), at end, substituted "that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2" for "minimum standards are not being met"; inserted (4) allowing the Department to keep the revocation in effect for up to 2 years and providing that on appeal, there must be an affirmance or reversal; and made minor changes in style.

50-5-208. Hearing required.

Compiler's Comments

1995 Amendment: Chapter 546 throughout section substituted "department" for "board"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-5-210. Department to make rules — standards for hospices.

Compiler's Comments

1993 Amendment: Chapter 151 inserted (3) requiring establishment of standards for licensure of a residential hospice facility; inserted (4) requiring establishment of standards for licensure of a freestanding inpatient hospice facility; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 151, L. 1993, provided: "A statement of intent is necessary for this bill because it grants the department of health and environmental sciences [now department of public health and human services] the authority to adopt by rule specific licensing standards for residential hospice and inpatient hospice facilities.

It is the intent of the legislature that the department adopt rules for licensure of residential and inpatient hospice facilities to ensure that:

(1) hospice facilities are constrained to a certain standard of care;

(2) hospice facilities are managed and operated by hospice-trained staff or volunteers; and

(3) policies and procedures are in keeping with the hospice approach to care and with current trends in hospice care.

It is the intent of the legislature that the department adopt rules for inpatient hospice facilities that reflect applicable, current federal regulations and that the department go beyond adoption of existing relevant federal regulations for inpatient hospice facilities and provide for two levels of site-based hospice services. It is the intent of the legislature to ensure that residential and inpatient hospice facilities are integrated within a comprehensive, licensed hospice program."

1983 Statement of Intent: The statement of intent attached to SB 208 (Ch. 324, L. 1983) provided: "Section 2 authorizes the department of health and environmental sciences [now department of public health and human services] to adopt rules setting standards for hospice programs. It is anticipated that the department will draw on the Hospice Project Standards being formulated by the Joint Commission on Accreditation of Hospitals (JCAH), which cover hospice programs operated both with and without hospital affiliation. The JCAH standards expand on areas mentioned in section 2 (patient and family as unit, continuity of care, management and administration) and touch on additional areas when standards are contemplated (such as symptom management, medical records, and quality assurance). The department should bear in mind that many of the JCAH standards are optimum standards or goals and that these should not be promulgated as minimum standards. Where minimum standards or weighted averages exist, these should be taken into account.

The bill is not intended as a vehicle to qualify hospice programs for medicare reimbursement. Such program standards as the federal government may establish to qualify medicare providers are not to be considered a source of state licensing criteria, except as an alternative standard for programs which choose to pursue medicare reimbursement."

Administrative Rules

Title 37, chapter 106, subchapter 23, ARM Minimum standards for hospice facilities.

50-5-212. Organ procurement program required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: At end of (2) substituted reference to 72-17-213 for reference to 72-17-211.

Administrative Rules

ARM 37.106.405 Minimum standards for hospital — organ donation requests and protocols.

50-5-213. Requirements for home infusion therapy services.

Administrative Rules

Title 37, chapter 106, subchapter 24, ARM Home infusion therapy.

50-5-214. Requirements for retirement homes.

Administrative Rules

Title 37, chapter 106, subchapter 25, ARM Retirement homes.

50-5-215. Standards for adult foster care homes.

Compiler's Comments

2007 Amendment: Chapter 449 in second sentence near middle after "investigation" substituted "section" for "program". Amendment effective June 1, 2007.

Administrative Rules

Title 37, chapter 106, subchapter 26, ARM Adult day care.

50-5-216. Limitation on care provided in adult foster care home.

Compiler's Comments

2005 Amendment: Chapter 519 in (4) near middle substituted "physician assistant" for "physician assistant-certified". Amendment effective October 1, 2005.

1999 Amendment: Chapter 133 in (2) inserted reference to adult receiving state-funded services through department and after "an adult who resided in the home" deleted "for at least 1 year"; at end of (3) substituted "shall provide the department with a copy of the statement required in subsection (4)" for "must have a signed statement from a physician agreeing that the care needed by the adult may be provided in the home"; in (4) after "must have a" inserted "certification in the form of a" and at end of introductory phrase inserted "and certifies that"; deleted former (4)(b) that read: "(b) has certified that the particular needs of the resident can be adequately met in the home"; inserted (4)(a) relating to appropriateness of available services; deleted former (4)(c) that read: "(c) has certified that there has been no significant change in health care status that would require another level of care"; inserted (4)(b) relating to no need for more intensive residential service setting; and made minor changes in style. Amendment effective July 1, 1999.

50-5-220. Licensure of outdoor behavioral programs — exemption.

Compiler's Comments

Effective Date: Section 4, Ch. 348, L. 2003, provided: "[This act] is effective July 1, 2003."

Administrative Rules

Title 37, chapter 98, ARM Outdoor behavioral program.

50-5-225. Assisted living facilities — services to residents — employee background checks.

Compiler's Comments

2019 Amendment: Chapter 362 inserted (3) requiring assisted living facilities to conduct background checks on employees; inserted (4) concerning individuals whom assisted living facilities may not employ; inserted (5) allowing an assisted living facility to provisionally employ an individual pending the results of a background check; and made minor changes in style. Amendment effective October 1, 2019.

2003 Amendment: Chapter 54 in (1) at beginning substituted "An assisted living facility shall, at a minimum" for "A personal-care facility must"; in (1)(a) at beginning substituted "personal" for "residential"; in (1)(b) substituted language regarding assistance with activities of daily living for former language that read: "personal assistance services, such as assistance by staff as required by residents in eating, walking, dressing, grooming, and similar routine living tasks"; in (1)(d) at beginning substituted "assistance with" for "supervision of"; inserted (1)(e) regarding 24-hour onsite supervision by staff; inserted (1)(f) regarding assistance in arranging health-related services; inserted (2) allowing a resident of an assisted living facility to obtain certain third-party provider services; and made minor changes in style. Amendment effective October 1, 2003.

50-5-226. Placement in assisted living facilities.

Compiler's Comments

2017 Amendment: Chapter 402 inserted (5) concerning placement of resident in category D facility and diversion to category D facility from involuntary commitment; in (6) inserted reference to category D; in (8)(b) at end of first sentence substituted "(3) through (5)" for "(3) and (4) and inserted last sentence concerning eligibility to be placed in a category D assisted living facility"; in (8)(f) near beginning inserted "and a category D" and inserted last sentence concerning safety and restraint training; and made minor changes in style. Amendment effective October 1, 2017.

2003 Amendment: Chapter 54 in (1) at beginning substituted "An assisted living facility" for "A personal-care facility"; in (2) substituted language restricting a category A assisted living facility from admitting or retaining a category A resident unless certain conditions are met for former language that read: "A resident of a personal-care facility licensed as a category A facility under 50-5-227 may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time"; in (3) substituted language restricting a category B assisted living facility from admitting or retaining a category B resident unless certain conditions are met for former language that read: "A resident of a personal-care facility licensed as a category B facility under 50-5-227 must have a signed statement from a physician agreeing to the resident's admission to the facility if the resident is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications"; in (3)(f) substituted language concerning a health care assessment by a licensed health care professional for former language that read: "A resident of a category B personal-care facility who needs skilled nursing care must have a signed statement, renewed on a quarterly basis by a physician, a physician assistant-certified, an advanced practice registered nurse, or a registered nurse, whose work is unrelated to the operation of the facility and who"; in (3)(f)(i) substituted "assessment" for "statement"; inserted (4) restricting a category C assisted living facility from admitting or retaining a category C resident unless certain conditions are met; inserted (5) requiring an assisted living facility to specify services that will be provided to category B and C residents; in (6) near beginning of first sentence after "provide to the" substituted "assisted living" for "personal-care" and after "and to the" substituted "licensed health care professionals" for "physicians, physician assistants-certified, advanced practice registered nurses, or registered nurses"; in (7)(a) near end after "resident's" substituted "practitioner" for "physician"; in (7)(a)(i) after "residents of" substituted "assisted living" for "personal-care"; in (7)(b) at end inserted reference to subsection (4); in (7)(d) near beginning after "category A" substituted "assisted living" for "personal-care" and at end inserted "and the storage and administration of over-the-counter and prescription medications"; in (7)(e) near beginning after "category B" substituted "assisted living" for "personal-care", after "category A" substituted "assisted living" for "personal-care", near middle after "training of staff" deleted "restraint use and reduction", and at end after "care" deleted "and the storage and administration of drugs"; inserted (7)(f) requiring rules addressing standards for operating a category C assisted living facility"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 331 in (4) substituted "an advanced practice registered nurse" for "a nurse practitioner"; inserted (5) concerning standardized forms and education and training materials for personal-care facilities; and made minor changes in style. Amendment effective October 1, 2001.

Department Review: Section 2, Ch. 331, L. 2001, provided: "(1) The legislature finds that an increasing number of individuals require personal-care services and that it is in the best interest of individuals who reside in personal-care facilities:

(a) to remain in those facilities and to age in place while having their health, medical, and social needs met;

(b) for the department to provide some flexibility in the regulation of personal-care facilities; and

(c) for the department to educate the personal-care facilities and health care professionals about the regulations.

(2) The department shall review all rules adopted pursuant to 50-5-226, in conjunction with consumers and providers of personal care, to determine any necessary changes that may be needed to the rules or the laws that they implement. The department shall consider the following, including but not limited to:

(a) the appropriate size of category A and category B personal-care facilities;

(b) the flexibility in the oversight and regulation of personal-care facilities based on the needs of the individuals who reside in the personal-care facilities in order to allow individuals to safely remain in those facilities and age in place; and

(c) the extent to which the rules specify provider qualifications, sufficient staff training requirements, and sufficient physician involvement in the care of the individuals in personal-care facilities.

(3) The department shall present its findings, recommendations, and any suggested legislation to the children, families, health, and human services interim committee by September

15, 2002, and to the legislature as provided in 5-11-210." Section 2 is effective October 1, 2001, and pursuant to sec. 3, Ch. 331, L. 2001, terminates June 30, 2003.

1995 Amendments: Chapter 366 in (4), near beginning after "resident of a", inserted "category B", after "renewed on" deleted "an annual basis for a category A facility and on", and after "quarterly basis" substituted "by" for "for a category B facility, from"; and in (4)(a), after "within the", deleted "year covered by the statement for a category A facility and within the" and at end deleted "for a category B facility".

Chapter 546 in (5), after "shall", deleted "in consultation with the department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 590 substituted (1) through (4) concerning residents of various categories of facilities for former (1) that read: "A personal-care facility may not have as a resident a person who is:

(a) in need of medical or physical restraints;
(b) nonambulatory or bedridden;
(c) totally incontinent; or
(d) less than 18 years of age"; in (5)(b), at end, substituted "individuals referred to in subsection (3)" for "persons prohibited by subsection (1)"; in (5)(c) substituted "subsection (5)(b)" for "subsection (2)(b)"; inserted (5)(d) and (5)(e) concerning standards for category A and category B facilities; and made minor changes in style. Amendment effective July 1, 1994.

1993 Statement of Intent: The statement of intent attached to Ch. 590, L. 1993, provided: "A statement of intent is required for this bill because 50-5-226 requires the department of health and environmental sciences [now department of public health and human services] to adopt standards governing personal-care facilities and because 50-5-227 requires the department to adopt rules implementing two categories of personal-care facilities.

The legislature intends that the standards to be adopted under 50-5-226 involve only those basic aspects of care that are not already part of local ordinances and that the rules do not overregulate or require more than absolutely necessary for the safety of the residents because, in many instances, the facilities in which residents will live are the homes of those persons managing them.

The legislature recognizes a preference by many senior citizens and their relatives for seniors to live in a home setting in a private home or residence rather than in a nursing home. The legislature further recognizes that there are a number of persons in this state who are willing to care for seniors in their own homes or in homes operated by them in which the home setting is preserved. The legislature further recognizes that the quality of care given in these homes or residences may be preferable under many circumstances because the patient-to-staff ratio is considerably lower than in a nursing home and the home setting avoids the institutional atmosphere and associated problems.

Finally, the legislature recognizes that these homes can be considerably less expensive than nursing homes. Therefore, the legislature specifically finds that the use of private homes or residences in which the home setting is preserved is to be recognized as the preferred treatment for all persons who can receive adequate care in such a facility."

Applicability: Section 7, Ch. 590, L. 1993, provided: "[Sections 1 through 4] [50-5-101, 50-5-226, 50-5-227, and 50-5-301] and the rules of the department of health and environmental sciences [now department of public health and human services] adopted pursuant to [sections 2 and 3] [50-5-226 and 50-5-227] apply to licenses for personal-care facilities issued or renewed after July 1, 1994."

1985 Amendment: In (2)(c) substituted "subsection (2)(b)" for "subsection (1)(b)".

Administrative Rules

Title 37, chapter 106, subchapter 28, ARM Assisted living facilities.

50-5-227. Licensing assisted living facilities.

Compiler's Comments

2019 Amendment: Chapter 362 inserted (2) concerning suspension of an assisted living facility's license for noncompliance with employee background checks; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 402 inserted (2)(d) concerning category D facility; inserted (3)(b) regarding facility seeking licensing as category D facility; and made minor changes in style. Amendment effective October 1, 2017.

2003 Amendment: Chapter 54 in (1) near middle after "operation of" substituted "assisted living" for "personal-care"; in (2)(a) at beginning after "facility" substituted "serving residents requiring the level of care as provided for in 50-5-226(2)" for "providing personal care to residents who may not be:
(i) in need of skilled nursing care;
(ii) in need of medical, chemical, or physical restraint;
(iii) nonambulatory or bedridden;
(iv) incontinent to the extent that bowel or bladder control is absent; or
(v) unable to self-administer medications"; in (2)(b) near beginning after "providing" substituted "skilled nursing care or other skilled services" for "personal care" and after "residents who" substituted "meet the requirements stated in 50-5-226(3)" for "may be:
(i) in need of skilled nursing care;
(ii) in need of medical, chemical, or physical restraint;
(iii) nonambulatory or bedridden;
(iv) incontinent to the extent that bowel or bladder control is absent; or
(v) unable to self-administer medications"; inserted (2)(c) establishing category C; inserted (3) allowing an approved single facility that meets the requirements for a category A facility to be licensed to provide category B or category C services; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendments: Chapter 366 in (2)(a), after "personal care to", deleted "six or more".

Chapter 546 in (1), near beginning after "shall", deleted "in consultation with the department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 590 inserted (2) concerning licensing categories; and made minor changes in style. Amendment effective July 1, 1994.

1993 Statement of Intent: The statement of intent attached to Ch. 590, L. 1993, provided: "A statement of intent is required for this bill because 50-5-226 requires the department of health and environmental sciences [now department of public health and human services] to adopt standards governing personal-care facilities and because 50-5-227 requires the department to adopt rules implementing two categories of personal-care facilities.

The legislature intends that the standards to be adopted under 50-5-226 involve only those basic aspects of care that are not already part of local ordinances and that the rules do not overregulate or require more than absolutely necessary for the safety of the residents because, in many instances, the facilities in which residents will live are the homes of those persons managing them.

The legislature recognizes a preference by many senior citizens and their relatives for seniors to live in a home setting in a private home or residence rather than in a nursing home. The legislature further recognizes that there are a number of persons in this state who are willing to care for seniors in their own homes or in homes operated by them in which the home setting is preserved. The legislature further recognizes that the quality of care given in these homes or residences may be preferable under many circumstances because the patient-to-staff ratio is considerably lower than in a nursing home and the home setting avoids the institutional atmosphere and associated problems.

Finally, the legislature recognizes that these homes can be considerably less expensive than nursing homes. Therefore, the legislature specifically finds that the use of private homes or residences in which the home setting is preserved is to be recognized as the preferred treatment for all persons who can receive adequate care in such a facility."

Applicability: Section 7, Ch. 590, L. 1993, provided: "[Sections 1 through 4] [50-5-101, 50-5-226, 50-5-227, and 50-5-301] and the rules of the department of health and environmental sciences [now department of public health and human services] adopted pursuant to [sections 2 and 3] [50-5-226 and 50-5-227] apply to licenses for personal-care facilities issued or renewed after July 1, 1994."

1983 Statement of Intent: The statement of intent attached to SB 446 (Ch. 597, L. 1983) provided: "Senate Bill 446 requires a statement of intent because section 3 requires the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to adopt standards for operation and licensing of personal-care facilities, and license, inspection, and patient screening fees. It is the intent of the Legislature that when the Department adopts rules to implement provisions of SB 446 that it utilize the report to the 48th Legislature by the Legislative advisory committee on Joint Resolution 34 and that the rules:

1. assure that licensees meet applicable fire, sanitation, building, and service standards;

2. provide as expeditious a licensing procedure as possible;
3. set inspection and patient screening fees that recover but do not exceed the costs of inspection and patient screening; and
4. include other state agencies in the development of those rules which fall in their areas of expertise and responsibility. While SB 446 prohibits direct provision of nursing services by the personal-care or roominghouse/retirement home licensee, there is no intent to prevent those services from being delivered by any provider legally authorized to do so, consistent with the provisions of this act."

Administrative Rules

Title 37, chapter 106, subchapter 28, ARM Assisted living facilities.

50-5-228. Limited licensing.

Compiler's Comments

1997 Amendment: Chapter 42 in two places substituted "50-5-225 through 50-5-228" for "50-5-225 through 50-5-230". Amendment effective March 12, 1997.

50-5-232. Patient protection account — deposit of funds.

Compiler's Comments

1997 Amendment: Chapter 422 in (1) deleted second sentence that read: "The money in the account is statutorily appropriated to the department as provided in 17-7-502"; deleted (2)(a) that read: "(a) penalties collected pursuant to part 1 or 2 of this chapter"; deleted (2)(c) that read: "(c) interest earned on money in the account"; inserted (4) relating to the deposit of penalties in the state general fund; and made minor changes in style. Amendment effective July 1, 1997.

50-5-233. Designation of critical access hospitals — adoption of rules.

Compiler's Comments

2005 Amendment: Chapter 7 in (1)(c) substituted language concerning bed limitations adopted by rule for "has no more than 15 acute care inpatient beds or, in the case of a facility with swing beds, 25 acute care inpatient beds, of which no more than 15 are used for acute care at any one time, for providing inpatient care for a period not exceeding 96 hours, as determined on an average, annual basis for each patient"; inserted (1)(d) concerning inpatient acute care; inserted (2)(d) concerning the designation of the maximum number of beds allowed; and made minor changes in style. Amendment effective February 23, 2005.

Effective Dates: Section 8, Ch. 192, L. 2001, provided: "(1) Except as provided in subsection (2), [this act] is effective July 1, 2001.

(2) [Sections 5(2) [50-5-233(2)] and 7 and this section] are effective on passage and approval." Approved April 3, 2001.

Administrative Rules

Title 37, chapter 106, subchapter 7, ARM Critical access hospital.

50-5-234. Designation as rural emergency hospital — requirements — rulemaking.

Compiler's Comments

Effective Date: Section 11, Ch. 602, L. 2023, provided: "[This act] is effective July 1, 2023."

Administrative Rules

ARM 37.106.901 Minimum standards for rural emergency hospitals.

50-5-235. Hourly limitation waivable by department or department's designee.

Compiler's Comments

Effective Date: Section 4, Ch. 366, L. 2001, provided that this section is effective on passage and approval. Approved April 23, 2001.

Applicability: Section 5, Ch. 366, L. 2001, provided: "[This act] applies to a health care facility license for an outpatient center for surgical services that is issued or renewed after [the effective date of this act]." Effective April 23, 2001.

50-5-238. Licensure of intermediate care facility for developmentally disabled — rulemaking.

Compiler's Comments

Effective Date: Section 7, Ch. 403, L. 2003, provided: "[This act] is effective July 1, 2003."

Administrative Rules

Title 37, chapter 106, subchapter 21, ARM Intermediate care facilities for the developmentally disabled.

50-5-245. Department to license specialty hospitals — standards — rulemaking — moratorium.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 364, L. 2023. Amendment effective October 1, 2023.

Transition: Section 5, Ch. 364, L. 2023, provided: "(1) The department of public health and human services may not require the submission of the financial assistance policy and community benefit report required under [this act] until the department has adopted rules specifying the information to be reported.

(2) A hospital financial assistance policy required under [this act] may comply with only federal financial assistance standards until the department of public health and human services has adopted rules specifying state standards for the policy."

2009 Amendment: Chapter 456 in (2) at beginning inserted "Prior to approving an application under this section"; in (3) after "may not" substituted "accept an application or issue a license for a specialty hospital before July 1, 2009" for "license a specialty hospital until July 1, 2009"; in (4) at end inserted "and the hospital is not subject to the provisions of 50-5-246 and subsections (5) through (9) of this section"; inserted (5) relating to emergency care requirements; inserted (6) relating to licensing requirements; inserted (7) relating to specialty hospital owned by physicians proposed as joint venture with nonprofit hospital; inserted (8) authorizing physician partners to manage specialty hospital; inserted (9) relating to charity care policy of specialty hospital applying as joint venture with nonprofit hospital; and made minor changes in style. Amendment effective July 1, 2009.

The amendments to this section made by sec. 1, Ch. 471, L. 2009, were rendered void by sec. 7, Ch. 456, L. 2009, a coordination section.

2007 Amendment: Chapter 466 in (1) at beginning inserted "Subject to subsection (4)"; in (2) substituted text requiring adoption of rules for "As used in this section, "specialty hospital" means a specialty hospital as defined in 42 U.S.C. 1395nn"; in (3) substituted "2009" for "2007"; inserted (4) prohibiting change in licensure status of specified health care facility; and made minor changes in style. Amendment effective May 8, 2007.

Termination Provision Repealed: Section 4, Ch. 466, L. 2007, repealed sec. 6, Ch. 365, L. 2005, which terminated this section July 1, 2007. Effective May 8, 2007.

Applicability: Section 6, Ch. 466, L. 2007, provided: "[This act] does not apply to a hospital existing prior to [the effective date of this act]." Effective May 8, 2007.

Applicability: Section 5, Ch. 365, L. 2005, provided: "[This act] applies to specialty hospitals to be established after the moratorium on referrals to specialty hospitals referred to in [section 4] [not codified] expires."

Termination: Section 6, Ch. 365, L. 2005, provided: "[This act] terminates July 1, 2007."

Contingent Effective Date: Section 4, Ch. 365, L. 2005, provided: "[This act] is effective upon certification by the director of public health and human services to the secretary of state that the moratorium on referrals by medical doctors to specialty hospitals provided for in section 507 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108-173 (42 U.S.C. 1395nn), has expired and not been continued. The director shall certify the date of the expiration as soon as the expiration is effective and shall send a copy of the certification to the code commissioner." In a letter dated June 28, 2005, the director of public health and human services certified that the moratorium expired on June 8, 2005, and was not continued.

Administrative Rules

Title 37, chapter 106, subchapter 8, ARM Licensing of specialty hospitals.

Case Notes

No Abuse of Discretion in Denial of Hospital's Request for Preliminary Injunction Against Opening Other Hospital Based on Lack of Irreparable Injury and Public Participation: Plaintiff hospital sought a preliminary injunction against defendant partnership to keep the partnership from opening another hospital in Great Falls, based on potential irreparable injury and on the lack of public participation in the licensing process. The District Court denied the injunction. On appeal, the Supreme Court found that plaintiff failed to present evidence demonstrating that plaintiff would suffer some injury that would be irremediable by a future award of legal or other equitable relief. Additionally, the District Court relied on Kadillak v. The Anaconda Co., 184 M 127, 602 P2d 147 (1979), for the proposition that there is no independent right of public participation in an agency's decisionmaking process when the Legislature has not provided for participation. The Supreme Court noted that the state has been given very limited statutory direction in licensing hospitals and that there is no express statutory requirement for the state to permit public participation in licensing matters, concluding that whatever the state's obligations are in evaluating hospital license applications, plaintiff did not demonstrate that those obligations were clearly violated. Staying within the limits of review of a denial of a request for a preliminary injunction without reaching the merits of the underlying case, the Supreme Court concluded that the District Court did not manifestly abuse its discretion in denying the preliminary injunction, and the District Court was affirmed. Benefis Healthcare v. Great Falls Clinic, LLP, 2006 MT 254, 334 M 86, 146 P3d 714 (2006).

50-5-246. Specialty hospital application process — impact study.

Compiler's Comments

Effective Date: Section 8, Ch. 456, L. 2009, provided that this section is effective July 1, 2009.

50-5-247. Licensure of eating disorder centers — rulemaking — definition.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 131, L. 2023. Amendment effective April 18, 2023.

Effective Date: This section is effective October 1, 2017.

Administrative Rules

Title 37, chapter 106, subchapter 30, ARM Eating disorder centers.

Part 3
Certificate of Need

Part Administrative Rules

Title 37, chapter 106, subchapter 1, ARM Certificate of need.

50-5-301. When certificate of need is required — definitions — report on capital expenditures not subject to certificate of need.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 339 in (2)(b) near end before "correctional facilities" deleted "juvenile and adult". Amendment effective October 1, 2021.

Chapter 477 throughout section substituted references to long-term care facilities for references to health care facilities; deleted former (1)(a), (1)(f), (1)(i), and (2)(a) (see 2021 Session Law for former text); in (1)(f) substituted "long-term care" for "home health care, long-term care, or inpatient chemical dependency treatment"; in (2)(a) after "this part" deleted "the following definitions apply"; inserted (4) concerning requirements when a person incurs an obligation by or on behalf of a long-term care facility for a capital expenditure that exceeds $5 million and does not otherwise require a certificate of need under this part; and made minor changes in style. Amendment effective October 1, 2021.

2003 Amendment: Chapter 114 in (2)(a)(ii) substituted "licensed addiction" for "chemical dependency". Amendment effective October 1, 2003.

2001 Amendment: Chapter 286 in (1)(h) after "services for" deleted "ambulatory surgical care through an outpatient center for surgical services, as defined in subsection (2)(a)" and after "dependency treatment" deleted "or inpatient rehabilitation"; inserted (1)(i) prohibiting construction, development, or other establishment of a facility for ambulatory surgical care through an outpatient center for surgical services in a county with a population of 20,000 without a certificate of need; in (2)(a) at end of first sentence after "dependency facility" deleted "rehabilitation facility with inpatient services, or outpatient center for surgical services that has or is intended to qualify for medicare certification as an ambulatory surgical center pursuant to 42 CFR, part 416"; inserted (2)(a)(iii) excluding a rehabilitation facility or an outpatient center for surgical services from the definition of health care facility; and made minor changes in style. Amendment effective April 20, 2001.

1999 Amendment: Chapter 98 in (1)(h) inserted "through an outpatient center for surgical services, as defined in subsection (2)(a)"; in (2)(a) near beginning after "nonfederal" deleted "ambulatory surgical facility" and inserted "or outpatient center for surgical services that has or is intended to qualify for medicare certification as an ambulatory surgical center pursuant to 42 CFR, part 416"; and made minor changes in style. Amendment effective October 1, 1999.

Saving Clause: Section 6, Ch. 98, L. 1999, was a saving clause.

Applicability: Section 7, Ch. 98, L. 1999, provided: "[This act] applies to health care facility licenses or certificates of need issued pursuant to Title 50, chapter 5, after October 1, 1999."

1997 Amendment: Chapter 93 in (1)(a), in first sentence after "expenditure", inserted "that exceeds $1.5 million" and after "existing health care facility" deleted "or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4)" and in second sentence, after "plant", deleted "or equipment" and at end substituted "exceeds $1.5 million" for "exceeds the expenditure thresholds"; at end of (1)(b)(i) substituted "and no beds have been added or relocated during the 2 years prior to the date the letter of intent for the proposal is received" for "in any 2-year period"; at end of (1)(b)(iii) substituted "state health care facilities plan" for "state health plan"; deleted former (1)(d) that read: "(d) the acquisition by any person of major medical equipment, provided the acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility"; in (1)(h), after "long-term care", deleted "inpatient mental health care"; deleted former (2) that read: "(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305"; in (2)(a), after "long-term care facility", deleted "medical assistance facility, mental health center with inpatient services" and after "facility with inpatient services" deleted "or residential treatment facility"; deleted (3)(c) that read: "(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1"; deleted (4) that read: "(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000"; deleted (5) that read: "(5) This section may not be construed to require a health care facility to obtain a certificate of need to undertake any activity that would not be subject to a certificate of need if undertaken by a person other than a health care facility"; inserted (3) concerning construction of the section regarding nonreviewable service; adjusted subsection references; and made minor changes in style. Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (3)(b)(ii), the Code Commissioner has made the change.

Chapter 366 in (3)(b)(ii), near beginning after "include", substituted "residential care facilities, as defined in 50-5-101" for "adult foster care, licensed under 52-3-303".

Chapter 398 near beginning of (1)(h) inserted "in excess of five"; and inserted (5) providing that the section cannot be construed to require a facility to obtain a certificate of need for an activity that would not need a certificate if done by a person other than a facility. Amendment effective April 12, 1995.

Chapter 546 at end of (3)(b)(ii) substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 590 at end of (1)(i) deleted "or personal care"; in (3)(a), at end of first sentence, deleted "or personal care facility"; in (3)(b)(i) and (3)(b)(ii) substituted "individuals" for "persons"; deleted (3)(d) that read: "(d) "Personal care facility" means an entity which provides services and care which do not require nursing skills to more than four persons who are not related to the owner or administrator by blood or marriage and who need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection (3)(b)"; and made minor changes in style. Amendment effective July 1, 1994.

Applicability: Section 7, Ch. 590, L. 1993, provided: "[Sections 1 through 4] [50-5-101, 50-5-226, 50-5-227, and 50-5-301] and the rules of the department of health and environmental sciences [now department of public health and human services] adopted pursuant to [sections 2 and 3] [50-5-226 and 50-5-227] apply to licenses for personal-care facilities issued or renewed after July 1, 1994."

1991 Amendments — Instructions to Code Commissioner: Chapter 244 inserted (3)(a)(ii) to exclude offices of private physicians, dentists, or other health care professionals from definition of health care facility.

The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 764 in (3)(a), in definition of health care facility or facility, inserted "residential treatment facility". Amendment effective July 1, 1991.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

1989 Amendments: Chapter 330 in definition of long-term care facility substituted "persons with severe disabilities" for "physically disabled persons" and after "under" substituted "53-19-203" (renumbered 52-4-203) for "53-19-111". Amendment effective July 1, 1989.

Chapter 377 inserted (1)(i) requiring certificate of need before a hospital may provide ambulatory surgical care, home health care, long-term care, inpatient mental, chemical dependency, or rehabilitation care, or personal care; in (3)(a), after "home health agency", deleted "hospital" and inserted second sentence exempting hospitals from certificate of need requirements in certain circumstances; and made minor changes in style and punctuation. Amendment effective June 30, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 377, L. 1989, provided: "It is the legislature's intent to exclude acute care hospitals from certificate of need requirements, except in certain limited circumstances that are enumerated in subsections 50-5-301(1)(h) and 50-5-301(1)(i). The provision by a hospital of services under either of those subsections is intended to include construction, conversion, or expansion of bed capacity."

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

Severability: Section 5, Ch. 377, L. 1989, was a severability clause.

1987 Amendment: In (1)(a) inserted "or to replace major medical equipment with equipment performing substantially the same function and in the same manner" and changed reference to subsection (5) to reference to subsection (4); in (1)(b) substituted "through an increase in the number of beds or" for "by 10 beds or 10%, whichever is less, in any 2-year period through:

(i) an increase or decrease in the total number of beds;

(ii) a redistribution of beds among various categories; or

(iii)", before "facility" substituted "health care" for "physical", and at end inserted "unless"; inserted (1)(b)(i) through (1)(b)(iii) (see 1987 Session Law for text); near end of (1)(c) substituted "$150,000" for "$100,000"; in (1)(e) inserted "or persons", inserted "50% or more of", and at end substituted "unless" for "if"; in (1)(e)(i) substituted "submits the letter" for "has failed to submit the notice" and at end substituted "and" for "or"; in (1)(e)(ii), after "finds", deleted "within 30 days after it receives the notice of intent required by 50-5-302(3)" and after "will" substituted "not significantly increase the cost of care provided or increase bed capacity" for "result in a change in the services or bed capacity of the facility"; at end of (1)(f) inserted "by any person, including another type of health care facility"; inserted (1)(h), (2), (3)(a), (3)(b), and (3)(d) (see 1987 Session Law for text); deleted former (2)(b), (3), and (4) that read: "(b) a health maintenance organization is to be considered a health care facility except to the extent exempted from certificate of need requirements as prescribed in rules adopted by the department.

(3) A proposed change in a project associated with a capital expenditure under subsection (1)(a) or (1)(b) for which the department has previously issued a certificate of need requires subsequent certificate of need review if the change is proposed within 1 year after the date the activity for which the capital expenditure was granted a certificate of need is undertaken. As used in this subsection, a "change in project" includes but is not limited to any change in the bed capacity of a health care facility as described in subsection (1)(b) and the addition or termination of a health care service.

(4) If a person acquires an existing health care facility without a certificate of need and proposes to change, within 1 year after the acquisition, the services or bed capacity of the health care facility, the proposed change requires a certificate of need if one would have been required originally under subsection (1)(e)"; in (4)(a) inserted "and the construction of any building necessary to house the equipment" and substituted "$750,000" for "$500,000"; in (4)(b) substituted "$1,500,000" for "$750,000"; deleted former (5)(b) that read: "(b) The department may by rule establish thresholds higher than those established in subsection (5)(a) if necessary and appropriate to accomplish the objectives of this part"; and made minor changes in phraseology.

Coordination Instruction: Section 3, Ch. 450, L. 1987, a coordination instruction, in (3)(a) inserted "medical assistance facility" in list of facilities defined as health care facilities.

1987 Statement of Intent: The statement of intent attached to Ch. 477, L. 1987, provided: "A statement of intent is prepared for this bill because the committee [House Health and Human Services Committee] felt it was necessary to ensure compliance with legislative intent in furtherance of the extension of rulemaking authority provided in section 11.

The legislature contemplates that the department of health and environmental sciences [now department of public health and human services] will continue to monitor the effects of certificate of need and other factors that control capital expenditures and development of health care service capacity. By December 1, 1988, the department must provide for the 1989 legislature an evaluation of the need to continue the certificate of need program beyond June 30, 1989, and identify any alternative legislation that would be needed if certificate of need were to be discontinued. It is also this committee's intent that the legislative audit committee review and, if possible, make a performance audit of the certificate of need process and make its recommendation to the 1989 legislature."

Saving Clause: Section 12, Ch. 477, L. 1987, was a saving clause.

Severability: Section 13, Ch. 477, L. 1987, was a severability section.

1985 Amendment: At end of (1)(e)(i) substituted "50-5-302(2)" for "50-5-302(3)".

1983 Amendment: Substituted entire text (see 1983 Session Law) for former text, which read: "Unless an application has been submitted to and a certificate of need granted by the department, no person may initiate any of the following:

(1) a new institutional health service as defined in 50-5-101;

(2) any expenditure by or on behalf of a health care facility in excess of $150,000 made in preparation for the offering or development of a new institutional health service and any arrangement or commitment made for financing the offering or development of the new institutional health service. Expenditures made in the preparation for the offering of a new institutional health service shall include expenditures for architectural designs, preliminary plans, working drawings, specifications, studies, and surveys."

50-5-302. Letter of intent — application and review process.

Compiler's Comments

2021 Amendment: Chapter 477 in (2) substituted "long-term care facility" for "health care facility". Amendment effective October 1, 2021.

1997 Amendment: Chapter 93 deleted former (1)(c) that read: "(c) the abbreviated review of a proposal that:

(i) does not significantly affect the cost or use of health care;

(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;

(iii) is necessary to comply with licensure or certification standards; or

(iv) would add a health service that is subject to a certificate of need review under 50-5-301(1)(c)"; at end of (4) substituted "proposals that are also subject to review" for "proposals unless, in the case of beds, the proposal is determined to be exempt from review"; in (7), in first sentence after "applicant", inserted "specifying" and after "information" inserted language requiring date by which additional information must be submitted to Department, inserted second sentence requiring Department to allow 15 days for submission of additional information, and in last sentence, after "complete and", inserted "if the application is still incomplete" and after "application is" deleted "complete or"; in (8), after "If", deleted "a proposal is to undergo comparative review with another proposal but"; in (9), after "send", substituted "either the request for additional information or the notice of incompleteness required by subsection (7)" for "the notices"; in (12), after "facilities", deleted "or equipment"; and made minor changes in style. Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1995 Amendment: Chapter 398 in (1)(b), after "the scheduling", deleted "and consolidation"; at beginning of (1)(e) deleted "the establishment of batching periods for certificate of need applications for new beds and major medical equipment, challenge periods, and" and after "applications" deleted "from different batches"; at beginning of (4) substituted "The department may determine that the proposals should be comparatively reviewed with similar proposals" for "If the proposal is for new beds or major medical equipment, the department shall place the letter of intent in the appropriate batch"; in (5) inserted first sentence requiring the Department to publish a description of each letter of intent received during the prior month and in second sentence, at beginning, inserted "Within 30 days of the publication", in middle substituted "described in the publication" for "in a batch", after "must submit a" deleted "challenge", and at end substituted "requesting comparative review" for "at least by the end of the challenge period following the batching period for that batch"; in (7), in second sentence after "shall have", inserted "an additional" and at end deleted sentence allowing repetitive requests for additional information when the information submitted is incomplete and giving the Department 15 working days after each submission to send a notice that the application is complete or incomplete; at end of (8) substituted "is considered withdrawn" for "must be dropped from the current batch and assigned to the next batching period"; in (10), at beginning, deleted sentence providing that after an application is designated as complete, immediate notification must be sent to the applicant and all other affected persons regarding the Department's projected time schedule for review of the application and in first sentence, after "after the", substituted "application is initially received or, if the application is to be comparatively reviewed as provided in subsection (5), within 90 days after all applications to be comparatively reviewed are received" for "notice is sent or, if a challenging application has been submitted as provided in subsection (5), within 90 days after the notice has been sent for all such challenging applications"; and at end of (14) substituted "issue the certificate of need" for "render a decision". Amendment effective April 12, 1995.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

1987 Amendment: In (1)(a) substituted "letters" for "notices"; at end of (1)(b) deleted "of similar proposals"; substituted (1)(c)(iv) that reads: "would add a health service that is subject to a certificate of need review under 50-5-301(1)(c)" for former language that read: "(iv) has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, providing the legislative findings accompanying such approval give consideration to the criteria of 50-5-304, and subject to the provisions of 50-5-309"; at end of (1)(e), after "beds", substituted remainder of subsection for "establishment of new services, and replacement of health care facilities"; inserted (1)(f) that reads: "the circumstances under which a certificate of need may be approved for the use of hospital beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients or residents needing only that level of care"; in (2), after "person", inserted "or persons", before "an existing health care facility" inserted "50% or more of", and after "department" substituted "a letter noting" for "and the appropriate health systems agency a notice of his"; at end of (3) deleted "The letter of intent must be placed in the appropriate batch, if any. Any person who applies for comparative review by submitting a challenge letter of intent during the challenge period immediately following the batch must submit an application within 30 days after the close of the challenge period"; inserted (4) through (6) that reads: "(4) If the proposal is for new beds or major medical equipment, the department shall place the letter of intent in the appropriate batch unless, in the case of beds, the proposal is determined to be exempt from review.

(5) Any person who desires comparative review with a proposal in a batch must submit a challenge letter of intent at least by the end of the challenge period following the batching period for that batch.

(6) The department shall give to each person submitting a letter of intent written notice of the deadline for submission of an application for certificate of need, which will be no less than 30 days after the notice is sent"; near beginning of (7) increased time to "20 working days" from "15 calendar days", in first sentence, after "complete", substituted "and if" for "If, after the 15 days", after "shall" substituted "send a written request to the applicant for" for "request", at end of first sentence deleted "within 5 working days", in second sentence inserted "working" before "days", at end of second sentence inserted "and to send a notice to the applicant that the application is complete or incomplete", and substituted last sentence that reads: "The request for added information may be repeated as long as the information submitted remains incomplete, and the department shall have 15 working days after each submission to send a notice that the application is complete or incomplete" for "If the department fails to make a determination as to the completeness of the application within the prescribed 15-day period, the application shall be deemed to be complete. If the applicant fails to submit the necessary additional information requested by the department by the deadline as prescribed by department rules for considering such reviews, a new letter of intent and application must be submitted and the application will be dropped from the current batch"; inserted (8) and (9) that reads: "(8) If a proposal is to undergo comparative review with another proposal but the applicant fails to submit the necessary additional information requested by the department by the deadline prescribed by department rules, the application must be dropped from the current batch and assigned to the next batching period.

(9) If the department fails to send the notices within the periods prescribed in subsection (7), the application is considered to be complete on the last day of the time period during which the notice should have been sent"; in first sentence of (10), before "notification", inserted "immediate", in second sentence increased time to "90 calendar days" from "60 calendar days", after "is sent" deleted "unless a hearing is required, in which case the review must be completed within 120 days after the notice is sent", changed reference to subsection (3) to reference to subsection (5), near end of second sentence reduced time to "90 days" from "120 days", and at end deleted "All completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area may be considered in relation to each other. During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department. Such a hearing must be conducted pursuant to the provisions for informal proceedings of the Montana Administrative Procedure Act"; inserted (11) and (12) that reads: "(11) During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.

(12) Each completed application may be considered in relation to other applications pertaining to similar types of facilities or equipment affecting the same health service area"; and made minor changes in phraseology.

1987 Statement of Intent: The statement of intent attached to Ch. 477, L. 1987, provided: "A statement of intent is prepared for this bill because the committee [House Health and Human Services Committee] felt it was necessary to ensure compliance with legislative intent in furtherance of the extension of rulemaking authority provided in section 11.

The legislature contemplates that the department of health and environmental sciences [now department of public health and human sciences] will continue to monitor the effects of certificate of need and other factors that control capital expenditures and development of health care service capacity. By December 1, 1988, the department must provide for the 1989 legislature an evaluation of the need to continue the certificate of need program beyond June 30, 1989, and identify any alternative legislation that would be needed if certificate of need were to be discontinued. It is also this committee's intent that the legislative audit committee review and, if possible, make a performance audit of the certificate of need process and make its recommendation to the 1989 legislature."

Saving Clause: Section 12, Ch. 477, L. 1987, was a saving clause.

Severability: Section 13, Ch. 477, L. 1987, was a severability section.

1985 Amendments: Chapter 26 in (3) substituted last sentence requiring submission of an application within 30 days after the challenge period for "After expiration of the challenge period following the batching period in which the letter of intent was submitted or if no batching is required, after receipt of the letter of intent, the department shall send the person an application form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304"; in third sentence of (4) substituted "applicant" for "application"; in first sentence of (5) substituted "After an application is designated complete" for "After all applications in the current batch have been designated complete or, if an application does not require batching, after it is designated complete"; in second sentence of (5) substituted "The review period for an application may be no longer than 60 calendar days after the notice is sent unless a hearing is required, in which case the review must be completed within 120 days after the notice is sent or, if a challenging application has been submitted as provided in subsection (3), within 120 days after the notice has been sent for all such challenging applications" for "The review period for an application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant or, if the application has been batched, by all applicants in the batch"; inserted third sentence of (5) allowing a longer period upon consent; inserted last sentence of (5) requiring that hearings be conducted according to the Montana Administrative Procedure Act; and made minor changes in phraseology.

Chapter 140 at end of (1)(c)(iv) substituted "50-5-309" for "[section 9]"; and in (4) near middle of third sentence substituted "applicant" for "application".

1983 Amendment: Substituted entire text (see 1983 Session Law) for former text, which read: "(1) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department. After receipt, the department shall send the applicant a form requiring the submission of information considered necessary by the department to determine if the proposed activity meets the standards in 50-5-304. The form and content of the notification of intent and applications for certificates of need shall be prescribed by rule by the department.

(2) Within 15 calendar days after receipt of the application, the department shall determine whether it contains sufficient information to determine if the proposed activity meets the standards in 50-5-304. If the application is found incomplete, the department shall request additional information.

(3) After the application has been designated complete, notification must be sent to the applicant and all other affected persons regarding the department's projected review of the application and the review period time schedule. The review period for the application may be no longer than 90 calendar days after the notice is sent unless a longer period is agreed to by the applicant. During the review period a public hearing may be held if requested by one or more affected persons.

(4) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or reject the application. The department shall notify the applicant and affected persons of its decision."

50-5-304. Review criteria, required findings, and standards.

Compiler's Comments

2021 Amendment: Chapter 477 in (1)(b) and (1)(c) substituted "long-term care facilities" for "health care facilities"; in (4), (8), and (9) substituted "long-term care services" for "health services"; in (4) near end after "proposing the" deleted "health"; and in (10) substituted "services offered by long-term care facilities for persons" for "health services for persons". Amendment effective October 1, 2021.

1997 Amendment: Chapter 93 in (1)(b) and (1)(c) substituted "state health care facilities plan" for "state health plan"; in (7), after "health", deleted "manpower"; and made minor changes in style. Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1995 Amendment: Chapter 398 inserted (1)(a) relating to a demonstration that the service is needed; inserted (1)(b) relating to data demonstrating the need for services contrary to the current state health plan; inserted (11) relating to a project to add long-term care facility beds, with criteria as to the need for the beds, the current and projected population over 65 years of age, and other appropriate factors; and made minor changes in style. Amendment effective April 12, 1995.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

1987 Amendment: Substituted (1) that reads: "the degree to which the proposal being reviewed is consistent with the current state health plan" for "(a) the relationship of the health services being reviewed to the applicable health systems plan, state health plan, and annual implementation plan developed pursuant to Title XV of the Public Health Service Act, as amended;

(b) the relationship of services reviewed to the long-range development plan, if any, of the person providing or proposing the services"; in (2) substituted "proposal" for "services"; deleted former (1)(i), (1)(j), and (1)(k) that read: "(i) the special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers.

(j) the special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Public Health Service Act. Such needs and circumstances include the needs of and costs to members and projected members of the health maintenance organization in obtaining health services and the potential for a reduction in the use of inpatient care in the community through an extension of preventive health services and the provision of more systematic and comprehensive health services.

(k) the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages"; deleted former (1)(n) and (2) that read: "(n) any other criteria, required findings, or requirements for reviewing certificate of need applications cited in the federal regulations found in Title 42, CFR, Part 123, as amended.

(2) If an application for new long-term care beds will involve new or increased use of medicaid funds and the department of social and rehabilitation services determines that such use would cause the state medicaid budget for long-term care facilities to be exceeded, the department of health and environmental sciences may impose conditions on a certificate of need for new long-term care beds, including limitation on the number of approved beds which may be certified for medicaid patients. Availability of medicaid funding may be the basis for imposing conditions but may not be the sole basis for denial of a certificate of need. The department may adopt rules for the imposition of such conditions, but only if the secretary of the United States department of health and human services has approved an amendment to the state's medicaid plan, adopted pursuant to 42 U.S.C. 1396a, allowing for the imposition of such conditions"; and made minor changes in phraseology.

1987 Statement of Intent: The statement of intent attached to Ch. 477, L. 1987, provided: "A statement of intent is prepared for this bill because the committee [House Health and Human Services Committee] felt it was necessary to ensure compliance with legislative intent in furtherance of the extension of rulemaking authority provided in section 11.

The legislature contemplates that the department of health and environmental sciences [now department of public health and human services] will continue to monitor the effects of certificate of need and other factors that control capital expenditures and development of health care service capacity. By December 1, 1988, the department must provide for the 1989 legislature an evaluation of the need to continue the certificate of need program beyond June 30, 1989, and identify any alternative legislation that would be needed if certificate of need were to be discontinued. It is also this committee's intent that the legislative audit committee review and, if possible, make a performance audit of the certificate of need process and make its recommendation to the 1989 legislature."

Saving Clause: Section 12, Ch. 477, L. 1987, was a saving clause.

Severability: Section 13, Ch. 477, L. 1987, was a severability section.

1983 Amendment: In (1)(a), after "health systems plan" inserted "state health plan"; at end of (1)(f) inserted "and the consistency of the proposal with joint planning efforts by health care providers in the area"; inserted (2) regarding the effect of the availability of Medicaid funding on approval of a certificate of need.

Case Notes

Certificate of Need — Duplication of Services as Test: Community care facility was unsuccessful on appeal in which it claimed it was error to find that establishment of a similar facility would not have an adverse financial impact on existing care systems and was not inconsistent with joint planning efforts by health care providers in the area. Appellant claimed the Board, in granting a certificate of need for a new facility, failed to consider that the new one would be duplicating services offered by appellant. However, Montana's statutory plan allows for duplication where it is considered appropriate, and there was substantial testimony that competition would reduce the cost of care in the area with no adverse effect on care given patients and that quality of care would increase. West-Mont Community Care, Inc. v. Bd. of Health & Environmental Sciences, 217 M 178, 703 P2d 850, 42 St. Rep. 1116 (1985).

Retroactive Application of Rule to Certificate of Need Determination: Generally, an appellate court must apply the law in effect at the time it renders its decision. If, subsequent to a judgment below and before the decision of the appellate court, a law, whether constitutional, statutory, administrative, or judicial, intervenes and positively changes the rule that governs the case, the new law must be obeyed. Retroactive application of new law is impermissible only if it takes away or impairs vested rights acquired under existing law or creates new obligations or imposes new duties in respect to transactions already past. Here, a board considering whether to issue a certificate of need considered the effect of competition, believing it was required to do so under a statute allegedly incorporating federal law. The parties offered evidence on the competition issue, and the losing party argued on appeal that the federal law was not in fact incorporated. After the appeal and before the decision, the board adopted the federal requirement by rule. The Supreme Court held that it must consider the rule, which required the effect of competition to be considered. The administrative rule properly incorporated the federal regulations where it stated that criteria listed in 42 CFR 123.412 will be considered in making a decision. West-Mont Community Care, Inc. v. Bd. of Health & Environmental Sciences, 217 M 178, 703 P2d 850, 42 St. Rep. 1116 (1985).

50-5-305. Period of validity of approved application.

Compiler's Comments

1997 Amendment: Chapter 93 at beginning of (1) deleted "Unless an extension is granted pursuant to subsection (3)"; in first sentence of (3), after "need", inserted "subject to expiration under the circumstances specified in subsection (1)(a) or (1)(b)"; deleted (4) that read: "(4) The holder of an unexpired certificate of need shall report to the department in writing on the status of his project at the end of each 6-month period after being granted a certificate of need until completion of the project for which the certificate of need was issued"; and made minor changes in style. Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

1987 Amendment: In (1) changed reference to subsection (2) to reference to subsection (3); in (1)(a) substituted "the decision to issue it is final" for "its issuance"; in (1)(b) substituted "after the date the project is commenced plus the estimated period of time" for "from the estimated time"; inserted (2) relating to a reconsideration hearing and final decision; and in (4) increased time to "6-month period" from "90-day period".

1983 Amendment: Substituted entire text (see 1983 Session Law) for former text, which read: "A certificate of need shall terminate 1 year after the date of issuance unless:

(1) the applicant has commenced construction if the project provides for construction or has incurred an enforceable capital expenditure commitment for projects not involving construction; or

(2) the certificate of need validity period is extended by the department for one additional period of 6 months, upon showing good cause by the applicant for the extension."

50-5-306. Right to hearing and appeal.

Compiler's Comments

1997 Amendment: Chapter 93 at end of (4) inserted "unless the parties to the hearing agree to a different date". Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1995 Amendment: Chapter 398 substituted (1) concerning a contested case hearing under Title 2, chapter 4, on written request, including a statement of findings and conclusions that are contested and the objection to or error in each and a summary of the evidence to be submitted, for former text providing for a public hearing to reconsider the Department's decision, which had to be held if the affected person requested it in writing received by the Department within 30 days after the decision; inserted (2) limiting the hearing to issues in subsection (1) and other issues identified through discovery; in (3), after "hearing", deleted "to reconsider" and at end substituted "the hearings examiner extends the time limit for good cause" for "the requestor agrees to waive the time limit"; deleted former (3) requiring the reconsideration to be conducted under the Title 2, chapter 4, provisions for informal proceedings; in (5), near beginning, inserted "adversely" and after "person" inserted "who was a party to the hearing"; and in (6) substituted provision for an order for payment of applicant's costs and attorney fees for former provision for a stay of the decision pending resolution of an appeal. Amendment effective April 12, 1995.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

1987 Amendment: In (1), after "request in writing", deleted "showing good cause as defined in rules adopted by the department"; in (1) and (2) increased time to "30 calendar days" from "20 calendar days"; in (2), after "held", deleted "if warranted or required" and at end substituted "the request is received unless the requestor agrees to waive the time limit" for "its request"; inserted (3) requiring the reconsideration hearing to be conducted pursuant to the Montana Administrative Procedure Act; in (4), after "decision and", inserted "serve the appellant with"; inserted (6) providing that if a petition to appeal the decision is filed, the decision must be stayed pending resolution; and made minor changes in phraseology.

1987 Statement of Intent: The statement of intent attached to Ch. 477, L. 1987, provided: "A statement of intent is prepared for this bill because the committee [House Health and Human Services Committee] felt it was necessary to ensure compliance with legislative intent in furtherance of the extension of rulemaking authority provided in section 11.

The legislature contemplates that the department of health and environmental sciences [now department of public health and human services] will continue to monitor the effects of certificate of need and other factors that control capital expenditures and development of health care service capacity. By December 1, 1988, the department must provide for the 1989 legislature an evaluation of the need to continue the certificate of need program beyond June 30, 1989, and identify any alternative legislation that would be needed if certificate of need were to be discontinued. It is also this committee's intent that the legislative audit committee review and, if possible, make a performance audit of the certificate of need process and make its recommendation to the 1989 legislature."

Saving Clause: Section 12, Ch. 477, L. 1987, was a saving clause.

Severability: Section 13, Ch. 477, L. 1987, was a severability section.

1985 Amendment: Substituted (2) providing for public hearing to reconsider for former (2), (3), and (4) that read: "(2) An affected person may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. An affected person does not have to request the department to hold a reconsideration hearing prior to filing an administrative appeal to the board. The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

(3) The hearing before the board must be a hearing de novo with respect to the findings and conclusions identified pursuant to subsection (2) and must be conducted pursuant to the contested case provisions of the Montana Administrative Procedure Act. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm, reverse, or modify the department's decision or remand it for further proceedings.

(4) The final decision of the board shall be considered the decision of the department for purposes of an appeal to district court. Any affected person may appeal this decision to the district court as provided in Title 2, chapter 4, part 7."

1983 Amendment: Substituted entire text (see 1983 Session Law) for former text, which read: "(1) The applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act may request and shall be granted a public hearing before the department to reconsider its decision, if the request is received by the department within 30 calendar days after the decision is announced. Any other affected person may, for good cause, request the department to reconsider its decision at such a hearing. The department shall grant the request if the affected person submits the request in writing showing good cause as defined in rules adopted by the department and if the request is received by the department within 30 calendar days after the decision is announced. The public hearing to reconsider shall be held, if warranted or required, within 30 calendar days after its request. The department shall make its final decision and written findings of fact and conclusions of law in support thereof within 45 days after the conclusion of the reconsideration hearing. The hearing shall be conducted in accordance with 2-4-601 through 2-4-623.

(2) An aggrieved applicant or a health systems agency designated pursuant to Title XV of the Public Health Service Act may appeal the department's final decision to the board by filing a written notice of appeal stating the specific findings of fact and conclusions of law being appealed and the grounds. The notice of appeal must be received by the board within 30 calendar days after formal notice of the department's final decision was issued. The board shall give public notice of the appeal within 10 days, and the hearing shall be held within 30 days after receipt of the notice of appeal.

(3) The scope of the hearing before the board is limited to a review of the record upon which the department made its decision. The board, upon request of any party to an appeal before the board, shall hear oral arguments and receive written briefs. Within 45 calendar days after the conclusion of the public hearing, the board shall make and issue its decision, supported by written findings of fact and conclusions of law. The board may affirm the department's decision or remand it for further proceedings. The board may reverse or modify the department's decision if the appellant's rights have been prejudiced for any of the reasons found in 2-4-704."

Case Notes

Venue: The District Court did not err in denying intervenor's motion for change of venue. This section specifically provides that the Montana Administrative Procedure Act's provision relating to venue applies, and the trial court properly determined that venue should remain in Lewis and Clark County. Mont. Health Systems Agency, Inc. v. Bd. of Health and Environmental Sciences, 188 M 188, 612 P2d 1275, 37 St. Rep. 664 (1980).

50-5-307. Civil penalty — injunction.

Compiler's Comments

2021 Amendment: Chapter 477 in (2) substituted "long-term care facility" for "health care facility". Amendment effective October 1, 2021.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

50-5-308. Special circumstances.

Compiler's Comments

2021 Amendment: Chapter 477 in (2) after "department has determined that the" inserted "long-term care" and near end substituted "long-term care facilities" for "health care facilities". Amendment effective October 1, 2021.

1997 Amendment: Chapter 93 at end of (2) substituted "state health care facilities plan" for "state health plan". Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

1983 Amendment: Substituted entire text (see 1983 Session Law) for former text, which read: "In the event of destruction of any part of a health care facility as a result of fire, storm, civil disturbance, or any act of God, the department may issue a certificate of need for only the replacement of the previously existing facility or portion thereof."

50-5-309. Exemptions from certificate of need review.

Compiler's Comments

2021 Amendment: Chapter 477 in two places before "facility" inserted "long-term care". Amendment effective October 1, 2021.

1997 Amendment: Chapter 93 substituted current text regarding exemptions from certificate of need review for former text that read: "A project proposed by an agency of state government that has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, is exempt from certificate of need review." Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

1987 Amendment: Deleted former (1)(a) that read: "(1) Except as provided in subsection (2), the following are exempt from certificate of need review:

(a) expenditures by a health care facility for nonmedical and nonclinical facilities and services unrelated to the operation of the health care facility if a letter of intent is submitted pursuant to 50-5-302 at least 30 days prior to incurring an obligation for capital expenditures to enable the department to determine whether the expenditures are exempt"; at end of section inserted "is exempt from certificate of need review"; and deleted former (2) that read: "(2) If the secretary of the United States department of health and human services notifies the state that the sanctions provided by section 1521 of the Public Health Service Act and all acts amendatory thereto or any other federal statute for noncompliance with federal certificate of need requirements are to be imposed, the department may by rule require certificate of need review for projects exempted by subsection (1) that are otherwise subject to the provisions of this part. Any rule adopted by the department under this subsection is effective only until the 10th day of the next regular legislative session following the adoption of the rule."

1987 Statement of Intent: The statement of intent attached to Ch. 477, L. 1987, provided: "A statement of intent is prepared for this bill because the committee [House Health and Human Services Committee] felt it was necessary to ensure compliance with legislative intent in furtherance of the extension of rulemaking authority provided in section 11.

The legislature contemplates that the department of health and environmental sciences [now department of public health and human services] will continue to monitor the effects of certificate of need and other factors that control capital expenditures and development of health care service capacity. By December 1, 1988, the department must provide for the 1989 legislature an evaluation of the need to continue the certificate of need program beyond June 30, 1989, and identify any alternative legislation that would be needed if certificate of need were to be discontinued. It is also this committee's intent that the legislative audit committee review and, if possible, make a performance audit of the certificate of need process and make its recommendation to the 1989 legislature."

Saving Clause: Section 12, Ch. 477, L. 1987, was a saving clause.

Severability: Section 13, Ch. 477, L. 1987, was a severability section.

50-5-310. Fees.

Compiler's Comments

1997 Amendment: Chapter 93 deleted former (3) that read: "(3) With the exception of the department and an applicant whose proposal is approved and who does not request the hearing, each affected person who is a party in a reconsideration hearing held pursuant to 50-5-306(1) shall pay the department $500"; and made minor changes in style. Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1995 Amendment: Chapter 398 in (4), at end, substituted "the general fund" for "a state special revenue account for use by the department in conducting certificate of need reviews". Amendment effective April 12, 1995.

1993 Amendment: Chapter 538 in (2), after "fee", substituted "that is at least equal to" for "equaling"; in (4), at end, substituted "special revenue account for use by the department in conducting certificate of need reviews" for "general fund"; and made minor changes in style. Amendment effective July 1, 1993.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Repeal Date Amended: Section 3, Ch. 377, L. 1989, amended the July 1, 1989, repeal date enacted in sec. 9, Ch. 477, L. 1987, to provide that this section is repealed July 1, 1991.

Part 5
Right to Refuse Participation in Sterilization

50-5-502. Refusal by hospital or health care facility to participate in sterilization.

Case Notes

Sterilization — Doctor Subject to Hospital Morality Rules: With respect to the issue of voluntary sterilization, although the physician has exclusive direction over his patient, he is subject to hospital rules based upon religious or moral tenets. Ham v. Holy Rosary Hosp., 165 M 369, 529 P2d 361 (1974).

50-5-503. Refusal by individual to participate in sterilization.

Compiler's Comments

1987 Amendments: Chapters 370 and 450 at end of (3) deleted reference to subsection (20) of 50-5-101.

Case Notes

Untimely Notice: It is an open question whether untimely notice of refusal to participate in a sterilization proceeding might outweigh the right to refuse. Twenty-two hours' notice, although a final decision was delayed until approximately 13 hours before the scheduled operation at the hospital administrator's request, was not held untimely. Swanson v. St. John's Lutheran Hosp., 182 M 414, 597 P2d 702 (1979).

Refusal Not Precluded by Past Participation: Past participation in sterilization procedures does not prohibit exercise of the right of refusal based on religious beliefs or moral convictions at any time, if exercised prospectively. Swanson v. St. John's Lutheran Hosp., 182 M 414, 597 P2d 702 (1979).

Statement of Reasons: The reasons for refusal to participate in sterilization procedures need not be stated at the time of refusal unless requested by the hospital at that time. The conscience of the person need not be related to any particular religion, cult, or sect but may be a part of the person's indefinable concept of the natural law, not easily definable in an A-B-C fashion. Swanson v. St. John's Lutheran Hosp., 182 M 414, 597 P2d 702 (1979).

50-5-504. Unlawful to interfere with right of refusal.

Case Notes

Evidence to Support Award of Exemplary Damages and Damages for Mental Distress: Plaintiff's employment as a nurse-anesthetist was terminated by defendant hospital for plaintiff's refusal to participate in a tubal ligation. In an action for damages, the plaintiff introduced no evidence supporting her claims for exemplary damages and damages for mental distress. No award for the claimed damages was made as neither the likelihood of the hospital's improper behavior nor the plaintiff's injuries were so great as to justify awarding damages without proof. Swanson v. St. John's Lutheran Hosp., 189 M 259, 615 P2d 883, 37 St. Rep. 1420 (1980).

Future Damages: Plaintiff's employment as a nurse-anesthetist was terminated by defendant hospital for plaintiff's refusal to participate in a tubal ligation. In an action for damages, the plaintiff introduced evidence of her projected future earnings. The District Court failed to award future damages and gave no reasons for its decision. It must be assumed that the District Court was aware of its power to award future damages under 27-1-203 but did not feel such damages were reasonably certain to occur. Swanson v. St. John's Lutheran Hosp., 189 M 259, 615 P2d 883, 37 St. Rep. 1420 (1980).

Theory for Determining Damages: This section creates a statutory right to receive damages above and beyond the employment contract. A compensation theory is to be used with future damages, exemplary damages, and damages for mental distress allowable in the proper case. Swanson v. St. John's Lutheran Hosp., 189 M 259, 615 P2d 883, 37 St. Rep. 1420 (1980).

Burden of Producing Evidence: Once a discharged hospital employee had established that her discharge was brought about in substantial part by her refusal to participate in a sterilization, it then became the burden of the hospital to prove by a preponderance of the evidence that it would have discharged the employee even if she had not exercised her right of refusal. Swanson v. St. John's Lutheran Hosp., 182 M 414, 597 P2d 702 (1979).

Rights of Employees Preeminent: The "rights" of the hospital to avoid the difficulties of finding substitutes for employees who refuse to participate in a sterilization do not outweigh the rights of employees to refuse to participate. Swanson v. St. John's Lutheran Hosp., 182 M 414, 597 P2d 702 (1979).

Part 6
Family Practice Residency Training

50-5-602. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 30, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in 2-15-2101". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-5-603. Montana family practice training program.

Compiler's Comments

1993 Amendment: Chapter 140 deleted former (3) that read: "(3) No resident physician may train more than 2 months in any one community in any 12-month period"; and made minor changes in style.

Part 7
Lay Caregivers

Part Compiler's Comments

Effective Date: This part is effective October 1, 2017.

50-5-701. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 602, L. 2023. Amendment effective July 1, 2023.

Part 11
Long-Term Health Care Facilities

Part Compiler's Comments

Severability: Section 8, Ch. 582, L. 1987, was a severability section.

50-5-1103. Definitions.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 418 in definition of Department substituted "department of public health provided for in Title 2, chapter 15, part 21" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Because of the repeal of 2-15-2101, the Code Commissioner has codified the reference to 2-15-2201 contained in Ch. 546.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-5-1104. Rights of long-term care facility residents.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1997 Amendment: Chapter 42 in (1) substituted "42 U.S.C. 1395i-3(a) and 1396r(a)" for "42 U.S.C. 1395x(j) and 1396d(c)"; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (2)(h), the Code Commissioner has made the change.

1991 Amendment: In (1)(h) inserted "and Developmentally Disabled"; and made minor change in style.

50-5-1105. Long-term care facility to adopt and post residents' rights.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

50-5-1106. Resident's rights devolve to authorized representative.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Part 12
Safety Devices in Long-Term Care Facilities

Part Compiler's Comments

Effective Date: This part is effective October 1, 2001.

50-5-1202. Definitions.

Compiler's Comments

2003 Amendment: Chapter 54 in definition of long-term care facility near middle after "that is" substituted "an assisted living" for "a personal care". Amendment effective October 1, 2003.

Part 13
Proxy Decisionmakers

Part Compiler's Comments

Effective Date: Section 10, Ch. 285, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 4, 2017.

50-5-1301. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 13, Ch. 88, L. 2023, in definition of physician assistant at end deleted "whose duties and delegation agreement authorizes the individual to undertake the activities allowed under this part"; and made minor changes in style. Amendment effective April 18, 2023.

Section 7, Ch. 602, L. 2023, in definition of health care facility near middle inserted "rural emergency hospital"; and made minor changes in style. Amendment effective July 1, 2023.

Part 14
Patient Visitation Rights

Part Compiler's Comments

Effective Date: This part is effective October 1, 2023.

CHAPTER 6
EMERGENCY MEDICAL SERVICES

Chapter Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.

Part 1
Development of Program

50-6-101. Legislative purpose.

Compiler's Comments

2019 Amendment: Chapter 220 in (1) near beginning substituted "an emergency care system" for "a comprehensive emergency medical services program" and in middle after "because of inadequate" deleted "emergency"; inserted (2) regarding purposes of community-integrated health care; in (3) after "an emergency medical services program" inserted "and community-integrated health care" and at end inserted "who require emergency and community-integrated medical care"; and made minor changes in style. Amendment effective July 1, 2019.

50-6-102. Department to establish and administer program.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-6-103. Powers of department.

Compiler's Comments

2019 Amendment: Chapter 220 in (1) at end substituted "the emergency medical services program and community-integrated health care" for "emergency medical services problems and needs"; inserted (4) requiring continual assessment by the department and revision as needed to adapt to changing community-integrated health care needs; inserted (5) requiring the department to collaborate with other components of the health care system; and inserted (6) requiring the department to provide guidance to ambulance services and nontransporting medical units. Amendment effective July 1, 2019.

1997 Amendment: Chapter 171 in (3), near beginning after "consultation with", deleted "the emergency medical services advisory council".

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

1995 Amendments — Composite Section: Chapter 418 in (1) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 at beginning of (1) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 579 inserted (3) concerning adoption of rules to implement Title 50, chapter 6, part 4; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-6-104. Interdepartmental cooperation required.

Compiler's Comments

2009 Amendment: Chapter 150 near beginning substituted "the board of medical examiners" for "the department of justice"; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1981 Amendment: Substituted "department of justice" for "department of community affairs, highway safety division".

50-6-105. Medical care standards — review process.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 294, L. 2023. Amendment effective April 26, 2023.

2019 Amendment: Chapter 220 in (1)(a) substituted "out-of-hospital emergency medical treatment and interfacility transportation" for "prehospital and interfacility emergency medical treatment and transportation"; inserted (1)(b) regarding community-integrated health care; in (2)(a) near beginning substituted "out-of-hospital care" for "prehospital care" and after "interfacility care" inserted "community-integrated health care"; in (3)(b) after "care provided by an emergency" substituted "care provider" for "medical technician"; in (4)(b)(i) and in (5)(a)(ii) substituted "emergency care provider" for "emergency medical technician"; and made minor changes in style. Amendment effective July 1, 2019.

Effective Date: This section is effective October 1, 2009.

Part 2
Emergency Care Providers

Part Administrative Rules

Title 24, chapter 156, subchapter 27, ARM Emergency care providers.

50-6-201. Legislative findings — duty of board.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 294, L. 2023. Amendment effective April 26, 2023.

2019 Amendment: Chapter 220 in (1) substituted current language regarding emergency and community-integrated health care for former language that read: "The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care"; inserted (2) regarding prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility; inserted (3) regarding the use of community-integrated health care to prevent illness and injury and to help fill gaps in the state's health care system; in (4) in middle substituted "emergency care providers are properly licensed and" for "emergency medical technicians"; and made minor changes in style. Amendment effective July 1, 2019.

2009 Amendment: Chapter 150 inserted (2) concerning duty of board; and made minor changes in style. Amendment effective October 1, 2009.

50-6-202. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 294, L. 2023. Amendment effective April 26, 2023.

2019 Amendment: Chapter 220 substituted definition of emergency care provider for former definition that read: ""Emergency medical technician" means a person who has been specially trained in emergency care in a training program approved by the board and certified by the board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition"; in definition of volunteer emergency care provider substituted ""Volunteer emergency care provider" means" for ""Volunteer emergency medical technician" means", after "pursuant to this part and provides" inserted "out-of-hospital", substituted "emergency medical, or community-integrated health care or interfacility transport" for "emergency medical care", and in (b)(ii) after "provide emergency medical" inserted "or community-integrated health"; and made minor changes in style. Amendment effective July 1, 2019.

Effective Date: Section 4, Ch. 82, L. 2009, provided that subsection (3) is effective on passage and approval. Approved March 25, 2009.

2001 Amendment: Chapter 483 in definition of board substituted "Montana state board of medical examiners provided for in 2-15-1731" for "board of medical examiners, department of commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendment: In definition of emergency medical technician, after "technician", deleted "basic" and after "means" substituted "a person" for "personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services"; deleted definition of emergency medical technician—advanced; and made minor changes in style.

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (3).

Case Notes

Unpaid Emergency Medical Technician Trainees, Volunteers, and Students Not Considered Employees: The definition of emergency medical services personnel in this section does not include an unpaid emergency medical technician (EMT) trainee. Therefore, an unpaid EMT trainee who has not been certified to provide medical services is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Further, because volunteers are generally not considered employees unless designated by law, a volunteer involved in ambulance services is also not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Similarly, an unpaid student, such as an unpaid EMT trainee, who is learning skills in a work environment is considered a volunteer and is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. The general statement of public policy in Great W. Sugar Co. v. District Court, 188 M 1, 610 P2d 717 (1980), that all forms of employment are subject to the Workers' Compensation Act, does not apply to unpaid EMT trainees and volunteers because those persons are not considered employees. Dyess v. Meagher County, 2003 MT 78, 315 M 35, 67 P3d 281 (2003).

50-6-203. Rules.

Compiler's Comments

2019 Amendment: Chapter 220 in (1)(a), (1)(b), (1)(c), and (2) in two places substituted references to emergency care provider for references to emergency medical technician. Amendment effective July 1, 2019.

2009 Amendment: Chapter 150 in (1) following "human services" deleted "the department of justice"; in (1)(a) substituted "licensure" for "certification"; in (1)(b) inserted language concerning the adoption of rules for the administration of drugs by emergency medical technicians; inserted (1)(c) concerning complaints; in (2) following "medical technician" substituted "licensure" for "certification", following "acts allowed" substituted "relicensure" for "recertification", and following "performance or" substituted "licensure" for "certification"; and made minor changes in style. Amendment effective October 1, 2009.

2003 Amendment: Chapter 271 in (2) at end inserted "subject to the provisions of 37-1-138". Amendment effective April 9, 2003.

Retroactive Applicability: Section 63, Ch. 271, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to occurrences after December 31, 2002."

1995 Amendments: Chapter 418 in (1) substituted "department of public health" for "department of health and environmental sciences"; and at end of (2) deleted "or desirable". Amendment effective July 1, 1995.

Chapter 546 in (1) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Near end of (1), after "certification of" substituted "emergency medical technicians and" for "personnel" and at end, after "drugs", deleted "and other acts as allowed herein"; and inserted (2) authorizing Board to adopt rules establishing levels of certification and training and certification requirements. Amendment effective April 6, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 377, L. 1991, provided: "A statement of intent is required for this bill because [section 2] [50-6-203] gives the board of medical examiners authority to adopt rules specifying various certification levels for emergency medical technicians and requires the board to establish training, certification, and performance requirements for each level of certification. It is the intent of the legislature that the board define several certification levels for emergency medical technicians, which will differ in the amount of training required and in the acts allowed to be performed. It is also intended that the board specify the training needed by each level, the acts and procedures each level is allowed to perform, the standards that must be met to be certified and recertified at each level, and procedural requirements necessary to enforce and implement certification and training."

1981 Amendment: Substituted "department of justice" for "department of community affairs".

Attorney General's Opinions

Fee From Applicants for Certification: The Board of Medical Examiners may charge a fee from applicants for certification as emergency medical technicians. The fee may be in an amount that is sufficient to defray administrative costs, as provided in ARM 8.28.1005, 8.28.1006, 8.28.1104, and 8.28.1105 (rules now repealed). 37 A.G. Op. 174 (1978).

50-6-206. Consent.

Compiler's Comments

2019 Amendment: Chapter 220 at beginning substituted "An emergency care provider may not" for "No emergency medical technician may", after "performing acts as authorized" substituted "in this part" for "herein", and after "regardless of age" substituted "when" for "where"; and made minor changes in style. Amendment effective July 1, 2019.

50-6-207. Construction.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: After "regulate" substituted "emergency medical services" for "ambulance service as".

50-6-210. Provision of patient care in health care facility.

Compiler's Comments

Effective Date: Section 7, Ch. 294, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 26, 2023.

Part 3
Ambulance Service Licensing

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 387, L. 1989, provided: "A statement of intent is required for this bill because [section 3] [50-6-323] grants authority to the department of health and environmental sciences [now department of public health and human services] to adopt rules necessary to carry out the provisions of Title 50, chapter 6, part 3.

In adopting rules, the department should consider the following:

(1) It is the intent of the legislature that the department adopt rules to regulate emergency medical services. These rules may include minimum licensing standards for various types and levels of prehospital and interhospital emergency medical services. The rules may also include other requirements to assure the quality, safety, and proper operation of emergency medical services in Montana.

(2) In addition to rules governing operation of ground ambulance services, which are currently regulated, it is intended that the department adopt rules to regulate other types of emergency medical transportation and treatment services not currently subject to regulation by the department. Examples of such services include air ambulance services, such as fixed-wing aircraft which provide life support services, including medical personnel and medical equipment; initial response rotary-wing aircraft; and nontransporting medical units. The department shall exclude from regulation air transportation services, such as charter or fixed-based operators, regulated by the federal aviation administration that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) It is further intended that the department adopt rules to regulate various levels of emergency services that have evolved in recent years (such as basic life support, defibrillation, and advanced life support) without minimum standards, rules, or licensing to assure the health and safety of the public. Rules to regulate these various levels of service should recognize the differences in personnel, equipment, and operational requirements for each type and level of service.

(4) The department should assure minimum statewide standards for prehospital emergency medical care; however, the rules should not be so stringent that the provision of emergency medical care in smaller communities will be made unreasonably difficult or expensive. If a licensed emergency medical service is not reasonably available, department rules should not preclude the occasional and infrequent transportation of patients by other means available. Nevertheless, rules should not conflict with any regulations issued by a federal agency, such as the federal aviation administration.

(5) The legislature intends that the department establish an advisory committee to make recommendations to the department or to the board of health and environmental sciences [now

board of environmental review] concerning matters described in [section 12] [50-6-324]. Creation of this committee and its composition should be established by rule. Any such rule adopted by the department should assure that persons actively providing emergency medical care be included as members of the committee."

Saving Clause: Section 19, Ch. 387, L. 1989, was a saving clause.

Severability: Section 20, Ch. 387, L. 1989, was a severability clause.

Severability Clause: Section 11, Ch. 387, L. 1971, was a severability clause.

Part Administrative Rules

Title 37, chapter 104, ARM Emergency medical services.

50-6-301. Findings.

Compiler's Comments

2019 Amendment: Chapter 220 in (2) after "emergency medical services" inserted "or community-integrated health care"; and in (3) after "emergency medical" deleted "care". Amendment effective July 1, 2019.

1989 Amendment: At beginning inserted "legislature finds and declares that: (1) the"; in (1) substituted "emergency medical services" for "ambulance services" and after "services" deleted "as defined in 50-6-302"; in (2) substituted "providing emergency medical services is necessary" for "engaged therein in order"; in (3) substituted "emergency medical care services" for "establishments providing such service"; and made minor changes in style. Amendment effective January 1, 1990.

50-6-302. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 294, L. 2023. Amendment effective April 26, 2023.

2019 Amendment: Chapter 220 inserted definition of community-integrated health care; in definition of emergency medical service substituted "an out-of-hospital health care treatment service" for "a prehospital", after "interfacility emergency medical transportation" deleted "or treatment service", and after "licensed by the department" inserted "to provide out-of-hospital health care treatment services or interfacility emergency medical transportation, including community-integrated health care"; in definition of offline medical direction in (a) at end substituted "emergency care provider" for "emergency medical technician"; in definition of online medical direction near end substituted "emergency care provider for interfacility emergency medical transportation or out-of-hospital emergency medical or community-integrated health care" for "emergency medical technician for prehospital and interfacility emergency care"; in definition of patient in (b) at beginning inserted exception clause; in definition of volunteer emergency care provider at beginning substituted "Volunteer emergency care provider" for "Volunteer emergency medical technician", after "Title 50, chapter 6, part 2, and provides" substituted "out-of-hospital, emergency medical, or community-integrated health care or interfacility emergency medical transportation" for "emergency medical care", and in (b)(ii) after "provide emergency medical" inserted "or community-integrated health"; and made minor changes in style. Amendment effective July 1, 2019.

2009 Amendments — Composite Section: Chapter 150 inserted definition of board; in definition of emergency medical service substituted "interfacility" for "interhospital" and at end of sentence following "unit" inserted "that is licensed by the department"; deleted definition of medical control that read: ""Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider"; inserted definitions of offline medical direction and online medical direction and deleted definition of offline medical director that read: ""Offline medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers the physician's services as an offline medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 354 inserted definitions of nonemergency ambulance transport and volunteer emergency medical technician; and made minor changes in style. Amendment effective April 24, 2009.

1995 Amendments — Composite Section: Chapter 418 in definition of Board substituted "board of public health" for "board of health and environmental sciences"; in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 deleted definition of Board that read: ""Board" means the board of health and environmental sciences, provided for in 2-15-2104"; in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences, provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Inserted definition of off-line medical director. Amendment effective April 1, 1991.

1989 Amendment: Inserted definitions of aircraft, emergency medical service, medical control, and nontransporting medical unit; in definition of ambulance, after "vehicle", inserted "or aircraft", after "that" deleted "is especially designed, constructed, and equipped which", after "patients" deleted language concerning dual purpose vehicles, at beginning of second sentence inserted "The term", after "vehicle" inserted "or aircraft", after "States" deleted "or this state", and inserted third sentence excluding from definition certain operators regulated by federal government; deleted former definitions of ambulance service, attendant, attendant driver, driver, and dual purpose police patrol car; and made minor changes in style. Amendment effective January 1, 1990.

Case Notes

Unpaid Emergency Medical Technician Trainees, Volunteers, and Students Not Considered Employees: The definition of emergency medical services personnel in 50-6-202 does not include an unpaid emergency medical technician (EMT) trainee. Therefore, an unpaid EMT trainee who has not been certified to provide medical services is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Further, because volunteers are generally not considered employees unless designated by law, a volunteer involved in ambulance services is also not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Similarly, an unpaid student, such as an unpaid EMT trainee, who is learning skills in a work environment is considered a volunteer and is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. The general statement of public policy in Great W. Sugar Co. v. District Court, 188 M 1, 610 P2d 717 (1980), that all forms of employment are subject to the Workers' Compensation Act, does not apply to unpaid EMT trainees and volunteers because those persons are not considered employees. Dyess v. Meagher County, 2003 MT 78, 315 M 35, 67 P3d 281 (2003).

50-6-304. Cooperative agreements — gifts, grants, and donations.

Compiler's Comments

1989 Amendment: At end of (1) deleted "or any part thereof"; and inserted (2) authorizing Department to accept and administer gift, grant, or donated funds. Amendment effective January 1, 1990.

50-6-306. License required.

Compiler's Comments

2017 Amendment: Chapter 315 inserted (5) concerning notification of ambulance service. Amendment effective May 4, 2017.

Retroactive Applicability: Section 5, Ch. 315, L. 2017, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to reports as of [the effective date of this act] of ambulance bills incurred for services provided in the state prior to [the effective date of this act] and paid in part to the extent of an insurance policy or for which a record exists of a complaint made to the insurance commissioner's office prior to [the effective date of this act]." Effective May 4, 2017.

Preamble: The preamble attached to Ch. 315, L. 2017, provided: "WHEREAS, individuals in a medical crisis that requires ambulance services may be faced with unexpectedly high bills with the potential to propel them into bankruptcy even after their insurance, if they have any, has paid on the ambulance bills; and

WHEREAS, individuals are responsible for paying ambulance bills with vendors they have selected themselves but often individuals in highly critical medical emergencies are unable to make the decisions on who is providing their ambulance service yet they still are expected to pay a bill over which they had no control."

1989 Amendment: In (1) substituted "may not conduct or operate an emergency medical service without first obtaining" for "conducting or operating an ambulance service shall procure", after "license" substituted "from" for "issued by", and in second sentence, after "each", substituted "type and level of service" for "establishment"; deleted former (3) requiring licenses to be granted as matter of right; deleted (4) allowing applicant to apply for hearing and review upon license denial or cancellation; in first sentence of (3) substituted "must be issued for a specific term not to exceed 2 years" for "shall expire on December 31 following its date of issue unless canceled for cause" and in second sentence, before "license fee", deleted "annual" and at end inserted "and demonstrating compliance with department rules"; in (4), after "transferable", deleted "or be applicable to any premises other than that for which originally issued"; and made minor changes in grammar and style. Amendment effective January 1, 1990.

50-6-307. License fee.

Compiler's Comments

1989 Amendment: Near end of (1) deleted "an annual"; and made minor changes in grammar. Amendment effective January 1, 1990.

1983 Amendment: At end of (1), increased annual license fee from $5 to $35.

50-6-308. Cancellation of license.

Compiler's Comments

1995 Amendment: Chapter 546 at end of (1) substituted "department" for "department or board". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: In (1) inserted reference to order of the Department or Board; at beginning of (2) deleted "the licensee has"; and made minor changes in style. Amendment effective January 1, 1990.

50-6-310. Notice and hearing required.

Compiler's Comments

1995 Amendment: Chapter 546 in two places substituted "department" for "board". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-6-313. Inspections.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Near end of (2) substituted "it considers" for "the department may consider"; in (3) substituted "the place of business of any person operating an emergency medical service in order" for "the establishments listed and defined in 50-6-302", after "make" inserted "necessary", and inserted second sentence expanding inspections to include equipment or records of medical service; inserted (4) prohibiting person from refusing entry or access to Department for inspection or interfering with inspection; and inserted (5) requiring Department, upon request, to provide operator with inspection report. Amendment effective January 1, 1990.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-6-314. Authority of department to compel and take testimony.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department" for "board or department". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: After "board" inserted "or department". Amendment effective January 1, 1990.

50-6-315. County attorney to prosecute violations.

Compiler's Comments

1995 Amendment: Chapter 546 at end substituted "department" for "department or board". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: At end substituted "any rule of the department or order issued by the department or board" for "the rules adopted under this part". Amendment effective January 1, 1990.

50-6-316. Criminal and civil penalties.

Compiler's Comments

1995 Amendment: Chapter 546 in (1), (2), and (4) substituted "department" for "department or board"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: In (1), after "part or", substituted "any rule of the department or order issued by the department or board" for "regulation made hereunder"; and inserted (2), (3), (4), (5), and (6) concerning civil penalties (see sec. 16, Ch. 387, L. 1989, for text). Amendment effective January 1, 1990.

50-6-317. Liability protection.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral. Amendment effective October 1, 2009. The amendment by Ch. 150 rendered the amendment by Ch. 56 void.

Chapter 150 in (1) in three places and (1)(b) following "physician" inserted "physician assistant"; in (1) near beginning substituted "provides online medical direction" for "gives instructions for medical care"; in (1)(a) substituted "offline medical direction" for "medical control"; in (1)(b) following "consistent with the level of" deleted "certification or"; in (2) at beginning substituted "An individual who volunteers or who is reimbursed $5,000 or less in any 12-month period for providing offline medical direction" for "An offline medical director", and at end substituted "individual" for "director"; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: Section 4, Ch. 304, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 1, 1991.

50-6-320. Private air ambulance service — findings — exemptions from insurance code.

Compiler's Comments

2017 Amendment: Chapter 210 in (2) at beginning inserted exception clause; inserted (3) regarding applicability of the provisions of Title 33 prescribed in 33-2-2212 to certain private air ambulance services; in (4) after "membership program must have" substituted "reciprocity agreements with all other air ambulance service providers" for "arrangements with other air ambulance service providers" and after "providers in Montana" substituted "with air ambulance service membership programs" for "to the extent reasonably possible"; and made minor changes in style. Amendment effective April 20, 2017.

Applicability: Section 14, Ch. 210, L. 2017, provided that this section is applicable to private air ambulance membership agreements sold, solicited, or negotiated on or after April 20, 2017, for purposes of out-of-network coverage of out-of-pocket expenses in excess of deductibles, copays, and coinsurance.

Severability: Section 13, Ch. 210, L. 2017, was a severability clause.

Preamble: The preamble attached to Ch. 237, L. 2011, provided: "WHEREAS, consumer expenses associated with life saving air ambulance service can be substantial and only a portion of the costs are typically eligible to be paid by insurers, leaving significant costs to the patient; and

WHEREAS, air ambulance service membership programs implemented in other states have provided protection to consumers from substantial out-of-pocket expenses for air ambulance services; and

WHEREAS, the Legislature believes it is appropriate to allow Montana consumers a choice on whether they want to participate in air ambulance service membership programs as a means to offset the costs of air ambulance services, while supporting the continued availability of these services in their communities."

Effective Date: Section 4, Ch. 237, L. 2011, provided: "[This act] is effective on passage and approval." Effective April 20, 2011.

50-6-322. Staffing — nonemergency ambulance transports — transports in rural areas.

Compiler's Comments

2019 Amendment: Chapter 220 in first sentence near beginning substituted "volunteer emergency care providers" for "volunteer emergency medical technicians" and in middle substituted "emergency care provider" for "emergency medical technician". Amendment effective July 1, 2019.

Effective Date: Section 4, Ch. 354, L. 2009, provided that this section is effective April 24, 2009.

50-6-323. Powers and duties of department.

Compiler's Comments

2019 Amendment: Chapter 220 in (3)(a) after "provide care at the scene" deleted "or" and after "during prehospital or interfacility transportation" inserted "or in other out-of-hospital care settings"; in (3)(d) substituted "emergency care provider" for "emergency medical technician"; in (5)(a) after "specific types and levels of" deleted "prehospital and" and after "interfacility medical transportation or" inserted "out-of-hospital"; in (5)(b) at end inserted "issued under this part"; in (6) substituted current language for former (6) that read: "(6) A rule adopted pursuant to this section is not effective until:

(a) a public hearing has been held for review of the rule; and

(b) notice of the public hearing and a copy of the proposed rules have been sent to all persons licensed under 50-6-306 to conduct or operate an emergency medical service. Notice must be sent at least 30 days prior to the date of the public hearing"; and made minor changes in style. Amendment effective July 1, 2019.

2009 Amendment: Chapter 150 in (2) at beginning inserted "Upon referral by a screening panel pursuant to 50-6-105", near middle substituted "review and may" for "receive and", and at end deleted "including complaints concerning"; in (3) inserted introductory clause regarding investigation of complaints; in (3)(a) substituted language regarding use of equipment and procedures by an emergency medical service for "patient care provided by an emergency medical service"; in (3)(c) at beginning substituted "general" for "individual" and at end deleted "provider"; inserted (3)(d) regarding the department's ability to review the board's investigation; in (4) near middle inserted "sharing information regarding complaints with the board as provided in 50-6-105 and"; in (5)(a) near middle substituted "interfacility" for "interhospital"; in (5)(c) near middle substituted "offline medical direction, online medical direction" for "medical control"; in (6) in introductory clause substituted "adopted pursuant to" for "under"; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective March 30, 1989.

Case Notes

Unpaid Emergency Medical Technician Trainees, Volunteers, and Students Not Considered Employees: The definition of emergency medical services personnel in 50-6-202 does not include an unpaid emergency medical technician (EMT) trainee. Therefore, an unpaid EMT trainee who has not been certified to provide medical services is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Further, because volunteers are generally not considered employees unless designated by law, a volunteer involved in ambulance services is also not considered an employee, as defined in 39-71-118, for workers' compensation purposes. Similarly, an unpaid student, such as an unpaid EMT trainee, who is learning skills in a work environment is considered a volunteer and is not considered an employee, as defined in 39-71-118, for workers' compensation purposes. The general statement of public policy in Great W. Sugar Co. v. District Court, 188 M 1, 610 P2d 717 (1980), that all forms of employment are subject to the Workers' Compensation Act, does not apply to unpaid EMT trainees and volunteers because those persons are not considered employees. Dyess v. Meagher County, 2003 MT 78, 315 M 35, 67 P3d 281 (2003).

50-6-324. Advisory committee.

Compiler's Comments

1995 Amendment: Chapter 546 at beginning of (1) substituted "department" for "board or department". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

50-6-325. Waiver of licensing requirements.

Compiler's Comments

1995 Amendment: Chapter 546 deleted (5) that read: "(5) The decision of the department to deny or revoke a waiver under this section may be appealed to the board." Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

50-6-326. Injunction to require compliance.

Compiler's Comments

1995 Amendment: Chapter 546 in (1), at end of first sentence, substituted "department" for "department or board". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

50-6-327. Administrative enforcement.

Compiler's Comments

1995 Amendment: Chapter 546 in (3), in three places, substituted "department" for "board"; in (4), in first and third sentences, substituted "department" for "board", at end of first sentence substituted "modify the corrective action order" for "modify the order issued by the department", near beginning of second sentence substituted "issued by the department after hearing" for "issued by the board", and at end of last sentence substituted "rescind the corrective action order" for "rescind the department's order"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 21, Ch. 387, L. 1989, provided that this section is effective January 1, 1990.

Part 4

State Trauma Care System

Part Compiler's Comments

Preamble: The preamble attached to Ch. 579, L. 1995, provided: "WHEREAS, the Legislature recognizes that trauma is the leading cause of death and disability for Montanans under 44 years of age and causes the loss of more years of human life than all other causes of death combined; and

WHEREAS, the death rate from injury in Montana is higher than the national norm, resulting in an economic loss to the state because of the productive years of life lost and the cost of treatment and rehabilitation; and

WHEREAS, organized systems of trauma care have been shown to reduce the number of deaths and disabilities resulting from trauma; and

WHEREAS, the people of the State of Montana would benefit from establishment and coordination of a statewide trauma care system."

1995 Statement of Intent: The statement of intent attached to Ch. 579, L. 1995, provided: "A statement of intent is required for this bill because [section 4(2)] [56-4-402(2)] requires the department of health and environmental sciences [now department of public health and human services] to adopt rules to implement a statewide trauma care system. It is the intent of the legislature that the rules adopted by the department:

(1) determine trauma regions by existing patient flow patterns;

(2) specify procedures that ensure due process in the designation and revocation of designation of trauma facilities;

(3) adopt protocols that will be used to screen and classify trauma patients to ensure that they are sent to the most appropriate treatment facilities and receive the most appropriate treatment;

(4) adopt standards for the state and hospital trauma registers in order to ensure that data on trauma cases is collected and organized in a manner allowing analysis of the quality of trauma care and the improvement of that care; and

(5) establish four levels of trauma care facilities, each having a different capacity for trauma treatment:

(a) regional centers capable of providing advanced trauma care to a region;

(b) area trauma hospitals capable of handling most trauma patients within their ordinary service areas;

(c) community trauma hospitals with limited emergency and surgical coverage; and

(d) trauma receiving facilities, such as hospitals with no surgical coverage and medical assistance facilities."

Part Administrative Rules

Title 37, chapter 104, subchapter 30, ARM Trauma facility designation.

50-6-401. Definitions.

Compiler's Comments

2001 Amendment: Chapter 192 in definition of health care facility after "means a hospital" inserted "critical access hospital"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 171 deleted definition of Emergency Medical Services Advisory Council that read: ""Emergency medical services advisory council" means the emergency medical services advisory council created in 2-15-2215"; and made minor changes in style.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

Code Commissioner Change: Pursuant to sec. 3, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Health and Environmental Sciences.

50-6-402. Department duties — rules.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 79, Ch. 261, L. 2021. Amendment effective April 20, 2021.

1997 Amendment: Chapter 171 in (2)(a)(viii), after "functions of", deleted "the emergency medical services advisory council created by 2-15-2215".

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

Effective Date: Section 13(1), Ch. 579, L. 1995, provided that subsection (2) of this section is effective May 1, 1995. The remainder of the section is effective October 1, 1995.

50-6-404. Duties of trauma care committee.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 131, L. 2023. Amendment effective April 18, 2023.

1997 Amendment: Chapter 171 deleted (4) that read: "(4) provide recommendations to the emergency medical services advisory committee concerning the statewide trauma care system and the integration of trauma care with the emergency medical services delivery system"; and made minor changes in style.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

Part 5
Automated External Defibrillator Programs

Part Compiler's Comments

Preamble: The preamble attached to Ch. 335, L. 1999, provided: "WHEREAS, the Montana Legislature finds that each year more than 250,000 Americans die from out-of-hospital, sudden cardiac arrest; and

WHEREAS, the American Heart Association estimates that more than 20,000 deaths could be prevented each year if early defibrillation were more widely available; and

WHEREAS, while many communities have invested in 9-1-1 emergency notification systems and emergency medical services systems that include well-trained emergency personnel, in other communities there are insufficient numbers of strategically placed defibrillators and persons properly trained to operate them.

THEREFORE, the Legislature finds that in order to improve the access of Montana's citizens to early defibrillation, the Legislature should authorize and regulate the establishment of early defibrillation programs by many different public and private entities in careful coordination with emergency medical services systems."

Part Administrative Rules

Title 37, chapter 104, subchapter 6, ARM Automated external defibrillators.

50-6-501. Definitions.

Compiler's Comments

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

50-6-502. AED program — requirements for AED use.

Compiler's Comments

2007 Amendment: Chapter 291 in (1)(d) substituted "oversight" for "supervision"; deleted former (1)(h) that read: "(h) the name, location, and telephone number of a physician, or other individual designated by the physician, designated to provide medical supervision of the AED program"; deleted former (5) that read: "(5) ensure that the physician or other individual designated by the physician to supervise the AED program supervises the AED program to ensure compliance with the written plan, this part, and rules adopted by the department pursuant to 50-6-503 and reviews each case in which the AED is used"; in (5) near end after "reported to the" deleted "supervising physician or the person designated by the physician and to the"; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

50-6-503. Rulemaking.

Compiler's Comments

2009 Amendment: Chapter 2 in (1)(a) at end substituted "50-6-502(6)" for "50-6-502(7)". Amendment effective October 1, 2009.

2007 Amendment: Chapter 291 in (1)(e) substituted "guidelines for medical oversight" for "requirements for medical supervision". Amendment effective July 1, 2007.

Effective Date: Section 9(1), Ch. 335, L. 1999, provided that this section is effective on passage and approval. Approved April 19, 1999.

Administrative Rules

Title 37, chapter 104, subchapter 6, ARM Automated external defibrillators.

50-6-504. Enforcement — cessation order — hearing — injunction.

Compiler's Comments

2021 Amendment: Chapter 535 in (3) after "county where the violation occurred" deleted "or in the district court for Lewis and Clark County". Amendment effective October 1, 2021.

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

50-6-505. Liability limitations.

Compiler's Comments

2007 Amendment: Chapter 291 in (2)(a) at beginning substituted "a person providing medical oversight of the AED program" for "the physician supervising the AED program or the person designated by a physician to supervise the program, either of whom are"; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

50-6-506. Exemptions.

Compiler's Comments

2019 Amendment: Chapter 220 in (2) substituted "emergency care provider" for "emergency medical technician". Amendment effective July 1, 2019.

Effective Date: Section 9(2), Ch. 335, L. 1999, provided that this section is effective July 1, 1999.

CHAPTER 8
ONE-STEP FACILITY LICENSING

Part 1
General

Part Compiler's Comments

Legislative Study Committee Bill: Senate Bill 447 (Ch. 356, L. 1983) was introduced by request of the SJR 34 Legislative Study Committee. See report to 48th Legislature, Bureau of Health Planning and Resource Development, Division of Hospital and Medical Facilities, Department of Health and Environmental Sciences, December 1982. Also see SJR 34, L. 1981.

50-8-101. Definitions.

Compiler's Comments

2013 Amendment: Chapter 68 in definition of facility in (e) substituted "intellectually disabled" for "mentally retarded". Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

2003 Amendment: Chapter 54 in definition of facility in (g) substituted "assisted living" for "personal-care". Amendment effective October 1, 2003.

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (2)(b), the Code Commissioner has made the change.

Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; in definition of facility, in (c), substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of corrections and human services, the department of health and environmental sciences, and the department of family services"; in definition of facility, at beginning of (a), deleted "for the department of corrections and human services", deleted former (b) that read: "(b) for the department of family services", and deleted former (c) that read: "(c) for the department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1987 Amendment: In (1) and (2)(b) substituted reference to Department of Family Services for reference to Department of Social and Rehabilitation Services; at beginning of (2)(b)(i) substituted “community” for “adult services”, after “disabled” substituted “community homes for physically disabled persons” for “adult independent and semi-independent living facilities”, and after “care” substituted “homes” for “facilities”; and in (2)(b)(ii) substituted “youth care facilities” for “children’s services achievement homes, maternity homes, attention homes, aftercare group homes, district youth guidance homes, foster family care facilities, child-care agencies, and community homes for the developmentally disabled”.

50-8-102. One-step licensing required.

Compiler’s Comments

1995 Amendment: Chapter 546 at beginning of introductory clause substituted “The” for “Each”. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-8-105. Inspections by employees of other department.

Compiler’s Comments

Statement of Intent: The statement of intent attached to SB 447 (Ch. 356, L. 1983), first adopted by the Senate Public Health, Welfare, and Safety Committee, read: “Senate Bill 447 requires a statement of intent because it authorizes the departments of health and environmental sciences, social and rehabilitation services, and institutions [functions now in department of public health and human services] to adopt joint rules which would enable the agencies to coordinate their reviews of certain residential facilities over which they have jurisdiction. The intent of the legislature is that such rules will address cooperative review mechanisms, utilization of personnel, qualifications of inspectors, and delegation of review authority to other agencies. These rules will not affect the substantive standards or criteria under which the regulated facilities operate.”

CHAPTER 9

RIGHTS OF THE TERMINALLY ILL ACT

Chapter Commissioner’s Comments

The Rights of the Terminally Ill Act is designed to provide various means by which an individual’s preferences can be carried out with regard to administration of life-sustaining treatment. The Act permits an individual to execute a declaration that instructs a physician to withhold or withdraw life-sustaining treatment in the event the individual is in a terminal condition and is unable to participate in medical treatment decisions. In the alternative, the Act permits the individual to execute a declaration designating another individual to make decisions regarding the withholding or withdrawal of life-sustaining treatment. Finally, the Act authorizes an attending physician to withhold or withdraw life-sustaining treatment in the absence of a declaration upon the consent of a close relative if the action would not conflict with the known intentions of the individual.

The scope of the Act is narrow. Its impact is limited to treatment that is merely life-prolonging, and to patients whose terminal condition is incurable and irreversible, whose death will soon occur, and who are unable to participate in treatment decisions. Beyond its narrow scope, the Act is not intended to affect any existing rights and responsibilities of persons to make medical treatment decisions. The Act merely provides alternative ways in which a terminally-ill patient’s desires regarding the use of life-sustaining procedures can be legally implemented.

The purposes of the Act are (1) to establish a procedure which is simple, effective, and acceptable to persons who desire to execute a declaration, (2) to provide a statutory framework that is acceptable to physicians and health-care facilities whose conduct will be affected, (3) to provide for the effectiveness of a declaration in states other than the state in which it is executed through uniformity of scope and procedure, and (4) to avoid the inconsistency in approach that has characterized early state statutes in the area.

The Act’s basic structure and substance has been drawn from existing legislation in order to avoid further complexity and to permit its effective operation in light of prior enactments. Departures from existing statutes have been made, however, in order to simplify procedures, improve drafting, and clarify language. Selected provisions have been reworked to express more adequately a specific concept (i.e., life-sustaining treatment, terminal condition) or to reflect changes in established procedure (i.e., the qualifications of witnesses). The Act’s stylistic and substantive departures from existing legislation were pursued for the purposes of clarity and simplicity.

The 1989 Act reflects changes and additions to the original Rights of the Terminally Ill Act, approved by the Conference in 1985. The principal changes are noted in the Comments, but they can also be briefly listed. First, Section 2 [50-9-103] has been expanded to permit individuals to designate other persons to make decisions regarding the withholding or withdrawal of life-sustaining treatment. Second, under new Section 7 [50-9-106] consent to withholding or withdrawal of treatment may be obtained in the absence of a declaration. With few exceptions, changes in the original Act have been limited to Section 2 [50-9-103] and (new) Section 7 [50-9-106], so that states that have enacted the earlier version can easily incorporate the new provisions.

Chapter Compiler's Comments

Source: Uniform Rights of the Terminally Ill Act.

1989 Statement of Intent: The statement of intent attached to Ch. 475, L. 1989, provided: "A statement of intent is needed for this bill because [section 4] [50-9-110] grants the department of health and environmental sciences [now department of public health and human services] authority to adopt rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules, the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health organizations, and emergency medical services."

Chapter Administrative Rules

Title 37, chapter 10, subchapter 1, ARM Living wills.

Chapter Case Notes

Physician Aid in Dying Not Against Public Policy — Protection of Participating Physician From Prosecution: The District Court held that a competent terminally ill patient has a right to die with dignity pursuant to the rights to individual dignity and privacy in the Montana Constitution, which includes protection of the patient's physician from prosecution for homicide. The Supreme Court held that the issue could be resolved at the statutory level and therefore declined to rule on the constitutional issue. Because suicide is not a crime under Montana law, the only person who might be subject to criminal prosecution is a physician who prescribes a lethal dose of medication to a terminally ill patient. Thus, the court addressed the possible culpability of a physician who extends aid in dying, whether the patient's consent could constitute a statutory defense against a homicide charge against the assisting physician, and whether patient consent is rendered ineffective by 45-2-211(2)(d) because permitting the conduct or resulting harm is against public policy. The court noted that the consent defense is effective only if none of the exceptions in 45-2-211(2) apply. By law, consent is ineffective if it is (1) given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; (2) given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; (3) induced by force, duress, or deception; or (4) against public policy to permit the conduct or the resulting harm, even though consented to. The first three exceptions require case-by-case factual determinations, so the court confined its analysis to whether consent to physician aid in dying is against public policy and concluded that physician aid in dying provided to terminally ill, mentally competent adult patients is not against public policy. The exception to consent applies only to conduct that disrupts public peace and physically endangers others, to which the act of a physician handing medicine to a terminally ill patient and the patient's subsequent peaceful and private act of taking the medicine is not comparable. The physician is not directly involved in the final decision or the final act, and the patient's private decision whether to take the medicine does not breach public peace or endanger others, so the patient's consent to physician aid in dying constitutes a statutory defense to a homicide charge against the physician when no other exceptions apply. Baxter v. St., 2009 MT 449, 354 M 234, 224 P3d 1211 (2009).

Rights of the Terminally Ill Act Not Against Public Policy: The Montana Rights of the Terminally Ill Act clearly provides that terminally ill patients are entitled to autonomous end-of-life decisions even if enforcement of those decisions involves direct participation by a physician through withdrawing or withholding treatment. It is not against public policy to honor the patient's wishes when the patient is conscious and able to vocalize and carry out the decision with self-administered medication and no immediate or direct physician assistance. The Act's encompassing immunity for medical professionals reinforces the patient's right to enforce the decisions without fear that those who give effect to the patient's wishes will be prosecuted. There is nothing in the plain language of the law that indicates that the Act is against public policy. Baxter v. St., 2009 MT 449, 354 M 234, 224 P3d 1211 (2009).

Chapter Law Review Articles

Viatical Settlements in Montana: New Legislation Serves the Terminally Ill, Jacobs, 59 Mont. L. Rev. 81 (1998).

The Right to Die in Montana: The Montana Uniform Rights of the Terminally Ill Act, Hunt, 54 Mont. L. Rev. 339 (1993).

The Natural Death Act: Protection for the Right to Die, Schimke, 47 Mont. L. Rev. 379 (1986).

Part 1
General

50-9-101. Short title.

Compiler's Comments

1991 Amendment: Changed short title from "Montana Living Will Act" to "Montana Rights of the Terminally Ill Act". Amendment effective April 8, 1991.

Source: Section 16, Uniform Rights of the Terminally Ill Act.

50-9-102. Definitions.

Commissioner's Comments

The Act's definitions of "life-sustaining treatment" and "terminal condition" are interdependent and must be read together. This has caused drafting problems in many existing acts, and the Act has been drafted to avoid the problems detected in existing legislation.

Most of the "life-sustaining treatment" and "terminal condition" definitions in existing statutes were considered problematical in that they (1) were tautological, defining "terminal condition" with respect to "life-sustaining treatment" and vice versa, and (2) defined terminal condition as requiring "imminent" death "whether or not" or "regardless of" the application of life-sustaining treatment. Strictly speaking, if death is "imminent" even with the full application of life-sustaining treatment, there is little point in having a statute permitting withdrawal of such procedures. The Act's definitions have attempted to avoid these problems.

The "life-sustaining treatment" definition found in many statutes inserts the clause "and when, in the judgment of the attending physician, death will occur whether or not such procedure or intervention is utilized," after the phrase "will serve only to prolong the dying process" found in the Act's provision. Because the Act's life-sustaining treatment definition concerns only those procedures or interventions applied to "qualified patients" (i.e., those who have been determined to be in a terminal condition), and because a terminal condition is defined as "incurable and irreversible" with death resulting "in a relatively short time," the requirement that death be "inevitable" has been satisfied by the presence of "qualified patient" in the life-sustaining treatment definition. Therefore, this additional clause was excluded because it was considered repetitious and possibly confusing.

The Act defines "life-sustaining treatment" in an all-inclusive manner, dealing with those procedures necessary for comfort care or alleviation of pain separately in Section 6(b) [50-9-202(2)], where it is provided that such procedures need not be withdrawn or withheld pursuant to a declaration. Most existing statutes incorporate "comfort care" as an exclusion from the definition of life-sustaining treatment. Because many such procedures *are* life-sustaining, however, the Act avoids definitional confusion by treating them in a separate provision that reflects the Act's policy more clearly, and better reflects the fact that comfort care does not involve a fixed group of procedures applicable in all instances.

Subsection (9) of Section 1 [50-9-102] is the "terminal condition" definition. The difficulty of trying to express such a condition in precise, accurate, but not unduly restricting language is obvious. A definition must preserve the physicians' professional discretion in making such determinations. Consequently, the Act's definition of terminal condition incorporates not only selected language from various state acts, but also suggestions from medical literature in the field.

The Act employs the term "terminal condition" rather than terminal illness, and it is important that these two different concepts be distinguished. Terminal illness, as generally understood, is both broader and narrower than terminal condition. Terminal illness connotes a disease process that will lead to death; "terminal condition" is not limited to disease. "Terminal illness" also connotes an inevitable process leading to death, but does not contain limitations as to the time period prior to death, or potential for nonreversibility, as does "terminal condition."

The terminal condition definition requires that the condition be "incurable and irreversible." These adjectives were chosen over the similar phrase, "no possibility of recovery," because of possible ambiguity in the term "recovery" (i.e., recovery to "normal" or to some other stage). A number of state statutes now use "incurable" and/or "irreversible," and the terms appear to comport with the criteria applied by physicians in terminal care situations. The phrase "incurable *and* irreversible" is to be read conjunctively as long as the circumstances warrant. A condition which is reversible but incurable is *not* a terminal condition.

Subsection (9) [50-9-102] also requires that the condition result in the death of the patient with [within] a "relatively short time . . . without the administration of life-sustaining treatment." This requirement differs to some degree from the language employed in most of the statutes. First, the decision that death will occur in a relatively short time is to be made without considering the possibilities of extending life with life-sustaining treatment. The alternative is that required by a number of states—that death be imminent whether or not life-sustaining procedures are applied. The President's Commission for the Study of Ethical Problems in Medicine and Biomedical Research has noted that such a definition severely limits the group of terminally-ill patients able to qualify under these acts. It is precisely because life can be prolonged indefinitely by new medical technology that these acts have come into existence. Though the Act intends to err on the side of prolonging life, it should not be made wholly ineffective as to the actual situation it purports to address. The provisions which require that death be imminent regardless of the application of life-sustaining procedures appear to have that effect. Therefore, such provisions have been excluded in the Act.

The terminal condition definition of Subsection (9) [50-9-102] requires that death result "in a relatively short time." Rejecting the "imminency" language employed in a number of statutes, this alternative was chosen because it provides needed flexibility and reflects the balancing character of the time frame judgment. Though the phrase, "relatively short time," does not eliminate the need for judgment, it focuses the physician's medical judgment and avoids the narrowing implications of the word "imminent."

The "relatively short time" formulation is employed to avoid both the unduly constricting meaning of "imminent" and the artificiality of another alternative—fixed time periods, such as 6 months, 1 year, or the like. The circumstances and inevitable variations in disorder and diagnosis make unrealistic a fixed time period. Physicians may be hesitant to make predictions under a fixed time period standard unless the standard of physician judgment is so loose as to be unenforceable. Under the Act's standard, considerations such as the strength of the diagnosis, the type of disorder, and the like can be reflected in the judgment that death will result within a relatively short time, as they are now reflected in judgments physicians must and do make.

The life-sustaining treatment and terminal condition definitions exclude certain types of disorders, such as kidney disease requiring dialysis, and diabetes requiring continued use of insulin. This is accomplished in the requirement that terminal conditions be "irreversible," and that life-sustaining procedures serve "*only* to prolong the dying process." For purposes of the Act, diabetes treatable with insulin is "reversible," a diabetic person so treatable is not in the "dying process," and insulin is a treatment the benefits of which foreclose it serving "*only*" to prolong the dying process.

Compiler's Comments

2019 Amendment: Chapter 220 in definition of emergency medical services personnel near middle substituted "emergency care providers" for "emergency medical technicians". Amendment effective July 1, 2019.

2003 Amendment: Chapter 240 inserted definitions of advanced practice registered nurse and attending advanced practice registered nurse; in definition of qualified patient near middle after "attending physician" inserted "or attending advanced practice registered nurse"; in definition of terminal condition near middle after "attending physician" inserted "or attending advanced practice registered nurse"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendments — Composite Section: Chapter 418 in definition of Department substituted "department of public health provided for in Title 2, chapter 15, part 21" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Because of the repeal of 2-15-2101, the Code Commissioner has codified the reference to 2-15-2201.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In definition of health care provider, after "licensed", inserted "certified"; changed definition of life-sustaining procedure to life-sustaining treatment; in definition of living will protocol, after "life-sustaining", substituted "treatment" for "procedures"; inserted definition of person; in definition of physician, after "means", substituted "an individual" for "a person"; in definition of qualified patient, near beginning, inserted "18 or more years of age"; inserted definition of state; and in definition of terminal condition, after "life-sustaining", substituted "treatment" for "procedures". Amendment effective April 8, 1991.

Source: Section 1, Uniform Rights of the Terminally Ill Act.

1989 Amendment: Inserted definitions of board, department, emergency medical services personnel, living will protocol, and reliable documentation. Amendment effective April 8, 1989.

Administrative Rules

Title 37, chapter 10, subchapter 1, ARM Living wills.

50-9-103. Declaration relating to use of life-sustaining treatment — designee.

Commissioner's Comments

Section 2 [50-9-103] sets out the minimal requirements regarding the making and execution of a valid declaration. "Sample" declaration forms are offered in this section. The forms are not mandatory, as some acts require; they "may, but need not, be" followed. The forms provided also are not as elaborate as others. The drafters rejected more detailed declarations for two reasons. First, the forms are to serve only as examples of a valid declaration. More elaborate forms may have erroneously implied that a declaration more simply constructed would not be legally sufficient. Second, the sample forms' simple structure and specific language attempt to provide notice of exactly what is to be effectuated through these documents to those persons desiring to execute a declaration and the physicians who are to honor it.

Sections 2(a) and (c) [50-9-103(1) and (3)] of the Act authorize an individual by a declaration to designate another person to make decisions governing the withholding or withdrawal of life-sustaining care. The designated person must be an adult of sound mine, but no other restrictions are placed on the designation other than the requirements of form contained in Section 2(a) [50-9-103(1)]. The designated person may be an attorney-in-fact who is so designated in the declaration or in another writing that conforms with the applicable requirements of each state for durable powers of attorney.

Section 2(c) [50-9-103(3)] provides a model form of declaration by which the designation of another decision-maker may be accomplished. The bracketed language in the Section 2(c) [50-9-103(3)] form of declaration is intended to allow a declarant two choices when designating another person to make treatment decisions. First, by striking the bracketed language, an individual may make an exclusive designation of another decision-maker, and if that person is not available to fulfill the responsibility, the declaration will have no effect. It is intended, in such an event, that the substituted decision-makers who are authorized to make treatment decisions in Section 7 [50-9-106] will be able to exercise decision-making authority pursuant to the terms of Section 7 [50-9-106]. The execution of a declaration exclusively designating another person to make treatment decisions, in other words, should not itself be construed as an "expressed intention of the individual" not to have life-sustaining treatment withheld or withdrawn under Section 7(d) [50-9-106(4)].

The second choice available in the Section 2(c) [50-9-103(3)] form of declaration would make the declaration directly effective by its terms in the event that the substituted decision-maker were unavailable. This would be accomplished by not striking the bracketed language.

Other than the requirement that designees be adults of sound mind, no limitation is placed in Section 2 [50-9-103] on the person(s) who may be designated to make decisions about the withholding or withdrawal of treatment for the declarant. It is specifically anticipated, for example, that some people may choose to appoint their physician to make such decisions and, absent any ethical restrictions on such an appointment, Section 2 [50-9-103] anticipates that the physician may act in the appointed capacity.

Persons may be appointed to make decisions for a declarant through a declaration in substantially the form contained in Section 2(c) [50-9-103(3)], through appointment of an attorney-in-fact pursuant to a durable power of attorney, or through a judicially appointed guardian. In all cases, the designee has full power to make the relevant decisions called for in the Act, and functions as the agent of the declarant. No specific standards, other than good faith, apply to decisions of the designee. Designation of another to make decisions pursuant to a durable power of attorney or judicially-appointed guardianship is treated as a declaration under the Act, so that, for example, decisions of the designee "govern" treatment decisions by the physician, and a physician who is unwilling to abide by such decisions (if medically reasonable) must transfer the patient to the care of another physician.

Designation by a durable power of attorney or judicially-appointed guardianship must be based on a sufficiently specific reference to health care or terminal care treatment decisions, as required by state law governing such appointments, to trigger application of the Act. No specific formulation of the terms of appointment is required, however. If appointment for purposes of health-care decisions would be sufficient under state law to include withholding or withdrawal of treatment for a person in a terminal condition, that will suffice under the Act.

The Act's authorization for specific decisions does not in any way restrict authority that exists under state law. The Act is in this respect additive only. Thus, for example, if an attorney-in-fact would have the authority independent of this Act to authorize withdrawal of treatment for a person in a persistent vegetative state not covered by the terms of the Act, the Act's limitations would not circumscribe the attorney-in-fact's authority under other law.

In designating another person to make treatment decisions, it is assumed that a declarant will identify only a single decision-maker. In view of this assumption, Sections 2(a) and (c) [50-9-103(1) and (3)] permit designation of an *individual*, rather than *individuals*, as the problems associated with identifying, locating, and communicating with multiple decision-makers are substantial and the drafters did not want to encourage the practice.

The Act does not expressly prohibit multiple designees, however, and a declaration containing a multiple designation is not invalid under the Act. The absence of any provision permitting a majority of such designees to act in the case of a disagreement, however, means that the refusal of one member of a designee group to agree to direct the withholding or withdrawal of treatment will foreclose any action *under the Act* unless the declaration specifically provides otherwise. Because of the difficulties associated with multiple designees under the Act, declarants should be discouraged from the practice and, if such designations are made and any result other than the one stated above is desired, the declaration should so specify.

The Act's provisions governing witnesses to a declaration are simplified. Section 2 [50-9-103] provides only that the declaration be signed by the declarant in the presence of two witnesses. The Act does not require witnesses to meet any specific qualifications for two primary reasons. First, the interest in simplicity mandates as uncomplicated a procedure as possible. It is intended that the Act present a viable alternative for those persons interested in participating in their medical treatment decisions in the event of a terminal condition.

Second, the absence of more elaborate witness requirements relieves physicians of the inappropriate and perhaps impossible burden of determining whether the legalities of the witness requirements have been met. Many physicians understandably and rightly would be hesitant to make such decisions and, therefore, the effectiveness of the declaration might be jeopardized. It should be noted, as well, that protection against abuse in these situations is provided by the criminal penalties in Section 10 [50-9-206]. The attending physicians and other health-care professionals will be able, in most circumstances, to discuss the declaration with the patient and family, and any suspicion of duress or wrongdoing can be discovered and handled by established hospital procedures.

Section 2(e) [50-9-103(5)] requires that a physician or health-care provider who is given a copy of the declaration record it in the declarant's medical records. This step is critical to the effectuation of the declaration, and the duty applies regardless of the time of receipt. If a copy of the same declaration is already in the record, its re-recording would not be necessary, but its receipt should be noted as evidence of its continued force. Section 2(e) [50-9-103(5)] is not duplicative of Section 5 [50-9-201] which requires recording the terms of the declaration (or the document itself, when available, in the event of telephonic communication to the physician by another physician, for example) at the time the physician makes a determination of terminal condition. It was deemed important that knowledge of the declaration and its continued force be specifically noted at this critical juncture.

Section 2(e) [50-9-103(5)] imposes a duty on the physician or other health-care provider to inform the declarant of his or her unwillingness to comply with the provisions of the declaration. This will provide notice to the declarant that certain terms may be deemed medically unreasonable

(Section 11(f) [50-9-205(6)]), or that the declarant should decide whether to select another attending physician who is willing to carry out the Act (Section 8 [50-9-203]).

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

2003 Amendment: Chapter 240 in (1) at beginning of fourth sentence after "A" deleted "physician or"; in (2) in introductory clause and in two places in declaration form and in (3) in two places in declaration form after "physician" inserted reference to advanced practice registered nurse or attending advanced practice registered nurse; in (5) at beginning after "A" deleted "physician or other"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: In (1) substituted present first two sentences regarding execution of a declaration governing withholding of life-sustaining treatment for former first two sentences that read: "Any competent adult may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn. However, the declaration is effective only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions"; deleted former (2) requiring declarant to notify physician of a declaration; near beginning of (2) after "declaration", inserted "directing a physician to withhold or withdraw life-sustaining treatment", in declaration form inserted reference to Montana Rights of the Terminally Ill Act, and deleted former third sentence regarding validity of declaration subject to revocation by declarant; inserted (3) establishing form for designation of another individual to withhold life-sustaining treatment; inserted (4) regarding designation of an attorney-in-fact; inserted (5) requiring physician to make declaration a part of declarant's medical records and to notify declarant of any unwillingness to comply; and made minor changes in style. Amendment effective April 8, 1991.

Source: Section 2, Uniform Rights of the Terminally Ill Act.

Case Notes

Physician Aid in Dying Not Against Public Policy — Protection of Participating Physician From Prosecution: The District Court held that a competent terminally ill patient has a right to die with dignity pursuant to the rights to individual dignity and privacy in the Montana Constitution, which includes protection of the patient's physician from prosecution for homicide. The Supreme Court held that the issue could be resolved at the statutory level and therefore declined to rule on the constitutional issue. Because suicide is not a crime under Montana law, the only person who might be subject to criminal prosecution is a physician who prescribes a lethal dose of medication to a terminally ill patient. Thus, the court addressed the possible culpability of a physician who extends aid in dying, whether the patient's consent could constitute a statutory defense against a homicide charge against the assisting physician, and whether patient consent is rendered ineffective by 45-2-211(2)(d) because permitting the conduct or resulting harm is against public policy. The court noted that the consent defense is effective only if none of the exceptions in 45-2-211(2) apply. By law, consent is ineffective if it is (1) given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; (2) given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; (3) induced by force, duress, or deception; or (4) against public policy to permit the conduct or the resulting harm, even though consented to. The first three exceptions require case-by-case factual determinations, so the court confined its analysis to whether consent to physician aid in dying is against public policy and concluded that physician aid in dying provided to terminally ill, mentally competent adult patients is not against public policy. The exception to consent applies only to conduct that disrupts public peace and physically endangers others, to which the act of a physician handing medicine to a terminally ill patient and the patient's subsequent peaceful and private act of taking the medicine is not comparable. The physician is not directly involved in the final decision or the final act, and the patient's private decision whether to take the medicine does not breach public peace or endanger others, so the patient's consent to physician aid in dying constitutes a statutory defense to a homicide charge against the physician when no other exceptions apply. Baxter v. St., 2009 MT 449, 354 M 234, 224 P3d 1211 (2009).

Rights of the Terminally Ill Act Not Against Public Policy: The Montana Rights of the Terminally Ill Act clearly provides that terminally ill patients are entitled to autonomous end-of-life decisions even if enforcement of those decisions involves direct participation by a physician through withdrawing or withholding treatment. It is not against public policy to honor the patient's wishes when the patient is conscious and able to vocalize and carry out the decision with self-administered medication and no immediate or direct physician assistance. The Act's encompassing immunity for medical professionals reinforces the patient's right to enforce the decisions without fear that those who give effect to the patient's wishes will be prosecuted. There is nothing in the plain language of the law that indicates that the Act is against public policy. Baxter v. St., 2009 MT 449, 354 M 234, 224 P3d 1211 (2009).

50-9-104. Revocation of declaration.

Commissioner's Comments

Section 4 [50-9-104] provides for revocation of a declaration and is modeled after North Carolina's similar provision. Virtually every other statute sets out specific examples of how a declaration can be revoked—by physical destruction, by a signed, dated writing, or by a verbal expression of revocation. A provision that freely allowed revocation and avoided procedural complications was desired. The simple language of Section 4 [50-9-104] appears to meet these qualifications. It should be noted that the revocation is, of course, not effective until communicated to the attending physician or another health-care provider working under a physician's guidance, such as nursing facility or hospice staff. The Act, unlike many statutes, also does not explicitly require that a person relaying the revocation be acting on the declarant's behalf. Such a requirement could impose an unreasonable burden on the attending physician. The communication is assumed to be in good faith, and the physician may rely on it.

In employing a general revocation provision, it was intended to permit revocation by the broadest range of means. Therefore, for example, it is intended that a revocation can be effected in writing, orally, by physical defacement or destruction of a declaration, and by physician [physical] sign communicating intention to revoke.

Compiler's Comments

2003 Amendment: Chapter 240 in (1) in four places and in (2) near beginning after "physician" inserted "attending advanced practice registered nurse"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: In (1), in first sentence after "manner", deleted "by which the declarant is able to communicate his intent to revoke", in second sentence, after "effective", deleted "only as to the attending physician or any health care provider acting under the guidance of that physician" and before "physician" inserted "attending", and in fourth sentence, at end, substituted "treatment" for "procedures"; and made minor changes in style. Amendment effective April 8, 1991.

Source: Section 4, Uniform Rights of the Terminally Ill Act.

1989 Amendment: Inserted third and fourth sentences of (1) clarifying actions required of witnesses to a revocation. Amendment effective April 8, 1989.

50-9-105. When declaration operative.

Commissioner's Comments

Section 3 [50-9-105] establishes the preconditions to the declaration becoming operative. Once operative, Section 3, [50-9-105] provides that the attending physician shall act in accordance with the provisions of the declaration or transfer care of the patient under Section 8 [50-9-203]. This provision is not intended to eliminate the physician's need to evaluate particular requests in terms of reasonable medical practice under Section 11(f) [50-9-205(6)], nor to relieve the physician from carrying out the declaration except for any specific unreasonable or unlawful request in the declaration. Transfer of the patient under Section 8 [50-9-203] is to occur if the physician, for reasons of conscience, for example, is unwilling to carry out the Act or to follow medically reasonable requests in the declaration.

Compiler's Comments

2007 Amendment: Chapter 345 in (2) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2007.

Retroactive Applicability: Section 20, Ch. 345, L. 2007, provided: "[This act] applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift made before October 1, 2007."

2003 Amendment: Chapter 240 in (1)(a), (1)(b), and (2) after "physician" inserted "or attending advanced practice registered nurse". Amendment effective October 1, 2003.

Source: Section 3, Uniform Rights of the Terminally Ill Act.

Effective Date: Section 16, Ch. 391, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 8, 1991.

Case Notes

Physician Aid in Dying Not Against Public Policy — Protection of Participating Physician From Prosecution: The District Court held that a competent terminally ill patient has a right to die with dignity pursuant to the rights to individual dignity and privacy in the Montana Constitution, which includes protection of the patient's physician from prosecution for homicide. The Supreme Court held that the issue could be resolved at the statutory level and therefore declined to rule on the constitutional issue. Because suicide is not a crime under Montana law, the only person who might be subject to criminal prosecution is a physician who prescribes a lethal dose of medication to a terminally ill patient. Thus, the court addressed the possible culpability of a physician who extends aid in dying, whether the patient's consent could constitute a statutory defense against a homicide charge against the assisting physician, and whether patient consent is rendered ineffective by 45-2-211(2)(d) because permitting the conduct or resulting harm is against public policy. The court noted that the consent defense is effective only if none of the exceptions in 45-2-211(2) apply. By law, consent is ineffective if it is (1) given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; (2) given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; (3) induced by force, duress, or deception; or (4) against public policy to permit the conduct or the resulting harm, even though consented to. The first three exceptions require case-by-case factual determinations, so the court confined its analysis to whether consent to physician aid in dying is against public policy and concluded that physician aid in dying provided to terminally ill, mentally competent adult patients is not against public policy. The exception to consent applies only to conduct that disrupts public peace and physically endangers others, to which the act of a physician handing medicine to a terminally ill patient and the patient's subsequent peaceful and private act of taking the medicine is not comparable. The physician is not directly involved in the final decision or the final act, and the patient's private decision whether to take the medicine does not breach public peace or endanger others, so the patient's consent to physician aid in dying constitutes a statutory defense to a homicide charge against the physician when no other exceptions apply. Baxter v. St., 2009 MT 449, 354 M 234, 224 P3d 1211 (2009).

Rights of the Terminally Ill Act Not Against Public Policy: The Montana Rights of the Terminally Ill Act clearly provides that terminally ill patients are entitled to autonomous end-of-life decisions even if enforcement of those decisions involves direct participation by a physician through withdrawing or withholding treatment. It is not against public policy to honor the patient's wishes when the patient is conscious and able to vocalize and carry out the decision with self-administered medication and no immediate or direct physician assistance. The Act's encompassing immunity for medical professionals reinforces the patient's right to enforce the decisions without fear that those who give effect to the patient's wishes will be prosecuted. There is nothing in the plain language of the law that indicates that the Act is against public policy. Baxter v. St., 2009 MT 449, 354 M 234, 224 P3d 1211 (2009).

50-9-106. Consent by others to withholding or withdrawal of treatment.

Commissioner's Comments

Section 7 [50-9-106] provides a procedure by which an attending physician may obtain consent to the withholding or withdrawal of life-sustaining treatment in the absence of an effective declaration. It draws upon the definitions of the Act, as well as those sections bearing on the process for and the legal effect of withholding or withdrawal of treatment, but in most other respects it is free-standing. It can therefore simply be inserted as a new section in existing statutes that follow the original 1985 Uniform Act. For states that might want to adopt the Section 2 [50-9-103] amendments, but not the Section 7 [50-9-106] amendments, Section 7 [50-9-106] can simply be deleted.

The purpose of Section 7 [50-9-106] is to authorize persons other than the patient who are in a close familial relationship to the patient to consent to the withholding or withdrawal of life-sustaining treatment when the patient has no prior declaration, or when a prior declaration is not effective. Prior declarations might not be effective for a variety of reasons, including for example the expiration of a time limit, the failure to have the declaration properly witnessed, or the absence of a condition precedent contained in the declaration, such as the death or disability of a designated decision-maker.

Section 7 [50-9-106] authorizes binding consent to the withholding or withdrawal of life-sustaining treatment for qualified patients. Members of the patient's family in designated priority order may consent to withholding or withdrawal of life-sustaining treatment, and such consent will be treated as if the individual had given it. Consent by the designated family members, however, must be given in good faith, and is not valid if it would conflict with the expressed intention of the patient.

The consent provision of section 7 [50-9-106] differs from the designation of another to make decisions under Section 2 [50-9-103]. Because the "consent" does not constitute a declaration under the Act, provisions that impose an obligation on the physician to seek out a designee under a declaration, that make the designee's decisions "govern" treatment, and that require transfer by a physician under Section 8 [50-9-203], do not apply. Section 7 [50-9-106], in short, is not a full alternative to a declaration, but is rather a means by which the attending physician can obtain legally reliable consent to the withholding or withdrawal of treatment for individuals in a terminal condition, should that be needed in the circumstances. Section 7 [50-9-106] neither constitutes a de jure appointment of family to make such decisions in all cases, nor does it limit treatment authority authorized under other law.

Compiler's Comments

2007 Amendment: Chapter 480 inserted (3) allowing a full guardian to consent or withhold consent as provided in 72-5-321; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 240 in (1) in two places, in (1)(a) near beginning, in (5), and in (6) near middle after "physician" inserted "or attending advanced practice registered nurse". Amendment effective October 1, 2003.

Source: Section 7, Uniform Rights of the Terminally Ill Act.

Effective Date: Section 16, Ch. 391, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 8, 1991.

50-9-107. When health care provider may presume validity of declaration.

Compiler's Comments

2003 Amendment: Chapter 240 near middle after "contrary, a" deleted "physician or other". Amendment effective October 1, 2003.

Source: Section 12, Uniform Rights of the Terminally Ill Act.

Effective Date: Section 16, Ch. 391, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 8, 1991.

50-9-108. Effect of previous declaration.

Compiler's Comments

Source: Section 14, Uniform Rights of the Terminally Ill Act.

Effective Date: Section 16, Ch. 391, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 8, 1991.

50-9-110. Authority to adopt rules.

Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 475, L. 1989, provided: "A statement of intent is needed for this bill because [section 4] [50-9-110] grants the department of health and environmental sciences [now department of public health and human services] authority to adopt rules to implement the Montana Living Will Act. It is intended that the rules address, among other things, living will protocols, reliable documentation of declarations, and training for emergency medical services personnel to inform them of the provisions of the act and implementing rules. In developing the rules, the department should seek the advice and aid of medical associations and organizations, including those relating to hospices, home health organizations, and emergency medical services."

Effective Date: Section 6, Ch. 475, L. 1989, provided that this section is effective April 8, 1989.

Administrative Rules

Title 37, chapter 10, subchapter 1, ARM Living wills.

50-9-111. Recognition of declarations executed in other states.

Commissioner's Comments

Section 13 [50-9-111] provides that a declaration executed in another state, which meets the *execution* requirements of that other state or the enacting state (adult, two witnesses, voluntary), is to be treated as validly *executed* in the enacting state, but its operation in the enacting state shall be subject to the substantive policies in the enacting state's law.

Compiler's Comments

Source: Section 13, Uniform Rights of the Terminally Ill Act.

Part 2
Effect on Health Care — Rights and Duties

50-9-201. Recording determination of terminal condition and content of declaration.

Commissioner's Comments

Section 5 [50-9-201] of the Act requires that an attending physician record the determination that the patient is in a terminal condition in the patient's medical records. The section provides that an attending physician must know of the declaration's existence. It is anticipated that knowledge may in some instances occur through oral communication between physicians. If the attending physician determines that the patient is in a terminal condition, and has been notified of the declaration, the physician is to make the determination of terminal condition, as defined in Section 1(8) [50-9-102], part of the patient's medical records. There is no explicit requirement that the physician inform the patient of the terminal condition. That decision is to be left to the physician's professional discretion under existing standards of care. The Act also does not require, as do many statutes, that a physician other than the attending physician concur in the terminal condition determination. It appears to be the established practice of most physicians to request a second opinion or, more often, review by a panel or committee established as a matter of hospital procedure, and the Act is not intended to discourage such a practice. Requiring it, however, would almost inevitably freeze in a single process or set of processes for review in this evolving area of medicine. Because existing policies and regulations typically address the review issue, requiring a specific form of review in the Act was viewed as an unnecessary regulation of normal hospital procedures. Moreover, in smaller or rural health facilities a second qualified physician or review mechanism may not be readily available to confirm the attending physician's determination.

The physician must record the terms of the declaration in the medical record so that its specific language or any special provisions are known at later stages of treatment. It is assumed that "terms" of the declaration will be a copy of the declaration itself in most instances, although cases of an emergency character may arise, for example, in which the contents of a declaration can be reliably conveyed, and where obtaining a copy of the declaration prior to making decisions governed by it will be impracticable. In such cases, the terms of the declaration will suffice for recording purposes under Section 5 [50-9-201].

Compiler's Comments

2003 Amendment: Chapter 240 near middle after "physician" inserted "or attending advanced practice registered nurse". Amendment effective October 1, 2003.

1991 Amendment: Made minor changes in style. Amendment effective April 8, 1991.

Source: Section 5, Uniform Rights of the Terminally Ill Act.

50-9-202. Treatment of qualified patients.

Commissioner's Comments

Section 6(a) [50-9-202(1)] recognizes the right of patients who have made a declaration and are determined to be in a terminal condition to make decisions regarding use of life-sustaining procedures. Until unable to do so, such patients have the right to make such decisions independently of the terms of the declaration. In affording patients a "right to make decisions regarding use of life-sustaining procedures," the Act is intended to reflect existing law pertaining to this issue. As Sections 11(e) [50-9-205(5)] and (f) [50-9-205(6)] indicate, qualifications on a patient's right to force the carrying out of those decisions in a manner contrary to law or accepted standards of medical practice, for example, are not intended to be overridden.

In Section 6(b) [50-9-202(2)] the Act uses the term "comfort care" in defining procedures that may be applied notwithstanding a declaration instructing withdrawal or withholding of life-sustaining treatment. The purpose for permitting continuation of life-sustaining treatment deemed necessary for comfort care or alleviation of pain is to allow the physician to take appropriate steps to insure comfort and freedom from pain, as dictated by reasonable medical standards. Many existing statutes employ the term "comfort care" in connection with the alleviation of pain, and the Act follows this example. Although the phrase "to alleviate pain" arguably is subsumed within the term comfort care, the additional specificity was considered helpful for both the doctor and layperson.

Section 6(b) [50-9-202(2)] does not set out a separate rule governing the provision of nutrition and hydration. Instead, each is subject to the same considerations of necessity for comfort care and alleviation of pain as are all other forms of life-sustaining treatment. If nutrition and hydration are not necessary for comfort care or alleviation of pain, they may be withdrawn. This approach was deemed preferable to the approach in a few existing statutes, which treat nutrition and hydration as comfort care in all cases, regardless of circumstances, and exclude comfort care from the life-sustaining treatment definition.

It is debatable whether physicians or other professionals perceive the providing of nourishment through intravenous feeding apparatus or nasogastric tubes as comfort care *in all cases* or whether such procedures at times merely prolong the dying process. Whether procedures to provide nourishment should be considered life-sustaining treatment or comfort care appears to depend on the factual circumstances of each case and, therefore, such decisions should be left to the physician, exercising reasonable medical judgment. Declarants may, however, specifically express their views regarding continuation or noncontinuation of such procedures in the declaration, and those views will control.

Section 6(c) [50-9-202(3)] addresses the problem of a qualified patient who is pregnant. The states which address this issue typically require that the declaration be given no force or effect during the pregnancy. Because this requirement inadvertently may do more harm than good to the fetus, Section 6(c) [50-9-202(3)] provides a more suitable, if more complicated, standard. It is possible to hypothesize a situation in which life-sustaining treatment, such as medication, may prove fatal to a fetus which is at or near the point of viability outside the womb. In such cases, the Act's provision would permit the life-sustaining treatment to be withdrawn or withheld as appropriate in order best to assure survival of the fetus. Also, for example, if the qualified patient is only a few weeks pregnant and the physician, pursuant to reasonable medical judgment, determines that it is not probable that the fetus could develop to a point of viability outside the womb even with application of life-sustaining treatment, such treatment may also be withheld or withdrawn. Thus, the pregnancy provision attempts to honor the terminally-ill patient's right to refuse life-sustaining treatment without jeopardizing the likelihood of life for the fetus.

In the original Rights of the Terminally Ill Act, adopted by the Conference in 1985, Section 6(c) [50-9-202(3)] included the introductory phrase "Unless the declaration otherwise provides." In the current Act the phrase has been eliminated from Section 6(c) [50-9-202(3)] in order to conform with a similar provision in Section 7 [50-9-106]. Under the current provision, life-sustaining treatment may not be withdrawn from a woman known to be pregnant if it is probable that the fetus will develop to live birth with continuation of the treatment, notwithstanding expressed views of the patient to the contrary. In view of the requirement that development to birth be probable, and the frequently complicating impact of prolonged life-sustaining treatment for a terminal patient, the provisions is likely to have an impact in relatively narrow circumstances.

Nevertheless, in states that wish to accommodate the declaration of a pregnant woman, the wording from the prior version of the Act may be used. Differences from the Uniform Act in this specific application would not undermine the interest in uniformity served by the Act.

Compiler's Comments

2003 Amendment: Chapter 240 in (2) near middle after "physician" inserted "attending advanced practice registered nurse"; in (3) near middle after "physician" inserted "or attending advanced practice registered nurse"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: In (1), in first sentence, substituted "treatment" for "procedures" and deleted second sentence that read: "If a qualified patient is not able to make such decisions, the declaration governs decisions regarding use of life-sustaining procedures"; near beginning of (2) substituted "affect the responsibility of the attending physician or other health care provider to provide treatment" for "prohibit the application of any medical procedure or intervention"; in (3), at beginning, substituted "Life-sustaining treatment cannot be withheld or withdrawn pursuant to a declaration from an individual" for "The declaration of a qualified patient" and at end substituted "treatment" for "procedures"; and made minor changes in style. Amendment effective April 8, 1991.

Source: Section 6, Uniform Rights of the Terminally Ill Act.

50-9-203. Transfer of patients.

Commissioner's Comments

Section 8 [50-9-203] is designed to address situations in which a physician or health-care provider is unwilling to make and record a determination of terminal condition, or to respect the medically reasonable decisions of the patient or designee regarding withholding or withdrawal of life-sustaining procedures, due to personal convictions or policies unrelated to medical judgment called for under the Act. In such instances, the physician or health-care provider must promptly take all reasonable steps to transfer the patient to another physician or health-care provider who will comply with the applicable provisions of the Act.

Compiler's Comments

2003 Amendment: Chapter 240 in first sentence near beginning after "physician" inserted "attending advanced practice registered nurse" and near middle after "physician" inserted "advanced practice registered nurse"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Near beginning of first sentence, after "physician", inserted "or other health care provider", near middle, after "comply with", substituted "this chapter" for "the requirements of 50-9-201 or who is unwilling to comply with the declaration of a qualified patient in accordance with 50-9-202", after "steps" inserted "as promptly as practicable", and near end, after "physician", inserted "or health care provider who is willing to do so"; and made minor changes in style. Amendment effective April 8, 1991.

Source: Section 8, Uniform Rights of the Terminally Ill Act.

50-9-204. Immunities.

Commissioner's Comments

Section 9 [50-9-204] provides immunities for persons acting pursuant to the declaration and in accordance with the Act. Immunities are extended in Sections 9(a)-(c) [50-9-204(1) through (3)] to physicians as well as persons operating under the physician's direction or with the physician's authorization, to facilities in which the withholding or withdrawal of life-sustaining procedures occurs, and to designees or persons authorized to consent under Sections 2 [50-9-103] or 7 [50-9-106]. Section 9(b) [50-9-204(2)] serves both to immunize physicians from liability as long as reasonable medical judgment is exercised, and to impose "reasonable medical standards" as the criterion that should govern all of the specific medical decisions called for throughout the Act. Section 9(b) [50-9-204(2)], in conjunction with Section 11(f) [50-9-205(6)], therefore, avoids the need to restate the medical standard in each section of the Act requiring a medical judgment.

Compiler's Comments

2003 Amendment: Chapter 240 in (1)(a) near beginning, in (1)(b) at end, and in (1)(c) near middle after "physician" inserted "or advanced practice registered nurse"; and in (2) at beginning and in (3) at beginning after "A" deleted "physician or other". Amendment effective October 1, 2003.

1991 Amendment: In (1)(a), (1)(b), and (1)(c) substituted "treatment" for "procedures"; in (2), near beginning after "physician", inserted "or other health care provider whose action under this chapter is in accord with reasonable medical standards" and after "liability" substituted "or discipline for unprofessional conduct with respect to that decision" for "for actions under this chapter that are in accord with reasonable medical standards"; inserted (3) regarding liability for decisions on consent made in good faith by a physician or other health care provider; and inserted (4) regarding liability for decisions on consent made in good faith by a designated individual. Amendment effective April 8, 1991.

Source: Section 9, Uniform Rights of the Terminally Ill Act.

1989 Amendment: Inserted (1)(c) and (1)(d) granting immunity to emergency medical services personnel; and made minor changes in phraseology. Amendment effective April 8, 1989.

Case Notes

Physician Aid in Dying Not Against Public Policy — Protection of Participating Physician From Prosecution: The District Court held that a competent terminally ill patient has a right to die with dignity pursuant to the rights to individual dignity and privacy in the Montana Constitution, which includes protection of the patient's physician from prosecution for homicide. The Supreme Court held that the issue could be resolved at the statutory level and therefore declined to rule on the constitutional issue. Because suicide is not a crime under Montana law, the only person who might be subject to criminal prosecution is a physician who prescribes a lethal dose of medication to a terminally ill patient. Thus, the court addressed the possible culpability of a physician who extends aid in dying, whether the patient's consent could constitute a statutory defense against a homicide charge against the assisting physician, and whether patient consent is rendered ineffective by 45-2-211(2)(d) because permitting the conduct or resulting harm is against public policy. The court noted that the consent defense is effective only if none of the exceptions in 45-2-211(2) apply. By law, consent is ineffective if it is (1) given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; (2) given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; (3) induced by force, duress, or deception; or (4) against public policy to permit the conduct or the resulting harm, even though consented to. The first three exceptions require case-by-case factual determinations, so the court confined its analysis to whether consent to physician aid in dying is against public policy and concluded that physician aid in dying provided to terminally ill, mentally competent adult patients is not against public policy. The exception to consent applies only to conduct that disrupts public peace and physically endangers others, to which the act of a physician handing medicine to a terminally ill patient and the patient's subsequent peaceful and private act of taking the medicine is not comparable. The physician is not directly involved in the final decision or the final act, and the patient's private decision whether to take the medicine does not breach public peace or endanger others, so the patient's consent to physician aid in dying constitutes a statutory defense to a homicide charge against the physician when no other exceptions apply. Baxter v. St., 2009 MT 449, 354 M 234, 224 P3d 1211 (2009).

Rights of the Terminally Ill Act Not Against Public Policy: The Montana Rights of the Terminally Ill Act clearly provides that terminally ill patients are entitled to autonomous end-of-life decisions even if enforcement of those decisions involves direct participation by a physician through withdrawing or withholding treatment. It is not against public policy to honor the patient's wishes when the patient is conscious and able to vocalize and carry out the decision with self-administered medication and no immediate or direct physician assistance. The Act's encompassing immunity for medical professionals reinforces the patient's right to enforce the decisions without fear that those who give effect to the patient's wishes will be prosecuted. There is nothing in the plain language of the law that indicates that the Act is against public policy. Baxter v. St., 2009 MT 449, 354 M 234, 224 P3d 1211 (2009).

50-9-205. Effect on insurance — patient's decision.

Compiler's Comments

2003 Amendment: Chapter 240 in (6) after "require a" deleted "physician or other"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: In (1), in first sentence, substituted "treatment" for "procedures pursuant to a declaration and"; in (2), in first sentence near middle after "insurance", inserted "or annuity" and before "modify" inserted "affect, impair, or" and in second sentence substituted "treatment" for "procedures" and after "insured" deleted "qualified patient"; at beginning of (3) substituted "A person may not prohibit or require the execution of" for "No physician, health care facility, or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may require any person to execute"; in (4), near middle, inserted reference to revocation and near end substituted "treatment" for "procedures"; in (5), at beginning, substituted "This chapter does not affect" for "Nothing in this chapter increases or decreases", near middle substituted reference to treatment for reference to procedures, at end, after "care", deleted "in any lawful manner", and deleted former second sentence that read: "In that respect, the provisions of this chapter are cumulative"; inserted (6) regarding action contrary to medical standards; in (7), before "authorize", inserted "condone" and after "killing" inserted "or euthanasia"; and made minor changes in style. Amendment effective April 8, 1991.

Source: Section 11, Uniform Rights of the Terminally Ill Act.

50-9-206. Penalties.

Commissioner's Comments

Section 10 [50-9-206] provides criminal penalties for specific conduct that violates the Act. Subsections (a) and (b) [50-9-206(1) and (2)] provide that a physician's failure to transfer a patient or record the diagnosis of terminal condition constitutes a misdemeanor. Subsection (c) [50-9-206(3)] makes certain willful actions which could result in the unauthorized prolongation of life a misdemeanor. Subsection (d) [50-9-206(4)] governs acts which are intended to cause the unauthorized withholding or withdrawal of life-sustaining treatment, thereby advancing death. Subsections (e) and (f) [50-9-206(5) and (6)] concern situations that may be coercive, and therefore are against public policy.

Some of the criminal penalties—particularly subsection (d) [50-9-206(4)]—depart significantly from most existing statutes. Most statutes provide penalties for intentional conduct that actually causes the death of a declarant, and define such conduct as murder or a high degree felony. The Act does not take this approach. Assuming that such conduct will already be covered by a state's criminal statutes, the Act only addresses the situations in which the actor falsifies or forges the declaration of another or willfully conceals or withholds knowledge of revocation. To be criminally sanctioned as a misdemeanor under the Act the circumscribed conduct need not cause the death of a declarant. The approach taken by most states, that of providing a felony penalty for those acts that actually caused death, was considered unnecessary, as existing criminal law will also apply pursuant to Section 10(g) [50-9-206(7)]. A specific penalty for the conduct described in Section 10(d) [50-9-206(4)], however, was deemed appropriate, as existing criminal codes may not adequately address it.

Compiler's Comments

2003 Amendment: Chapter 240 in (1) at beginning after "A" deleted "physician or other"; and in (2) at beginning after "physician" inserted "or advanced practice registered nurse". Amendment effective October 1, 2003.

1991 Amendment: Near beginning of (1), after "physician", inserted "or other health care provider" and after "transfer" inserted "the care of a patient"; in (2), after "condition", inserted "or the terms of a declaration"; in (3) and (4), in two places, inserted references to individual; in (4), after "50-9-104", deleted "with the intent to cause a withholding or withdrawal of life-sustaining procedures"; inserted (5) establishing penalty regarding execution of a declaration as condition of insurance; inserted (6) establishing penalty for inducing execution of a declaration; and inserted (7) regarding nondisplacement of other legal sanctions. Amendment effective April 8, 1991.

Source: Section 10, Uniform Rights of the Terminally Ill Act.

Case Notes

Physician Aid in Dying Not Against Public Policy — Protection of Participating Physician From Prosecution: The District Court held that a competent terminally ill patient has a right to die with dignity pursuant to the rights to individual dignity and privacy in the Montana Constitution, which includes protection of the patient's physician from prosecution for homicide. The Supreme Court held that the issue could be resolved at the statutory level and therefore declined to rule on the constitutional issue. Because suicide is not a crime under Montana law, the only person who might be subject to criminal prosecution is a physician who prescribes a lethal dose of medication to a terminally ill patient. Thus, the court addressed the possible culpability of a physician who extends aid in dying, whether the patient's consent could constitute a statutory defense against a homicide charge against the assisting physician, and whether patient consent is rendered ineffective by 45-2-211(2)(d) because permitting the conduct or resulting harm is against public policy. The court noted that the consent defense is effective only if none of the exceptions in 45-2-211(2) apply. By law, consent is ineffective if it is (1) given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; (2) given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; (3) induced by force, duress, or deception; or (4) against public policy to permit the conduct or the resulting harm, even though consented to. The first three exceptions require case-by-case factual determinations, so the court confined its analysis to whether consent to physician aid in dying is against public policy and concluded that physician aid in dying provided to terminally ill, mentally competent adult patients is not against public policy. The exception to consent applies only to conduct that disrupts public peace and physically endangers others, to which the act of a physician handing medicine to a terminally ill patient and the patient's subsequent peaceful and private act of taking the medicine is not comparable. The physician is not directly involved in the final decision or the final act, and the patient's private decision whether to take the medicine does not breach public peace or endanger others, so the patient's consent to physician aid in dying constitutes a statutory defense to a homicide charge against the physician when no other exceptions apply. Baxter v. St., 2009 MT 449, 354 M 234, 224 P3d 1211 (2009).

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Part 5
Health Care Declaration Registry

Part Compiler's Comments

Effective Date: Section 8, Ch. 447, L. 2005, provided: "[This act] [50-9-501 through 50-9-505] is effective July 1, 2005."

CHAPTER 10
DO NOT RESUSCITATE — NOTIFICATION

Part 1
General

Part Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 581, L. 1991, provided: "A statement of intent is required for this bill because [section 5] [50-10-105] grants the department of health and environmental sciences [now department of public health and human services] authority to adopt rules implementing the bill. It is intended that the rules adopt by reference the board of medical examiners' do not resuscitate protocol and address, among other things, a standard form of statewide do not resuscitate identification, a form for a do not resuscitate order, training for emergency medical services personnel to inform them of the provisions of the bill and its implementing rules, and standards that emergency medical personnel shall follow when presented with do not resuscitate identification. It is also the intent of the legislature that the do not resuscitate identification adopted pursuant to this bill may be identical to that adopted pursuant to Title 50, chapter 9, and that the rules adopted pursuant to this bill may be correlated and intermingled with the rules adopted pursuant to 50-9-110."

Effective Date: Section 7, Ch. 581, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 23, 1991.

Part Administrative Rules

ARM 37.10.108 Do-not-resuscitate protocol.

50-10-101. Definitions.

Compiler's Comments

2003 Amendment: Chapter 240 inserted definitions of advanced practice registered nurse and attending advanced practice registered nurse; in definition of DNR identification near middle after "physician" inserted "or attending advanced practice registered nurse"; in definition of do not resuscitate order after "physician" inserted "or advanced practice registered nurse"; in definition of do not resuscitate protocol near end after "physicians" inserted "advanced practice registered nurses"; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 93 at end of definition of health care facility inserted "and includes a public health center as defined in 7-34-2102". Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1995 Amendments — Composite Section: Chapter 418 in definition of Department substituted "department of public health provided for in Title 2, chapter 15, part 21" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Because of the repeal of 2-15-2101, the Code Commissioner has codified the reference to 2-15-2201.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 286 in definition of DNR identification substituted "is a qualified patient, as defined in 50-9-102" for "has executed a declaration, as provided in 50-9-103, that has not been revoked". Amendment effective April 7, 1993.

50-10-102. Immunities.

Compiler's Comments

2003 Amendment: Chapter 240 in (1)(a) near beginning, in (1)(b) at end, in (1)(e) in two places, and in (3) near middle inserted references to advanced practice registered nurse; and made minor changes in style. Amendment effective October 1, 2003.

50-10-103. Adherence to do not resuscitate protocol — transfer of patients.

Compiler's Comments

2007 Amendment: Chapter 345 in (1) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2007.

Retroactive Applicability: Section 20, Ch. 345, L. 2007, provided: "[This act] applies to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift made before October 1, 2007."

2003 Amendment: Chapter 240 in (1) near beginning after "physicians" inserted "or advanced practice registered nurses" and near end after "physician" inserted "or an advanced practice registered nurse"; in (2) near beginning after "physician" inserted "an attending advanced practice registered nurse" and near end after "physician" inserted "or advanced practice registered nurse"; and made minor changes in style. Amendment effective October 1, 2003.

50-10-104. Effect on insurance — patient's decision.

Compiler's Comments

2003 Amendment: Chapter 240 in (3) at beginning after "physician" inserted "advanced practice registered nurse"; and made minor changes in style. Amendment effective October 1, 2003.

50-10-106. Penalties.

Compiler's Comments

2003 Amendment: Chapter 240 in (1) at beginning after "physician" inserted "or advanced practice registered nurse". Amendment effective October 1, 2003.

50-10-107. DNR form to be readily available.

Compiler's Comments

Effective Date: Section 3, Ch. 286, L. 1993, provided: "[This act] is effective on passage and approval." Approved April 7, 1993.

CHAPTER 11
BAN ON REPRODUCTIVE HUMAN CLONING

Part 1
General Provisions

Part Compiler's Comments

Effective Date: This part is effective October 1, 2009.

50-11-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 31, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

CHAPTER 12
TREATMENTS FOR CHRONIC OR TERMINAL ILLNESS

Part 1
Right to Try Act

Part Compiler's Comments

Codification Change: Section 11, Ch. 135, L. 2015, provided that [sections 1 through 10] were to be codified as an integral part of Title 50, chapter 9. The code commissioner has codified those sections as Title 50, chapter 12, part 1, to avoid conflicts between the definitions in 50-9-102 and the definitions in sec. 2, Ch. 135, L. 2015.

Severability: Section 12, Ch. 135, L. 2015, was a severability clause.

Effective Date: Section 14, Ch. 135, L. 2015, provided: "[This act] is effective on passage and approval." Approved March 27, 2015.

50-12-102. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 14, Ch. 88, L. 2023, in definition of health care provider in (c) after "a physician assistant" deleted "whose duties and delegation agreement allows the physician assistant to undertake the activities allowed under this part". Amendment effective April 18, 2023.

Section 1, Ch. 413, L. 2023, deleted definitions of eligible patient and terminal illness (see sec. 1, Ch. 413, L. 2023 for former text); and made minor changes in style. Amendment effective October 1, 2023.

Severability: Section 10, Ch. 413, L. 2023, was a severability clause.

50-12-103. Availability of experimental drugs.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 413, L. 2023. Amendment effective October 1, 2023.

Severability: Section 10, Ch. 413, L. 2023, was a severability clause.

50-12-104. Patient requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 413, L. 2023. Amendment effective October 1, 2023.

Severability: Section 10, Ch. 413, L. 2023, was a severability clause.

50-12-105. Written informed consent required.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 413, L. 2023. Amendment effective October 1, 2023.

Severability: Section 10, Ch. 413, L. 2023, was a severability clause.

50-12-106. Effect on insurance coverage and health care services.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 413, L. 2023. Amendment effective October 1, 2023.

Severability: Section 10, Ch. 413, L. 2023, was a severability clause.

50-12-107. Heirs not liable for payments.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 413, L. 2023. Amendment effective October 1, 2023.

Severability: Section 10, Ch. 413, L. 2023, was a severability clause.

50-12-108. Disciplinary action prohibited.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 413, L. 2023. Amendment effective October 1, 2023.

Severability: Section 10, Ch. 413, L. 2023, was a severability clause.

50-12-109. State action prohibited.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 413, L. 2023. Amendment effective October 1, 2023.

Severability: Section 10, Ch. 413, L. 2023, was a severability clause.

50-12-110. Immunity from suit.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 413, L. 2023. Amendment effective October 1, 2023.

Severability: Section 10, Ch. 413, L. 2023, was a severability clause.

Part 2
Palliative Care

Part Compiler's Comments

Effective Date: Section 8, Ch. 153, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 4, 2017.

CHAPTER 15
VITAL STATISTICS

Chapter Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.

Title 37, chapter 8, ARM Records and statistics.

Part 1
General Provisions

Part Administrative Rules

Title 37, chapter 8, subchapter 1, ARM Records and statistics — general provisions.

50-15-101. Definitions.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 172, L. 2023, inserted definition of nonviable birth; and made minor changes in style. Amendment effective October 1, 2023.

Section 32, Ch. 685, L. 2023, inserted definition of sex; and made minor changes in style. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

2021 Amendment: Chapter 14 in definition of person in charge of disposition of a dead body after first reference to funeral director deleted "[licensed under Title 37, chapter 19]". Amendment effective October 1, 2021.

2019 Code Commissioner Correction: The code commissioner inserted brackets around "licensed under Title 37, chapter 19" in (11) to reflect the repeal of funeral director licensure under sec. 14, Ch. 49, L. 2019.

2007 Amendment: Chapter 474 inserted definition of stillbirth; and made minor changes in style. Amendment effective January 1, 2008.

2001 Amendments — Composite Section: Chapter 91 inserted definition of authorized representative; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 258 inserted definition of advanced practice registered nurse; and made minor changes in style. Amendment effective October 1, 2001.

Preamble: The preamble attached to Ch. 91, L. 2001, provided: "WHEREAS, an opinion by the Attorney General, issued on March 23, 2000, 48 A.G. Op. 10, held that applications for marriage licenses should be treated as confidential records once they have been completed and filed with the Clerk of the District Court; and

WHEREAS, the same opinion interprets the intent of the Legislature in enacting sections 50-15-121 and 50-15-122, MCA, to allow general information about a marriage to be made public, while safeguarding the detailed background information about the bride and groom; and

WHEREAS, the opinion seeks to clarify who is entitled to receive marriage license application information that is not made available to the public."

Severability: Section 4, Ch. 91, L. 2001, was a severability clause.

1995 Amendments — Composite Section: Chapter 418 in definition of Board substituted "board of public health" for "board of health and environmental sciences"; in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 515 inserted definitions of final disposition, registration, research, system of vital statistics, and vital records and changed definitions of dead body, fetal death, live birth, person in charge of disposition of a dead body, and vital statistics (see 1995 Session Law for text in regard to changed definitions). Amendment effective January 1, 1996.

Chapter 546 deleted definition of Board that read: ""Board" means the board of health and environmental sciences provided for in 2-15-2104"; in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995.

Because of the repeal of 2-15-2101, the Code Commissioner has codified the reference to 2-15-2201.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1991 Amendment: In definition of fetal death, after "gestation", inserted "or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery"; and made minor change in style.

1981 Amendment: Added definitions of "dissolution of marriage" and "invalid marriage".

Attorney General's Opinions

Marriage License Application — Disclosure of Vital Statistics: An applicant for a marriage license can be required to disclose information concerning his or her dependents, race, education, and support obligations. 37 A.G. Op. 159 (1978).

50-15-102. Statewide system of vital statistics to be established.

Compiler's Comments

1995 Amendment: Chapter 515 inserted "amending" and "and vital records". Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Attorney General's Opinions

Marriage License Application — Disclosure of Vital Statistics: An applicant for a marriage license can be required to disclose information concerning his or her dependents, race, education, and support obligations. 37 A.G. Op. 159 (1978).

50-15-103. Duties of department.

Compiler's Comments

1995 Amendment: Chapter 515 deleted former (2) through (4) relating to gathering, recording, using, and preserving vital statistics, enforcing Department rules relating to those matters, and giving instructions and providing forms for those matters; and inserted (2) through (6) relating to promulgation and enforcement of rules, conducting training programs to promote uniformity, prescribing, furnishing, and distributing forms, and preparing and publishing reports. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

50-15-107. Payment of fees to local registrars.

Compiler's Comments

2003 Amendment: Chapter 434 inserted (3)(b) concerning payment to county office; and made minor changes in style. Amendment effective April 22, 2003.

50-15-108. Duty to furnish information.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Substituted "dissolution of marriage, or invalid marriage" for "or divorce" in (1).

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Administrative Rules

ARM 37.8.302 Parental review of birth certificate information.

ARM 37.8.1601 Information recorded.

50-15-109. Certificates.

Compiler's Comments

2005 Amendment: Chapter 149 in (2) near end after "recorder, and" inserted "unless the certificate is filed electronically"; in (4) near beginning of first sentence after "within" substituted "1 year" for "6 months"; and made minor changes in style. Amendment effective April 8, 2005.

Case Notes

Admission of Death Certificate With Hearsay Statement That Decedent Was Passenger — Harmless Error: In a negligent homicide case, defendant contended decedent was driving. The trial court admitted a death certificate with a statement in it that decedent was a passenger in the truck that crashed. While the death certificate was admissible to prove the victim's death, the statement about the victim being a passenger was based on hearsay and should have been excised. However, the Supreme Court held that failure to do so was harmless error in light of the testimony by other witnesses that established a substantial basis for concluding that decedent was a passenger. St. v. Gould, 216 M 455, 704 P2d 20, 42 St. Rep. 946 (1985).

50-15-111. Certified copy fees — transfer.

Compiler's Comments

2021 Amendment: Chapter 160 in (1)(a) at end inserted "other than a death certificate"; inserted (2)(a) concerning minimum fees and (2)(b) concerning rules regarding death certificate fees; inserted (4)(a) concerning transfers of portions of fees to the department of labor and industry and (4)(b) concerning deposits of the remainder of the fee in the state special revenue fund; and made minor changes in style. Amendment effective July 1, 2021.

2015 Amendment: Chapter 380 in (1) inserted introductory phrase referring to minimum charge; in (1)(a)(i) inserted "other than a death certificate"; inserted (1)(a)(ii) regarding fees for death certificates; in (2) inserted exception clause; inserted (3) concerning requirement that $3 of each death certificate fee be transferred to department of labor and industry; and made minor changes in style. Amendment effective May 4, 2015, and terminates June 30, 2017.

1995 Amendment: Chapter 515 in introductory clause of (1) inserted "by rule" and after "a fee" deleted "of not less than $5"; in (1)(a), at end, inserted "records"; in (1)(b), at end, inserted "or records when a copy is not made"; inserted (1)(c) through (1)(g) relating to a copy of information provided for statistical or administrative purposes, a replacement birth certificate, filing a delayed registration of a vital event, amendment of a vital record, and other services; in introductory clause of (2) substituted "under subsection (1) must" for "for a certified copy of a certificate or a search of files shall"; at end of (2)(a) substituted "vital records" for "and costs for"; and inserted (2)(c) relating to administration of the system of vital statistics. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1983 Amendments: Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

Chapter 587, in (1), changed "$3" to "$5"; and in (2) after "deposited" deleted "as follows: (a) $1 shall be deposited" and after "vital records" deleted former (2)(b), which read: "the remainder shall be deposited in the state general fund".

Saving Clause: Section 2, Ch. 587, L. 1983, was a saving clause.

1981 Amendment: Increased amount of fee from $2 to $3 in (1); substituted "as follows" and (2)(a) and (2)(b) requiring deposit of $1 of the fee in an earmarked fund and the remainder in the general fund for "in the state general fund".

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

50-15-114. Unlawful acts and penalties.

Compiler's Comments

2011 Amendment: Chapter 19 in (3)(c) at end substituted "the person" for "him". Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: At end of (1), after "law", deleted "and approved by the department".

1989 Amendment: In (3) increased from $100 to $500 maximum penalty for knowingly transporting, interring, or disposing of a dead body without a permit or for refusing to provide information required by law; and made minor changes in phraseology.

50-15-121. Copies from system of vital statistics.

Compiler's Comments

1999 Amendment: Chapter 416 in (4) after "certificate" substituted "must be issued upon request of any person" for "containing information or data that would identify any person or institution named in a certificate or report and the cause of death information may not be issued, except as follows:

(a) upon specific request of the spouse, children, parents, or other next of kin of the decedent or their respective authorized representatives, as specified by department rule;

(b) when a documented need for the cause of death to establish a legal right or claim has been demonstrated, as specified by department rule;

(c) when the request for the copy is made by or on behalf of a person or entity that provides monetary benefits to the decedent's survivors or beneficiaries, as may be specified by department rule;

(d) upon specific request by federal, state, or local agencies for research or administrative purposes and when approved for release by the department;

(e) when needed for research activities and approved for release by the department; or

(f) upon receipt by the department of an order directed to the department from a court of competent jurisdiction ordering the release"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 118 in (3), at end of first sentence and near middle of third sentence after "date of", substituted "filing" for "registration".

1995 Statement of Intent: The statement of intent attached to Ch. 515, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the department of health and environmental sciences [now department of public health and human services] authority to adopt administrative rules.

The legislature intends that the rules:

(1) address the process for establishing and maintaining a statewide system of vital statistics and vital records;

(2) define persons who may obtain copies of vital records and the showing necessary to obtain vital records;

(3) establish which persons may prepare or issue certified copies of certificates of birth or vital records;

(4) establish the process and scope of disclosure of information to the public and governmental agencies as well as adequate standards for security and confidentiality of vital records;

(5) establish a system for preservation or disposal of vital records;

(6) establish the process and guidelines for registration of births;

(7) establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth;

(8) establish forms necessary to track vital statistics by courts or other governmental entities;

(9) establish a system of issuance and maintenance of certificates of birth following adoption, legitimation, or establishment of paternity;

(10) establish a system for issuance and maintenance of records of dissolution or annulment of marriage; and

(11) establish a system for the issuance and maintenance of certificates of adoption and annulment of adoption."

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

Attorney General's Opinions

Confidentiality of Marriage License Applications: Pursuant to 50-15-122 and this section, an application for a marriage license should be treated as a confidential record once the application is completed and filed with the Clerk of the District Court. Once a marriage is reported by the Department of Public Health and Human Services, the Department or the Clerk of the District Court may disclose to the public the record of marriage, consisting of the names of the bride and groom, the date and place of the marriage, the name of the officiant, and whether the ceremony was religious or civil. 48 A.G. Op. 10 (2000). See also 48 A.G. Op. 17 (2000), in which the Attorney General clarified 48 A.G. Op. 10 (2000), by holding that 48 A.G. Op. 10 (2000), applied to all marriage applications on file with a Clerk of the District Court, not to only applications filed after the date of that opinion. (See 2001 amendment.)

Parties to Whom Marriage Application Information May Be Released: The Clerk of the District Court may not divulge or provide copies of an application for a marriage license unless the requestor is the applicant; the applicant's spouse, child, parent, or guardian; or an authorized representative, which includes: (1) a person who has a general power of attorney for a resident; (2) a person appointed by a court to manage the personal or financial affairs of a resident; (3) a representative payee; (4) a resident's next of kin; or (5) a sponsoring agency. 48 A.G. Op. 10 (2000). See also 48 A.G. Op. 17 (2000), in which the Attorney General clarified 48 A.G. Op. 10 (2000), by holding that under 50-15-122, a Clerk of the District Court may allow public inspection and copying of a marriage certificate filed pursuant to 40-1-321, but not of the marriage license itself. (See 2001 amendment.)

50-15-122. Disclosure of information from vital records or vital reports — rules.

Compiler's Comments

2001 Amendment: Chapter 91 in (5)(a) in first sentence after "occurred" deleted "or a record of marriage or dissolution of marriage"; inserted (5)(b) through (5)(e) regarding confidentiality and release of information in a marriage license application and record of dissolution of marriage; and made minor changes in style. Amendment effective October 1, 2001.

Preamble: The preamble attached to Ch. 91, L. 2001, provided: "WHEREAS, an opinion by the Attorney General, issued on March 23, 2000, 48 A.G. Op. 10, held that applications for marriage licenses should be treated as confidential records once they have been completed and filed with the Clerk of the District Court; and

WHEREAS, the same opinion interprets the intent of the Legislature in enacting sections 50-15-121 and 50-15-122, MCA, to allow general information about a marriage to be made public, while safeguarding the detailed background information about the bride and groom; and

WHEREAS, the opinion seeks to clarify who is entitled to receive marriage license application information that is not made available to the public."

Severability: Section 4, Ch. 91, L. 2001, was a severability clause.

1999 Amendment: Chapter 416 in two places in second sentence in (5) after "birth" deleted "or death"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Statement of Intent: The statement of intent attached to Ch. 515, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the department of health and environmental sciences [now department of public health and human services] authority to adopt administrative rules.

The legislature intends that the rules:

(1) address the process for establishing and maintaining a statewide system of vital statistics and vital records;

(2) define persons who may obtain copies of vital records and the showing necessary to obtain vital records;

(3) establish which persons may prepare or issue certified copies of certificates of birth or vital records;

(4) establish the process and scope of disclosure of information to the public and governmental agencies as well as adequate standards for security and confidentiality of vital records;

(5) establish a system for preservation or disposal of vital records;

(6) establish the process and guidelines for registration of births;

(7) establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth;

(8) establish forms necessary to track vital statistics by courts or other governmental entities;

(9) establish a system of issuance and maintenance of certificates of birth following adoption, legitimation, or establishment of paternity;

(10) establish a system for issuance and maintenance of records of dissolution or annulment of marriage; and

(11) establish a system for the issuance and maintenance of certificates of adoption and annulment of adoption."

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

Pursuant to sec. 2, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Family Services.

Attorney General's Opinions

Confidentiality of Marriage License Applications: Pursuant to 50-15-121 and this section, an application for a marriage license should be treated as a confidential record once the application is completed and filed with the Clerk of the District Court. Once a marriage is reported by the Department of Public Health and Human Services, the Department or the Clerk of the District Court may disclose to the public the record of marriage, consisting of the names of the bride and groom, the date and place of the marriage, the name of the officiant, and whether the ceremony was religious or civil. 48 A.G. Op. 10 (2000). See also 48 A.G. Op. 17 (2000), in which the Attorney General clarified 48 A.G. Op. 10 (2000), by holding that 48 A.G. Op. 10 (2000), applied to all marriage applications on file with a Clerk of the District Court, not to only applications filed after the date of that opinion. (See 2001 amendment.)

Right of Access to Sealed Original Birth Records: Considering the legislative history, 50-15-206, as amended in 1979, prohibited disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained except upon court order. This conflicted with 50-15-304, which would allow an adopted illegitimately born person access to his or her sealed original birth records upon demand. Section 50-15-206(1)(a) was enacted as part of a 1979 amendment. Under 1-2-203, ". . . the new provisions are to be considered as having been enacted at the time of the amendment". Earlier statutes are controlled by later statutes when they conflict, so 50-15-206 controls. Additionally, when a specific statute conflicts with a general statute, the specific statute controls to the extent of any conflict. Under this rule of construction, 50-15-304 was considered the general statute dealing with the birth records of adopted persons, and 50-15-206(1)(a) was considered a more specific statute regulating disclosure of birth records of illegitimate adopted persons, the statute which controlled. Therefore, legitimately born adopted persons of legal age may have their sealed original birth records opened on demand while illegitimately born adopted persons may apply to the court for disclosure of their sealed original birth records. 38 A.G. Op. 62 (1980).

50-15-123. Preservation of vital records.

Compiler's Comments

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

50-15-124. Content of certificates, records, and reports.

Compiler's Comments

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

Part 2
Birth

Part Administrative Rules

Title 37, chapter 8, subchapter 3, ARM Birth records.

50-15-202. Unattended birth.

Compiler's Comments

2009 Amendment: Chapter 139 in (2) at end substituted "amended" for "altered"; and made minor changes in style. Amendment effective October 1, 2009.

50-15-204. Delayed or amended birth certificate.

Compiler's Comments

2009 Amendment: Chapter 139 in (4) in two places and in (5) substituted "amended" for "altered" and in (4) in two places substituted "amendment" for "alteration". Amendment effective October 1, 2009.

1995 Amendment: Chapter 515 substituted (1)(a) through (1)(e) for sentence that provided that after the time prescribed by the Department, a person born in this state could file a birth certificate upon submitting proof as required by the Department or the court; in (2) substituted "The department or its designee" for "A person"; inserted (3) requiring adoption of rules; in (4) deleted references to delayed filings of birth certificates; and made minor changes in style. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

50-15-208. Birth registration for stillbirth — requirements.

Compiler's Comments

Effective Date: Section 4, Ch. 474, L. 2007, provided that this section is effective January 1, 2008.

50-15-209. Certificate of nonviable birth — requirements.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Administrative Rules

ARM 37.8.306 Certificate of nonviable birth.

50-15-210. Paternity acknowledgment.

Compiler's Comments

1997 Amendment: Chapter 552 inserted (4) requiring the Department to file an acknowledgment received under 40-6-105 with the birth certificate if a child is born in this state and providing that if a child is not born in this state or if a 40-6-105 acknowledgment cannot be filed with the birth certificate, the Department shall file the acknowledgment in an acknowledgment registry created and maintained for that purpose; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 70 in (1) substituted "mother" for "woman"; in (1)(a) and (1)(b) substituted "paternity" for "parentage"; in (1)(b) and (2), after "department", inserted "of social and rehabilitation services"; and in second sentence of (2), after "shall establish", deleted "by rule". Amendment effective July 1, 1995.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

50-15-221. Birth registration.

Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 515, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the department of health and environmental sciences [now department of public health and human services] authority to adopt administrative rules.

The legislature intends that the rules:

(1) address the process for establishing and maintaining a statewide system of vital statistics and vital records;

(2) define persons who may obtain copies of vital records and the showing necessary to obtain vital records;

(3) establish which persons may prepare or issue certified copies of certificates of birth or vital records;

(4) establish the process and scope of disclosure of information to the public and governmental agencies as well as adequate standards for security and confidentiality of vital records;

(5) establish a system for preservation or disposal of vital records;

(6) establish the process and guidelines for registration of births;

(7) establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth;

(8) establish forms necessary to track vital statistics by courts or other governmental entities;

(9) establish a system of issuance and maintenance of certificates of birth following adoption, legitimation, or establishment of paternity;

(10) establish a system for issuance and maintenance of records of dissolution or annulment of marriage; and

(11) establish a system for the issuance and maintenance of certificates of adoption and annulment of adoption."

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

50-15-222. Judicial birth facts procedure.

Compiler's Comments

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

50-15-223. Certificates of birth following adoption, legitimation, or determination or acknowledgment of paternity.

Compiler's Comments

2015 Amendment: Chapter 162 inserted (4)(a) referencing Title 42, chapter 6, part 1; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 149 in (7) after second "department" substituted "shall" for "may", near end after "state" deleted "either be sealed from inspection or", after "forwarded" inserted "immediately", and at end after "department" deleted "for sealing from inspection"; in (8)(a) after "country" deleted "who is not a citizen of the United States"; and made minor changes in style. Amendment effective April 8, 2005.

1997 Amendments: Chapter 480 in third sentence in (2), after "acknowledgment", substituted "are only subject" for "may not be subject" and after "rule" inserted "as provided in Title 42, chapter 6, part 1".

Chapter 552 in (1)(b)(i) inserted "court of appropriate jurisdiction in another state, or administrative agency in this state or another state with appropriate jurisdiction" and inserted "and information necessary to identify the original certificate of birth is provided". Amendment effective July 1, 1997.

Severability: Section 172, Ch. 480, L. 1997, was a severability clause.

1995 Statement of Intent: The statement of intent attached to Ch. 515, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the department of health and environmental sciences [now department of public health and human services] authority to adopt administrative rules.

The legislature intends that the rules:

(1) address the process for establishing and maintaining a statewide system of vital statistics and vital records;

(2) define persons who may obtain copies of vital records and the showing necessary to obtain vital records;

(3) establish which persons may prepare or issue certified copies of certificates of birth or vital records;

(4) establish the process and scope of disclosure of information to the public and governmental agencies as well as adequate standards for security and confidentiality of vital records;

(5) establish a system for preservation or disposal of vital records;

(6) establish the process and guidelines for registration of births;

(7) establish the process for establishing, maintaining, or dismissing applications for delayed certificates of birth;

(8) establish forms necessary to track vital statistics by courts or other governmental entities;

(9) establish a system of issuance and maintenance of certificates of birth following adoption, legitimation, or establishment of paternity;

(10) establish a system for issuance and maintenance of records of dissolution or annulment of marriage; and

(11) establish a system for the issuance and maintenance of certificates of adoption and annulment of adoption."

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

50-15-224. Sex change designation on birth certificate.

Compiler's Comments

Effective Date — Applicability: Section 4, Ch. 332, L. 2021, provided: "[This act] is effective on passage and approval [approved April 30, 2021] and applies to amendments to sex designations in birth certificates that are received by the department of public health and human services on or after [the effective date of this act]." Effective April 30, 2021.

Preamble: The preamble attached to Ch. 332, L. 2021, provided: "WHEREAS, in December 2017, the Department of Public Health and Human Services (DPHHS) adopted MAR Notice No. 37-807, which amended ARM 37.8.102 and 37.8.311 to allow an individual to correct the gender designation on the individual's birth certificate by providing to DPHHS a correction affidavit accompanied by: (1) a completed gender designation form certifying that the individual has undergone gender transition or has an intersex condition; (2) a government-issued identification displaying the correct gender designation; or (3) a certified copy of a court order indicating that the gender of the individual born in Montana has been changed; and

WHEREAS, prior to the adoption of MAR Notice No. 37-807, the sex designation on a birth certificate could only be amended if DPHHS received a certified copy of an order from a court indicating that the sex of an individual born in Montana had been changed by surgical procedure; and

WHEREAS, accurate vital statistics play an important role in society, and the rulemaking adopted in MAR Notice No. 37-807 should have been contemplated in the Legislature rather than through DPHHS rulemaking; and

WHEREAS, the Legislature intends to repeal the rulemaking adopted in MAR Notice No. 37-807 and enact into law the substance of the administrative rule existing prior to the adoption of MAR Notice No. 37-807."

Part 3
Marriage and Adoption

Part Administrative Rules

Title 37, chapter 8, subchapter 6, ARM Marriage.

Part Attorney General's Opinions

Marriage License Application — Disclosure of Vital Statistics: An applicant for a marriage license can be required to disclose information concerning his or her dependents, race, education, and support obligations. 37 A.G. Op. 159 (1978).

50-15-301. Marriage certificates.

Compiler's Comments

2005 Amendment: Chapter 114 deleted former third and fourth sentences that read: "The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license. Beginning July 1, 2003, the recording fee must be forwarded to the state for deposit in the state general fund." Amendment effective July 1, 2005.

2002 Amendment: Chapter 13 inserted last sentence relating to deposit in the state general fund; and made minor changes in style. Amendment effective August 16, 2002.

1981 Amendment: Substituted "10th day" for "16th day" near the beginning of the section.

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Attorney General's Opinions

Confidentiality of Marriage License Applications: Pursuant to 50-15-121 and 50-15-122, an application for a marriage license should be treated as a confidential record once the application is completed and filed with the Clerk of the District Court. Once a marriage is reported by the Department of Public Health and Human Services, the Department or the Clerk of the District Court may disclose to the public the record of marriage, consisting of the names of the bride and groom, the date and place of the marriage, the name of the officiant, and whether the ceremony was religious or civil. 48 A.G. Op. 10 (2000). See also 48 A.G. Op. 17 (2000), in which the Attorney General clarified 48 A.G. Op. 10 (2000), by holding that 48 A.G. Op. 10 (2000), applied to all marriage applications on file with a Clerk of the District Court, not to only applications filed after the date of that opinion. (See 2001 amendment to 50-15-122.)

Declaration of Marriage Without Solemnization — No Fee Required: A marriage license is not a requirement for a valid marriage by written declaration. No fee may be charged for filing the declaration of marriage without solemnization. (Annotator's note: Chapter 12, L. 1983, established a fee for filing a declaration.) 37 A.G. Op. 12 (1977).

50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-15-303. Certificates of dissolution of marriage or declaration of invalidity of marriage.

Compiler's Comments

1995 Amendment: Chapter 515 deleted references to certificates of adoption and of annulment of adoption; and made minor changes in style. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1981 Amendment: Substituted "10th day" for "16th day" near the beginning of the section.

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

50-15-304. Substitute birth certificate for person adopted.

Compiler's Comments

2005 Amendment: Chapter 149 in (2)(c) after "only" substituted "as provided in 50-15-223(2)" for "on order of a court". Amendment effective April 8, 2005.

1995 Amendments: Chapter 418 in (1)(b)(iv) substituted ““department of public health”” for ““department of health and environmental sciences””; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1)(b)(iv) substituted ““department of public health and human services”” for ““department of health and environmental sciences””. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1981 Amendment: Deleted "on demand of the adopted person if of legal age or" following "open them only" in (2)(c).

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Attorney General's Opinions

Right of Access to Sealed Original Birth Records: Considering the legislative history, 50-15-206 (now repealed), as amended in 1979, prohibits disclosure of illegitimacy of birth or information from which illegitimacy can be ascertained except upon court order. This conflicts with this section, which would allow an adopted illegitimately born person access to his or her sealed original birth records upon demand. Section 50-15-206(1)(a) (now repealed) was enacted as part of a 1979 amendment to that section. Under 1-2-203, ". . . the new provisions are to be considered as having been enacted at the time of the amendment". Earlier statutes are controlled by later statutes when they conflict, so 50-15-206(1)(a) (now repealed) controls. Additionally, when a specific statute conflicts with a general statute, the specific statute controls to the extent of any conflict. Under this rule of construction, this section was considered the general statute dealing with the birth records of adopted persons, and 50-15-206(1)(a) (now repealed) was considered a more specific statute regulating disclosure of birth records of illegitimate adopted persons, the statute which controlled. Therefore, legitimately born adopted persons of legal age may have their sealed original birth records opened on demand while illegitimately born adopted persons may apply to the court for disclosure of their sealed original birth records. 38 A.G. Op. 62 (1980).

50-15-311. Certificates of adoption or annulment of adoption — report of amended or annulled adoption decree.

Compiler's Comments

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

Effective Date: Section 24, Ch. 515, L. 1995, provided that this section is effective January 1, 1996.

Part 4

Death

Part Administrative Rules

Title 37, chapter 8, subchapter 8, ARM Death records.

50-15-402. Copy to be forwarded to deceased's county of residence.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-15-403. Preparation and filing of death or fetal death certificate.

Compiler's Comments

2001 Amendment: Chapter 258 in (2) in first sentence after "physician" inserted "the certifying advanced practice registered nurse" and in second and third sentences inserted references to advanced practice registered nurses. Amendment effective October 1, 2001.

1999 Amendment: Chapter 27 in (1) after "on the deceased" inserted ", including the deceased's social security number, if any". Amendment effective January 1, 2001, unless contingency occurs. The codifier has bracketed the amendment.

Effective Date — Contingent Termination: Section 3(2), Ch. 27, L. 1999, provided: "(2) [Section 2] [this section] is effective January 1, 2001, unless prior to that date the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from the requirement to have a social security number on a death certificate and the exemption covers the period January 1, 2001, through July 1, 2001, in which case [section 2] [this section] is void." An exemption was not received by January 1, 2001, so the previously bracketed language contained in [section 2] referring to a person's social security number became effective.

1997 Amendments: Chapter 118 in (2) inserted second sentence concerning completion of medical certification and at end of third sentence inserted "or, if the place of death is unknown, where the dead body was discovered"; inserted (3) concerning dead body found in the state where place of death is unknown; inserted (4) concerning death occurring in a moving vehicle; and made minor changes in style.

Chapter 552 in (1) inserted "including the deceased's social security number, if any". Amendment effective July 1, 1997. Amendment terminated April 24, 1998, pursuant to section 104(4)(d), Ch. 552, L. 1997.

Contingent Termination — Request for Federal Exemptions: Section 104, Ch. 552, L. 1997, contained the following contingent termination provisions and order that the Department of Public Health and Human Services seek federal exemptions:

"(1) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];
(b) [section 11] [40-5-924];
(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];
(d) [section 93] [50-15-403];
(e) [section 95] [61-5-107];
(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

(a) [section 9] [40-5-922];
(b) [section 11] [40-5-924];
(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];
(d) [section 93] [50-15-403, certification filed April 24, 1998];
(e) [section 95] [61-5-107];
(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(5) (a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(b) Because section 395(c) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA and because the Montana legislature believes that the section of PRWORA prohibiting a jury trial in a paternity proceeding violates Article II, section 26, of the Montana constitution and is therefore rejected, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5)(a). [This exemption was received on December 8, 1997.]

(6) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate July 1, 1999.

(7) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement." Section 1, Ch. 27, L. 1999, revised this note by deleting references to [section 93], which amended 50-15-403.

1995 Amendment: Chapter 515 in (1) inserted "that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death"; and made minor changes in style. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1993 Amendment: Chapter 287 in (1), near beginning, substituted "disposition of a dead body or fetus" for "interment" and after "personal data" inserted reference to data on deceased and on parents of fetus; in (2), at beginning, inserted "The person in charge of disposition of the dead body or fetus", substituted "certifying physician" for "physician last in attendance upon the deceased", substituted "for medical certification of" for "or the state medical examiner, who shall certify", after "cause of death deleted "according to his best knowledge and belief", substituted language requiring completion of certification of cause of death for former (2)(b) and (3) that provided alternatives allowing presentation of fetal death certificate to person in attendance or notification to local registrar of attendance or lack of attendance at death (see 1993 Session Law for text), and at end substituted "in the registration area where the death occurred" for "within 3 days after the occurrence"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 287, L. 1993, provided: "Passage and approval of this bill would require the department of health and environmental sciences [now department of public health and human services] to amend existing rules and possibly to adopt new rules under the authority already delegated under 50-1-202(20) and 50-15-102. The amendments to 50-15-403 replace the current 3-day filing requirement for a death certificate with timeframes established by rule. The legislature intends that these timeframes remain relatively brief but that good cause be recognized when the person in charge of disposition of a dead body is unable to obtain a physician's certification within the set time.

The department shall amend or replace its burial transit permit rule, Rule 16.6.906, Administrative Rules of Montana, to conform with the changes made by 50-15-405. The department may, in replacing this permit with a dead body removal authorization, require any information as to contemplated time, site, and method of disposition as the performance of its vital statistics mission requires."

50-15-404. Preparation of certificate when death not medically attended.

Compiler's Comments

2001 Amendment: Chapter 258 in (1) inserted reference to advanced practice registered nurse. Amendment effective October 1, 2001.

50-15-405. Authorization for removal of body from place of death.

Compiler's Comments

2001 Amendment: Chapter 258 in (1) near end inserted "the advanced practice registered nurse in attendance at death". Amendment effective October 1, 2001.

1995 Amendment: Chapter 515 in second sentence of (2) substituted "cremation" for "removal"; and in (3) inserted "or, when applicable, to cremate a dead body", substituted "quadruplicate" for "triplicate", and inserted sentence providing that a fourth copy may accompany the body to final disposition, as necessary. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1993 Amendment: Chapter 287 substituted language concerning authorization to remove a body from place of death for former section that read: "(1) No dead body may be disposed of or removed from a registration district until a permit for disposition or removal has been issued by the local registrar.

(2) No permit may be issued until a death certificate, fetal death certificate, or notice of delay as required in subsection (3) of this section has been filed with the local registrar.

(3) If the cause of death or fetal death cannot be determined within 3 days after the occurrence, the attending physician, coroner, or medical examiner shall give the local registrar written notice of the reason for delay so that a permit may be issued for disposition of the body."

1993 Statement of Intent: The statement of intent attached to Ch. 287, L. 1993, provided: "Passage and approval of this bill would require the department of health and environmental sciences [now department of public health and human services] to amend existing rules and possibly to adopt new rules under the authority already delegated under 50-1-202(20) and 50-15-102. The amendments to 50-15-403 replace the current 3-day filing requirement for a death certificate with timeframes established by rule. The legislature intends that these timeframes remain relatively brief but that good cause be recognized when the person in charge of disposition of a dead body is unable to obtain a physician's certification within the set time.

The department shall amend or replace its burial transit permit rule, Rule 16.6.906, Administrative Rules of Montana, to conform with the changes made by 50-15-405. The department may, in replacing this permit with a dead body removal authorization, require any information as to contemplated time, site, and method of disposition as the performance of its vital statistics mission requires."

50-15-409. List of deaths to be made by department — copy to county clerk.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

A style change in the chapters was slightly different. The codifier chose the most appropriate.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

50-15-411. Sudden infant death syndrome — findings — definition.

Compiler's Comments

Effective Date: Section 4, Ch. 351, L. 1997, provided: "[This act] is effective July 1, 1997."

50-15-412. Cause of death — sudden infant death syndrome.

Compiler's Comments

Effective Date: Section 4, Ch. 351, L. 1997, provided: "[This act] is effective July 1, 1997."

Part 7
Tumor Registry

Part Compiler's Comments

Severability: Section 7, Ch. 354, L. 1981, was a severability section.

Part Administrative Rules

Title 37, chapter 8, subchapter 18, ARM Tumor registry.

50-15-702. Definitions.

Compiler's Comments

1997 Amendment: Chapter 101 inserted definition of health care practitioner; and in definition of medical services, at end, substituted "health care practitioner" for "a physician licensed under Title 37, chapter 3, to practice medicine in Montana".

1995 Amendments — Composite Section: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; in definition of medical services, after "licensed", inserted "under Title 37, chapter 3"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21". Amendment effective July 1, 1995.

Because of the repeal of 2-15-2101, the Code Commissioner has codified the reference to 2-15-2201.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-15-703. Duty to report tumors.

Compiler's Comments

1997 Amendment: Chapter 101 substituted current text concerning persons or entities required to report information regarding person with a tumor for former text that read: "A hospital that provides to any person medical services relating to a tumor designated as reportable by the department or a clinical laboratory, as defined in 50-5-101, that is not owned or operated by a hospital and that provides laboratory services relating to such a tumor shall make available to the department all medical and personal information and laboratory results relevant to that person's treatment and condition on forms provided by the department."

1985 Amendment: Inserted language requiring a clinical laboratory not owned or operated by a hospital to make its laboratory results relative to a tumor available to the department; and substituted "person's treatment and condition" for "person's treatment".

50-15-704. Confidentiality.

Compiler's Comments

1997 Amendment: Chapter 101 in (2) substituted reference to part 6 for part 5; and inserted (5) concerning release of information to health care practitioner or health care facility.

1987 Amendment: In (2) substituted "Title 50, chapter 16, part 5" for "50-16-311".

50-15-706. Rules.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 37 (Ch. 354, L. 1981) read: "A statement of intent is required for this bill because it creates rulemaking authority for the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to administer a Montana Central Tumor Registry. Rulemaking is primarily necessary to implement Section 3, which requires a hospital to report to the Department medical and personal information relevant to the treatment of any person having a tumor listed as reportable by the Department and given hospital medical services relating to that tumor. Rules would list precisely which tumors would be reportable and specify the information on each tumor patient to be reported. Those tumors most likely to be included are malignant neoplasms; carcinoid tumors, whether malignant, benign, or NOS ("not otherwise specified"); and benign tumors of the brain; but others may be added if their reporting becomes significant either statistically or as an aid to patient treatment, or they are requested to be added by physicians or hospitals.

As for the information to be reported, the rules will ask for:

(1) Medical and personal information on patients with tumors which assists the registry to develop statistics helpful to future health planning and medical treatment such as those showing survival rates for different types of cases and treatments, rates of certain cancers in areas of Montana or particular occupations, etc. (e.g. diagnosis made; medication and/or therapy given; occupation, sex and age of patient).

(2) Sufficient information to allow the registry to track and facilitate follow-up treatment of tumor cases (e.g. name; address; physician; hospital; and any subsequent treatment by hospital, whether or not tumor-related; social security number).

First adopted by the Senate Public Health, Welfare, and Safety Committee on the 26th day of January, 1981."

CHAPTER 16
HEALTH CARE INFORMATION

Part 1
General Provisions

50-16-101. Public officials and corporations to furnish information on request.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-16-102. Information on infant morbidity and mortality.

Compiler's Comments

1995 Amendments: Chapter 418 in (1) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-16-103. Information on shaken baby syndrome — program.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 602, L. 2023. Amendment effective July 1, 2023.

Effective Date: Section 4(1), Ch. 365, L. 2009, provided that this section is effective July 1, 2009.

Source This section is based on sections 3701.63, 3701.64, and 5101.135, Ohio Revised Code.

50-16-104. Information on shaken baby syndrome — distribution.

Compiler's Comments

Effective Date: Section 4(2), Ch. 365, L. 2009, provided that this section is effective November 1, 2009.

Source This section is based on sections 3701.63, 3701.64, and 5101.135, Ohio Revised Code.

50-16-108. Privacy in health care — ownership of firearms.

Compiler's Comments

Effective Date: This section is effective October 1, 2013.

Part 2
Professional Review Committees

Part Case Notes

Documents Dealing With Patient Care and Treatment Discoverable Under Hospital Peer Review Statutes — Data Protected From Disclosure: The net effect of the hospital peer review statutes is that health care information belongs to both the patient and the hospital, while data is a matter of an internal administrative function. To the extent that documents over which a hospital seeks protection are relevant to a patient's care and treatment, they are discoverable, but to the extent that documents are data in connection with the professional training, supervision, or discipline of the hospital medical staff, they are not discoverable. The right of confidentiality created under 50-16-205 is subject to the patient's right of access to records concerning that patient's own hospital care and treatment, consistent with the Uniform Health Care Information

Act, which also provides that a personal representative of a deceased patient may exercise all the deceased patient's rights, including the right of the deceased's estate to examine or copy all of the deceased patient's health care information. Huether v. District Court, 2000 MT 158, 300 M 212, 4 P3d 1193, 57 St. Rep. 647 (2000), distinguishing Sistok v. Kalispell Regional Hosp., 251 M 38, 823 P2d 251 (1991), and overruling Sistok to the extent that that case may not be read to apply to a hospital patient seeking disclosure of information concerning that patient's care or treatment. (See 2001 amendment to 50-16-201.)

50-16-201. Definitions.

Compiler's Comments

2013 Amendment: Chapter 265 in definition of data in (a) in middle inserted "may be shared with a medical practitioner, including the medical practitioner being reviewed, and that" and inserted last sentence regarding subsequent evaluations and analysis; in definition of incident report or occurrence report in (a)(i) substituted "may be but is not required to be created by the staff involved" for "created", inserted (a)(ii) regarding factual rendition of event, and in (b) substituted current language for former (b) that read: "(b) The terms do not include any subsequent evaluation of the event in response to an incident report or occurrence report by a utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee"; and made minor changes in style. Amendment effective October 1, 2013.

Preamble: The preamble attached to Ch. 265, L. 2013, provided: "WHEREAS, the Montana Legislature adopted Montana's peer review statutes over 50 years ago, noting that peer review is in the interest of the public health; and

WHEREAS, in Sistok v. Kalispell Regional Hospital, 251 Mont. 38, 823 P.2d 251 (1991), the Montana Supreme Court held that Montana's peer review statutes confer a privilege on data created by or at the request of a medical review committee; and

WHEREAS, in Sistok v. Kalispell Regional Hospital, the Montana Supreme Court also observed that the statute providing for confidentiality was developed and the privilege was conferred by the Legislature as a matter of public policy to encourage health care providers to join medical review committees in an effort to ensure the responsive and full discourse among the professionals involved and to promote an atmosphere free of apprehension so that constructive criticism could occur; and

WHEREAS, in Huether v. District Court, 2000 MT 158, 300 Mont. 212, 4 P.3d 1193, the Montana Supreme Court found that Montana's peer review statutes are typical of the statutes adopted by various states to encourage candor in medical review committees that review and evaluate the quality of medical care provided in their hospitals; and

WHEREAS, in Huether v. District Court, the Montana Supreme Court also noted that the goal of Montana's peer review statutes is to promote continuous improvement in the quality of health care delivery through review of standardized health care operations and the performance of doctors and staff; and

WHEREAS, the Legislature finds that the continuous review and improvement of health care is in the interest of all Montanans; and

WHEREAS, the Legislature finds it appropriate to revise certain definitions in order to clarify which information is privileged and which information is not privileged under Montana's peer review statutes."

2005 Amendments — Composite Section: Chapter 467 in definition of medical practitioner after "37-8-202" deleted "(5)"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 519 in definition of medical practitioner near end substituted "physician assistant" for "physician assistant-certified". Amendment effective October 1, 2005.

2003 Amendment: Chapter 396 in definition of data in (a) after "connection with" inserted "quality assessment or improvement activities, including" and inserted (b)(ii) providing that data does not include health care information that is used in whole or in part to make decisions about an individual who is the subject of the health care information; and made minor changes in style. Amendment effective April 18, 2003.

2001 Amendment: Chapter 359 substituted definition of data for former definition that read: ""data" means written reports, notes, or records of tissue committees or other medical staff committees in connection with the professional training, supervision, or discipline of the medical staff of hospitals"; inserted definitions of health care facility, incident reports or occurrence reports, and medical practitioner; and made minor changes in style. Amendment effective April 23, 2001.

50-16-202. Committees to have access to information.

Compiler's Comments

2001 Amendment: Chapter 359 throughout section substituted references to health care facility for references to hospital; in first sentence substituted "health care facility committees" for "inhospital medical staff committees" and substituted "other health care information" for "information, and other data"; in second sentence substituted "other health care information" for "information, or other data" and at end substituted "utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of the health care facility" for "inhospital medical staff committee"; and made minor changes in style. Amendment effective April 23, 2001.

50-16-203. Committee health care information and proceedings confidential and privileged.

Compiler's Comments

2001 Amendment: Chapter 359 in first sentence substituted "health care information" for "data, and information", inserted "referred to in 50-16-202", and substituted "the health care facility" for "such hospital"; in second sentence before "records" deleted "and inhospital" and before "committees" deleted "such medical staff"; and made minor changes in style. Amendment effective April 23, 2001.

Case Notes

Documents Dealing With Patient Care and Treatment Discoverable Under Hospital Peer Review Statutes — Data Protected From Disclosure: The net effect of the hospital peer review statutes is that health care information belongs to both the patient and the hospital, while data is a matter of an internal administrative function. To the extent that documents over which a hospital seeks protection are relevant to a patient's care and treatment, they are discoverable, but to the extent that documents are data in connection with the professional training, supervision, or discipline of the hospital medical staff, they are not discoverable. The right of confidentiality created under 50-16-205 is subject to the patient's right of access to records concerning that patient's own hospital care and treatment, consistent with the Uniform Health Care Information Act, which also provides that a personal representative of a deceased patient may exercise all the deceased patient's rights, including the right of the deceased's estate to examine or copy all of the deceased patient's health care information. Huether v. District Court, 2000 MT 158, 300 M 212, 4 P3d 1193, 57 St. Rep. 647 (2000), distinguishing Sistok v. Kalispell Regional Hosp., 251 M 38, 823 P2d 251 (1991), and overruling Sistok to the extent that that case may not be read to apply to a hospital patient seeking disclosure of information concerning that patient's care or treatment. (See 2001 amendment.)

Records of Hospital Medical Staff Committee Held Privileged — No Waiver Found in Administrator's Affidavit: Plaintiff sought to discover documents from a hospital medical staff committee supporting his theory that because of conditions placed upon the staff privileges of a physician previously suspended for performing his hospital duties while intoxicated, the relationship between the hospital and the physician changed from independent contractor to principal and agent. On appeal from a District Court order quashing a deposition subpoena and giving summary judgment to the defendant, the Supreme Court affirmed that the members of the hospital's medical staff committee were immune from subpoena. The Supreme Court held that this section applies to all members of the hospital's committee, to the hospital itself, and to patients whose files are reviewed by a committee and that even if the hospital had waived its privilege, it could not waive the privilege personal to the members of the committee. The Supreme Court also held that there was no issue as to the discoverable nature of the hospital administrator's files because there was no evidence in the record of any attempt to subpoena his files. Sistok v. Kalispell Regional Hosp., 251 M 39, 823 P2d 251, 48 St. Rep. 1151 (1991), distinguished in Huether v. District Court, 2000 MT 158, 300 M 212, 4 P3d 1193, 57 St. Rep. 647 (2000), and overruled to the extent that Sistok may not be read to apply to a hospital patient seeking disclosure of information concerning that patient's care or treatment.

50-16-204. Restrictions on use or publication of information.

Compiler's Comments

2001 Amendment: Chapter 359 in first sentence substituted "A utilization review, peer review, medical ethics review, quality assurance, or quality improvement committee of a health care facility may use or publish health care information" for "Such inhospital medical staff committees shall use or publish information from such material"; in second sentence in two places substituted references to a committee for references to an inhospital medical staff committee and at end substituted "health care facility patient" for "such inhospital patient"; and made minor changes in style. Amendment effective April 23, 2001.

50-16-205. Data confidential — inadmissible in judicial proceedings.

Compiler's Comments

2001 Amendment: Chapter 359 in first sentence inserted "discoverable or"; in second sentence inserted "discoverability or" and at end substituted "health care information that is not data as defined in 50-16-201" for "records dealing with the patient's hospital care and treatment"; and made minor changes in style. Amendment effective April 23, 2001.

Case Notes

Documents Dealing With Patient Care and Treatment Discoverable Under Hospital Peer Review Statutes — Data Protected From Disclosure: The net effect of the hospital peer review statutes is that health care information belongs to both the patient and the hospital, while data is a matter of an internal administrative function. To the extent that documents over which a hospital seeks protection are relevant to a patient's care and treatment, they are discoverable, but to the extent that documents are data in connection with the professional training, supervision, or discipline of the hospital medical staff, they are not discoverable. The right of confidentiality created under this section is subject to the patient's right of access to records concerning that patient's own hospital care and treatment, consistent with the Uniform Health Care Information Act, which also provides that a personal representative of a deceased patient may exercise all the deceased patient's rights, including the right of the deceased's estate to examine or copy all of the deceased patient's health care information. Huether v. District Court, 2000 MT 158, 300 M 212, 4 P3d 1193, 57 St. Rep. 647 (2000), distinguishing Sistok v. Kalispell Regional Hosp., 251 M 38, 823 P2d 251 (1991), and overruling Sistok to the extent that that case may not be read to apply to a hospital patient seeking disclosure of information concerning that patient's care or treatment. (See 2001 amendment.)

Part 5

Uniform Health Care Information

Part Compiler's Comments

Source: This part is derived from the Uniform Health-Care Information Act approved in 1985 by the National Conference of Commissioners on Uniform State Laws.

Prefatory Note: The prefatory note to the Uniform Health-Care Information Act provided: "The critical role that confidentiality plays in the provision of health care has been recognized almost from the inception of the medical profession. Gellman, *Prescribing Privacy: The Uncertain Role of the Physician in the Protection of Patient Privacy*, 62 N.C.L.Rev. 255 (1984) (hereinafter cited as Gellman). It is well accepted that confidentiality is essential to a patient's trust in a health-care provider and to a patient's willingness to supply information candidly for his or her benefit.

However, over the last several decades, a number of fundamental developments have threatened the confidentiality of health-care information. The emergence of third-party payment plans; the use of health-care information for nonhealth-care purposes; the growing involvement of government agencies in virtually all aspects of health care; and the exponential increase in the use of computers and automated information systems for health-care record information have combined to put substantial pressure on traditional confidentiality protections. Privacy Protection Study Commission, *Personal Privacy in an Information Society, 283* (1977) (hereinafter cited as Privacy Commission Report).

To make matters worse from a privacy standpoint, the sheer amount of personal data kept in health-care records, and the number of individuals who monitor those records have mushroomed over the same period. It goes without saying that much of the information in health-care records is highly personal and, if disclosed improperly, may cause emotional, psychological, and physical harm to the patient. The Privacy Commission (1975-1977) and the National Commission on the Confidentiality of Health Record[s] (1976-1979) received several hundred complaints from patient describing harms they suffered as a result of the misuse of their health records. The Canadian "Krever Commission" (*Report of the Commission of Inquiry into the Confidentiality of Health Information* (1980)) documented several hundred instances of abuse of medical records.

For all of these reasons Congress, state legislatures, courts, and health professional organizations have struggled over the last 20 years to develop law and policy that restore patient privacy and confidentiality protections. Nevertheless, the great majority of states have not yet adopted comprehensive statutes that regulate the record-keeping practices of health-care providers.

In almost one-fifth of the states, comprehensive privacy acts—based more or less on the 1974 federal Privacy Act, 5 U.S.C. § 552(a)—provide some assurance that state-held medical records will not be disclosed to third parties without first obtaining the patient's consent. E.g., Ark.Stat. Ann. § 16-802 *et seq.*; Conn.Gen.Stat.Ann. § 4-190 *et seq.*; Ind.Code Ann. § 4-1-6-1; Mass.Gen. Laws ch. 30 § 63, ch. 66A §§ 1-3, ch. 214 § 3B; Minn.Stat.Ann. § 15.162 *et seq.*; Ohio Rev.Code Ann. 1347.01 *et seq.*; Utah Code Ann. § 63-50-1 *et seq.*; Va.Code § 2.1-377 *et seq.*

However, only two types of health-record legislation are common to virtually every state. First, statutes in every state require health-care providers to report certain types of patient information to state agencies. Typically, these statutes require providers to report health data concerning their patients who have: violent injuries (gunshot and knife wounds are most common); contagious or infectious diseases; tuberculosis; venereal disease; occupational illnesses or injuries; certain congenital defects; and injuries from child abuse.

Secondly, almost every state recognizes some type of provider-patient privilege. The privilege permits the patient to restrict his physician (and occasionally other types of health professionals) from disclosing in many types of judicial proceedings, information received in confidence from the patient about the patient's health. Because a physician-patient privilege did not exist at common law, courts do not recognize a privilege in state without statutory provisions. (South Carolina, Texas, and Vermont do not have health-care provider-patient privilege statutes and are thus the exception to the rule.)

Most privilege statutes expressly provide that the privilege belongs to the patient and thus can be waived by the patient. Other circumstances in which physicians can be compelled to provide information to a court include court-ordered examinations, where child abuse is at issue, where involuntary hospitalization is at issue, and where the patient relies upon his medical condition as a defense.

It is difficult to generalize about privilege case law since it involves statutory, common law, and occasionally constitutional doctrines. However, privilege decisions seem increasingly to narrow the circumstances under which privilege can be claimed, and to expand exceptions requiring providers to provide health-record information. This trend confirms the opinion of many health-care professionals that the privilege doctrine is an increasingly fragile shield to protect the confidentiality of the health-care relationship. Gellman, *supra*, p. 3, at 272.

Virtually all major health professional groups, including the American Medical Association, the American Hospital Association, the American Nurses' Association, the American Psychiatric Association, the American Medical Record[s] Association, and the American Psychological Association, have adopted formal codes, guidelines, or policies regarding the handling of health records. For legislative audiences, the American Psychiatric Association, the American Medical Records Association, and the American Medical Association, among others, developed model health-record confidentiality statutes.

In drafting this Act, the Conference took into account the proposed standards and model statutes written by these health professional groups and national commissions. The Act embodies many of the standards and all of the principles found in the recommendations of the federal Privacy Protections Study Commission. Existing and proposed state and federal statutes were also reviewed and utilized.

Many of the organizations with a direct interest in the subject of this Act participated directly in the Conference's drafting process. These included the American Medical Association, the American Hospital Association, the American Medical Records Association, the American Psychiatric Association, the Health Insurance Association, the United States Department of Health and Human Services, the United States Department of Justice, and the American Bar Association. In addition, the Conference sought and received written input from numerous other interested organizations and individuals including the National Blood Bank Association, the Hospital Pharmacists Association, the American Society of Internal Medicine, the American Society of Law and Medicine, and others. Although such assistance is gratefully acknowledged, the Conference is solely responsible for the final product which was the subject of three years of effort by the Drafting Committee and was debated by the entire Conference in two separate years.

The contents of Article I [50-16-502] address more specifically the underlying reasons for the Act, as Legislative Findings."

Part Case Notes

Discovery of Medical Records Upon Commencement of Action for Damages Placing Mental and Physical Condition at Issue — Waiver of Physician-Patient Privilege as to Condition in Controversy: Plaintiff's child fell through the second story railing at the Montana State University-Bozeman library and suffered brain injuries. Plaintiff brought damage claims related to the child's injuries and claims related to plaintiff's own emotional distress, loss of consortium, and posttraumatic stress disorder. The state moved to compel production of all of plaintiff's health care records from before and after the fall. The District Court denied the motion, holding that the records were constitutionally protected and irrelevant to the case and therefore not discoverable. On appeal, the Supreme Court noted plaintiff's constitutional right to confidentiality of medical records, but cited State ex rel. Mapes v. District Court, 250 M 524, 822 P2d 91 (1991), for the holding that that right must be balanced against a defendant's right to defend itself in an informed manner and that records of prior physical or mental conditions are discoverable only if they relate to currently claimed damages. Here, plaintiff commenced an action for damages that placed in issue the mental and physical condition arising from the accident, thus waiving any physician-patient privilege as to the condition in controversy, and the state had the right to discover evidence related to prior medical conditions that was possibly connected to plaintiff's current damages. Denial of the discovery motion prejudiced the state's right to defend itself in an informed manner, constituting reversible error. Henricksen v. St., 2004 MT 20, 319 M 307, 84 P3d 38 (2004).

50-16-501. Short title.

Compiler's Comments

Source: This section is derived from section 9-102 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-502. Legislative findings.

Official Comments

The inclusion of a statement of legislative findings is a common practice in privacy legislation. These findings aid agency officials, courts, and the public in identifying and properly applying the Act's purposes. The Conference's Uniform Information Practices Code contains a statement of "General Provisions" which sets forth the purposes to be served by the Information Practices Code.

The first statement recognizes the extraordinary sensitivity of health-care information. The second expresses the Act's view that patients should have access to their own health-care information and an opportunity to correct inaccurate or incomplete information. The Act seeks to give patients more control over their health-care information by giving them a right to see and copy their own records and to correct and amend their records when these records are in the hands of health-care providers.

The third statement expresses the view that health-care providers have an interest in assuring the confidentiality of health-care information and in being able to rely upon clear and certain rules to govern disclosure decisions. In this regard the Act permits patients to approve or disapprove disclosures by health-care providers to third parties in most instances. Moreover, the Act seeks to restrict and regulate the flow of health-care information to third parties by carefully limiting disclosures that can be made without patient consent; by restricting the acquisition of health-care information by compulsory process; and by imposing security requirements on health-care providers maintaining such data.

The fourth statement makes the point that many nonhealth-care providers obtain, use, and disclose health-care information for innumerable nonhealth-care purposes. It is the public policy of the state that a patient has an interest in the proper use and disclosure of the patient's health-care information even when the information is held by nonhealth-care providers. The purpose of this statement is to recognize that such rights exist as a matter of case law and other expressions of public policy and to assure that enactment of the Act—notwithstanding its general limitation to health-care providers—does not undercut health-record privacy rights that may exist under other law and in other contexts.

There are two reasons why the Act does not attempt to regulate the use or redisclosure of health-care information once such information is held by nonhealth-care providers (except in those limited circumstances set forth in Article II [50-16-525 through 50-16-530, 50-16-535, and 50-16-536] where a health-care provider makes health-care information available to third parties without the patient's consent and in order to meet the provider's needs or interests). First, the expectations that a patient and society can rightfully have concerning the use and disclosure of health-care information must necessarily change when health-care information is held by nonhealth-care providers. The type of relationship that nonhealth-care providers have with patients is inevitably different than the relationship that health-care providers have with patients. The interests that will be advanced or deterred by confidentiality are different; the needs of the nonhealth-care providers to use and disclose the information are different; and the threat to patient privacy interests is different. These issues are complex, and require different responses, depending on the identity of the particular holder of the record and the reasons for which the records are held.

Second, in recognition of these differing interests and needs Congress and state legislatures have already adopted, or are well along in the process of adopting, statutes that regulate the handling of personal information, including health-care information, when held outside of the health-care relationship. For example, the Fair Credit Reporting Act regulates the handling of health-care information by consumer reporting agencies. The Privacy Act of 1974 regulates the handling of health-care information by federal agencies. Over a dozen states have adopted statutes which regulate the handling of health-care information by state agencies. A model privacy protection act, promulgated by the National Association of Insurance Commissioners, and thus far adopted in over ten states, addresses the handling of health-care information by insurance carriers. Several states have adopted statutes which regulate the handling of health-care information by private employers.

These legislative developments indicate as an empirical matter that a health-care information statute should not cover the handling of health-care information by nonhealth-care providers. As a conceptual matter a health-care information statute should not attempt to cover health-care information in other record-keeping settings because the expectations, interests, needs, and threats posed by the use and disclosure of health-care information in these different record-keeping relationships vary so significantly.

No doubt for these reasons, virtually every record-keeping and privacy statute that has been adopted, including the Conference's Uniform Information Practices Code, regulates personal information according to the type of record-keeper holding the information, and not according to the type of personal information being held. In taking this approach Congress, state legislatures, and other legislative authors are acting in a manner that is consistent with the recommendations of the Privacy Protection Study Commission.

Notwithstanding all this, the extraordinarily sensitive nature of health-care information makes it appropriate to provide, as statement four does, that it is the public policy of the state that a patient retains his privacy interest in health-care information even after the information leaves the provider-patient relationship.

The fifth and final statement in the Findings section explains that a uniform law is necessary due to the movement of patients and their health-care information across state lines; the use of automated information systems; and the emergence of multi-state health-care providers.

Certainly, it is increasingly common for patients to have health-care information created in one state but used in another state. Given the mobility of patients, and the patients' use of providers located in different states, it is important for patients to be able to rely on uniform rules for patient access and confidentiality. Moreover, health-care information is increasingly maintained and communicated via automated information systems. The effective operation of these systems and their operation in a manner protective of patient interest is advanced by uniform confidentiality standards.

Furthermore, health care increasingly is provided by many different types of providers. In the early part of this century roughly 85 percent of all health professionals were physicians. Today physicians make up only about five percent of the total. *Dilemma, A Report of the National Commission on the Confidentiality of Health Records* (1977), at p. 2. Thus, patients' physicians' ethical tradition of confidentiality plays a diminishing role in assuring health-record privacy.

Moreover, not only are health-care occupations changing, so too is the corporate status of health-care providers. Increasingly, health care is provided by national corporations with health-care operations in many different states. Some of these corporations have begun to centralize their record-keeping operations. As a result of these changes in the health-care industry, it is of growing importance that providers be able to rely upon uniform confidentiality standards.

Compiler's Comments

2003 Amendment: Chapter 396 inserted (6) and (7) finding that the enactment of federal law has made the provisions of this part unnecessary for certain health care providers but that the legislature intends this part to apply to health care providers to whom the federal law does not apply; and made minor changes in style. Amendment effective April 18, 2003.

Source: This section is derived from section 1-101 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

Case Notes

Revealing Limited Medical Information During Police Interview Not Considered Waiver of Constitutional Right to Confidentiality in Medical Records — Voluntary Medical Information Outside Scope of Fruit of Poisonous Tree Doctrine — Adequate Probable Cause for Investigative Subpoena of Medical Records: Bilant was involved in a three-car accident and was subsequently arrested for DUI and a seat belt violation. During an interview following the arrest, Bilant revealed to an officer that he had taken pain medication on the day of the accident. The officer called Bilant's health care provider for confirmation, and the provider confirmed that Bilant had a prescription for a drug similar to the pain medication that he mentioned. The officer then procured an investigative subpoena regarding documentation on all prescriptions issued to Bilant, including any advisory warnings, and the provider sent Bilant's entire medical file. Bilant contended that the state violated both his constitutional right to privacy and the statutory protections of 50-16-535. The state maintained that Bilant waived his claim of confidentiality in his medical information when he voluntarily revealed his use of pain medication to the officer. The Supreme Court agreed with Bilant. Medical records are quintessentially private and deserve the utmost constitutional protection. None of the statutory prerequisites for disclosure of the medical records were met. In deciding to reveal limited medical information in a police interview, Bilant did not forfeit his constitutional right to subsequently claim confidentiality in his medical records. The officer conducted an illegal search in seeking the constitutionally protected private medical information without probable cause and the benefit of an investigative subpoena under 46-4-301, and the information gleaned from the telephone call should have been suppressed. Bilant then contended that the use of the illegally obtained information formed an improper basis for the investigative subpoena and that the results of the subpoena should also have been suppressed pursuant to the fruit of the poisonous tree doctrine, which forbids the use of evidence that comes to light as the result of an initially illegal act. However, on this point, the Supreme Court disagreed with Bilant. One exception to the doctrine is that the derivative evidence is admissible if it is obtained from an independent source. Here, Bilant himself provided the source by giving voluntary medical information from other than the illegal telephone inquiry. The Supreme Court recognized that an investigative subpoena seeking constitutionally protected medical information requires greater justification for state access than the administration of justice rationale used to obtain public information under 46-4-301, so in reviewing the probable cause basis for constitutionally protected material, the court excised the illegal evidence from the application and reviewed the remaining information de novo to determine whether probable cause existed for issuing the subpoena. In this case, even when the information subject to suppression was excised, the remaining evidence established probable cause that a DUI was committed and underscored a compelling state interest in medical records related to prescription medicines in order to confirm Bilant's initial admission to the officer. Thus, the subpoena was issued in accordance with the statutory requirements for constitutionally protected medical records, and Bilant's conviction was affirmed. St. v. Bilant, 2001 MT 249, 307 M 113, 36 P3d 883 (2001). See also St. v. New, 276 M 529, 917 P2d 919 (1996), and St. v. Nelson, 283 M 231, 941 P2d 441 (1997).

50-16-503. Uniformity of application and construction.

Compiler's Comments

Source: This section is derived from section 9-101 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-504. Definitions.

Official Comments

This section contains the Act's definition.

Subsection (1) defines the term "audit." The definition of audit is important because the Act allows nonconsensual disclosure for the purpose of an "audit." See Section 2-104(10) [50-16-529(7)]. Audit is defined broadly to include government and private assessments, evaluations, determinations, or investigations relating to compliance with statutory, regulatory, fiscal, medical, or scientific standards, or compliance with a private or public program of payments to health-care providers. Thus, audit may include traditional governmental auditing as well as private health program auditing, including rate setting and rate review.

Audits also include assessments and investigations for licensing, accreditation, or certification of health-care facilities or providers by such organizations as the Joint Commission on Accreditation of Hospitals.

Organizations, such as hospital management companies, Blue Cross/Blue Shield and commercial insurers, which evaluate utilization, financial, or management practices under contractual arrangements with health-care facilities or providers also are included in this definition. These organizations, however, may not use their audit authority to obtain information to make decisions about payment of a particular patient's claim. Insurers can obtain information for claim purposes only by first obtaining the patient's consent, pursuant to Section 2-102 [50-16-526 and 50-16-527].

Subsection (2) defines "directory information" as the disclosure of the presence and general health condition of an in-patient in a health-care facility or one who is receiving emergency treatment in a health-care facility. Under the terms of Section 2-104(6) [50-16-529(5)], a health-care provider may disclose directory information without the patient's consent, unless the patient has instructed the health-care provider not to make the disclosure.

Disclosure of a patient's presence can include sufficient information to identify the patient and his location, including room and telephone numbers within the facility. While a facility is expected to exercise appropriate discretion to minimize the extent to which the disclosure of directory information jeopardizes patient privacy, disclosure of such information is generally proper absent instructions from the patient.

Subsection (3) defines "general health condition" to mean a generic description of the patient's health status such as "critical," "fair," "good," etc. The term "general health condition" does not include information about the diagnosis, symptomatology, or prognosis for the patient.

Subsection (4) defines "health care" broadly to include any type of service to diagnose, treat, or maintain a patient's physical or mental condition. The second part of the definition is included to make clear that medical procedures performed on one patient to help another, such as the withdrawal of blood by a bloodbank or a kidney transplant, are included.

Subsection (5) defines "health-care facility" to mean any physical location, such as a hospital, clinic, laboratory, or office which is maintained to permit a health-care provider to dispense health care.

Subsection (6) defines "health-care information" as any information in any form which relates to the patient's health care and can identify the patient. This definition is broad and includes all provider-maintained information, including a patient's personal health history, that both relates to health care and can be used to identify the patient. Health-care information does not include birth or death certificates or information which cannot be linked to a particular patient. Health-care information includes the record of disclosures of health-care information (the disclosure log). Providers are required to maintain such a log under Section 2-101(b) of the Act [50-16-525(2)].

Subsection (7) defines "health-care provider" to mean any person licensed, certified, or otherwise authorized by state law to provide health care as a business or a profession. The term "otherwise authorized" connotes some kind of formal recognition by appropriate authorities that the person is entitled to provide health care as a business or profession. Thus, family members providing health care are not covered, whereas licensed laboratories are covered.

However, this definition does not include pharmacists (except pharmacists that are employed by health-care providers, such as hospitals) or others who provide health care solely through the sale or dispensing of drugs or medical devices. Persons who dispense health care exclusively through the sale of drugs and medical devices—pharmacists primarily—are excluded because they traditionally have a different relationship with their patients than do health-care providers. The relationship more closely resembles a seller-customer relationship than a provider-patient relationship. In addition, pharmacists and drug companies have an information relationship that should not be disturbed in an Act designed to address problems in the provider-patient relationship.

Subsection (8) defines "institutional review board" (IRB) to mean any board, committee, or other group designated by an institution to protect the rights of human research subjects. The definition includes IRB's established under Section 474 of the Public Health Service Act or state law.

In the last few years, IRB's have become a familiar part of the medical landscape. Federal health-care facilities and most other medium to large health-care facilities have created IRB's to review requests for the conduct of human experimentation research. IRB's are used in this Act as the necessary approval mechanism for research projects which are authorized to obtain access, in the provider's discretion, to health-care information, without patient consent. If a particular facility does not have an IRB, it is expected that researchers will find an appropriate IRB. The Act authorizes providers to rely on a finding by any qualified IRB, even if that IRB is not affiliated with the provider.

Subsection (9) defines "maintain" broadly to mean any act of holding or controlling health-care information. A provider who maintains health-care information is subject to the requirements of the Act.

Subsection (10) defines "patient" to include both living and deceased individuals who receive or have received health care. The right of privacy survives death because reputation may be substantially harmed by the release of health-care information. When this occurs, family members and others may be harmed and so may the deceased's estate. The personal representative of the deceased, as set out in Section 6-102 [50-16-522], has the right to exercise this surviving right of privacy. *See Boggess v. Aetna Life Insurance Co.*, 196 S.E.2d 172 (Ga.1973).

Subsection (11) defines "person" broadly to include any natural person or organizational entity, including trusts, partnerships, and corporations.

Compiler's Comments

2003 Amendment: Chapter 396 in definition of health care provider deleted former second sentence that read: "The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices." Amendment effective April 18, 2003.

1999 Amendment: Chapter 300 inserted definition of reasonable fee. Amendment effective October 1, 1999.

Source: This section is derived from section 1-102 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws. However, the definition of "reasonable fee" has no counterpart in the Uniform Act.

Case Notes

Confidentiality of Patients' Health Care Information — Costs of Producing Copies of Nonconfidential Information to Be Borne by Health Care Providers: In a class action suit seeking monetary damages for excessive fees allegedly charged for copies of patient medical records, the District Court concluded that patient names were not confidential and ordered that the health care providers produce the names and bear the cost of producing the information as to requests for copies. The Supreme Court held that names of medical patients are protected under constitutional and statutory law and vacated the portion of the order requiring the production of patients' names, noting that patient notification would have to be accomplished through other means, such as an opt-in notification. The order was affirmed to the extent that names of nonpatient requesters, such as attorneys and insurance companies whose privacy was not at issue, be provided. Further, because 50-16-525 requires health care providers to maintain patient records for 3 years, the District Court did not abuse it discretion in ordering the providers to bear the cost of producing the information. St. James Community Hosp., Inc. v. District Court, 2003 MT 261, 317 M 419, 77 P3d 534 (2003).

50-16-505. Limit on applicability.

Compiler's Comments

Effective Date: Section 26, Ch. 396, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 18, 2003.

50-16-511. Duty to adopt security safeguards.

Official Comments

Section 7-101 [this section] requires health-care providers to implement reasonable security safeguards for all health-care information which they maintain. The Act does not define "reasonable security safeguards." What are reasonable safeguards will vary depending upon the content of the health-care information; the type and location of the health-care provider; and other factors that are specific to the particular record-keeping environment.

Accordingly, reasonable security safeguards may include personnel security standards for record room personnel (e.g., personnel background checks); administrative security standards (rules concerning who may enter a record room or a nurses station); physical security safeguards (locked doors and file cabinets, for example); and in automated records systems, technological security standards (user unique access codes, for example).

Health-care information is sensitive and often commercially valuable information which may be the target of theft or improper inspection or acquisition. There are numerous examples of the theft or improper inspection or acquisition of health-care information. Perhaps the most notorious example concerned the indictment brought by a Denver grand jury against a private investigative firm for, among other things, using investigators dressed as hospital personnel to obtain and subsequently sell health-care information. "U.S. Probes Sale of Confidential Medical Records," *Washington Star*, Dec. 9, 1976, at 1.

Compiler's Comments

Source: This section is derived from section 7-101 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

Case Notes

Doctor-Patient Privilege as Precluding Physician Private Interviews in Workers' Compensation Case: The doctor-patient privilege set out in 26-1-805 prevents the defendant from conducting private interviews with a claimant's physician. Linton v. St. Comp. Ins. Fund, 230 M 122, 749 P2d 55, 45 St. Rep. 68 (1988), citing Japp v. District Court, 191 M 319, 623 P2d 1389, 38 St. Rep. 280 (1981).

50-16-512. Content and dissemination of notice.

Official Comments

This section requires health-care providers to make available to patients a description of the basic information rights accorded to patients whose health-care information is maintained by health-care providers. It also sets forth an easy-to-read model notice. Although this model notice need not be used *verbatim*, any notice must include a brief reference to the fact that the provider maintains health-care records; that patients have a right to see and copy those records; that patients have a right of correction concerning those records; that the provider will keep the patient's records confidential, subject to certain qualifications; and an identification of the person or office from whom the patient can obtain the patient's records or get additional information.

The Privacy Commission's recommendations include a similar proposal that health-care providers explain their information dissemination policies to patients and prospective patients. *Privacy Commission Report* at 313.

Compiler's Comments

Source: This section is derived from section 5-101 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-513. Retention of record.

Official Comments

This section requires a health-care provider to maintain health-care information for at least one year after a provider receives an authorization to disclose health-care information and for the period of time while a request for examination or copying or a request for correction or amendment is pending. Since the Act does not require providers otherwise to retain health-care information, this provision is necessary in order to prevent providers from avoiding the disclosure obligations or the examination and copying and correction and amendment requirements merely by destroying or transferring the health-care information in question.

Compiler's Comments

Source: This section is derived from section 7-102 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-521. Health care representatives.

Official Comments

Section 6-101(a) [subsection (1) of this section] states that an individual who is authorized under state law to consent to health care for a patient has the right to exercise all of the rights of a patient under this Act but only to the extent necessary to discharge his or her responsibility to consent to health care. It contemplates two types of authority: (1) an authorization by law under which, for example, parents and guardians may consent to health care; and (2) an authorization by instrument under which, for example, persons operating under a power of attorney or "health-care representatives" in states which have adopted the Model Health Care Consent Act may consent to health care.

Once a minor has come of age, parents no longer have a right to consent to the minor's health care and at that point their rights under the Act are extinguished because the exercise of these rights is no longer necessary to discharge their responsibilities. This means that parents of an adult child would not be able, absent their child's consent, to inspect records of his or her child's health care, as to which consent was given when the child was a minor.

Subsection 6-101(a) [subsection (1)] also provides that if a minor is authorized by law to consent to his or her own health care without parental consent, then the minor may exclusively exercise all of the rights of a patient under the Act as to information about the health care to which the minor lawfully consented. Many states have adopted laws permitting minors to consent to certain kinds of health care, but not to other kinds. *See,* e.g., Iowa Code Ann. §§ 125.33, 140.9 (1982) (minor can consent to treatment for venereal disease and drug dependency); Md.Ann.Code art. 43 §§ 135, 135A (1982) (minor can consent to treatment for venereal disease, drug abuse, alcoholism, pregnancy, contraception, emotional disorders, or sexual assault); Minn. Stat.Ann. § 144.342 (1982) (minor can consent to treatment for pregnancy, venereal disease, alcohol, and other drug abuses). Thus, if a minor can consent and has consented to treatment for venereal disease, the minor enjoys all of the rights of a patient under this Act as to information pertaining to the venereal disease and its treatment. Accordingly, the minor can control access to this health-care information including access by his parents.

Under subsection (b) [subsection (2) of this section] a person authorized to act for a patient must make a good-faith effort to act in the best interests of the patient. This subsection attempts to insure that a person acting for a patient will act in a fiduciary manner and will not deliberately misuse or mishandle the patient's health-care information. This subsection does not attempt to define the "best interests" of a patient. However, the fiduciary standards are well defined in case law and issues relating to the handling of health-care record information pertaining to a guardian or ward has [sic] received increased attention. *See* Wals, "State Intervention on Behalf of 'Neglected' Children: A Search for Realistic Standards," 27 Stan.L.Rev. 985, 1031-33, (1975); *In re Guardianship of Pescinski,* 226 N.W.2d 180 (Wis. 1975). At a minimum, this subsection requires the person acting for the patient to make decisions about the handling of the patient's records that approximate the decisions that a reasonable person would make about the handling of his own records.

Compiler's Comments

Source: This section is derived from section 6-101 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-522. Representative of deceased patient.

Official Comments

This section follows from the Act's definition of patient in Section 1-102(11) [50-16-504(10)] in that it recognizes the possibility of substantial harm or embarrassment to the family, estate, or reputation of a deceased patient by the release of health-care information. Therefore, this Act gives representatives of deceased patients the authority to exercise all of the deceased patient's rights under the Act. Moreover, those rights are the same privacy rights under the Act as those of a living patient. *See Boggess v. Aetna Life Insurance Co.,* 196 S.E.2d 172 (Ga.1973); *Lorde v. Guardian Life Insurance Co.,* 300 N.Y.S. 721 (N.Y.Sup.Ct. 1937) (both decisions recognize that the physician-patient privilege does not expire upon the death of the patient).

The deceased patient's rights may be exercised by the decedent's personal representative and, in the absence of a personal representative, by those authorized to act for the decedent under state law.

Compiler's Comments

2017 Amendment: Chapter 235 in (1) inserted "41-3-123 and". Amendment effective April 25, 2017, and terminates September 30, 2021.

Effective Date — Applicability: Section 11, Ch. 235, L. 2017, provided: "[This act] is effective on passage and approval and applies to child abuse and neglect cases resulting in a fatality or near fatality that occurred on or after [the effective date of this act]." Approved April 25, 2017.

2013 Amendments — Composite Section: Chapter 67 inserted exception clause; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 353 near beginning inserted exception to 53-21-1108; and made minor changes in style. Amendment effective July 1, 2013, and terminates June 30, 2016.

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1989 Amendment: Near end substituted "the surviving spouse, a parent, an adult child, an adult sibling, or any other person" for "persons"; and made minor change in grammar.

Source: This section is derived from section 6-102 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

Case Notes

Documents Dealing With Patient Care and Treatment Discoverable Under Hospital Peer Review Statutes — Data Protected From Disclosure: The net effect of the hospital peer review statutes is that health care information belongs to both the patient and the hospital, while data is a matter of an internal administrative function. To the extent that documents over which a hospital seeks protection are relevant to a patient's care and treatment, they are discoverable, but to the extent that documents are data in connection with the professional training, supervision, or discipline of the hospital medical staff, they are not discoverable. The right of confidentiality created under 50-16-205 is subject to the patient's right of access to records concerning that patient's own hospital care and treatment, consistent with the Uniform Health Care Information Act, which also provides that a personal representative of a deceased patient may exercise all the deceased patient's rights, including the right of the deceased's estate to examine or copy all of the deceased patient's health care information. Huether v. District Court, 2000 MT 158, 300 M 212, 4 P3d 1193, 57 St. Rep. 647 (2000), distinguishing Sistok v. Kalispell Regional Hosp., 251 M 38, 823 P2d 251 (1991), and overruling Sistok to the extent that that case may not be read to apply to a hospital patient seeking disclosure of information concerning that patient's care or treatment. (See 2001 amendments to 50-16-201, 50-16-203, and 50-16-205.)

50-16-525. Disclosure by health care provider.

Official Comments

This section prohibits a health-care provider from disclosing any health-care information about a patient without the patient's written authorization, unless the disclosure is permitted by Section 2-104 of this Act [50-16-529]. An authorization must comply with the requirements of Section 2-102 [50-16-526]. Disclosures made pursuant to an authorization must be limited to the terms of that authorization.

Subsection (b) [subsection (2) of this section] requires the health-care provider to maintain for three years a record of disclosures of written or otherwise recorded health-care information that the provider makes to any person who is providing the health-care provider with certain specified services. The subsection does not require that a record of oral disclosures be established or maintained. The disclosure record must contain the name and address of each recipient, the date of disclosure, and a description of the disclosed information (e.g., "x-rays," "full chart," or "all records relating to hospitalization for pneumonia"). The record of disclosure is to be maintained with the patient's health-care information where possible; however, if the records are kept in a form where that is not possible, the disclosure record should be readily accessible.

Nothing in this subsection requires a health-care provider to keep the underlying health-care records for a specific period of time, or indeed, to keep them at all, except for the provisions of Section 7-102 [50-16-527], which requires retention of records while either a request for access by a patient or a request for disclosure pursuant to a disclosure authorization is pending. The purpose of this Act is to protect patient confidentiality; record retention practices raise a different set of considerations and are governed by another body of law.

The categories of persons to whom disclosure can be made without the need for a disclosure record include independent contractors performing services for a health-care provider, such as data processing, as well as students or faculty of health-professional schools affiliated with a health-care facility. Persons who are not employees of a health-care provider, however, are subject to the special restrictions on redisclosure provided in Section 2-104(a)(2) [50-16-529(2)].

Compiler's Comments

2017 Amendment: Chapter 235 in (1) inserted "41-3-123". Amendment effective April 25, 2017, and terminates September 30, 2021.

Effective Date — Applicability: Section 11, Ch. 235, L. 2017, provided: "[This act] is effective on passage and approval and applies to child abuse and neglect cases resulting in a fatality or near fatality that occurred on or after [the effective date of this act]." Approved April 25, 2017.

2013 Amendment: Chapter 353 in (1) near beginning inserted "and 53-21-1108"; and made minor changes in style. Amendment effective July 1, 2013, and terminates June 30, 2016.

1997 Amendment: Chapter 519 in (1), near beginning after "50-16-530", inserted "and 50-19-402"; and made minor changes in style. Amendment effective May 2, 1997.

1989 Amendment: Near end of first sentence of (2), after "except for", deleted "an agent or employee of the health care provider or" and after "50-16-529" inserted "(1) or".

Source: This section is derived from section 2-101 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

Case Notes

DECISIONS UNDER CURRENT LAW

Confidentiality of Patients' Health Care Information — Costs of Producing Copies of Nonconfidential Information to Be Borne by Health Care Providers: In a class action suit seeking monetary damages for excessive fees allegedly charged for copies of patient medical records, the District Court concluded that patient names were not confidential and ordered that the health care providers produce the names and bear the cost of producing the information as to requests for copies. The Supreme Court held that names of medical patients are protected under constitutional and statutory law and vacated the portion of the order requiring the production of patients' names, noting that patient notification would have to be accomplished through other means, such as an opt-in notification. The order was affirmed to the extent that names of nonpatient requesters, such as attorneys and insurance companies whose privacy was not at issue, be provided. Further, because this section requires health care providers to maintain patient records for 3 years, the District Court did not abuse it discretion in ordering the providers to bear the cost of producing the information. St. James Community Hosp., Inc. v. District Court, 2003 MT 261, 317 M 419, 77 P3d 534 (2003).

Investigative Subpoena for Medical Records Not Issued for Overly Broad Time Period: The District Court issued an investigative subpoena related to an accident on January 3, 2000, to compel production of Bilant's medical records back to 1996. The affidavit for subpoena was issued May 10, 2000. The health care provider supplied records back to 1991. Bilant moved to suppress the information on grounds that the subpoena was overly broad in supplying any information after the date of the accident and prior to the date specified in the subpoena. The Supreme Court affirmed the validity of the investigative subpoena. The inclusion of time between January 3 and May 10 did not render the subpoena defective because there was a legitimate nexus between prescriptions issued before January 3 and prescription refills issued during subsequent months. Further, if a health care provider discloses medical information beyond what is allowed by law, the remedy lies with the health care provider and not with law enforcement through a motion to suppress. The question of the production of medical records beyond those required by the subpoena was a matter beyond the scope of Supreme Court review, and receipt by the state of records that contained information outside the scope and time period requested did not justify suppression of those portions of the records sought by and yielded pursuant to an otherwise legally sufficient investigative subpoena. St. v. Bilant, 2001 MT 249, 307 M 113, 36 P3d 883 (2001).

Waiver of Physician-Patient Privilege by Workers' Compensation Claimant — Discovery: Although there is no direct statement in the Workers' Compensation Act or in the Procedural Rules of the Workers' Compensation Court regarding waiver of the physician-patient privilege, 39-71-604 and 39-71-605 imply that an injured employee, to sustain a right to workers' compensation benefits, must waive any privilege or claim of confidentiality as to medical information relating to compensability of his claim. If a claimant exercises his right under 26-1-805 or this section to prevent any medical witness from disclosing confidential health information, and subsequently application is made by the adverse party to the Workers' Compensation Court for an order authorizing discovery, the court should authorize such discovery as is relevant to the subject involved in the pending action. The information obtained must be reasonably necessary to determine compensability. Bowen v. Liberty Mut. Ins. Co., 229 M 84, 745 P2d 330, 44 St. Rep. 1799 (1987).

DECISIONS UNDER FORMER LAW

Alcohol Abuse Program — Confidential Information — Use in Drunk Driving Prosecution or Arrest: Concerned that Magnuson was intoxicated, Kee attempted to keep him from driving away from the Kee ranch and, when the attempt failed, called the local Alcoholics Anonymous and talked of her fears to House, not knowing that Magnuson was in counseling with House under a federally funded program. Federal law provides that patients' records are confidential and that information received while performing any alcohol abuse prevention function cannot be used to initiate or substantiate any criminal prosecution. House called an undersheriff and told him Magnuson was intoxicated, was driving a Ford Bronco, that Tracy's Bar was his usual hangout, and that the undersheriff should watch out for Magnuson. While driving around, the undersheriff saw Magnuson driving erratically. When stopped, Magnuson smelled of alcohol, appeared drunk, and failed onsite sobriety tests. The information House gave the undersheriff was not tainted with the federal prohibition, and dismissal of a DUI charge on the grounds of taint would be reversed. House was not performing an alcohol abuse prevention function when he received the information from Kee, and thus the information he gave the undersheriff was not federally prohibited confidential records information. In addition, the information the undersheriff received from House was not used to initiate or substantiate any charge; the undersheriff's own observations were. St. v. Magnuson, 210 M 401, 682 P2d 1365, 41 St. Rep. 1121 (1984) (decided under former 50-16-311, which was repealed by sec. 31, Ch. 632, L. 1987).

Attorney General's Opinions

Required Report of Transportation of Patient With Transmittable Infectious Disease Not in Conflict With Uniform Health Care Information Act: This section contains a statutory exception for disclosure of health care information as otherwise specifically provided by law. Therefore, the disclosure required under 50-16-702 and 50-16-703 when a patient transported to a health care facility is diagnosed with a transmittable infectious disease is not in conflict with the general provision of the Uniform Health Care Information Act that health care information may not be disclosed without the patient's written authorization. 45 A.G. Op. 31 (1994).

50-16-526. Patient authorization to health care provider for disclosure.

Official Comments

This section provides the mechanism by which a patient may authorize the disclosure of health-care information. It is important to note that all of a patient's rights under this section, and indeed under this Act, can be exercised by a person authorized to act on behalf of the patient under Article 6 [50-16-521 or 50-16-522]. Under subsection (a) [subsection (1) of this section], the recipient of such an authorization must honor the patient's request.

Subsection (b) [subsection (2) of this section] provides that the person making a disclosure pursuant to an authorization may charge the person seeking the record a reasonable fee, not to exceed actual cost, for providing copies of documents. Thus, the provider would be able to recover a reasonable fee for providing copies or actual expenses, whichever is less. This formulation will ensure that the reasonable costs of photocopying will be recovered, but that the patient will not be charged for a pro-rata share of overhead or professional salaries.

To be valid, an authorization must meet the criteria set forth in subsection (c) [subsection (3) of this section].

A patient should have wide latitude in executing an authorization form. It can be very specific (e.g., "x-rays of my broken leg, disclosed by ABC Hospital to EKG Insurance Company") or very general (e.g., "all my health-care information to any life insurance company"), depending on the patient's wishes.

A patient will often have a right to privacy or confidentiality, pursuant to the physician-patient privilege, under other statutory or common law. Common law rights may arise under either tort law or a theory of implied contract. Subsection (d) [subsection (4) of this section] provides that the signing of an authorization under this law does not, by itself, constitute a waiver of any of these privileges or rights.

Compiler's Comments

1999 Amendment: Chapter 300 in (2) substituted "the fee provided for in 50-16-540" for "his actual cost for providing the health care information". Amendment effective October 1, 1999.

Source: This section is derived from subsections (a) through (d) of section 2-102 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-527. Patient authorization — retention — effective period — exception — communication without prior notice for workers' compensation purposes.

Official Comments

Subsection (e) [subsection (1) of this section] requires health-care providers to maintain authorizations in conjunction with the patient's health-care information.

Subsection (f) [subsection (2) of this section] limits authorizations to information that already exists or will exist within six months, and prohibits general releases for any information that may be thereafter created. However, an exception is made for authorizations given to third-party payors, including insurance companies and employers who are self-insurers, in order to avoid disrupting and delaying patient reimbursements. It should be noted that Article VI [50-16-521 and 50-16-522] provides for a similar exception where under state law, a second individual is authorized to "stand in the shoes" of a patient who may be incompetent or who has provided a general power of attorney; in such cases no purpose would be served by requiring the guardian or attorney to constantly return to the patient to seek information.

Subsection (g) [subsection (3) of this section] provides a "grandfather" clause for authorizations in effect prior to the passage of this Act. It could create needless confusion to simply nullify those authorizations even though they do not meet the technical requirements of Section 2-102 [50-16-526]. Therefore, any authorization in effect prior to the passage of this Act will remain in effect for a period of 30 months unless an earlier date is specified or the patient elects to revoke the authorization by written notice pursuant to Section 2-103 [50-16-528]. Except for the technical requirements of the authorization, health-care information created prior to the effective date of this Act is fully subject to its requirements.

The subsection also provides for a 30-month cap on the length of authorizations signed after the effective date of the Act, although the patient would of course be free to specify a shorter period. The Privacy Protection Study Commission recommended a one-year authorization period; however, it was felt that such a short limit could create logistical problems for patients and providers without an accompanying increase in patient protection. The 30-month period was chosen to permit life insurers access to patient records, pursuant to a disclosure authorization, during the two-year contestibility period found in most life insurance policies, and to provide them with a short grace period thereafter to initiate legal action.

The time limits in subsections (f) and (g) [subsection (2) and (3) of this section] must be read together to determine the validity of a particular authorization. For 30 months after an authorization is signed, the holder may obtain access to any records in existence on the date the authorization was signed, or which were created within six months thereafter. Health-care information created more than six months after an authorization is signed cannot be obtained without a new authorization.

Compiler's Comments

2003 Amendment: Chapter 464 in (4) in first sentence after "39-71-116" inserted reference to agent of workers' compensation insurer; and inserted (5) providing for disclosure of health care information without prior notice to injured employee. Amendment effective April 21, 2003.

Applicability: Section 6(4), Ch. 464, L. 2003, provided that this section applies retroactively, within the meaning of 1-2-109, to injuries occurring before April 21, 2003.

1999 Amendment: Chapter 480 in (3) deleted former first sentence that read: "An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528" and in second sentence at beginning after "An authorization" deleted "written after October 1, 1987"; in (4) near middle of second sentence after "subsection" substituted "authorizes the physician or other health care provider to disclose or release only" for "relates only to", inserted third and fourth sentences outlining relevant health care information, and inserted sixth sentence limiting applicability of the subsection with regard to discovery or disclosure of health care information allowed by law; and made minor changes in style. Amendment effective April 27, 1999.

1989 Amendment: Inserted (4) allowing disclosure of health care information by health care provider to insurers of information relating to claimant's condition so long as claimant is receiving benefits. Amendment effective March 27, 1989.

Retroactive Applicability: Section 16, Ch. 333, L. 1989, provided that this section applies retroactively, within the meaning of 1-2-109, to all requests for health care information in workers' compensation claims.

Source: This section is derived from subsections (e) through (g) of section 2-102 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

Case Notes

Workers' Compensation Court Authorized to Issue Only Limited Declaratory Judgments: Several workers filed claims in the Workers' Compensation Court seeking benefits. In a separate action, the workers filed a petition for a declaratory judgment in the Workers' Compensation Court seeking a declaration that the claimant disclosure waiver procedures in 39-71-604(3) and subsection (5) of this section violated the workers' right to privacy and deprived them of property without due process. The Workers' Compensation Court granted summary judgment for the workers and declared the statutory provisions unconstitutional. On appeal, the Supreme Court reversed. The Workers' Compensation Court erred in concluding that it had jurisdiction to enter a declaratory judgment in the context of this case. As a court of limited jurisdiction, the Workers' Compensation Court is statutorily authorized to issue declaratory rulings only in the context of a dispute concerning benefits under the Workers' Compensation Act and only as to the applicability of any statutory provision, rule, or order of an agency to that dispute. Benefits were not at issue in this case, so the Workers' Compensation Court did not have jurisdiction to issue a declaratory judgment concerning the constitutionality of 39-71-604(3) and subsection (5) of this section, nor is the Workers' Compensation Court a court of record because it does not appear in the list in 3-1-102. (Note that the Legislature added the Workers' Compensation Court to the list of courts of record effective October 1, 2007.) Thompson v. St., 2007 MT 185, 338 M 511, 167 P3d 867 (2007). See also Allum v. Mont. St. Fund, 2023 MT 121, 412 Mont. 546, 531 P.3d 560.

50-16-528. Patient's revocation of authorization for disclosure.

Official Comments

A patient may, as a general rule, revoke any prior disclosure authorization. The form of revocation and the effective date of any revocation is left to existing state law. There is an exception to this rule when health care has been provided or other action taken in reliance on a prior authorization.

In this context, "action" means substantial or significant action and not trivial or incidental action. This limitation might be operative, for example, when a claim under a life insurance policy is made or when a patient on public assistance has signed an authorization permitting disclosure of information to the state Medicaid authority that will pay for the treatment. It would be inequitable to permit the patient to revoke the authorization upon completion of treatment but prior to submission of the claim by the hospital.

When a health-care provider maintaining a patient's records is presented with an authorization form by an insurance company or other party, it generally has no independent means of determining whether the authorization has been revoked. A health-care provider who relies in good faith on an authorization that conforms on its face to the requirements of this Act is not liable under this Act for improper disclosure that arises from that reliance.

Compiler's Comments

Source: This section is derived from section 2-103 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-529. Disclosure without patient's authorization based on need to know.

Official Comments

Subsection (a) [this section] enumerates certain circumstances under which disclosure can be made without patient consent. Disclosure under this subsection is on a need-to-know basis only.

Paragraph (a)(1) [subsection (1) of this section] permits consultation within a health-care facility and with other health-care providers who are currently treating a patient. Such disclosures are often necessary to permit proper treatment and are of course limited by the general "need-to-know" restriction.

Paragraph (a)(2) [subsection (2) of this section] allows disclosure to persons who are not themselves health-care providers for planning, financial, administrative, or legal purposes. Thus billing services, outside laboratories, independent x-ray facilities, and other outside persons performing functions on behalf of the health-care facility can obtain records without patient authorization. Under this subsection records might be used by or disclosed to staff doctors, research fellows, student doctors and nurses, hospital accountants, and the hospital legal staff. Similarly, records would also be available to an attorney or insurance company acting on behalf of a health-care facility. Although subject to the need-to-know limitation, this paragraph adds restrictions on use and redisclosure of records by nonemployees performing services for a facility. Health-care providers must be satisfied that recipients have agreed to refrain from using the information for any purpose other than for the reason it was disclosed, and to take appropriate steps to protect its confidentiality. Thus, this provision, like other provisions in this Act which authorize nonconsensual disclosures, imposes restrictions on redisclosure. Such restrictions are appropriate and conceptually consistent with other provisions in the Act in that when disclosure is authorized by the patient the Act leaves the question of redisclosure to be worked out by the patient and the recipient or by other law. However, when the disclosure is not authorized by a patient, limits on redisclosure are appropriate because the patient does not have a basis for imposing redisclosure limitations on the recipient.

Paragraph (a)(3) [subsection (3) of this section] permits a health-care provider to consult with other health-care providers who have previously treated the patient. Under this provision, for example, a specialist might consult with the patient's general practitioner to help establish a diagnosis or recommended course of treatment. The patient is given the option of prohibiting such disclosures.

Paragraph (a)(4) [not adopted in Montana] permits a health-care provider to disclose information from a patient's record where the health-care provider has reason to believe that disclosure will avoid or minimize imminent danger to the health or safety of the patient or any other individual. Once it is apparent that an individual's health or safety is in imminent jeopardy, privacy concerns can become secondary. In some instances, such as after a serious accident, a patient may be unconscious and unable to consent to the release of information. This subsection would thus permit disclosure to a physician for purposes of emergency treatment. In other cases, such as where the patient is threatening the lives of hostages, the patient will obviously refuse to authorize disclosure. In such cases, immediate access to health-record information by appropriate personnel may be vital. For example, if a psychotic patient tells a physician he will kill another person as soon as he leaves the offices of the physician, that physician should disclose this threat of imminent danger to the threatened person or to the authorities. *See Tarasoff v. Regents of the University of California,* 17 Cal.3d 425, 551 P.2d 334, 131 Cal.Rptr. 14 (1976) (physician has duty to exercise reasonable care to protect third persons who may be injured by a patient's actions; thus physician may be liable for failure to warn victim of patient's violent threats).

Paragraph (a)(5) [subsection (4) of this section] permits a disclosure in those instances where it is generally assumed, and not formally required, to immediate family. For example, if a patient is in a coma or is in intensive care after surgery, generally the patient's family is informed of the patient's condition, even if an authorization was not completed beforehand.

There are two restrictions on such disclosures. First, they must be in accordance with good health-care practices. This means that the patient's health-care provider must believe that such a disclosure is appropriate under the circumstances of each individual case. Secondly, the patient may prohibit any disclosure by so informing the health-care provider.

Even where a relative objects to disclosure to another relative, the person seeking information still has the option of going to court to seek release under Section 2-105(a)(9) [50-16-535(9)]. This might be necessary, for example, if a mother denies her daughter access to records concerning the mother's use of DES or other drugs that could affect descendants.

Paragraph (a)(6) [subsection (5) of this section] is intended to deal with those situations in which a health-care facility or health-care practice is sold. Such sales normally include a transfer of existing patient files. This practice would be permitted to continue, without the need to obtain consent from each individual patient.

Paragraph (a)(7) [subsection (6) of this section] permits disclosure to health researchers provided that the research project has first been reviewed and approved by an institutional review board (IRB). IRB's established pursuant to Section 474 of the Public Health Service Act or other federal or state law already review all medical research subject to FDA approval to determine, *inter alia,* whether patient confidentiality has been sufficiently protected. *See* 21 C.F.R. § 56.111(7). This Act extends the concept of the IRB to all medical research utilizing individually identifiable health-record information and instructs the review board to make a number of determinations before it can approve the release of identifiable health-record information to a researcher. This requires a decision that the research is sufficiently important to outweigh the patient's privacy interests; is impractical to conduct without health-record information in individually identifiable form; and that the research plan contains adequate safeguards to protect against disclosure of patient identities and other unauthorized redisclosure. While paragraph (a)(7)(v) [subsection (6)(e) of this section] permits a researcher to retain health-record information indefinitely if there is a need to do so, it is intended that the researcher discuss the need to retain individually identifiable information with the IRB before undertaking the project.

Recognizing the importance of medical research to society, the subsection authorizes researchers to redisclose health-record information under certain carefully circumscribed conditions. For example, this provision will permit routine disclosure of health-record information to "registries" established to monitor various diseases such as cancer. Before any such disclosure can be made, however, the registry, like any other research project, would have to be reviewed by an institutional review board. Registries, which in large measure exist to provide a database for other research, would also be able to redisclose health-record information, provided that the redisclosure is first approved by an institutional review board.

There are many other situations in which redisclosure of health-record information to other researchers may be necessary. For example, when results of a medical study are published and then reviewed by other researchers and scholars, questions about the conduct of the research or adequacy of the data may arise. If the data may not be redisclosed, there may be no way to verify its accuracy. Further, some studies require that medical records be checked many years after treatment. In a recent example, the link between vaginal cancer and the drug DES was established only after researchers were able to check the records of the victims' mothers, and learned that the mothers had taken DES 20 years before. Indeed, the term "research project" should be broadly construed, and may encompass a series of linked projects. The need to retain information or redisclose it, and the adequacy of the security safeguards should be determined by the IRB on a case-by-case basis.

At the same time, this subparagraph [subsection (6) of this section] prevents researchers from becoming information resources for law enforcement personnel or for others who might be curious about such data. Health-care providers and patients must be confident that information supplied to researchers will not be used to make decisions directly affecting patients. Thus, the Act permits redisclosure only to other researchers in conformity with a researcher's plan approved by an appropriate institutional review board.

Paragraph (a)(8) [subsection (7) of this section] is intended to strike a balance between the individual's right of privacy and society's interest in controlling and managing health-care programs, including third-party payment programs. It permits disclosure for purposes of an audit, provided that the auditor not publicly release patient-identifiable information, unless it is essential to do so and, in any event, removes or destroys such information from any copies of the original material that are retained by the auditor at the earliest opportunity consistent with the purposes of the audit.

Paragraph (a)(9) [subsection (8) of this section] permits a health-care provider to release patient records to a prison or other custodial facility while an individual is in custody, regardless of whether the health care was provided by the custodial facility or any other health-care facility. Once an individual is released from custody, the individual will have all of the rights accorded by this Act, regardless of whether the records were compiled while the individual was in custody.

Compiler's Comments

1991 Amendment: Inserted (9) concerning disclosure to avoid or minimize danger. Amendment effective July 1, 1991.

Severability: Section 8, Ch. 544, L. 1991, was a severability clause.

1989 Amendment: In (2), after "delivery of health care", inserted "or to a third-party health care payor who requires health care information"; and made minor change in phraseology.

Source: This section is derived from subsection (a) of section 2-104 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

Attorney General's Opinions

Conditions for Release of Information About HIV Test Subject — Imminent Danger to Health or Safety: In reconciling the apparent conflict in the provision of medical information as contained in the Uniform Health Care Information Act and the AIDS Prevention Act, the Attorney General determined that a health care provider may release health care information about the subject of an HIV-related test, including the identity of the subject, to a contact, as defined in 50-16-1003, without the subject's authorization, only when the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or other individual. 44 A.G. Op. 37 (1992).

50-16-530. Disclosure without patient's authorization.

Official Comments

Subsection (b) [this section] also permits certain disclosures without patient consent. However, it recognizes that there are certain situations in which disclosures should be made without the "need-to-know" restriction of subsection (a) [50-16-529], either because that restriction is impractical or because disclosure is legally mandated.

Paragraph (b)(1) [subsection (1) of this section] provides that the health-care provider may release directory information without a patient's express consent. Directory information is limited to the name and general medical status (e.g., good, fair, stable, poor, or critical condition) of a patient currently receiving treatment on an in-patient or emergency bases. As is the case with disclosure to family members under paragraph (a)(5) [50-16-529(4)], the patient may object to the release of such information, in which case the information cannot be released. Additionally, as with all paragraphs in this section [50-16-529 and this section], the Act does not require a health-care facility to release any information; it merely permits it to do so. Thus, if a psychiatric hospital has a policy of refusing to release directory information, this Act does not require it to change that policy.

Paragraphs (b)(2) and (b)(3) [subsections (2) and (3) of this section] recognize that many states have adopted statutes or regulations that require the reporting of particular kinds of health-care information to public health or law enforcement authorities. *See*, e.g., Cal.Lab.Code § 6409 (West

1979) (physician reporting of occupational injuries and illnesses); Ark.Stat.Ann. § 42-615 (1979) (reporting deaths from violence or unusual circumstances); Mass.Gen.Laws Ann. ch. 111, § 191 (West 1979) (reporting of lead poisoning cases). In some instances, for example, health-care providers are required to report information about individuals with highly communicable diseases, such as diphtheria, so that appropriate countermeasures can be taken. *See,* Ala.Code § 22-11-2 (1979); Ariz.Rev.Stat.Ann. § 36-623 (1979); N.J.Stat.Ann. §§ 26:4-15, 26:4-19 (West 1979). Such disclosures not always have to be made in individually identifiable form. However, laws vary from state to state, and many such laws require disclosure of individually identifiable information. Similarly, a number of states require that health-care providers report conditions such as gunshot or knife wounds or child abuse. *See* Ind.Code Ann. § 35-23-11-1 (Burns 1979); Mich.Comp.Laws § 750.411 (1970); Va.Code § 54-276.10 (1979); Colo.Rev.Stat. § 19-10-104 (1979); Ohio Rev.Code Ann. § 2151.421 (Page 1979); Wis.Stat.Ann. § 48.981 (West 1979). This provision recognizes these statutes which often also restrict redisclosure.

Only the information necessary to meet the needs of the compulsory reporting statute should be released. *See Minnesota v. Andring,* 52 U.S.L.W. 2425 (Minn. Feb. 7, 1984) (state child abuse reporting law does not totally abrogate the physician-patient privilege). It should be noted that, even though this subsection is narrowly drafted, paragraph (a)(4) [of section 2-104, not adopted in Montana] permits complete disclosure to law enforcement personnel in emergency situations. Recognizing that society has a larger interest in rapid investigation of public health problems, such as Acquired Immune Deficiency Syndrome (AIDS), paragraph (b)(2) [subsection (2) of this section] dealing with public-health investigations is more permissively drafted, permitting disclosure where authorized by law. This section does not require specific statutory authority for a specific piece of information; it is enough if a public-health agency has general statutory authority to request information, and believes it has a need for the information it is requesting.

Paragraph (b)(4) [subsection (5) of this section] permits disclosure of health-care information pursuant to compulsory process in those situations where compulsory process is permitted under Section 2-105 [50-16-535 or 50-16-536].

Compiler's Comments

2001 Amendments — Composite Section: Chapter 101 inserted (8) pertaining to disclosure of patient's health care information to state medical examiner or county coroner; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 124 in (5) substituted "office of victims services" for "division of crime control". Amendment effective July 1, 2001.

1995 Amendment: Chapter 396 inserted (7) concerning disclosure pursuant to 50-16-712.

1989 Amendment: Inserted (5) allowing disclosure without patient's authorization of information under The Crime Victims Compensation Act of Montana upon request by Division of Crime Control. Amendment effective March 13, 1989.

Source: This section is derived from subsection (b) of section 2-104 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws. Subsection (4) is not contained in the uniform act but was inserted upon adoption in Montana.

50-16-535. When health care information available by compulsory process.

Official Comments

Many of the protections contained in this Act would be of little value if government agencies or others were free to obtain health-care information from health-care providers through the unconditional use of compulsory process or discovery. A hospital or other health-care provider faced with a subpoena, search warrant, or discovery request is now generally required to turn over sensitive health-record information about a patient before the patient who is the subject of the record even knows the information has been requested. *See* Gellman, *supra,* at 287-292; Note, *Privacy in Personal Medical Information: A Diagnosis,* U.Fla.L.Rev. 394, 396-400 (1981). And, under current law in most jurisdictions, since the patient does not have possession of the documents sought through compulsory process or discovery, there is little he can do to contest their release, even when he does have knowledge. *Cf. United States v. Miller,* 425 U.S. 435 (1976) (customer has no right to challenge subpoena issued to a financial institution to produce the customer's records, which were in the possession of the financial institution).

There are several different ways that this problem can be addressed. The traditional physician-patient privilege, which exists in some form in nearly every state, precludes testimony by a health-care provider about a patient's health-care information. *See* Gellman, *supra,* at 272-274. The privilege does not, however, shield health-care information from disclosure pursuant to legal process, and the recipient is free to use information so obtained to pursue investigatory leads. *See*, e.g., Idaho Code § 9-203 (1982) (physician-patient privilege applies only where physician is subject to examination as a witness in litigation). Thus, the privilege, while it does protect a patient from some potential adverse consequences, does little to protect a patient's privacy interests.

The Federal Right to Financial Privacy Act attempted to address this problem for bank records by requiring the notification of the subject of records sought through compulsory process before his or her records were released. *See* 12 U.S.C. §§ 3401-3422 (1982). The subject was then given the right to go to court to bring an action to block release of the records. This approach has not worked well in practice. Few individuals have the knowledge or resources necessary to pursue a legal action, and, if adopted here, it would place a considerable burden on the patient. Further, such actions could potentially clog the courts and are cumbersome, requiring a number of expedited procedures and exceptions.

Section 2-105 [50-16-536 and this section] embodies a different approach, which has already been adopted by some states. *See*, e.g., Cal.Evid.Code § 994 (West 1980); Mont.Code Ann. § 50-16-314 (1980) [repealed 1987]; R.I.Gen.Laws § 5-37.3-6 (1980). Under this section, production of health-care information could not be compelled in any type of proceeding. It thus extends a physician-patient type privilege to encompass investigations and discovery. In a few states, this Act would create, for the first time, a comprehensive physician-patient type privilege. The general prohibition on the use of compulsory process or discovery in investigatory proceedings represents a major change in policy, modifying long-standing state privilege rules.

This general restriction on compulsory process and discovery does not apply where one of the exceptions contained in subsection (a) [this section] apply. Subsection (a) [this section] authorizes the use of discovery and compulsory process in nine specified situations. These situations generally include cases where a patient has consented to release of information, litigation, such as malpractice cases, where the patient is a party to a lawsuit, litigation involving a will or a deceased patient, health-care information obtained pursuant to a court-ordered examination, health-care fraud investigations, or pursuant to court order in cases where the interest in access outweighs the patient's privacy interest. In such cases, a patient may assert any of the usual procedural rules or defenses that existed prior to the passage of this Act. Nothing in this Act is intended to reduce current patient rights or to provide any new grant of subpoena authority.

It is important to note that this section in no way supersedes or modifies a state's rules of evidence. While the section does provide a new threshold test that must be met before health-care information is subject to discovery or subpoena, that test is an easier one to meet than the requirements of the rules of evidence. Thus, once health-care information has been discovered under this section, the normal rules of evidence govern its use at trial. There should be no situation in which health-care information would be admissible at trial, but shielded from discovery by this section; on the other hand, it may often be the case that discoverable health-care information will prove inadmissible at trial.

Subsection (a)(2) [subsection (2) of this section] is intended to permit discovery or compulsory process where the patient has waived confidentiality. It would make little sense, for example, to protect a patient's records from compulsory process where the patient has already granted a newspaper interview about his health condition.

Subsection (a)(3) [subsection (3) of this section] permits the use of a patient's health-care information where the patient is a party to a lawsuit and has placed his health at issue. This section should be narrowly interpreted, however. If a patient has placed his physical condition at issue, there should not be automatic access to his mental-health records. Where broader access is desired, or where the patient is a witness or a party that has not placed his health information at issue, the party seeking access must proceed under subsection (a)(9) [subsection (9) of this section], which permits a patient to raise his privacy interests.

Subsection (a)(4) [subsection (4) of this section] allows for patient records to be used where mental or physical condition is relevant to execution or witnessing of a will. In litigation over testamentary capacity, for example, the best evidence of whether the testator had a "sound mind" may be the testator's medical record at the time of execution of the will. Subsection (b)(4) [evidently a reference to subsection (a)(4) since there never was a subsection (b)(4)] allows compulsory process as to that evidence. *See* Mont.Code Ann. § 50-16-314(2)(a) (1980) (adopting the same exception to a general ban on compulsory process or discovery of health-care information) [repealed 1987].

Subsection (a)(6) [subsection (6) of this section] allows disclosure of relevant health-care information in civil or criminal commitment proceedings. The purpose of such a proceeding is for the court to assess a patient's health to determine whether that patient is in need of treatment. Without access to the patient's health-care record, a commitment proceeding would be meaningless. *See* R.I.Gen.Laws § 5.37.3-6(2)(B) (1980).

Subsection (a)(7) [subsection (7) of this section] recognizes that patient records are often the only evidence available to investigate and prosecute health-care providers or researchers who may have violated the law. A privacy statute intended to protect patients must not shield illegal behavior by providers. Therefore, this subjection [sic] permits the use of compulsory process or discovery to obtain information as part of an investigation or proceeding in which a health-care provider is suspected of a violation of law, is a defendant, or is otherwise a party. However, no information obtained under this section can be used in an investigation of, or action against, a patient, unless the action or investigation directly relates to payment by third-party payors for a patient's health care. However, this section does not prohibit use of information obtained by law enforcement personnel that, coincidentally, was also obtained independently under this subsection.

Subsection (a)(9) [subsection (9) of this section] permits the use of compulsory process or discovery to obtain health-care information where the party seeking access establishes, in an individual case, that its interests outweigh the privacy interests of the patient involved. This section, with its balancing test, should be used wherever patient health-care information is sought to challenge the competency or credibility of a witness, or a party who has not placed his health-care information at issue.

This test is also applicable to a case where the subject of information receives notice that his or her records are being sought and has the opportunity to contest access. For example, if the court is convinced that society's interests are greater than the patient's privacy interest, government officials would be permitted to use process to force production of records where there has been a felony committed, but the victim is reluctant or afraid to testify, for example in rape or child abuse cases.

This subsection will also permit the use of *ex parte* or *in camera* proceedings to obtain a patient's health-care information. Such proceedings should be rarely used, but might be necessary, for example, where a prosecutor is seeking a search warrant and does not want the patient to know.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 396 in (1)(a) near beginning after "patient has" substituted "authorized" for "consented"; in (1)(k) at end after "46-4-301" inserted "or a similar federal law"; and made minor changes in style. Amendment effective April 18, 2003.

Chapter 504 inserted (1)(i) concerning proceeding under Title 41, chapter 3; and made minor changes in style. Amendment effective October 1, 2003.

1989 Amendment: Inserted (1)(j) regarding information requested pursuant to subpoena; inserted (2) regarding disclosure prohibited by law; corrected internal reference; and made minor changes in phraseology and form.

Source: This section is derived from subsection (a) of section 2-105 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

Case Notes

DECISIONS UNDER CURRENT LAW

Confidentiality of Patients' Health Care Information — Costs of Producing Copies of Nonconfidential Information to Be Borne by Health Care Providers: In a class action suit seeking monetary damages for excessive fees allegedly charged for copies of patient medical records, the District Court concluded that patient names were not confidential and ordered that the health care providers produce the names and bear the cost of producing the information as to requests for copies. The Supreme Court held that names of medical patients are protected under constitutional and statutory law and vacated the portion of the order requiring the production of patients' names, noting that patient notification would have to be accomplished through other means, such as an opt-in notification. The order was affirmed to the extent that names of nonpatient requesters, such as attorneys and insurance companies whose privacy was not at issue, be provided. Further, because 50-16-525 requires health care providers to maintain patient records for 3 years, the District Court did not abuse it discretion in ordering the providers to bear the cost of producing the information. St. James Community Hosp., Inc. v. District Court, 2003 MT 261, 317 M 419, 77 P3d 534 (2003).

Investigative Subpoena for Medical Records Not Issued for Overly Broad Time Period: The District Court issued an investigative subpoena related to an accident on January 3, 2000, to compel production of Bilant's medical records back to 1996. The affidavit for subpoena was issued May 10, 2000. The health care provider supplied records back to 1991. Bilant moved to suppress the information on grounds that the subpoena was overly broad in supplying any information after the date of the accident and prior to the date specified in the subpoena. The Supreme Court affirmed the validity of the investigative subpoena. The inclusion of time between January 3 and May 10 did not render the subpoena defective because there was a legitimate nexus between prescriptions issued before January 3 and prescription refills issued during subsequent months. Further, if a health care provider discloses medical information beyond what is allowed by law, the remedy lies with the health care provider and not with law enforcement through a motion to suppress. The question of the production of medical records beyond those required by the subpoena was a matter beyond the scope of Supreme Court review, and receipt by the state of records that contained information outside the scope and time period requested did not justify suppression of those portions of the records sought by and yielded pursuant to an otherwise legally sufficient investigative subpoena. St. v. Bilant, 2001 MT 249, 307 M 113, 36 P3d 883 (2001).

Revealing Limited Medical Information During Police Interview Not Considered Waiver of Constitutional Right to Confidentiality in Medical Records — Voluntary Medical Information Outside Scope of Fruit of Poisonous Tree Doctrine — Adequate Probable Cause for Investigative Subpoena of Medical Records: Bilant was involved in a three-car accident and was subsequently arrested for DUI and a seat belt violation. During an interview following the arrest, Bilant revealed to an officer that he had taken pain medication on the day of the accident. The officer called Bilant's health care provider for confirmation, and the provider confirmed that Bilant had a prescription for a drug similar to the pain medication that he mentioned. The officer then procured an investigative subpoena regarding documentation on all prescriptions issued to Bilant, including any advisory warnings, and the provider sent Bilant's entire medical file. Bilant contended that the state violated both his constitutional right to privacy and the statutory protections of this section. The state maintained that Bilant waived his claim of confidentiality in his medical information when he voluntarily revealed his use of pain medication to the officer. The Supreme Court agreed with Bilant. Medical records are quintessentially private and deserve the utmost constitutional protection. None of the statutory prerequisites for disclosure of the medical records were met. In deciding to reveal limited medical information in a police interview, Bilant did not forfeit his constitutional right to subsequently claim confidentiality in his medical records. The officer conducted an illegal search in seeking the constitutionally protected private medical information without probable cause and the benefit of an investigative subpoena under 46-4-301, and the information gleaned from the telephone call should have been suppressed. Bilant then contended that the use of the illegally obtained information formed an improper basis for the investigative subpoena and that the results of the subpoena should also have been suppressed pursuant to the fruit of the poisonous tree doctrine, which forbids the use of evidence that comes to light as the result of an initially illegal act. However, on this point, the Supreme Court disagreed with Bilant. One exception to the doctrine is that the derivative evidence is admissible if it is obtained from an independent source. Here, Bilant himself provided the source by giving voluntary medical information from other than the illegal telephone inquiry. The Supreme Court recognized that an investigative subpoena seeking constitutionally protected medical information requires greater justification for state access than the administration of justice rationale used to obtain public information under 46-4-301, so in reviewing the probable cause basis for constitutionally protected material, the court excised the illegal evidence from the application and reviewed the remaining information de novo to determine whether probable cause existed for issuing the subpoena. In this case, even when the information subject to suppression was excised, the remaining evidence established probable cause that a DUI was committed and underscored a compelling state interest in medical records related to prescription medicines in order to confirm Bilant's initial admission to the officer. Thus, the subpoena was issued in accordance with the statutory requirements for constitutionally protected medical records, and Bilant's conviction was affirmed. St. v. Bilant, 2001 MT 249, 307 M 113, 36 P3d 883 (2001). See also St. v. New, 276 M 529, 917 P2d 919 (1996), and St. v. Nelson, 283 M 231, 941 P2d 441 (1997).

Discovery Exception Inapplicable — Blood Sample Admissible Under Other Law: After Henning's motion in limine for suppression of a voluntarily given blood sample was denied, he entered a plea of DUI upon the condition that the plea could be withdrawn if the District Court ruled his blood sample inadmissible. The District Court found that the state had a compelling state interest that outweighed Henning's privacy interest under 50-16-535. The Supreme Court held that subsection (1)(i) of this section is inapplicable because it applies only to discovery of health care information, and Henning did not contend that his blood test was not subject to discovery. The Supreme Court found the results of the test admissible under 61-8-404(1)(a) (now repealed) and admissible under the rationale of St. v. Kirkaldie, 179 M 283, 587 P2d 1298 (1978). St. v. Henning, 258 M 488, 853 P2d 1223, 50 St. Rep. 626 (1993), distinguished in St. v. Nelson, 283 M 231, 941 P2d 441, 54 St. Rep. 576 (1997).

DECISIONS UNDER FORMER LAW

Inspection of Medical and Youth Court Records Denied — No Prejudice: The defendant, convicted of sexual intercourse without consent, contended that the District Court's refusal to furnish him the minor victim's hospital and Youth Court records for use on cross-examination prejudiced his right to "be confronted with the witnesses against him" under the sixth amendment to the U.S. Constitution (similar to Art. II, sec. 24, Mont. Const.). The Supreme Court held that 50-16-314 (repealed, sec. 31, Ch. 632, L. 1987) and 53-24-306 (amended, sec. 29, Ch. 632, L. 1987) exempt confidential health care information from compulsory legal process. In St. v. Camitsch, 192 M 124, 626 P2d 1250, 38 St. Rep. 563 (1981), the Supreme Court "confine[d] the permissible use of . . . juvenile records to demonstrating, by cross-examination, a witness' bias, prejudice, or motive". The defendant in this case failed to show how use of the records could have demonstrated this or how he could have built a defense based on their use. He had adequate opportunity to cross-examine the victim in an effort to damage her credibility. The Supreme Court ruled that the confrontation clause does not require that a criminal defendant be allowed to impeach the credibility of a victim by compromising the confidentiality of medical treatment or Youth Court records; therefore, the defendant's sixth amendment right was not infringed. St. v. Mendenhall, 219 M 328, 721 P2d 1255, 42 St. Rep. 2060 (1985).

Attorney General's Opinions

OPINIONS UNDER FORMER LAW

Court Order — Investigative Subpoena: A County Attorney may seek an investigative subpoena under the provisions of 46-4-301 through 46-4-306 in order to compel a health care provider to release confidential health care information. 38 A.G. Op. 82 (1980). (Opinion issued under former 50-16-314, which was repealed by sec. 31, Ch. 632, L. 1987.)

50-16-536. Method of compulsory process.

Official Comments

Subsection (b) [subsection (1) of this section] provides that a person seeking compulsory process for discovery purposes under subsections (a)(3), (4), (5) [50-16-535 (3) through (5)], or in a civil action under (a)(9) [50-16-535(9)] must notify the patient by first-class mail. Obviously, this requirement will also be satisfied by personal service. In the case of access under the other paragraphs of subsection (a) [50-16-535(1), (2), (6) through (8)], the patient will either know, or should not be told, that his records are being sought, and no notice is necessary.

Subsection (c) [subsection (2) of this section] provides that the use of compulsory process or discovery must be accompanied by a written certification, signed by the person seeking to enforce such process or that person's representative, identifying the specific paragraph of subsection (a) [subsection of 50-16-535] under which compulsory process or discovery is being sought. The person making the certification must have a reasonable basis for believing that the paragraph of subsection (a) [subsection of 50-16-535] relied upon is applicable. A copy of the certification must be made a permanent part of the patient's health-care information.

Subsection (d) [subsection (3) of this section] is included to make clear that nothing in the Act is intended to waive any rights that any person might have under existing state law or procedural rules to challenge the disclosure of health-care information through compulsory process or discovery, or its admissibility into evidence. By the same token, nothing in the Act should be construed so as to restore any privilege or right that has otherwise been waived.

Compiler's Comments

2003 Amendment: Chapter 504 in (1) and (2) substituted "50-16-535(1)(j)" for "50-16-535(1)(i)"; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 300 in (5) substituted "the fee provided for in 50-16-540" for "the health care provider's actual cost for providing the information"; and made minor changes in style. Amendment effective October 1, 1999.

1991 Amendment: Near beginning of (4), after "health care", inserted "information".

1989 Amendment: Inserted (3) regarding denial of access to information in response to compulsory process or discovery requests; inserted (4) relating to court-ordered disclosure; inserted (5) allowing a fee for providing information; and corrected internal references.

Source: This section is derived from subsections (b) through (d) of section 2-105 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-540. Reasonable fees allowed.

Compiler's Comments

Effective Date: This section was effective October 1, 1999.

Source: This section has no counterpart in the Uniform Health-Care Information Act.

50-16-541. Requirements and procedures for patient's examination and copying.

Official Comments

In recent years a consensus has emerged that patients should be allowed to inspect their health-care information. In 1945 Massachusetts became the first state to adopt a statute giving patients a right to see their health-care information. Mass.Gen.Laws, ch. 111 § 70. By the early 1980's the number of states which had adopted patient access statutes had grown to approximately 25. Auerbach & Boque, *Medical Records: Getting Yours*, Public Citizen Health Research Group (1980). That number continues to increase due, in some measure, to a recommendation by the Privacy Protection Study Commission in 1977 that states adopt patient access statutes. *Privacy Commission Report* at 295.

The consensus supporting patient access to health-care information is also illustrated in the federal Privacy Act, 5 U.S.C. § 552a, which gives patients in federal health-care facilities a right of access to their health-care information, subject to certain limitations.

In addition to statutory patient access requirements, medical licensing boards in several states have adopted rules which require physicians to allow patients to inspect or copy their records in at least most circumstances. Moreover, courts in a number of states have held, even in the absence of a statute, that patients have a common-law right of access to their health-care information. In *Hutchings v. Texas Rehabilitation Commission*, 544 S.W.2d 802 (Tex.1976), for example, a former patient sought to compel the Texas Rehabilitation Commission to provide him with access to his medical records. The court held that patients in Texas have a common-law right to inspect their health records. (For other cases holding that patients have a right of access to their records, *see* National Commission on the Confidentiality of Health Records, *Judicial Decisions in Health Record Confidentiality*, at 6 (1979).

In recent years, health-care organizations have joined the chorus of those who support patient access to health-care information. The American Hospital Association and most other major health associations are now on record as supporting patient access. *See* American Hospital Association, *A Patient's Bill of Rights* (1972).

There are several reasons for the emergence of a consensus supporting patient access. There is the recognition that patient health-care information is widely shared with parties outside of the health community. Accordingly, basic fairness and patients' needs to assess the impact of such sharing demands that patients be given access to their records.

Other reasons often cited in support of patient access include its positive effect on patients' trust in health-care providers; its positive effect on patients' recovery; its positive effect on both the quality of care and the quality of recordkeeping; and the fact that patients, in one way or another, pay for the care and thus should be able to see records documenting the care. Kaiser, "Patients Rights of Access to Their Own Medical Records: The Need for New Law," 24 Buf.L.Rev. 317-30 (1975). For all of these reasons, this section gives patients a right, upon written request, to examine or copy their health-care information.

This section relies on the definition of the term "patient" as defined in Section 1-102 [50-16-504] and includes health-care representatives pursuant to Section 6-101 [50-16-521] and representatives of deceased patients pursuant to Section 6-102 [50-16-522]. Any reference to patients in this section refers to those persons authorized to act on behalf of patients under Sections 6-101 [50-16-521] and 6-102 [50-16-522]. However, where patients direct providers to disclose their health-care information to third parties the provisions of this section do not apply. Instead, the patient must proceed under the authorization procedures in Section 2-102 [50-16-526 and 50-16-527].

One of the continuing controversies concerning patient access to health-care information is whether patients should be entitled to obtain a copy of their record or merely be allowed to inspect the record. Subsection (a)(1) [subsection (1)(a) of this section] opts to give patients the right to obtain copies of their records, if requested. If patients are to have access, there does not seem to be any policy reason why patients should not enjoy the more complete and effective right to obtain a copy of their record.

Subsection (a) [subsection (1) of this section] also provides that when a health-care provider receives a written request from a patient to examine or copy the patient's health-care information the provider must, as promptly as possible, but in any event within 10 days after receiving the request, respond to the patient by making the record available, by denying access to the record on one of the grounds permitted by Section 3-102 [50-16-542], or by informing the patient that the record, for one of the reasons authorized by this section, cannot be provided to the patient or provided within the 10-day time period. The effect of this section is to ensure that patients will receive a timely and complete response to their access requests.

A second controversy which continues to simmer relates to whether access rights should apply exclusively to health-care information maintained by institutional health-care providers or should extend, as well, to health-care information maintained by physicians and other kinds of health-care professionals. Access statutes in just over a dozen states apply to health records maintained by providers other than institutions.

This section takes the view that a patient's interest in examining and obtaining a copy of health-care information is just as compelling when the information is maintained by a professional health-care provider as it is when the information is maintained by an institutional health-care provider. Accordingly, this section does not make a distinction between professional and institutional health-care providers. In so doing, this section is consistent with the approach taken throughout the Act.

However, Section 3-101 [this section] does contain several provisions that are designed to minimize the burden of complying with patient access requests.

In addition to the extension period permitted under subsection (a) [subsection (1) of this section], subsection (b) [subsection (2) of this section] includes two provisions designed to ease any burden for providers. First, the subsection provides that if the patient makes a request for the production of his records in a particular format, a health-care provider need not create a new record or reformulate an existing record in order to comply. Thus, if a patient seeks his record arranged by hospital, and instead his record is arranged chronologically, the provider is under no obligation to reformulate the record. Similarly, if the record is maintained on microfiche, the patient must accept the copy in that form. The provider's obligation is discharged if the provider provides the record in readable form.

Second, subsection (b) [subsection (2) of this section] gives providers a right to charge patients making examination and copying requests a reasonable fee not to exceed the health-care provider's actual cost for providing the requested information. Health-care providers may be reimbursed for reproduction costs and staff time for searching for, and otherwise producing, records. However, this formulation does not include indirect costs for general overhead. Moreover, providers must charge the lesser of a reasonable fee or their actual costs.

The provider may make this fee payable in advance and need not permit examination or copying until the fee is paid.

Compiler's Comments

1999 Amendment: Chapter 300 in (1)(a) after "examination" inserted "without charge"; in last sentence of (2) after "fee" inserted "for each request", substituted "the fee provided for in 50-16-540" for "the health care provider's actual cost", and near end substituted "provide copies" for "permit examination or copying"; and made minor changes in style. Amendment effective October 1, 1999.

Source: This section is derived from section 3-101 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

Case Notes

Documents Dealing With Patient Care and Treatment Discoverable Under Hospital Peer Review Statutes — Data Protected From Disclosure: The net effect of the hospital peer review statutes is that health care information belongs to both the patient and the hospital, while data is a matter of an internal administrative function. To the extent that documents over which a hospital seeks protection are relevant to a patient's care and treatment, they are discoverable, but to the extent that documents are data in connection with the professional training, supervision, or discipline of the hospital medical staff, they are not discoverable. The right of confidentiality created under 50-16-205 is subject to the patient's right of access to records concerning that patient's own hospital care and treatment, consistent with the Uniform Health Care Information Act, which also provides that a personal representative of a deceased patient may exercise all the deceased patient's rights, including the right of the deceased's estate to examine or copy all of the deceased patient's health care information. Huether v. District Court, 2000 MT 158, 300 M 212, 4 P3d 1193, 57 St. Rep. 647 (2000), distinguishing Sistok v. Kalispell Regional Hosp., 251 M 38, 823 P2d 251 (1991), and overruling Sistok to the extent that that case may not be read to apply to a hospital patient seeking disclosure of information concerning that patient's care or treatment. (See 2001 amendments to 50-16-201, 50-16-203, and 50-16-205.)

50-16-542. Denial of examination and copying.

Official Comments

Undoubtedly, the sharpest continuing controversy about patient access to health-care information concerns whether a health-care provider should have a right to deny access to a patient if the provider believes that access would be injurious to the patient's health. This question is most sharply focused in instances where mental-health patients seek access to their records. In these circumstances, both the volitional quality of the patient's access request and the potential effect of the access on the patient is a matter of acute concern. Strassburger, "Problems Surrounding 'Informed Voluntary Consent' and Patient Access to Records," *Psychiatric Opinion*, 30 (Feb. 1975).

Most state patient access statutes do not apply to mental-health records. Those statutes which do apply usually limit the access right so that the provider maintaining the record can opt to give the record to a third party—often another physician of the patient's choosing. *Medical Records: Getting Yours*, at 32. In addition, most of the courts that have considered whether mental-health patients have a common-law or a statutory right of access to mental-health information have ruled in the negative. *Gotkin v. Miller*, 514 F.2d 125 (2d Cir. 1975); *Bain v. Spencer*, 393 F.2d 108 (1st Cir. 1968), *cert. denied*, 400 U.S. 866 (1970); *Turner v. Reed*, 538 P.2d 373 (Or. 1975).

There are instances when a patient's access to his own records should be limited, denied, or circumscribed. Consistent with the other provisions of this Act, these exceptions are set out in this section without distinction as to whether the records relate to mental or physical health, although they will be applicable most often as to mental-health patients.

Subsection 3-102(a) [subsection (1) of this section] identifies three circumstances when a health-care provider may deny a patient's request to examine or copy his own health-care information. The first is where the health-care provider concludes that patient examination would be injurious to his or her health.

The second, included primarily because of real concerns of the mental-health community, is to encourage third persons, primarily family and friends, to assist the mental-health professional with information helpful in treating the patient. Health-care providers occasionally need to be able to receive information about a patient on a confidential basis, and their confidential sources should be able to provide such information without fear of being identified by the patient.

Thus, if the health-care information could reasonably be expected to enable the patient to identify a person who has provided information to the health-care provider on a confidential basis, and with an expectation that it would be retained in confidence, then, under subsection (a)(2) [subsection (1)(b) of this section], the patient does not have a right to examine or copy that part of the health-care information.

If the provider determines that the examination or copying could reasonably be expected to cause danger to the life or safety of any person, subsection (a)(3) [subsection (1)(c) of this section] provides that a patient does not have the right to examine or copy that information. Reasonable expectation of danger is sufficient; this subsection does not adopt the imminent danger standard of Section 2-104(4) [50-16-529(4)].

Subsection (a)(4) [subsection (1)(d) of this section] permits a provider to withhold health-care information compiled and used solely for litigation purposes, administrative purposes, quality assurance, or peer review. For example, attorney-client communications and so-called "incident reports" needed for efficient operations of a medical facility are exempt from the subject access requirements. These reports are usually not retrievable by patient name. Moreover, these reports are not compiled for health-care purposes but, rather, to document unusual or significant events that affect a provider's future health-care operation or involve matters of administrative planning or legal exposure. If patients could use this Act to examine and copy such information, much of the health-care provider's quality control activities would be disrupted. Furthermore, since this information has not been compiled for health-care purposes the Act's interests would not be furthered by providing access rights.

If a health-care provider denies a request for examination and copying pursuant to subsection 3-102(a) [subsection (1) of this section], then under subsection 3-102(b) [subsection (3) of this section] the provider must identify the portions of the health-record information which are not covered by a provision authorizing withholding and must make that portion available for examination and copying. For example, the deletion could be of the confidential source and some or all of the information furnished by the source if it might identify him or her.

Finally, if a provider denies an access request on the grounds that access would be injurious to the patient's health or could be expected to cause danger to the life or safety of any person, then under subsection 3-102(c) [subsection (4) of this section], the provider must permit examination and copying by another health-care provider selected by the patient provided that this health-care provider is licensed, certified, or otherwise authorized under the laws of the state to treat the patient for the same condition as the original health-care provider. Further, the original health-care provider must inform the patient, in writing, of the patient's right to select another provider to exercise his examination and copying rights. The health-care provider selected by the patient is free to make the health-record information available to the patient. This formulation is relatively common, having been adopted in a number of state statutes, and, as well, by a number of agencies operating under the federal Privacy Act.

Compiler's Comments

2001 Amendment: Chapter 359 in (1)(d) substituted "is data, as defined in 50-16-201, that is compiled and used solely for utilization review, peer review, medical ethics review, quality assurance, or quality improvement" for "was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes". Amendment effective April 23, 2001.

1995 Amendment: Chapter 515 in (1)(e), after "the health care information might", deleted "disclose birth out-of-wedlock or provide information from which knowledge of birth out-of-wedlock might be obtained and which" and substituted references to 50-15-121 and 50-15-122 for reference to 50-15-206; in middle of (4) inserted "the patient's spouse, adult child, or parent or guardian or by"; and made minor changes in style. Amendment effective January 1, 1996.

Severability: Section 23, Ch. 515, L. 1995, was a severability clause.

1989 Amendment: Inserted (1)(e) regarding information that might reveal birth out of wedlock.

Source: This section is derived from section 3-102 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws. Subsections (1)(e) and (2) are not contained in the uniform act but were inserted upon adoption in Montana.

50-16-543. Request for correction or amendment.

Official Comments

This section gives a patient a right to submit, in writing, a written request to correct or amend the patient's health-care information to which the patient has access under Section 3-101 [50-16-541]. The purpose of the correction or amendment request must be to improve the accuracy or completeness of the record. The Uniform Information Practices Code permits individuals to request agencies to correct or amend incomplete or inaccurate information about them maintained in agency records. Furthermore, the Privacy Protection Study Commission recommended that state health-care record statutes give patients a right to correct or amend their records together with a right to examine and copy their records. *Privacy Commission Report* at 295. Indeed, one of the principal purposes of most subject access schemes is to permit a record subject to verify the accuracy and completeness of his record. Accordingly, most state statutes which give patients a right of access to their health-care records also give patients a right to correct or amend their records. The federal Privacy Act takes the same approach. Accurate health-care information is not only important to the delivery of health care, but for patient applications for life, disability and health insurance, employment, and a great many other issues that might be involved in civil litigation (e.g., Workmen's Compensation, child custody, personal injury).

Section 4-101(b) [subsection (2) of this section] parallels Section 3-101(a) [50-16-541(1)] in setting out conditions which apply to a provider's handling of a correction or amendment request. Under subsection (b) [subsection (2) of this section], the provider must respond to each request as promptly as possible and, in any event, within 10 days after receiving the request.

This subsection, like the parallel provision in Section 3-101 [50-16-541], gives the provider five possible options for response. The provider can respond by: (1) making the requested correction or amendment and so informing the patient and further informing the patient of the patient's right to have the correction or amendment disseminated to previous recipients of the uncorrected or unamended health-care information; or (2) if the record no longer exists or cannot be located, so informing the patient; or (3) if the health-care provider does not maintain the record, providing the patient with the name and address of the provider or person who it is believed does maintain the record, if known; or (4) in the event of unusual circumstances, or if the record is in use, so informing the patient and specifying a time, not to exceed 21 days from receipt of the request, when the record will be corrected or amended or the request otherwise disposed of; or (5) denying the correction or amendment request and so informing the patient, in writing, including the provider's reason for refusing the request and the patient's right to add a statement of disagreement and to have that statement disseminated to previous recipients of the disputed information.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Source: This section is derived from section 4-101 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-544. Procedure for adding correction, amendment, or statement of disagreement.

Official Comments

Section 4-102 [this section] sets out the procedures that apply to adding corrections or amendments or patient statements of disagreement. Subsection (a)(1) [subsection (1)(a) of this section] provides that if a health-care provider accepts a proposed correction or amendment, the provider must add this information to the record and mark the corrected record or amended entries and indicate the place in the record where the corrected or amended information can be found, in whatever manner is practicable. The inaccurate or incomplete information should not be expunged but merely marked as inaccurate or incomplete. Where microfiche records are used, it may not be possible to mark old entries as inaccurate or incomplete and, in this circumstance, marking the cover page or adding a supplemental record may be the most practicable procedure and will satisfy the statutory standard.

Many state statutes or industry model codes permit patients to add a rebuttal statement when providers refuse to make a requested correction. Subsection (b) [subsection (2) of this section] provides that if a health-care provider denies a patient's correction or amendment request, the provider must permit the patient to file with his record a brief statement of the patient's reasons for believing that the record should be corrected or amended, and/or his reasons for disagreement with the provider's refusal. The rebuttal statement should be brief and to the point and, where practicable, the challenged entries should be so marked and the place in the record where the rebuttal statement can be found should be indicated. Section 4-102 [this section] is not intended to replace the judgments of health-care professionals who create the health-care information with the lay opinions of patients. However, if a patient disputes the accuracy or completeness of health-care information it is fair to permit the patient's view to be included in the record.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: This section is derived from section 4-102 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-545. Dissemination of corrected or amended information or statement of disagreement.

Official Comments

Subsection (a) [subsection (1) of this section] requires a health-care provider who accepts a patient's correction or amendment, as well as a provider who has been required to add a patient statement to the record, to take all reasonable steps upon request by the patient to distribute the corrected information or the patient statement to all parties designated by the patient who have previously received the information which is the subject of the correction or amendment attempt. The distribution requirement is made dependent on a patient's request because some patients may not want to encourage the dissemination of the corrected or amended information or the patient's statement, because any reference to the matter, even an alleged accurate reference, may be damaging to the patient.

Subsection (b) [subsection (2) of this section] permits a health-care provider to charge patients the lesser of a reasonable fee or the provider's actual cost in distributing the corrected or amended information or the statement of disagreement if the correction or amendment was not caused by the provider's error. Actual cost of distribution includes reproduction and postage and staff time for distribution but does not include overhead, professional staff time, or any costs associated with the processing of the correction or amendment request.

It is expected that patients will use the disclosure record, which Section 2-101(b) [50-16-525(2)] of the Act requires providers to maintain, to identify persons who have previously received the information in question.

Compiler's Comments

1999 Amendment: Chapter 300 in (2) substituted "the fee provided for in 50-16-540" for "the provider's actual cost". Amendment effective October 1, 1999.

Source: This section is derived from section 4-103 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-551. Criminal penalty.

Official Comments

Subsection (a) [not adopted in Montana] makes it a misdemeanor for a health-care provider to willfully disclose health-care information if the person knew, or should have known, that such disclosure is in violation of this Act. It is up to each state to set the terms of punishment for this crime. However, the section recommends a misdemeanor citation with a fine not to exceed $10,000 and a period of imprisonment not to exceed one year.

Subsection (b) [subsection (1) of this section] makes it a crime to willfully misrepresent one's identity or purpose (false pretenses) or to use bribery or theft to examine health-care information in violation of this Act. Access to an automated information system by willfully using a password or code to misrepresent one's identity or purpose would be covered by this subsection. So too would other types of related crimes such as wiretapping. The section recommends a penalty structure that is identical to the penalties for willful disclosure.

Subsection (c) [subsection (2) of this section] makes it a crime to willfully [purposely] provide a disclosure or authorization under Section 2-102 [50-16-526 or 50-16-527] a certification under Section 2-105(c) [50-16-536(2)] (compulsory disclosures) knowing that the certification is false or that the authorization is false. In order to come within this section an individual must know that the certification or authorization is false in a material respect and must willfully [purposely] present that certification or authorization to a health-care provider.

It is important to emphasize that the Act's criminal penalties only attach to violations of this Act. Thus, redisclosure by nonhealth-care providers does not provide a basis for a criminal action unless such redisclosure is expressly prohibited in this Act. For example, if a family member obtains health-care information under Section 2-104 [50-16-529] and subsequently rediscloses that information to a news reporter, neither the family member nor the reporter has criminal exposure under this Act.

Compiler's Comments

Source: This section is derived from section 8-101 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws. The first subsection of section 8-101, providing a penalty for willful disclosure in violation of the Act, was not adopted in Montana.

50-16-552. Civil enforcement.

Official Comments

This section permits the appropriate law enforcement official to bring a civil action to enforce the terms of the Act and permits the court to provide any of the remedies available to a patient in a private right of action under Section 8-103 [50-16-553]. Actions under this section are limited to actions to enforce the Act and thus redisclosure by nonhealth-care providers does not provide a basis for civil enforcement except in very limited circumstances as provided in this Act.

Compiler's Comments

Source: This section is derived from section 8-102 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws.

50-16-553. Civil remedies.

Official Comments

Subsection (a) [subsection (1) of this section] allows any person (defined in Section 1-102 [50-16-504]) who is aggrieved by a violation of this Act to file an action in a court of appropriate jurisdiction against the responsible health-care provider or other party. This is a standard formulation for standing. For example, this formulation is found in the Uniform Information Practices Code (§ 3-112). The burden of proof is always on the aggrieved party, except where specifically indicated otherwise. Although a person must be aggrieved in order to maintain a private right of action under this Act, it is worth noting that in many states a provider's violation of law, even if no harm to a patient results, is grounds for administrative sanctions by the state licensing board or other similar authority.

Subsections (b), (e), and (f) [subsections (2), (6), and (7) of this section] authorize three types of relief for the aggrieved party: (1) equitable relief in the form of an injunction ordering the health-care provider or other responsible party to comply with the Act (including, where appropriate, an expungement order or an order to enjoin prospective violations); (2) actual damages suffered by the aggrieved party, plus a suggested $5,000 limit on recovery for nonpecuniary loss if the violation arises out of willful or grossly negligent conduct; and (3) reasonable court costs and attorney's fees where the aggrieved party substantially prevails. Because the Act relies on self-enforcement by aggrieved persons as its principal enforcement mechanism, only a liberal provision for the award of attorney's fees will permit this self-enforcement mechanism to work effectively. A health-care provider who discloses information in good-faith reliance on a certification is not liable for disclosures made pursuant to that certification. See Section 2-103 [50-16-528].

Subsection (c) [evidently intended as a reference to subsection (5) of this section] provides that in an action brought by a patient seeking access to his own record, the health-care provider has the burden of proof if it contends that the health-care information should not be disclosed.

Subsection (f) [evidently intended as a reference to subsection (8) of this section] establishes a statute of limitations for civil actions brought pursuant to this section. States should insert the appropriate time period for their jurisdiction.

The civil remedies provided under this section—like their criminal counterparts—are only available for violations of this Act. Thus, redisclosure by family members, newspaper reporters, or others not covered by the redisclosure provisions in Section 2-104 [50-16-529 and 50-16-530] are not violations of this Act and do not provide a basis for a civil action.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: This section is derived from section 8-103 of the Uniform Health-Care Information Act as adopted by the National Conference of Commissioners on Uniform State Laws. Subsection (4) is not contained in the uniform act but was inserted upon adoption in Montana.

Part 6
Government Health Care Information

50-16-602. Definitions.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21". Amendment effective July 1, 1995.

Because of the repeal of 2-15-2101, the Code Commissioner has codified the reference to 2-15-2201.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-16-603. Confidentiality of health care information.

Compiler's Comments

2019 Amendment: Chapter 382 in (6) after "investigation" inserted "or a safety and risk assessment". Amendment effective October 1, 2019.

Applicability: Section 9, Ch. 382, L. 2019, provided: "[This act] applies to all reports received on or after [the effective date of this act]." Effective October 1, 2019.

2003 Amendments — Composite Section: Chapter 391 in (5) at end after "disease" inserted "or to alleviate and prevent injury caused by the release of biological, chemical, or radiological agents capable of causing imminent disability, death, or infection"; and made minor changes in style. Amendment effective April 17, 2003.

Chapter 504 in (6) in first sentence near middle substituted "to be presented as evidence in a" for "required in a subsequent" and at end substituted "pursuant to Title 41, chapter 3" for "the information may be disclosed only in camera"; and made minor changes in style. Amendment effective October 1, 2003.

50-16-605. Judicial, legislative, and administrative proceedings — testimony.

Compiler's Comments

2003 Amendment: Chapter 504 in (2) inserted reference to 50-16-603(6); and made minor changes in style. Amendment effective October 1, 2003.

50-16-606. Correlation with Uniform Health Care Information Act.

Compiler's Comments

Effective Date: Section 3, Ch. 432, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 15, 1991.

Part 7
Report of Exposure to Infectious Disease

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 390, L. 1989, provided: "A statement of intent is required for this bill because [section 4] [50-16-705] requires the department of health and environmental sciences [now department of public health and human services] to adopt rules defining an unprotected exposure to an infectious disease, specifying which infectious diseases are subject to [this act] [Title 50, Ch. 16, part 7], and specifying the information concerning infectious diseases that must be included in a report of unprotected exposure."

Part Administrative Rules

Title 37, chapter 104, subchapter 8, ARM Notification of exposure to infectious disease.

Title 37, chapter 116, subchapter 1, ARM Dead human bodies — embalming and transportation.

50-16-701. Definitions.

Compiler's Comments

2019 Amendment: Chapter 220 in definition of emergency services provider near end substituted "emergency care provider" for "emergency medical technician, paramedic". Amendment effective July 1, 2019.

1999 Amendment: Chapter 146 inserted definition of emergency services organization; in definition of emergency services provider substituted "an emergency services organization" for "a public or private organization that provides emergency services to the public"; in definition of infectious disease after "means" deleted "a communicable disease transmittable through an exposure, including the diseases of", after "virus" inserted "infection", and after "other" substituted "disease capable of being transmitted through an exposure that has been" for "diseases that may be"; in definition of infectious disease control officer near end substituted "part" for "chapter"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 93 at end of definition of health care facility inserted "and includes a public health center as defined in 7-34-2102". Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in 2-15-2101". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 476 inserted definitions of airborne infectious disease, designated officer, emergency services provider, exposure, and infectious disease control officer; in definition of infectious disease, after "communicable disease", deleted "designated by department rule as", before "exposure" deleted "unprotected", and after "exposure" inserted the remainder of the definition specifying certain diseases; and deleted definition of unprotected exposure that read: ""Unprotected exposure" means exposure of a person to an infectious disease in a manner defined by department rule as likely to allow transmission of the disease, including but not limited to mouth-to-mouth resuscitation and commingling of the blood or body fluids of the person and a patient."

50-16-702. Notification of exposure to infectious disease — report of exposure to disease.

Compiler's Comments

2009 Amendment: Chapter 362 in (1)(b) near beginning following "recognized by the" inserted "U.S. department of health and human services", at end following "patient's physician to" substituted "perform an HIV diagnostic test pursuant to 50-16-1014" for "seek consent for performance of an HIV-related test pursuant to 50-16-1007(10)"; and made minor changes in style. Amendment effective October 1, 2009.

Preamble: The preamble attached to Ch. 362, L. 2009, provided: "WHEREAS, in 2008, 22 people in Montana received a new HIV diagnosis and 514 people are reported to be living with HIV/AIDS in Montana; and

WHEREAS, an estimated 21% of people living with HIV/AIDS in the U.S. are unaware of their infection; and

WHEREAS, it has been shown that people who are not aware of their HIV-positive status are more likely to transmit the disease than those who know their status; and

WHEREAS, universal screening of pregnant women would significantly reduce the chances of a newborn contracting HIV during the birthing process; and

WHEREAS, public health would be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection; and

WHEREAS, public health would also be served by expanding the availability of informed, voluntary, and confidential HIV diagnostic testing and making HIV diagnostic testing a routine part of general medical care; and

WHEREAS, making HIV diagnostic testing a routine part of general medical care is the national recommendation by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention."

1999 Amendment: Chapter 146 in (1)(a) at end of third sentence substituted "completed form to the health care facility receiving the patient as soon as possible after the request for submission by the emergency services provider" for "form verifying that there was an exposure" and inserted fourth sentence concerning indication of exposure and verification; in (1)(b) after "control" inserted "and prevention"; in (1)(c) after "receipt of" substituted "the report of exposure" for "a request" and after "writing" substituted remainder of subsection concerning possible determinations for former text and subsection (1)(d) that read: "(i) whether or not the patient was infected with an infectious disease;

(ii) whether or not a determination has been made; and

(iii) the name of the disease and the date of transport if the patient was infected.

(d) The designated officer shall then notify the emergency services provider"; in (2) inserted second sentence concerning notice and in third sentence after "hours" inserted "after receiving the notice"; inserted (3) concerning providing information to emergency services provider; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment: Chapter 476 substituted (1)(a) concerning exposure of emergency services provider for former (1) and (2) that read: "A report may be filed, as provided in subsection (2), by a person:

(a) employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, corrections officer, or ambulance service attendant; and

(b) who, in his official capacity with the public or private organization, attends or assists in transporting a patient to a health care facility and believes he has sustained an unprotected exposure.

(2) A person who qualifies in subsection (1) may submit to the health care facility, on a form prescribed by the department, a report of unprotected exposure that contains his name and other information required by the department, including a description of the unprotected exposure"; in (1)(b), near beginning, substituted "on the form" for "in the report" and near middle substituted "form" for "report"; and inserted (1)(c) concerning notification of designated officer upon request, (1)(d) concerning notifying emergency services provider, and (2) concerning notification of exposure to airborne infectious disease.

1991 Amendment: Inserted (3) providing that report is request for performance of HIV-related test in certain circumstances. Amendment effective July 1, 1991.

Severability: Section 8, Ch. 544, L. 1991, was a severability clause.

Attorney General's Opinions

Required Report of Transportation of Patient With Transmittable Infectious Disease Not in Conflict With Uniform Health Care Information Act: Section 50-16-525 contains a statutory exception for disclosure of health care information as otherwise specifically provided by law. Therefore, the disclosure required under 50-16-703 and this section when a patient transported to a health care facility is diagnosed with a transmittable infectious disease is not in conflict with the general provision of the Uniform Health Care Information Act that health care information may not be disclosed without the patient's written authorization. 45 A.G. Op. 31 (1994).

Transportation of Patient With Transmittable Infectious Disease — Report Required: When a patient transported to a health care facility is diagnosed with one of the transmittable infectious diseases designated in ARM 16.30.801 (renumbered 37.104.801), the health care facility is required to report that fact to the designated officer of the emergency medical services provider who assisted the patient, even if no report of exposure was filed with the facility concerning the transported patient and there is no evidence that an actual exposure occurred. 45 A.G. Op. 31 (1994).

50-16-703. Notification of precautions after exposure to infectious disease.

Compiler's Comments

1999 Amendment: Chapter 146 in (1) near beginning after "facility" deleted "a physician shall inform the health care facility within 24 hours" and at end after "disease" inserted "the physician shall inform the infectious disease control officer of the health care facility of the determination within 24 hours after the determination is made"; at beginning of (2) inserted "If it is determined that the infectious disease is airborne or a report of exposure was filed concerning the patient under 50-16-702", after "facility shall" substituted "provide the notification required by subsection (3) orally" for "orally notify", and after "emergency services" substituted "organization known to the health care facility to have provided emergency services to the patient prior to or during transportation to the health care facility" for "provider who attended the patient prior to or during transport or who transported the patient with the infectious disease"; at end of (3) inserted "the date on which the patient was transported to the health care facility, and the time that the patient arrived at the facility"; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment: Chapter 476 in (1), after "facility", inserted "within 24 hours"; deleted (1)(b) and (1)(c) that read: "(b) a report of unprotected exposure to that patient has been filed; and

(c) the physician believes the unprotected exposure is capable of transmitting the infectious disease"; in (2) inserted "the designated officer of the emergency services provider who attended the patient prior to or during transport or who transported the patient with the infectious disease" and deleted "the person who filed the report in 50-16-702 of"; and at beginning of (3) inserted "The notification must state" and substituted "the emergency services provider was" for "he may have been".

Attorney General's Opinions

Required Report of Transportation of Patient With Transmittable Infectious Disease Not in Conflict With Uniform Health Care Information Act: Section 50-16-525 contains a statutory exception for disclosure of health care information as otherwise specifically provided by law. Therefore, the disclosure required under 50-16-702 and this section when a patient transported to a health care facility is diagnosed with a transmittable infectious disease is not in conflict with the general provision of the Uniform Health Care Information Act that health care information may not be disclosed without the patient's written authorization. 45 A.G. Op. 31 (1994).

Transportation of Patient With Transmittable Infectious Disease — Report Required: When a patient transported to a health care facility is diagnosed with one of the transmittable infectious diseases designated in ARM 16.30.801 (renumbered 37.104.801), the health care facility is required to report that fact to the designated officer of the emergency medical services provider who assisted the patient, even if no report of exposure was filed with the facility concerning the transported patient and there is no evidence that an actual exposure occurred. 45 A.G. Op. 31 (1994).

50-16-704. Confidentiality — penalty for violation — immunity from liability.

Compiler's Comments

1999 Amendment: Chapter 146 in (1) near beginning after "person" deleted "who suffered the exposure and the person", after "exposed" inserted "nor may the name of the emergency services provider who was exposed be released to anyone other than the emergency services provider", and after "required by" inserted "this part"; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment: Chapter 476 in (1), after "suffered the", deleted "unprotected" and after "anyone" inserted "including the emergency services provider who was exposed"; in (3), after "physician", inserted "or the designated officer of an emergency services provider's organization" and near end substituted "an exposed person of exposure" for "a person filing a report of unprotected exposure"; and made minor changes in style.

50-16-705. Rulemaking authority.

Compiler's Comments

1999 Amendment: Chapter 146 inserted (5) concerning recordkeeping and reporting rules; and made minor changes in style. Amendment effective March 23, 1999.

1993 Amendment: Chapter 476 in three places, before "exposure", deleted "unprotected".

Effective Date: Section 7, Ch. 390, L. 1989, provided: "[Section 4] [codified as 50-16-705] and [this section] are effective on passage and approval." Approved March 30, 1989.

50-16-711. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease.

Compiler's Comments

1999 Amendment: Chapter 146 in (1) substituted "this part" for "this chapter"; at end of (3) substituted "this part and the rules promulgated under this part and shall provide the names of the designated officer and the alternate to the department" for "this chapter and the rules promulgated under this chapter"; in (4) at end inserted "and shall provide their names to the department"; and made minor changes in style. Amendment effective October 1, 1999.

Part 8
Health Care Information Privacy Requirements for Providers Subject to HIPAA

Part Compiler's Comments

Effective Date: Section 26, Ch. 396, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 18, 2003.

50-16-804. Representative of deceased patient's estate.

Compiler's Comments

2017 Amendment: Chapter 235 in (1) inserted "41-3-123 and". Amendment effective April 25, 2017, and terminates September 30, 2021.

Effective Date — Applicability: Section 11, Ch. 235, L. 2017, provided: "[This act] is effective on passage and approval and applies to child abuse and neglect cases resulting in a fatality or near fatality that occurred on or after [the effective date of this act]." Approved April 25, 2017.

2013 Amendments — Composite Section: Chapter 67 inserted exception clause; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 353 near beginning inserted exception to 53-21-1108. Amendment effective July 1, 2013, and terminates June 30, 2016.

50-16-805. Disclosure of information allowed for certain purposes.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 516, L. 2023. Amendment effective October 1, 2023, and terminates June 30, 2025.

2017 Amendment: Chapter 235 inserted (3)(b) relating to the child abuse and neglect review commission; and made minor changes in style. Amendment effective April 25, 2017, and terminates September 30, 2021.

Effective Date — Applicability: Section 11, Ch. 235, L. 2017, provided: "[This act] is effective on passage and approval and applies to child abuse and neglect cases resulting in a fatality or near fatality that occurred on or after [the effective date of this act]." Approved April 25, 2017.

2013 Amendments — Composite Section: Chapter 67 inserted (3) permitting disclosure of health care information to mortality review team. Amendment effective October 1, 2013.

Chapter 353 inserted (3) regarding disclosure of information to suicide review team. Amendment effective July 1, 2013, and terminates June 30, 2016.

The code commissioner has combined the Ch. 67 and Ch. 353 amendments.

Case Notes

Dissemination of Private Health Care Information — No Knowing Assistance to Law Enforcement by Physician — Summary Judgment Proper: The plaintiff was receiving total disability benefits due to a work-related accident. After the defendant, the plaintiff's doctor, received a video from a State Fund attorney of the plaintiff engaging in various rigorous activities, he sent a letter to State Fund stating he believed the plaintiff was no longer incapable of gainful employment. The plaintiff filed suit against the doctor for unlawfully disseminating his private health care information to a law enforcement officer. The District Court, however, granted summary judgment to the defendant, finding that the defendant had previously communicated with the same State Fund attorney on several occasions about the plaintiff's condition and did not know he was assisting law enforcement at the time he wrote the letter. On appeal, the Supreme Court affirmed, agreeing that the defendant did not know when he wrote the letter that the State Fund attorney was acting in a law enforcement capacity. Simms v. Schabacker, 2014 MT 328, 377 Mont. 278, 339 P.3d 832.

50-16-811. When health care information available by compulsory process.

Compiler's Comments

2017 Amendment: Chapter 164 inserted (1)(j) relating to death investigations by a coroner that require health care information; and made minor changes in style. Amendment effective October 1, 2017.

Part 10
AIDS Education and Prevention

Part Case Notes

Statute Unconstitutional as Applied — Invasion of Right to Privacy: Gryczan and others, all of whom were homosexuals, brought a declaratory judgment action to determine whether 45-5-505 (amended and renumbered 45-8-218), as applied, violated their right of privacy. After reviewing the case of Bowers v. Hardwick, 478 US 186 (1986), in which the U.S. Supreme Court held that the federal constitution does not confer a fundamental right on homosexuals to engage in sodomy, the Supreme Court noted that it had long held that the Montana Constitution affords citizens broader protection of a right to privacy than does the U.S. Constitution and that since privacy is explicit in the Montana Constitution, privacy is a fundamental right and any statute limiting the right must pass the strict scrutiny test. The Supreme Court then applied the test enunciated in Katz v. U.S., 389 US 347 (1967), and adopted by the Montana Supreme Court in Hastetter v. Behan, 196 M 280, 639 P2d 510 (1982), and found that all adults have an expectation of privacy in noncommercial, consensual sexual conduct and that, while society may disapprove of homosexual conduct, society still recognizes that expectation of privacy, even concerning homosexual acts. The Supreme Court then determined that the interests advanced by the state in support of the constitutionality of the statute, the protection of public health by preventing the spread of the HIV-related virus, and the protection of public morals were not supported by the facts and were therefore not compelling state interests justifying an invasion of privacy. For these reasons, the Supreme Court determined the statute to be unconstitutional as applied to noncommercial, same-sex consensual sex between adults. Gryczan v. St., 283 M 433, 942 P2d 112, 54 St. Rep. 699 (1997), followed in Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999). (See 2013 amendments to 45-2-101 and 45-8-218.)

50-16-1003. Definitions.

Compiler's Comments

2009 Amendment: Chapter 362 in definition of "AIDS" near middle following "promulgated by the" inserted "U.S. department of health and human services" and at end substituted "and prevention" for "of the United States public health service"; inserted definition of antiretroviral prophylaxis; in definition of "contact" near middle following "recognized by the" inserted "U.S. department of health and human services" and at end substituted "and prevention" for "of the United States public health service"; substituted "HIV diagnostic test" for "HIV-related test" as defined term; deleted definition of informed consent that read: ""Informed consent" means a freely executed oral or written grant of permission by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject of the test is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the person's behalf to perform an HIV-related test after the receipt of pretest counseling"; deleted definition of legal guardian that read: ""Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor"; deleted definition of local health officer that read: ""Local health officer" means a county, city, city-county, or district health officer appointed by the local board"; deleted definition of next of kin that read: ""Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person"; deleted definition of posttest counseling that read: ""Posttest counseling" means counseling, conducted at the time that the HIV-related test results are given, and includes, at a minimum, written materials provided by the department"; deleted definition of pretest counseling that read: ""Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department"; inserted definition of rapid HIV diagnostic test; deleted definition of release of test results that read: ""Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized"; deleted definition of significant other that read: ""Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual"; and made minor changes in style. Amendment effective October 1, 2009.

Preamble: The preamble attached to Ch. 362, L. 2009, provided: "WHEREAS, in 2008, 22 people in Montana received a new HIV diagnosis and 514 people are reported to be living with HIV/AIDS in Montana; and

WHEREAS, an estimated 21% of people living with HIV/AIDS in the U.S. are unaware of their infection; and

WHEREAS, it has been shown that people who are not aware of their HIV-positive status are more likely to transmit the disease than those who know their status; and

WHEREAS, universal screening of pregnant women would significantly reduce the chances of a newborn contracting HIV during the birthing process; and

WHEREAS, public health would be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection; and

WHEREAS, public health would also be served by expanding the availability of informed, voluntary, and confidential HIV diagnostic testing and making HIV diagnostic testing a routine part of general medical care; and

WHEREAS, making HIV diagnostic testing a routine part of general medical care is the national recommendation by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention."

1997 Amendments: Chapter 197 in definition of health care provider, near middle of first sentence after "laws of this state", inserted "or who is licensed, certified, or otherwise authorized by the laws of another state"; in definition of written informed consent, in (a)(ii) after "confidentiality", substituted "specimen collection" for "blood drawing" and near end substituted "specimen" for "blood sample" (voided by Ch. 524); and made minor changes in style. Amendment effective April 3, 1997.

Chapter 524 in definition of contact deleted (a) that read: "(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes"; inserted definition of informed consent; deleted definition of written informed consent that read: ""Written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin or significant other or a person designated by the subject in hospital records to act on the subject's behalf. The written informed consent must include at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;

(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;

(iv) a statement that the test may be obtained anonymously if the subject wishes;

(v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and

(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.

(b) The department shall develop an agreement form that may be used for purposes of this subsection"; and made minor changes in style.

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in 2-15-2101". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In definition of contact inserted (b) concerning a person exposed to the test subject in a manner allowing HIV transmission; in definition of HIV-related test substituted "test approved by the federal food and drug administration" for "laboratory test"; in definition of health care provider substituted present text concerning person authorized to provide health care for "physician, nurse, paramedic, psychologist, dentist, public health department agent, or other person providing medical, nursing, psychological, or other health care services of any kind"; inserted definitions of local board, local health officer, and next of kin; in definition of pretest counseling, after "provision of", substituted "counseling" for "written materials" and after "test" inserted "including, at a minimum"; in definition of release of test results, in (a) after "dated", inserted "by the person tested or the person authorized to act for the person tested"; inserted definition of significant other; in definition of written informed consent, in (a) after "guardian", inserted "or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf, and", at end of (a)(ii) inserted "until the blood sample is taken", at beginning of (a)(iii) substituted "an explanation" for "a discussion", and inserted (a)(v) concerning name and address of health care provider and (a)(vi) concerning test performed as part of insurance application; and made minor changes in style. Amendment effective July 1, 1991.

Severability: Section 8, Ch. 544, L. 1991, was a severability clause.

Case Notes

Administration of HIV Test Without Consent — Lack of Requisite Information Regarding Patient's Significant Other — Motion for Summary Judgment and Directed Verdict Properly Denied: Howard was brought to the hospital by Schultz, who identified herself as Howard's roommate and girlfriend, after Howard suffered a seizure. Schultz then left the hospital. Howard then suffered another seizure, became violent, and had to be sedated and restrained. Hunter then arrived at the hospital and also identified herself as Howard's girlfriend. A physician ordered an HIV test to determine if the seizure was related to that disease. Because Howard was mentally incapacitated and Hunter's relationship with Howard was unclear to the doctor, the test was administered without consent. At trial, Howard moved for summary judgment and a directed verdict on the issue of the hospital's liability for administering an HIV test without the consent of Howard's significant other, allegedly Hunter, in violation of 50-16-1007 (now repealed), but the motions were denied. On appeal, the Supreme Court affirmed, holding that because a genuine issue of material fact existed regarding whether the hospital understood whether Hunter met the statutory definition of Howard's significant other and because there was credible evidence to support a finding that Hunter was not Howard's significant other, the question was properly left for the jury to decide. Howard v. St. James Community Hosp., 2006 MT 23, 331 M 60, 129 P3d 126 (2006).

Attorney General's Opinions

Conditions for Release of Information About HIV Test Subject — Imminent Danger to Health or Safety: In reconciling the apparent conflict in the provision of medical information as contained in the Uniform Health Care Information Act and the AIDS Prevention Act, the Attorney General determined that a health care provider may release health care information about the subject of an HIV-related test, including the identity of the subject, to a contact, as defined in this section, without the subject's authorization, only when the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or other individual. 44 A.G. Op. 37 (1992).

50-16-1008. Testing of donors of organs, tissues, and semen required — penalty.

Compiler's Comments

2009 Amendment: Chapter 362 in (1) in two places substituted "HIV diagnostic" for "HIV-related". Amendment effective October 1, 2009.

Preamble: The preamble attached to Ch. 362, L. 2009, provided: "WHEREAS, in 2008, 22 people in Montana received a new HIV diagnosis and 514 people are reported to be living with HIV/AIDS in Montana; and

WHEREAS, an estimated 21% of people living with HIV/AIDS in the U.S. are unaware of their infection; and

WHEREAS, it has been shown that people who are not aware of their HIV-positive status are more likely to transmit the disease than those who know their status; and

WHEREAS, universal screening of pregnant women would significantly reduce the chances of a newborn contracting HIV during the birthing process; and

WHEREAS, public health would be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection; and

WHEREAS, public health would also be served by expanding the availability of informed, voluntary, and confidential HIV diagnostic testing and making HIV diagnostic testing a routine part of general medical care; and

WHEREAS, making HIV diagnostic testing a routine part of general medical care is the national recommendation by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention."

1991 Amendment: Near middle of (1), after "donor", inserted "in accordance with nationally accepted standards adopted by the department by rule"; and made minor change in style. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 544, L. 1991, provided: "A statement of intent is required for this bill because [section 3] [50-16-1008] gives authority to the department of health and environmental sciences [now department of public health and human services] to adopt rules setting standards that must be met before donation of an organ, semen, or tissues in order to prevent transmission of the virus causing acquired immune deficiency syndrome (AIDS). It is intended that the department adopt nationally accepted standards that are developed for each type of donation and that are apparently most effective in preventing transmission of the virus."

Severability: Section 8, Ch. 544, L. 1991, was a severability clause.

50-16-1009. Confidentiality of records — notification of contacts — penalty for unlawful disclosure.

Compiler's Comments

2009 Amendment: Chapter 362 in (1) and in (2) substituted "HIV diagnostic" for "HIV-related". Amendment effective October 1, 2009.

Preamble: The preamble attached to Ch. 362, L. 2009, provided: "WHEREAS, in 2008, 22 people in Montana received a new HIV diagnosis and 514 people are reported to be living with HIV/AIDS in Montana; and

WHEREAS, an estimated 21% of people living with HIV/AIDS in the U.S. are unaware of their infection; and

WHEREAS, it has been shown that people who are not aware of their HIV-positive status are more likely to transmit the disease than those who know their status; and

WHEREAS, universal screening of pregnant women would significantly reduce the chances of a newborn contracting HIV during the birthing process; and

WHEREAS, public health would be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection; and

WHEREAS, public health would also be served by expanding the availability of informed, voluntary, and confidential HIV diagnostic testing and making HIV diagnostic testing a routine part of general medical care; and

WHEREAS, making HIV diagnostic testing a routine part of general medical care is the national recommendation by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention."

2003 Amendment: Chapter 396 in (1) at beginning deleted "Except as provided in subsection (2)" and at end inserted "the Government Health Care Information Act, Title 50, chapter 16, part 6, or applicable federal law"; deleted former (2) that read: "(2) A local board, local health officer, or the department may disclose the identity of the subject of an HIV-related test or the test results only to the extent allowed by the Government Health Care Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health care provider employed by it provided health care to the subject, in which case the Uniform Health Care Information Act governs the release of that information"; and made minor changes in style. Amendment effective April 18, 2003.

1991 Amendment: At beginning of (1) inserted exception clause; inserted (2) concerning disclosure of subject of test; in (3), at end of first sentence, substituted "who are potential contacts" for "with whom there has been a contact capable of spreading HIV"; and inserted (4) providing penalty for unauthorized disclosure. Amendment effective July 1, 1991.

Severability: Section 8, Ch. 544, L. 1991, was a severability clause.

Attorney General's Opinions

Conditions for Release of Information About HIV Test Subject — Imminent Danger to Health or Safety: In reconciling the apparent conflict in the provision of medical information as contained in the Uniform Health Care Information Act and the AIDS Prevention Act, the Attorney General determined that a health care provider may release health care information about the subject of an HIV-related test, including the identity of the subject, to a contact, as defined in 50-16-1003, without the subject's authorization, only when the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or other individual. 44 A.G. Op. 37 (1992).

50-16-1013. Civil remedy.

Compiler's Comments

2009 Amendment: Chapter 362 in (4) and in (5) substituted "HIV diagnostic" for "HIV-related"; in (5) near end following "department or the" inserted "U.S. department of health and human services" and at end substituted "and prevention" for "of the United States public health service"; and made minor changes in style. Amendment effective October 1, 2009.

Preamble: The preamble attached to Ch. 362, L. 2009, provided: "WHEREAS, in 2008, 22 people in Montana received a new HIV diagnosis and 514 people are reported to be living with HIV/AIDS in Montana; and

WHEREAS, an estimated 21% of people living with HIV/AIDS in the U.S. are unaware of their infection; and

WHEREAS, it has been shown that people who are not aware of their HIV-positive status are more likely to transmit the disease than those who know their status; and

WHEREAS, universal screening of pregnant women would significantly reduce the chances of a newborn contracting HIV during the birthing process; and

WHEREAS, public health would be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection; and

WHEREAS, public health would also be served by expanding the availability of informed, voluntary, and confidential HIV diagnostic testing and making HIV diagnostic testing a routine part of general medical care; and

WHEREAS, making HIV diagnostic testing a routine part of general medical care is the national recommendation by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention."

1991 Amendment: In (1)(a) increased damages from $1,000 to $5,000; and in (1)(b) increased damages from $5,000 to $20,000. Amendment effective July 1, 1991.

Severability: Section 8, Ch. 544, L. 1991, was a severability clause.

Case Notes

No Abuse of Discretion in Jury Instructions Regarding Negligence, Res Ipsa Loquitur, and Exception to HIV Informed Consent Provision: Howard contended that the trial court abused its discretion by providing insufficient jury instructions that did not allow the jury to determine whether defendant acted recklessly, by failing to inform the jury that the AIDS Prevention Act required defendant to pay per se damages if defendant acted negligently or recklessly by failing to get consent from Howard's alleged significant other prior to administering an HIV test, and by refusing an instruction on res ipsa loquitur permitting proof by circumstantial evidence. The Supreme Court found no abuse of the trial court's discretion. The jury found no breach of defendant's standard of care, so there could be no finding that defendant acted recklessly, and the issue of damages was moot. A res ipsa loquitur instruction was unnecessary because restraints applied on Howard at the hospital were not necessarily the cause of Howard's back injury, which also may have been caused by a seizure rather than the hospital's actions. Last, a material question existed whether Howard's girlfriend was actually a significant other under the AIDS Prevention Act, so the trial court's instruction on the guidelines regarding when an HIV test may be ordered without informed consent adequately informed the jury on the issue. Howard v. St. James Community Hosp., 2006 MT 23, 331 M 60, 129 P3d 126 (2006).

50-16-1014. Screening and pretest information.

Compiler's Comments

Preamble: The preamble attached to Ch. 362, L. 2009, provided: "WHEREAS, in 2008, 22 people in Montana received a new HIV diagnosis and 514 people are reported to be living with HIV/AIDS in Montana; and

WHEREAS, an estimated 21% of people living with HIV/AIDS in the U.S. are unaware of their infection; and

WHEREAS, it has been shown that people who are not aware of their HIV-positive status are more likely to transmit the disease than those who know their status; and

WHEREAS, universal screening of pregnant women would significantly reduce the chances of a newborn contracting HIV during the birthing process; and

WHEREAS, public health would be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection; and

WHEREAS, public health would also be served by expanding the availability of informed, voluntary, and confidential HIV diagnostic testing and making HIV diagnostic testing a routine part of general medical care; and

WHEREAS, making HIV diagnostic testing a routine part of general medical care is the national recommendation by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention."

Effective Date: This section is effective October 1, 2009.

50-16-1015. Prenatal HIV screening.

Compiler's Comments

Preamble: The preamble attached to Ch. 362, L. 2009, provided: "WHEREAS, in 2008, 22 people in Montana received a new HIV diagnosis and 514 people are reported to be living with HIV/AIDS in Montana; and

WHEREAS, an estimated 21% of people living with HIV/AIDS in the U.S. are unaware of their infection; and

WHEREAS, it has been shown that people who are not aware of their HIV-positive status are more likely to transmit the disease than those who know their status; and

WHEREAS, universal screening of pregnant women would significantly reduce the chances of a newborn contracting HIV during the birthing process; and

WHEREAS, public health would be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection; and

WHEREAS, public health would also be served by expanding the availability of informed, voluntary, and confidential HIV diagnostic testing and making HIV diagnostic testing a routine part of general medical care; and

WHEREAS, making HIV diagnostic testing a routine part of general medical care is the national recommendation by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention."

Effective Date: This section is effective October 1, 2009.

50-16-1016. Labor and delivery HIV screening.

Compiler's Comments

Preamble: The preamble attached to Ch. 362, L. 2009, provided: "WHEREAS, in 2008, 22 people in Montana received a new HIV diagnosis and 514 people are reported to be living with HIV/AIDS in Montana; and

WHEREAS, an estimated 21% of people living with HIV/AIDS in the U.S. are unaware of their infection; and

WHEREAS, it has been shown that people who are not aware of their HIV-positive status are more likely to transmit the disease than those who know their status; and

WHEREAS, universal screening of pregnant women would significantly reduce the chances of a newborn contracting HIV during the birthing process; and

WHEREAS, public health would be served by facilitating informed, voluntary, and confidential use of tests designed to reveal HIV infection; and

WHEREAS, public health would also be served by expanding the availability of informed, voluntary, and confidential HIV diagnostic testing and making HIV diagnostic testing a routine part of general medical care; and

WHEREAS, making HIV diagnostic testing a routine part of general medical care is the national recommendation by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention."

Effective Date: This section is effective October 1, 2009.

CHAPTER 17
DISEASE PREVENTION AND CONTROL

Part 1
Tuberculosis Control

Part Compiler's Comments

Saving Clause — Severability: Sections 11 and 12, Ch. 61, L. 1985, were, respectively, a saving clause and a severability section. Chapter 61, L. 1985, amended 50-17-101 through 50-17-105, 50-17-107, 50-17-108, 50-17-110, 50-17-112, and 50-17-113.

Part Administrative Rules

Title 37, chapter 114, ARM Communicable disease control.

Title 37, chapter 114, subchapter 10, ARM Tuberculosis control.

50-17-101. Policy of state.

Compiler's Comments

1985 Amendment: In (1) after "tuberculosis", deleted "in a communicable state".

50-17-102. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 602, L. 2023. Amendment effective July 1, 2023.

2017 Amendment: Chapter 400 inserted definitions of acute heart attack, critical access hospital, emergency medical service, and receiving hospital; in definition of treatment location after "person" inserted "diagnosed with tuberculosis"; and made minor changes in style. Amendment effective October 1, 2017.

2001 Amendment: Chapter 190 inserted definition of hospital; inserted definition of treatment location; in definition of tuberculosis in (a) at end after "mycobacterium tuberculosis" inserted "or mycobacterium tuberculosis complex" and inserted (b) excluding infection by mycobacterium bovis as part of cancer therapy; and made minor changes in style. Amendment effective April 3, 2001.

Saving Clause: Section 11, Ch. 190, L. 2001, was a saving clause.

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences, provided for in Title 2, chapter 15, part 21". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1985 Amendment: Inserted (1) defining "approved course of treatment"; and in (4) substituted "disease caused by mycobacterium tuberculosis" for "disease caused by the tubercle bacillus characterized by the production of tuberculous lesions".

50-17-103. Powers and duties of department.

Compiler's Comments

1985 Amendment: In (1)(c) after "determination", inserted "and control" and after "tuberculosis", deleted "in a communicable state".

Statement of Intent: The statement of intent attached to Ch. 61, L. 1985, provided: "A statement of intent is required for House Bill 119 because it adds authority to adopt rules concerning control of tuberculosis to the current authority of the department of health and environmental sciences [now department of public health and human services] in section 50-17-103, MCA, to adopt rules to determine whether tuberculosis exists.

The object of the specific chapter relating to tuberculosis (Title 50, chapter 17, MCA) has always been control of the disease, though the section in that chapter granting the department rulemaking authority only grants DHES [now DPHHS] the power to set standards for determining the existence of TB. However, since DHES [now DPHHS] has independent authority to adopt rules for control of any communicable disease (section 50-1-202, MCA), a category including tuberculosis, the department at present has rules in force prescribing TB control measures. Adding authority to Title 50, chapter 17, for DHES [now DPHHS] to adopt tuberculosis control rules will implement the primary purpose of that chapter and render the rulemaking authority specific to tuberculosis consistent with that granted for control of communicable diseases in general.

Therefore, it is the intent of the legislature that the department of health and environmental sciences [now department of public health and human services] has express rulemaking authority to adopt tuberculosis control rules setting standards for effective outpatient, as well as inpatient, treatment of tuberculosis, except for treatment prescribed by a physician in accordance with current acceptable medical standards; necessary measures to prevent transmission of the disease to others; and reporting to DHES [now DPHHS] and/or local health departments."

50-17-105. Application to require examination or treatment for tuberculosis.

Compiler's Comments

2001 Amendment: Chapter 190 in (2)(b) substituted language concerning treatment location for approved course of treatment for "enter or return to a hospital for treatment or follow an approved course of treatment outside of a hospital"; and made minor changes in style. Amendment effective April 3, 2001.

Saving Clause: Section 11, Ch. 190, L. 2001, was a saving clause.

1985 Amendment: Near middle of (1) before "tuberculosis", deleted "communicable"; in (2)(a) after "tuberculosis", inserted "and, if he is found to have tuberculosis, to complete an approved course of treatment"; in (2)(b) after "treatment", deleted "if the person is a menace to public health" and inserted "or follow an approved course of treatment outside of a hospital"; in (3)(a) substituted "having tuberculosis or has been exposed to tuberculosis" for "having tuberculosis in a communicable state or has been exposed to communicable tuberculosis, is a menace to public health"; and in (3)(b) substituted "has tuberculosis and has refused to be treated or to complete an approved course of treatment" for "is suffering from tuberculosis in a communicable state, is a menace to public health, and has refused to enter or has left a hospital against the advice of a physician or health officer".

50-17-107. Adjudication of application.

Compiler's Comments

2001 Amendment: Chapter 190 in (1) after "enter or return to a" substituted "treatment location for treatment" for "hospital for treatment or to follow an approved course of treatment outside of a hospital"; and in (2) near middle after "examination for tuberculosis" inserted "at a hospital" and at end after "course of treatment" inserted "if the person is found to have tuberculosis". Amendment effective April 3, 2001.

Saving Clause: Section 11, Ch. 190, L. 2001, was a saving clause.

1985 Amendment: In (1) substituted "true and order the person to enter or return to a hospital for treatment or to follow an approved course of treatment outside of a hospital" for "true and order the person committed to a hospital"; and in (2) after "tuberculosis", inserted "within a specified time and to complete an approved course of treatment".

50-17-108. Commitment on noncompliance with order to be examined or treated.

Compiler's Comments

2001 Amendment: Chapter 190 in (1) near beginning after "comply with an order" inserted "issued pursuant to 50-17-107", near middle after "within the time set" deleted "or to complete an approved course of treatment", and at end after "to a hospital" inserted "to determine if the person has tuberculosis and, if so, whether the person is infectious"; inserted (2) requiring court to order treatment under certain conditions; and made minor changes in style. Amendment effective April 3, 2001.

Saving Clause: Section 11, Ch. 190, L. 2001, was a saving clause.

1985 Amendment: Inserted "or to complete an approved course of treatment".

50-17-109. Order of commitment — warrant for transportation.

Compiler's Comments

2001 Amendment: Chapter 190 in introductory clause substituted language concerning commitment to hospital or treatment location for "The court shall"; in (1)(a) inserted "at which the person is to be examined"; inserted (1)(b) regarding person who will supervise course of treatment; in (2) at end after "to the designated hospital" inserted "or treatment location"; and made minor changes in style. Amendment effective April 3, 2001.

Saving Clause: Section 11, Ch. 190, L. 2001, was a saving clause.

50-17-110. Confinement in hospital or treatment location — submission to treatment.

Compiler's Comments

2001 Amendment: Chapter 190 in (1) in first sentence near middle after "at the hospital" inserted "or treatment location"; in (2) after "of the hospital" inserted reference to person supervising treatment at treatment location and at end after "at the hospital" inserted "or location"; and made minor changes in style. Amendment effective April 3, 2001.

Saving Clause: Section 11, Ch. 190, L. 2001, was a saving clause.

1985 Amendment: In (1) after "discharged", inserted "under 50-17-112 or 50-17-113" and after "surgical treatment", substituted remainder of (1) for "without written consent. If the person is incompetent, consent by his next of kin or guardian is required. If a person is a minor, consent by his parent or guardian is required."

50-17-111. Transfer of person to another treatment location.

Compiler's Comments

2001 Amendment: Chapter 190 in first sentence near beginning after "best interest" inserted "of a person committed to a treatment location" and in two places substituted "location" for "hospital" and in second sentence near beginning after "in charge of the" substituted "approved course of treatment at the location" for "hospital"; and made minor changes in style. Amendment effective April 3, 2001.

Saving Clause: Section 11, Ch. 190, L. 2001, was a saving clause.

50-17-112. Procedure to obtain release from commitment.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1985 Amendment: Substituted entire text (see 1985 Session Law) for: "(1) A person committed under 50-17-107 or 50-17-108 may apply for a release.

(2) The procedure for the request and a hearing is:

(a) not fewer than 180 days after commitment, the person applies to the court that ordered commitment requesting release;

(b) not fewer than 3 or more than 7 days after receipt of the request, the court holds a hearing.

(3) Following the hearing, the court:

(a) orders his discharge if it finds he no longer has tuberculosis in a communicable state; or

(b) dismisses the request if it finds he still has tuberculosis in a communicable state."

50-17-113. Voluntary release.

Compiler's Comments

2001 Amendment: Chapter 190 in (1) near beginning substituted "physician for the person at the hospital or treatment location where the person has been committed" for "person in charge of the hospital", near middle after "does not have tuberculosis or has" substituted "completed an approved course of treatment" for "submitted to an approved course of treatment", and at end after "released from the hospital" inserted "or treatment location"; in (2) at beginning substituted "The department or local board of health that requested commitment" for "The person in charge of the hospital"; and made minor changes in style. Amendment effective April 3, 2001.

Saving Clause: Section 11, Ch. 190, L. 2001, was a saving clause.

1985 Amendment: In (1) after "concur that a person" substituted "either does not have tuberculosis or has submitted to an approved course of treatment" for "is no longer a menace to public health".

50-17-114. Payment of costs, expenses, and fees.

Compiler's Comments

2001 Amendment: Chapter 190 in (2)(d) near middle after "from a hospital" inserted "or treatment location"; in (3) after "hospital" inserted "or treatment location"; and made minor changes in style. Amendment effective April 3, 2001.

Saving Clause: Section 11, Ch. 190, L. 2001, was a saving clause.

50-17-115. Emergency detainment — petition — detention.

Compiler's Comments

2001 Amendment: Chapter 190 in (1) in first sentence near beginning after "that a person has" deleted "communicable" and near middle after "hearing on commitment" deleted "to a hospital"; in (2) near middle after "in that the person probably has" deleted "communicable"; and made minor changes in style. Amendment effective April 3, 2001.

Saving Clause: Section 11, Ch. 190, L. 2001, was a saving clause.

Effective Date: Section 4, Ch. 460, L. 1989, provided that this section is effective April 5, 1989.

Part 2
Cardiovascular Disease

Part Compiler's Comments

Effective Date: This part is effective October 1, 2017.

CHAPTER 18
SEXUALLY TRANSMITTED DISEASES

Chapter Administrative Rules

Title 37, chapter 114, ARM Communicable disease control.

Part 1
General Provisions

Part Compiler's Comments

Saving Clause: Section 21, Ch. 440, L. 1989, was a saving clause.

Severability: Section 22, Ch. 440, L. 1989, was a severability clause.

50-18-101. Sexually transmitted diseases defined.

Compiler's Comments

1993 Amendment: Chapter 71 at beginning substituted "Human immunodeficiency virus (HIV)" for "Acquired immunodeficiency syndrome (AIDS)". Amendment effective February 23, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 71, L. 1993, provided: "It is the intent of the legislature to amend 46-18-256 and 50-18-101 in order to comply with federal requirements of the Crime Control Act of 1990 that requires states to enact laws related to human immunodeficiency virus (HIV) testing of certain convicted offenders or be subject to reduced federal funding.

Upon the request of the victim or the victim's representatives, testing and the test results must be made available for the victim's information. Testing information may or may not reveal exposure to the HIV virus. If exposed, the victim can seek medical treatment and take steps to protect others from the further spread of the epidemic.

This bill is intended to be a benefit to public health and safety by attempting to control and limit the potential spread and impact of disease. It is not intended to add additional sanctions or penalties for conviction of sexual abuse offenses or to make criminals of the victims of disease."

1989 Amendment: Inserted "Acquired immunodeficiency syndrome (AIDS)" and "chlamydia genital infections"; and in two places substituted "sexually transmitted" for "venereal".

50-18-102. Powers and duties of department.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Substituted "sexually transmitted" for "venereal".

50-18-103. Cooperation with federal agencies — federal funds.

Compiler's Comments

1995 Amendments: Chapter 418 in (1) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in (1) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: In two places substituted "sexually transmitted" for "venereal".

50-18-104. Serological test for syphilis.

Compiler's Comments

1995 Amendments: Chapter 418 in (1) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Deleted former (3) that read: "(3) The department shall destroy the results of a test if an erroneous report is made."

1985 Amendment: At end of (2) deleted "without charge".

50-18-105. Rules of department binding.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-18-106. Duty to report cases.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Deleted former (1) that read: "(1) A physician who diagnoses or treats a venereal disease shall make a record and report the case to the department of health and environmental sciences in the way and on forms provided by the department"; and substituted "a sexually transmitted" for "venereal".

50-18-107. Powers and duties of health officers.

Compiler's Comments

1989 Amendment: In two places substituted "a sexually transmitted" for "venereal".

Case Notes

Due Process: Due process provisions of amend. 14, U.S. Const., and of Art. III, sec. 6 and 7, 1889 Mont. Const. (now Art. III, sec. 24 and 11, 1972 Mont. Const.), have no application to one detained in quarantine because affected with a dangerous communicable disease. In re Caselli, 62 M 201, 204 P 364 (1922).

Quarantine Laws Within Police Power of Legislature: The Legislature under its police power may enact laws authorizing the establishment of quarantine regulations and requiring the detention of persons affected with contagious diseases dangerous to the public health without resort to a preliminary judicial proceeding to determine the character of the disease and the facts constituting the danger to public health. In re Caselli, 62 M 201, 204 P 364 (1922).

Habeas Corpus: A person placed in quarantine because affected with a communicable disease may, on habeas corpus, challenge the right of the authorities to continue his detention if the facts upon which the order was made no longer exist. In re Caselli, 62 M 201, 204 P 364 (1922).

Quarantine of Prostitute: Evidence that a woman who had been plying her trade as a prostitute shortly before her arrest by County Health Officer was affected with gonorrhea and was a constant associate of prostitutes was sufficient to warrant her detention in quarantine until such time as it was safe to allow her to go at large. In re Caselli, 62 M 201, 204 P 364 (1922).

50-18-108. Examination and treatment of prisoners.

Compiler's Comments

1989 Amendment: Substituted "a sexually transmitted" for "venereal"; and made minor change in phraseology.

50-18-109. Permissible release of information concerning infected persons.

Compiler's Comments

1995 Amendments: Chapter 418 in (1)(a) and (1)(d) substituted "department of public health" for "department of health and environmental sciences"; in (2), at end after "privileged", inserted "as provided in 26-1-810"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1)(a) and (1)(d) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: In introductory clause of (1) substituted "a sexually transmitted" for "venereal"; inserted (1)(c) regarding a local health officer; inserted (1)(d) authorizing release allowed by Title 50, ch. 16, part 6; in (2) substituted "sexually transmitted" for "venereal" and at end deleted "and shall not be required to testify concerning anything within their knowledge or work activities having any relation to venereal disease work"; in (3), in two places, substituted "sexually transmitted" for "venereal"; and made minor changes in phraseology.

50-18-110. Unlawful dispensing of drugs for cure or alleviation of sexually transmitted disease.

Compiler's Comments

1989 Amendment: Substituted "a sexually transmitted" for "venereal" and at end substituted "person legally authorized to do so by the pharmacy laws of this state" for "physician legally authorized to practice medicine in this state".

50-18-111. Certificate of freedom from sexually transmitted disease not to be issued.

Compiler's Comments

1989 Amendment: Substituted "a sexually transmitted" for "venereal".

50-18-112. Infected person not to expose another to sexually transmitted disease.

Compiler's Comments

1989 Amendment: Substituted "sexually transmitted" for "venereal"; and made minor change in phraseology.

50-18-113. Violation a misdemeanor.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Substituted "a sexually transmitted" for "venereal".

CHAPTER 19
PREGNANT WOMEN AND NEWBORN INFANTS

Part 1
Serological Test for Women Seeking Prenatal Care

Part Compiler's Comments

Severability Clause: Section 10, Ch. 228, L. 1973, was a severability clause.

Part Administrative Rules

Title 37, chapter 12, subchapter 8, ARM Prenatal care serological tests.

50-19-101. Definitions.

Compiler's Comments

2009 Amendment: Chapter 2 at beginning inserted introductory clause. Amendment effective October 1, 2009.

2005 Amendment: Chapter 519 in definition of health care provider substituted "physician assistant" for "physician assistant-certified". Amendment effective October 1, 2005.

2001 Amendment: Chapter 351 inserted definition of health care provider; in definition of standard serological test near end inserted "and a screening for hepatitis B surface antigen"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-19-102. Duties of department.

Compiler's Comments

2001 Amendment: Chapter 351 in (2) substituted "health care provider" for "physician"; in (3) inserted reference to hepatitis B surface antigen; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendment: In (3) substituted "sexually transmitted" for "venereal".

Saving Clause: Section 21, Ch. 440, L. 1989, was a saving clause.

Severability: Section 22, Ch. 440, L. 1989, was a severability clause.

50-19-103. Prenatal blood sample required for serological test.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 33, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

2001 Amendment: Chapter 351 in (1) in two places substituted "health care provider" for "physician"; in (2) at beginning substituted "health care provider" for "physician or other person authorized by law to practice obstetrics"; in (4) at beginning of first sentence substituted "health care provider" for "physician or other person required to take the blood sample" and near beginning of second sentence substituted "health care provider" for "person"; and made minor changes in style. Amendment effective October 1, 2001.

50-19-104. Approved laboratory to perform syphilis, hepatitis B surface antigen, and rubella immunity tests.

Compiler's Comments

2001 Amendment: Chapter 351 in (1) near beginning inserted "hepatitis B surface antigen". Amendment effective October 1, 2001.

1985 Amendment: Removed requirements that department approve laboratory that performs blood group tests as part of prenatal serological tests and that department laboratory perform blood group tests, by substituting entire text (see 1985 Session Law) for: "(1) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department. Any other state, United States public health service, or United States armed forces laboratory shall be approved for the purpose of this part.

(2) The laboratory test may be made on request at the laboratory of the department. A reasonable fee for the test may be established by the department."

50-19-105. Report of positive test results.

Compiler's Comments

2001 Amendment: Chapter 351 near middle inserted "or hepatitis B surface antigen". Amendment effective October 1, 2001.

1989 Amendment: Substituted "sexually transmitted" for "venereal"; and made minor change in phraseology.

Saving Clause: Section 21, Ch. 440, L. 1989, was a saving clause.

Severability: Section 22, Ch. 440, L. 1989, was a severability clause.

50-19-107. Required and permissible exhibit of test results.

Compiler's Comments

2001 Amendment: Chapter 351 in first sentence substituted "health care provider" for "physician"; and made minor changes in style. Amendment effective October 1, 2001.

Part 2

Metabolic Tests of Infants — Genetics Program

Part Administrative Rules

Title 37, chapter 57, subchapter 3, ARM Infant screening tests and eye treatment.

50-19-201. Definitions.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 418 in definition of Department substituted "department of public health provided for in Title 2, chapter 15, part 21" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Because of the repeal of 2-15-2101, the Code Commissioner has codified the reference to 2-15-2201.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-19-203. Newborn screening and followup for metabolic and genetic disorders.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 287, L. 2023. Amendment effective July 1, 2023.

2021 Amendment: Chapter 372 in (1) at end of introductory paragraph inserted last sentence concerning rulemaking to add testing for a new metabolic or genetic disorder to the newborn screening panel; inserted (1)(a) regarding screening for a genetic or metabolic condition using dried blood spots or other testing; inserted (1)(b) regarding quality assurance testing methodology; inserted (1)(c) regarding commercial availability of necessary materials; and inserted (1)(d) regarding recommendation by the newborn screening advisory committee. Amendment effective October 1, 2021.

Preamble: The preamble attached to Ch. 372, L. 2021, provided: "WHEREAS, the Montana Legislature has become aware that there are newborn screening tests available and treatments that can improve quality of life in conjunction with early diagnosis for certain lysosomal storage disorders including MPS I, Pompe, Gaucher, Fabry, and Krabbe diseases; and

WHEREAS, it is the intent of the Montana Legislature that these disorders be added to the newborn screening panel provided for each infant born in the State of Montana and that additional diseases be added to the panel in response to technological advancements; and

WHEREAS, to ensure that MPS I, Pompe, Gaucher, Fabry, and Krabbe diseases are considered for addition to the newborn screening panel and that other diseases are added as new testing and treatment methods become available, the creation of an advisory committee and protocols for adding new diseases to the newborn screening panel is necessary."

2007 Amendment: Chapter 401 in (1) in three places substituted "newborn" for "infant" or "newborn infant" and near end after "metabolic" substituted "and genetic disorders" for "errors"; inserted (3) requiring the department to contract with one or more qualified providers to provide followup services for children and parents of children identified with metabolic or genetic disorders; and made minor changes in style. Amendment effective October 1, 2007.

Case Notes

Nonresident Laboratory Subjected to Suit Under Long-Arm Statute — Exercise of Jurisdiction Unreasonable — Violation of Due Process: Since 1977, the Montana Department of Health and Environmental Sciences [now Department of Public Health and Human Services], the agency responsible under Title 59, ch. 19, part 2, for the testing of newborns for metabolic disorders, has contracted with an Oregon state laboratory for the testing. Plaintiff's minor son was born in June 1977. A sample of his blood was sent to the Oregon laboratory. No abnormality was reported. A few months later the son exhibited symptoms of a metabolic disorder, and treatment was begun in September 1977. After first filing an action in Oregon, which was later dismissed on procedural grounds, plaintiff filed a negligence action in Montana against the states of Montana and Oregon, alleging that the delay in treatment had caused his son permanent and irreparable brain and neuromuscular damage. The trial court dismissed the action against the state of Oregon on jurisdictional grounds. The Supreme Court affirmed, ruling that although both subsections (b) and (e) of former Rule 4B, M.R.Civ.P. (now superseded), potentially confer jurisdiction over the state of Oregon in this case, it would be a denial of due process for the Montana state courts to exercise that jurisdiction. The court found that Oregon had not structured its activities in such a way as to purposely avail itself of the privilege of functioning in Montana. Further, the court ruled that an evaluation of the interests of sovereignty, efficiency of resolution, and provision of important interstate medical services compels the conclusion that it would be unreasonable in this case to exercise jurisdiction over the state of Oregon. Simmons v. St., 206 M 264, 670 P2d 1372, 40 St. Rep. 1650 (1983).

50-19-204. Department and Montana developmental center to furnish assistance when requested.

Compiler's Comments

1985 Amendment: Throughout section changed "Boulder River school and hospital" to "Montana developmental center".

Severability Clause: Section 5, Ch. 227, L. 1973, was a severability clause.

50-19-205. Newborn screening advisory committee — membership — duties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 166, L. 2023. Amendment effective October 1, 2023.

Effective Date: This section is effective October 1, 2021.

Code Commissioner Correction: In (3)(b), the Code Commissioner substituted the bracketed reference to "nine" for "eight" to reflect the actual number of voting members on the committee.

Preamble: The preamble attached to Ch. 372, L. 2021, provided: "WHEREAS, the Montana Legislature has become aware that there are newborn screening tests available and treatments that can improve quality of life in conjunction with early diagnosis for certain lysosomal storage disorders including MPS I, Pompe, Gaucher, Fabry, and Krabbe diseases; and

WHEREAS, it is the intent of the Montana Legislature that these disorders be added to the newborn screening panel provided for each infant born in the State of Montana and that additional diseases be added to the panel in response to technological advancements; and

WHEREAS, to ensure that MPS I, Pompe, Gaucher, Fabry, and Krabbe diseases are considered for addition to the newborn screening panel and that other diseases are added as new testing and treatment methods become available, the creation of an advisory committee and protocols for adding new diseases to the newborn screening panel is necessary."

50-19-206. Genetic material related to newborn screening — limitations — retention.

Compiler's Comments

Effective Date: Section 4, Ch. 287, L. 2023, provided: "[This act] is effective July 1, 2023."

50-19-211. Statewide genetics program established.

Compiler's Comments

2007 Amendment: Chapter 401 in (1) after "department" substituted "to ensure the availability of services that include but are not limited to" for "to offer testing, counseling, and education to parents and prospective parents. The program includes but is not limited to the following services"; deleted former (1)(a) that read: "(a) followup programs for newborn testing, with emphasis on the counseling and education of women at risk for maternal phenylketonuria"; in (1)(b) at beginning deleted "development of"; in (1)(b) and in (1)(c)(iii) after "conditions" deleted "and metabolic disorders"; in (1)(c) at beginning deleted "development and expansion of"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 396 in (1) near beginning after "A" substituted "combined, comprehensive" for "voluntary"; in (1)(b) near beginning inserted "clinical and self-supporting laboratory" and near middle inserted "including but not limited to cytogenetics, DNA, and special chemistry"; inserted (2) regarding contract for genetic services; and made minor changes in style. Amendment effective October 1, 2005.

50-19-212. State special revenue account.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

Part 3

Montana Initiative for the Abatement of Mortality in Infants

Part Compiler's Comments

Appropriation Coordination — Void Without Appropriation: Section 12, Ch. 649, L. 1989, provided: "[This act] is void unless an appropriation for the administration of [this act] is specifically made to the department of health and environmental sciences [now department of public health and human services) in House Bill No. 100." The appropriation narrative for item 8, Preventive Health, of the appropriation to the Department of Health and Environmental Sciences (now Department of Public Health and Human Services) in House Bill No. 100 stated that item 8 included an appropriation to fund the MIAMI program.

Effective Date: Section 16, Ch. 649, L. 1989, provided that this part is effective July 1, 1989.

50-19-301. Short title.

Compiler's Comments

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-302. Purposes.

Compiler's Comments

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-303. Definitions.

Compiler's Comments

1997 Amendment: Chapter 171 deleted definition of Council that read: ""Council" means the MIAMI project advisory council established in 2-15-2213"; and made minor changes in style.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in 2-15-2101". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-311. MIAMI project.

Compiler's Comments

1991 Amendment: Inserted (2)(b) providing for morbidity review of low birthweight babies. Amendment effective June 30, 1991.

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-321. Contracts for services.

Compiler's Comments

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-322. Federal and other aid.

Compiler's Comments

2009 Amendment: Chapter 10 in (2) after "available" substituted "may be" for "are"; and made minor changes in style. Amendment effective October 1, 2009.

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-323. Coordination of programs.

Compiler's Comments

Code Commissioner Correction: Chapter 67, L. 2013, changed references to a fetal, infant, and child mortality review team to a fetal infant, child, and maternal mortality review team. The code commissioner has changed the references to the review team in this section to reflect the changes made by Ch. 67.

1997 Amendment: Chapter 519 inserted (4) regarding the services of fetal, infant, and child mortality teams; and made minor changes in style. Amendment effective May 2, 1997.

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

Part 4
Fetal, Infant, Child, and Maternal Mortality Prevention Act

Part Compiler's Comments

Effective Date: Section 11, Ch. 519, L. 1997, provided: "[This act] is effective on passage and approval." Approved May 2, 1997.

50-19-401. Short title.

Compiler's Comments

2013 Amendment: Chapter 67 after "Child" inserted "and Maternal"; and made minor changes in style. Amendment effective October 1, 2013.

50-19-402. Statement of policy — access to information.

Compiler's Comments

2013 Amendment: Chapter 67 throughout section after "child" inserted "and maternal"; in (1) in second sentence after "children" inserted "and postnatal women"; in (2)(a)(iii)(A) inserted reference to part 8; in (3)(a)(i) after "deaths" deleted "including a review of records available by law"; inserted (3)(a)(ii) concerning analyzing maternal deaths; in (3)(a)(iv) after "neglect" inserted "and postpartum complications"; inserted (3)(b) relating to reviewing available records; substituted current language in (4) prohibiting review of deaths in certain instances for former (4) that read: "(4) A local fetal, infant, and child mortality review team may not review deaths of fetuses, infants, or children who are Indians and which deaths occur within the boundaries of an Indian reservation with a tribal government that opposes the review"; and made minor changes in style. Amendment effective October 1, 2013.

2003 Amendments — Composite Section: Chapter 396 in (2) at end of second sentence after "provider as" substituted "permitted in Title 50, chapter 16, part 5, or applicable federal law" for "provided in 50-16-525 after the review team has considered whether the disclosure of the information by the provider satisfies the criteria provided in 50-16-529(6)". Amendment effective April 18, 2003.

Chapter 413 in (1) at end of fourth sentence inserted "and make recommendations for community or statewide change, if appropriate, that may help prevent future death"; in (2) in second sentence after "44-5-303(4)" inserted "from a tribal attorney"; in (3) in introductory clause at end after "may" deleted "only"; inserted (3)(a) relating to an indepth analysis of fetal, infant, and child deaths; at end of (3)(b) inserted "and communicate the statistics to the department of public health and human services for inclusion in statistical reports"; inserted (4) providing that a local team may not review deaths of Indian fetuses, infants, or children occurring on a reservation with a tribal government that opposes review; and made minor changes in style. Amendment effective October 1, 2003.

50-19-403. Local fetal, infant, child, and maternal mortality review team.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 15, Ch. 88, L. 2023. Amendment effective April 18, 2023.

2013 Amendment: Chapter 67 in (1) in first sentence after "child" inserted "and maternal"; inserted (1)(d) concerning review team membership obstetrical care requirements; in (2) in first sentence after "child" inserted "and maternal"; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 449 in (2)(s)(iv) after "local" substituted "governmental fire agency organized under Title 7, chapter 33" for "fire department". Amendment effective June 1, 2007.

2003 Amendment: Chapter 413 in (1) in introductory clause in first sentence substituted "department of public health and human services" for "county health department" and near beginning of second sentence substituted "may be given" for "must be given"; in (1)(a) inserted "a tribal health department, if the tribal government agrees, or both are represented on the team and the plan provided for in subsection (1)(d) includes the roles of the county health department, tribal health department, or both"; in (1)(d) at beginning substituted "a plan has been developed by the team" for "the five individuals have developed a plan"; inserted (2)(g) concerning a representative from a tribal health department, appointed by the tribal government; inserted (2)(h) concerning a representative from a neighboring county or tribal government, if there is an agreement to review deaths for that county or tribe; deleted former (2)(p) that read: "(p) a representative, appointed by the tribal government, of an Indian reservation that is located in whole or in part within the boundaries of the county"; inserted (3) requiring the team's designated lead person to submit membership lists to the department annually; and made minor changes in style. Amendment effective October 1, 2003.

50-19-404. Records — confidentiality.

Compiler's Comments

2013 Amendment: Chapter 67 in first sentence after "child" inserted "and maternal"; in second sentence before "review team" deleted "local fetal, infant, and child mortality"; and made minor changes in style. Amendment effective October 1, 2013.

2003 Amendment: Chapter 413 in second sentence at end deleted "unless the material and information are reviewed by a district court judge and ordered to be provided to the person seeking access". Amendment effective October 1, 2003.

50-19-405. Unauthorized disclosure — civil penalty.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 396 at end after "(8)" inserted "or 50-16-817". Amendment effective April 18, 2003.

Chapter 413 in middle after "violation of 50-19-402(2)" deleted "by a member of a local fetal, infant, and child mortality review team". Amendment effective October 1, 2003.

50-19-406. Unauthorized disclosure — misdemeanor.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 396 at end after "provided in" substituted "46-18-212" for "50-16-551". Amendment effective April 18, 2003.

Chapter 413 at beginning substituted "A person" for "A member of a local fetal, infant, and child mortality review team". Amendment effective October 1, 2003.

Part 5
Breastfeeding

50-19-501. Nursing mother and infant protection.

Compiler's Comments

2007 Amendment: Chapter 29 in (3)(c) at end substituted "45-5-625" for "45-5-620(1)(f)". Amendment effective October 1, 2007.

Preamble: The preamble attached to Ch. 299, L. 1999, provided: "WHEREAS, there are benefits to the child, the mother, and society by encouraging and enabling mothers to breastfeed their children; and

WHEREAS, an infant who is breast-fed receives protection against infection, illness, and allergies and long-term positive effects on the development, intelligence, and health of breast-fed children have been found; and

WHEREAS, a protective effect against various types of cancer and greater emotional and physical health are found for mothers who breastfeed; and

WHEREAS, breastfeeding promotes sufficient birth spacing, improved vaccine effectiveness, and decreased food and medical expenses, which all have positive societal effects;

WHEREAS, the Montana Supplemental Nutrition Program for Women, Infants, and Children (WIC) promotes breastfeeding education and support; and

WHEREAS, legislation to clarify the right to breastfeed is necessary to promote breastfeeding by mothers and remove any stumbling block from influencing a mother's decision to breastfeed or continue breastfeeding out of fear of reprisal."

Effective Date: This section is effective October 1, 1999.

CHAPTER 20
ABORTION

Chapter Case Notes

Abortion Legislation Challenged — Application of Preliminary Injunction Before 2023 Amendments — District Court Did Not Manifestly Abuse Discretion in Granting Preliminary Injunction by Determining Plaintiffs Made Prima Facie Showing That Challenged Laws Were Unconstitutional. Planned Parenthood of Mont. v. St., 2022 MT 157, 409 Mont. 378, 515 P.3d 301. (Annotator's note: See changes to preliminary injunction standard made by sec. 1, Ch. 43, L. 2023.)

Abortion Notice and Consent Laws — No Issue Preclusion — Summary Judgment Improper: The plaintiff challenged the constitutionality of the Parental Notice of Abortion Act of 2011 and the Parental Consent for Abortion Act of 2013. Based on Lambert v. Wicklund, 520 US 292 (1997), and Intermtn. Planned Parenthood v. St. (Cause No. BDV 97-477) (June 29, 1998), a First Judicial District Court ruling not appealed to the Montana Supreme Court, the District Court granted the plaintiff summary judgment, holding that the earlier rulings prevented the state from challenging the constitutionality of the two acts. On appeal, the Supreme Court reversed and remanded the matter for further proceedings. In analyzing the four factors of issue preclusion, the Supreme Court concluded that the 2011 and 2013 laws were not "substantively identical" to the 1995 laws analyzed in the earlier rulings for the purposes of issue preclusion. Planned Parenthood of Mont. v. St., 2015 MT 31, 378 Mont. 151, 342 P.3d 684.

Constitutionality of Judicial Bypass of Parental Notice Requirement Upheld by U.S. Supreme Court: Physicians and other medical personnel brought a civil action in the U.S. District Court of Montana challenging the "judicial bypass" provision in 50-20-212 (now repealed) by which a court could waive the requirement for parental notification of the minor's intent to seek an abortion.

The District Court held the bypass provision unconstitutional because Bellotti v. Baird, 443 US 622 (1979), as interpreted by the District Court, required that judicial bypass mechanisms authorize waiver of notice requirements whenever the abortion would be in the best interests of the minor, not just when notification would not be in the minor's best interests. The Ninth Circuit Court, in Wicklund v. Salvagni, 93 F3d 567 (1996), affirmed, stating that it was bound by its prior decision in Glick v. McKay, 937 F2d 434 (1991), in which it struck down a similar parental notification and judicial bypass statute in Nevada. The U.S. Supreme Court pointed out that in Ohio v. Akron Center for Reproductive Health, 497 US 502 (1990) (Akron II), it had upheld a parental notification statute that was virtually indistinguishable from 50-20-212 (now repealed) and in the Akron II opinion declined to decide whether a parental notification statute must have a "judicial bypass" provision to be constitutional, holding only that the Ohio statute at issue in Akron II satisfied any criteria that might be required for a judicial bypass of a parental consent statute. The Supreme Court pointed out that the Ninth Circuit Court affirmed the District Court decision based only upon its previous decision in Glick, and that decision, the Supreme Court said, simply cannot be squared with its decision in Akron II. Because the statute at issue in Akron II was upheld and because that statute is virtually indistinguishable from 50-20-212 (now repealed), the Supreme Court held that 50-20-212 (now repealed) was also constitutional. The Supreme Court held that the court of appeals should have drawn no conclusions from the fact that the statute at issue in Bellotti allowed a court to bypass the parental consent to an abortion if it found that the abortion was in the best interests of the minor, while the statute at issue in the present case allows bypass of notification if notice is not in the best interests of the minor. Lambert v. Wicklund, 520 US 292 (1997). See also Intermtn. Planned Parenthood v. St. (Cause No. BDV 97-477) (June 29, 1998) (First Judicial District Court ruling (not appealed to Montana Supreme Court) that the law banning partial-birth abortion procedure infringed on a woman's right to privacy under Art. II, sec. 10, Mont. Const.), and Planned Parenthood of Missoula v. St. (judgment of the First Judicial District, Lewis & Clark County, Dec. 29, 1999, declaring provisions of the Montana Abortion Control Act and the Woman's Right-to-Know Act unconstitutional under Art. II. sec. 10, Mont. Const.). In Planned Parenthood of Mont. v. St., 2015 MT 31, 378 Mont. 151, 342 P.3d 684, the Supreme Court concluded that the 2011 and 2013 parental notification and consent laws were not "substantively identical" to the 1995 laws considered in Wicklund for the purposes of issue preclusion.

Chapter Law Review Articles

Now What? The Right to Privacy in Montana After Dobbs, Borgmann, 84 Mont. L. Rev. 223 (2023), https://scholarworks.umt.edu/mlr/vol84/iss2/2/.

The Constitutional Politics of Abortion Policy After Dobbs: State Courts, Constitutions, and Lawmaking, Dinan, 84 Mont. L. Rev. 27 (2023), https://scholarworks.umt.edu/mlr/vol84/iss1/4/.

How Strong Is Armstrong? What to Make of Montana's Ambiguous Autonomy Rights in a Post-Roe World, McKee, 83 Mont. L. Rev. 323 (2022), https://scholarworks.umt.edu/mlr/vol83/iss2/5/.

Parental Notification of Abortion and Minors: Rights Under the Montana Constitution, Hayhurst, 58 Mont. L. Rev. 565 (1997).

Part 1

Montana Abortion Control Act

Part Compiler's Comments

Severability Clause: Section 94-5-624, R.C.M. 1947 (sec. 12, Ch. 284, L. 1974), was a severability clause that was not codified.

Part Administrative Rules

Title 37, chapter 21, ARM Documentation and study of abortion.

Part Case Notes

Supreme Court Expands States' Rights to Regulate Abortions: Reversing an Eighth Circuit Court of Appeals decision, the U.S. Supreme Court ruled that three provisions of Missouri's abortion law (a preamble's definition of when life begins, a ban on the use of public facilities and employees for the performance of elective abortions, and a requirement that physicians conduct medical tests and procedures to determine fetal viability) did not unconstitutionally violate a woman's right to obtain an abortion under Roe v. Wade. Since the Missouri provision banning abortion counseling did not adversely affect the parties, the court ruled the controversy moot. Webster v. Reproductive Health Serv., 109 S Ct 3040 (1989).

Part Law Review Articles

The Abortion Control Act, Navratil, 36 Mont. L. Rev. 159 (1975).

50-20-101. Short title.

Compiler's Comments

2005 Amendment: Chapter 130 at beginning after "This" substituted "part" for "chapter shall be known and". Amendment effective October 1, 2005.

50-20-102. Statement of purpose — findings.

Compiler's Comments

1999 Amendment: Chapter 479 in (1) inserted third through fifth sentences regarding policy findings of a compelling state interest; and inserted (2) establishing legislative findings regarding abortion. Amendment effective October 1, 1999.

Preamble: The preamble attached to Ch. 479, L. 1999, provided: "WHEREAS, in Intermountain Planned Parenthood v. State of Montana, No. BDV 97-477 (First Judicial District, 1998), the District Court found the definition of "partial-birth abortion" void for reasons of vagueness."

Severability: Section 4, Ch. 479, L. 1999, was a severability clause.

50-20-104. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 389, L. 2023. Amendment effective May 3, 2023.

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 566 in (1) substituted current definition of abortion for former language that read: ""Abortion" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth"; inserted definition of attempted abortion or attempted; in definition of informed consent, in (a) after "information", deleted "as is reasonably chargeable to the knowledge of the physician in his professional capacity", substituted (a)(i) through (a)(iii) (see 1995 Session Law for text) for former language in (a) through (c) that read: "(a) the stage of development of the fetus, the method of abortion to be utilized, and the effects of such abortion method upon the fetus;

(b) the physical and psychological effects of abortion; and

(c) available alternatives to abortion, including childbirth and adoption", inserted (b) requiring full disclosure by physician or agent of medical assistance benefits, child support liability, and woman's right to review printed material, and inserted (c) requiring full disclosure by physician or agent that printed materials have been provided by Department and describe unborn child and list agencies offering alternatives to abortion; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Construction: Section 12, Ch. 566, L. 1995, provided: "[Sections 1 through 10] [Title 50, ch. 20, part 3, 50-20-104, and 50-20-106] may not be construed as creating or recognizing a right to abortion. [Sections 1 through 10] [Title 50, ch. 20, part 3, 50-20-104, and 50-20-106] do not make lawful any abortion that is currently unlawful."

Severability: Section 13, Ch. 566, L. 1995, was a severability clause.

50-20-105. Duties of department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 278, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 308 inserted (4) regarding certification forms. Amendment effective October 1, 2021.

Case Notes

Recordkeeping and Reporting Requirements: Requiring and regulating recordkeeping and reporting by physicians and agencies performing abortions are constitutionally permissible so long as not administered in an unduly burdensome manner. Doe v. Deschamps, 461 F. Supp. 682 (D.C. Mont. 1976).

50-20-106. Informed consent.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment: Chapter 566 in first sentence in (1), after "consent", inserted "of the woman upon whom the abortion is to be performed" and inserted second sentence requiring receipt of informed consent 24 hours prior to abortion and certification of consent prior to abortion; in (2) substituted "50-20-104(5)" for "50-20-104(4)"; inserted (3) requiring that materials be provided, if requested for review, at least 24 hours before abortion or delivered by mail at least 72 hours before abortion; inserted (4) authorizing required information to be provided by telephone without conducting patient examination or tests; inserted (5) authorizing tape recording providing information if woman's choice to review material is specifically registered; in (6), after "or consent", inserted "provided for in this section" and after "necessary" substituted "because of a medical emergency as defined in 50-20-303" for "to preserve the life of the mother"; in (8) substituted "subsections (1) through (7)" for "subsections (1) and (4)"; and made minor changes in style. Amendment effective July 1, 1995.

Construction: Section 12, Ch. 566, L. 1995, provided: "[Sections 1 through 10] [Title 50, ch. 20, part 3, 50-20-104, and 50-20-106] may not be construed as creating or recognizing a right to abortion. [Sections 1 through 10] [Title 50, ch. 20, part 3, 50-20-104, and 50-20-106] do not make lawful any abortion that is currently unlawful."

Severability: Section 13, Ch. 566, L. 1995, was a severability clause.

Case Notes

Informed Consent Requirement: In accordance with the U.S. Supreme Court decision in Planned Parenthood of Central Missouri v. Danforth, 428 US 52 (1976), Montana's statute requiring informed consent prior to an abortion is constitutional as the decision to abort is important and a woman's full knowledge and awareness of the decision may be assured constitutionally by the state to the extent of requiring her prior written consent. (See 1995 amendment.) Doe v. Deschamps, 461 F. Supp. 682 (D.C. Mont. 1976).

Spousal Notice Requirement — Unconstitutional as Written: Because Montana's statute requiring notice by a woman to her husband prior to an abortion does not prescribe the method of giving notice, it is unduly restrictive and does not afford adequate protection for either the physician or the pregnant woman and is therefore unconstitutional as written. (See 1995 amendment.) Doe v. Deschamps, 461 F. Supp. 682 (D.C. Mont. 1976).

50-20-108. Protection of premature infants born alive.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Criminal Liability Provision — Constitutionality: The Supreme Court upheld the criminal liability provision of this section because, in part, it contains the same definition of "viable" infant as approved in Planned Parenthood of Central Missouri v. Danforth, 428 US 52 (1976). Doe v. Deschamps, 461 F. Supp. 682 (D.C. Mont. 1976).

50-20-109. Control of practice of abortion.

Compiler's Comments

2023 Amendments — Composite Section: Section 16, Ch. 88, L. 2023, deleted former (2) that read: "(2) The supervision agreement of a physician assistant may provide for performing abortions"; and made minor changes in style. Amendment effective April 18, 2023.

Section 2, Ch. 389, L. 2023, in (1)(b)(i) before "capable of feeling pain" inserted "who is"; inserted (1)(b)(ii) concerning viability; and made minor changes in style. Amendment effective May 3, 2023.

2021 Amendment: Chapter 307 in (1)(b) substituted "on an unborn child capable of feeling pain, except as provided in 50-20-603" for "after viability of the fetus, except as provided in subsection (2)"; deleted former (2), (3), and (4) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2021.

Preamble: The preamble attached to Ch. 307, L. 2021, provided: "WHEREAS, pain receptors are present throughout an unborn child's entire body no later than 16 weeks after fertilization, and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks gestational age; and

WHEREAS, by 8 weeks after fertilization, an unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling; and

WHEREAS, in the unborn child, application of painful stimuli is associated with significant increases in stress hormones known as the stress response; and

WHEREAS, subjection to painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life; and

WHEREAS, for the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without anesthesia; and

WHEREAS, there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks gestational age; and

WHEREAS, the state asserts a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain; and

WHEREAS, an abortion occurring later in pregnancy may increase the risk to the woman of the occurrence of infection, sepsis, heavy bleeding, or a ruptured or perforated uterus."

2005 Amendment: Chapter 519 in (1)(a) at end inserted "or physician assistant"; in (5) substituted "supervision agreement" for "utilization plan", substituted "physician assistant" for "physician assistant-certified", and after "may" deleted "not"; and in (6) after "(3)" deleted "and (5)". Amendment effective October 1, 2005.

1999 Amendment: Chapter 479 deleted former (1)(b) that read: "(b) after the first 3 months of pregnancy, except in a hospital licensed by the department"; in (1)(b) after "fetus" substituted "except as provided in subsection (2)" for "unless in appropriate medical judgment, the abortion is necessary to preserve the life or health of the mother"; in (2) at end after "performed" inserted "only to preserve the life or health of the mother and only"; deleted former (4) that read: "(4) A physician, facility, or other person or agency may not engage in solicitation, advertising, or other form of communication that has the purpose of inviting, inducing, or attracting a person to come to the physician, facility, or other person or agency to have an abortion or to purchase abortifacients"; inserted (4) defining health; in (6) at end deleted former second sentence that read: "Violation of subsection (4) is a misdemeanor"; and made minor changes in style. Amendment effective October 1, 1999.

Preamble: The preamble attached to Ch. 479, L. 1999, provided: "WHEREAS, in Intermountain Planned Parenthood v. State of Montana, No. BDV 97-477 (First Judicial District, 1998), the District Court found the definition of "partial-birth abortion" void for reasons of vagueness."

Severability: Section 4, Ch. 479, L. 1999, was a severability clause.

1997 Amendment: Chapter 314 in (1) inserted "Except as provided in 50-20-401"; and made minor changes in style.

1995 Amendments — Composite Section: Chapter 321 inserted (5) excluding performance of abortions from the utilization plan of a physician assistant-certified; in (6) inserted reference to subsection (5); and made minor changes in style.

Chapter 354 in (3), at end after "45-2-101", deleted "(37)"; and made minor changes in style. Amendment effective April 11, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

1981 Amendment: Changed internal references to section 45-2-101 in subsection (3) to reflect amendment of that section.

Case Notes

Statutory Limitation of Abortion Providers to Physicians or Physician Assistants — Unconstitutional Interference With Woman's Right of Privacy Regarding Medical Care. Weems v. St., 2023 MT 82, 412 Mont. 132, 529 P.3d 798.

2005 Amendments to Abortion Law Challenged in 2018 — Standing — Injunctive Relief Upheld: The 2005 Montana Legislature amended 50-20-109 to restrict the performance of previability abortions to licensed physicians and physician assistants. The plaintiffs, a certified nurse practitioner and a certified nurse midwife, filed an action in 2018 seeking a declaratory judgment that the statute violated Montana's constitutional rights of privacy, equal protection, and dignity. The District Court held that the plaintiffs were entitled to a preliminary injunction because they had made a showing that enforcement of the statute prior to the conclusion of litigation would cause irreparable injury. On appeal, the Supreme Court affirmed, holding that the plaintiffs had standing to seek relief on their claim, enforcement of the statute prior to the conclusion of litigation would cause irreparable injury, and enjoinment of the statute through a preliminary injunction was not too contingent or remote to support present adjudication. Weems v. St., 2019 MT 98, 395 Mont. 350, 440 P.3d 4.

Prohibition Against Abortion by Physician Assistant-Certified (Now Physician Assistant) Unconstitutional Violation of Right of Privacy: After the decision in Mazurek v. Armstrong, 520 US 968, 138 L Ed 2d 162, 117 S Ct 1865 (1997), ibid., Dr. Armstrong and Cahill, a physician assistant-certified (now physician assistant), filed this case in state District Court challenging the constitutionality of 37-20-103 and this section, which prohibit a physician assistant-certified (now physician assistant) from performing abortions. (See 2005 amendment.) The District Court found that the prohibition affected a woman's right to obtain a legal first trimester abortion and that the state had advanced no compelling interest to justify prohibiting Cahill from performing abortions, as she had for 20 years, and granted plaintiffs' motion for a preliminary injunction. Noting that Montana adheres to one of the most stringent protections of its citizens' right of privacy in the United States, exceeding even the federal constitution, the Supreme Court affirmed, holding that legislation that infringes on the exercise of the right of privacy must be reviewed under a strict scrutiny analysis. Under Art. II, sec. 10, Mont. Const., every individual is guaranteed the right to make medical judgments affecting that person's bodily integrity and health, in partnership with a chosen health care provider and free from government interference, except in very limited circumstances not at issue here. The court agreed that the statutory restrictions in question impacted a woman's right to procreative autonomy and her right to seek and obtain a specific lawful medical procedure from the health care provider of her choice, in this case a previability abortion from a physician assistant-certified (now physician assistant), and were thus an unconstitutional violation of the right of privacy. Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999), following Gryczan v. St., 283 M 433, 942 P2d 112, 54 St. Rep. 699 (1997). See also Intermtn. Planned Parenthood v. St. (Cause No. BDV 97-477) (June 29, 1998) (First Judicial District Court ruling (not appealed to Montana Supreme Court) that the law banning partial-birth abortion procedure infringed on a woman's right to privacy under Art. II, sec. 10, Mont. Const.), Planned Parenthood of Missoula v. St. (judgment of the First Judicial District, Lewis & Clark County, Dec. 29, 1999, declaring provisions of the Montana Abortion Control Act and the Woman's Right-to-Know Act unconstitutional under Art. II. sec. 10, Mont. Const.), and Weems v. St., 2019 MT 98, 395 Mont. 350, 440 P.3d 4.

Standing of Health Care Providers to Litigate Privacy Right of Patient to Obtain Previability Abortion: In a case of first impression, the Supreme Court relied on federal law to decide that the statutes directed at health care providers in 37-20-103 and this section, which prohibit a physician assistant-certified (now physician assistant) from performing abortions (see 2005 amendment), interfered with the normal functioning of the physician-patient relationship by criminalizing certain procedures. To establish standing to challenge government action: (1) the complaining party must clearly allege past, present, or threatened injury to a property right or civil right; and (2) the alleged injury must be distinguishable from the injury to the public generally but need not be exclusive to the complaining party. In this case, based on the closeness of the physician-patient relationship, the health care providers had standing, on behalf of their women patients, to assert the women's constitutional privacy right under Art. II, sec. 10, Mont. Const., to obtain a previability abortion from the health care provider of their choosing. Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999), following Singleton v. Wulff, 428 US 106, 49 L Ed 2d 826, 96 S Ct 2868 (1976). See also Intermtn. Planned Parenthood v. St. (Cause No. BDV 97-477) (June 29, 1998) (First Judicial District Court ruling (not appealed to Montana Supreme Court) that the law banning partial-birth abortion procedure infringed on a woman's right to privacy under Art. II, sec. 10, Mont. Const.), Planned Parenthood of Missoula v. St. (judgment of the First Judicial District, Lewis & Clark County, Dec. 29, 1999, declaring provisions of the Montana Abortion Control Act and the Woman's Right-to-Know Act unconstitutional under Art. II. sec. 10, Mont. Const.), and Weems v. St., 2019 MT 98, 395 Mont. 350, 440 P.3d 4.

"Physician Only" Limitation on Performance of Abortions Upheld by U.S. Supreme Court — No Evidence of "Undue Burden": A group of licensed physicians and one licensed physician assistant-certified (now physician assistant) practicing in Montana brought an action in the U.S. District Court challenging the constitutionality of this section, claiming that the statute allowing only licensed physicians to conduct abortions imposed an "undue burden" on a woman's right to an abortion within the meaning of Planned Parenthood of SE. Pa. v. Casey, 505 US 833 (1992). (See 2005 amendment.) The District Court, in Armstrong v. Mazurek, 906 F. Supp. 561 (D.C. Mont. 1995), denied the plaintiffs' motion for a preliminary injunction, finding that the plaintiffs had not established any likelihood of their success on the merits. The Ninth Circuit Court vacated the District Court judgment, holding in Mazurek v. Armstrong, 94 F3d 566 (9th Cir. 1996), that the plaintiffs had shown a "fair chance of success on the merits" of their claim, and remanded the case to the District Court with instructions to reconsider the "balance of hardships" and to determine whether entry of a preliminary injunction was warranted. The District Court entered an injunction pending appeal, and the state was granted certiorari. Noting that the Ninth Circuit Court did not challenge the District Court's conclusion that there was insufficient evidence in the record to show that a statute allowing only physicians to perform abortions in Montana placed an undue burden upon women seeking abortions, the Supreme Court said that the legality of the "physician only" requirement at issue in the present case is controlled by its decision in Casey. In that case, the Supreme Court upheld a "physician only" requirement for the distribution of information to abortion patients when there was insufficient evidence in the record to show that the law was a substantial obstacle to women seeking abortions. The Supreme Court pointed out that the decision of the Ninth Circuit Court was based upon the rationale that the "physician only" requirement could be invalidated if the purpose of the law, as assumed by the court of appeals, was to impose a substantial burden on women seeking abortions. The Supreme Court noted that it had already held in Washington v. Davis, 426 US 229 (1976), that courts should not assume an unconstitutional legislative intent even when statutes produce harmful results and that in this case, there was no evidence of an unconstitutional legislative result because there was no evidence of an undue burden. Moreover, the Supreme Court said that the respondent's argument that the Legislature must have had an invalid purpose because all health evidence contradicts the claim that there is any health basis for the statute was foreclosed by its opinion in Casey when it held that states have broad latitude to decide that a particular function must be carried out only by licensed professionals even though objective evidence might suggest that those same tasks could be performed by others. The Supreme Court also noted that it had held in Roe v. Wade, 410 US 113 (1973), and Conn. v. Menillo, 423 US 9 (1975), that a state may limit the performance of abortions to physicians only. For these reasons, the Supreme Court vacated the judgment of the court of appeals and remanded the case to the District Court. Mazurek v. Armstrong, 520 US 968 (1997).

Prohibiting Solicitation and Advertising — Unconstitutional: This section's prohibition against solicitation for the purpose of attracting a person to come to a doctor or agency to have an abortion is unconstitutional as it infringes upon a person's first amendment rights. (See 1999 amendment.) Doe v. Deschamps, 461 F. Supp. 682 (D.C. Mont. 1976).

Physician Concurrence After Viability — Constitutionality: The physician concurrence requirement of this section is constitutional because it is limited to the period "after viability of the fetus", when the concern is for the preservation of the "potentiality of life" compatible with the health of the mother. This holding follows the statement in Roe v. Wade, 410 US 113, at 163 (1973), that "State regulation protective of fetal life after viability thus has both logical and biological justifications." At such a point the state may properly require more than the opinion of the woman's attending physician to insure that the potentiality of life is not destroyed. Doe v. Deschamps, 461 F. Supp. 682 (D.C. Mont. 1976).

50-20-110. Reporting of practice of abortion.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 278, L. 2023. Amendment effective October 1, 2023.

1981 Amendment: Added (6) providing a penalty.

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

Case Notes

Recordkeeping and Reporting Requirements: Requiring and regulating recordkeeping and reporting by physicians and agencies performing abortions are constitutionally permissible so long as not administered in an unduly burdensome manner. Doe v. Deschamps, 461 F. Supp. 682 (D.C. Mont. 1976).

50-20-111. Right to refuse participation in abortion — affirmative consent required.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 376, L. 2023. Amendment effective October 1, 2023.

Applicability: Section 12, Ch. 376, L. 2023, provided: "[This act] applies to insurance policies issued on or after [the effective date of this act]." Effective October 1, 2023.

Severability: Section 11, Ch. 376, L. 2023, was a severability clause.

50-20-112. Penalties.

Compiler's Comments

1995 Amendment: Chapter 566 inserted (4)(a) prohibiting penalty against woman upon whom abortion is performed or attempted; and inserted (4)(b) prohibiting penalty for failure to comply with requirements to provide written materials if Department has not provided materials to physician or agent. Amendment effective July 1, 1995.

Construction: Section 12, Ch. 566, L. 1995, provided: "[Sections 1 through 10] [Title 50, ch. 20, part 3, 50-20-104, and 50-20-106] may not be construed as creating or recognizing a right to abortion. [Sections 1 through 10] [Title 50, ch. 20, part 3, 50-20-104, and 50-20-106] do not make lawful any abortion that is currently unlawful."

Severability: Section 13, Ch. 566, L. 1995, was a severability clause.

1987 Amendment: In (1) and (2) substituted "deliberate, mitigated, or negligent homicide" for "criminal homicide"; and near end of (1) substituted "45-5-102" for "45-5-101".

50-20-113. Provision of information — exceptions — penalty.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

Case Notes

Abortion Legislation Challenged — Application of Preliminary Injunction Before 2023 Amendments — District Court Did Not Manifestly Abuse Discretion in Granting Preliminary Injunction by Determining Plaintiffs Made Prima Facie Showing That Challenged Laws Were Unconstitutional. Planned Parenthood of Mont. v. St., 2022 MT 157, 409 Mont. 378, 515 P.3d 301. (Annotator's note: See changes to preliminary injunction standard made by sec. 1, Ch. 43, L. 2023.)

Part 3

Woman's Right to Know

Part Compiler's Comments

Construction: Section 12, Ch. 566, L. 1995, provided: "[Sections 1 through 10] [Title 50, ch. 20, part 3, 50-20-104, and 50-20-106] may not be construed as creating or recognizing a right to abortion. [Sections 1 through 10] [Title 50, ch. 20, part 3, 50-20-104, and 50-20-106] do not make lawful any abortion that is currently unlawful."

Severability: Section 13, Ch. 566, L. 1995, was a severability clause.

Effective Date: Section 15, Ch. 566, L. 1995, provided: "[This act] is effective July 1, 1995."

Part Case Notes

Provisions Enjoined — Unconstitutional Violation of Right to Privacy: Following the Montana Supreme Court's ruling in Armstrong v. St., 1999 MT 261, 296 M 361, 989 P2d 364, 56 St. Rep. 1045 (1999), the First Judicial District Court, Lewis & Clark County, entered judgment declaring 50-20-302 through 50-20-307 unconstitutional under Art. II, sec. 10, Mont. Const. Planned Parenthood of Missoula v. St. (Dec. 29, 1999) (not appealed to the Montana Supreme Court).

50-20-307. Civil remedies.

Compiler's Comments

Code Commissioner Correction: In (5), the Code Commissioner substituted a reference to 37-1-316 for a reference to 37-3-322 pursuant to the authority contained in sec. 73, Ch. 18, L. 1995.

Part 4
Miscellaneous Abortion Laws

50-20-401. Offense of partial-birth abortion — exception — definitions — penalties.

Compiler's Comments

1999 Amendment: Chapter 479 inserted (3)(c)(ii) describing procedures that constitute partial-birth abortion; and made minor changes in style. Amendment effective October 1, 1999.

Preamble: The preamble attached to Ch. 479, L. 1999, provided: "WHEREAS, in Intermountain Planned Parenthood v. State of Montana, No. BDV 97-477 (First Judicial District, 1998), the District Court found the definition of "partial-birth abortion" void for reasons of vagueness."

Severability: Section 4, Ch. 479, L. 1999, was a severability clause.

Part 5
Parental Consent for Abortion Act

Part Compiler's Comments

Severability: Section 16, Ch. 307, L. 2013, was a severability clause.

Effective Date: Section 17, Ch. 307, L. 2013, provided that this part is effective July 1, 2013.

Part Case Notes

Constitutionality of Judicial Bypass of Parental Notice Requirement Upheld by U.S. Supreme Court: Physicians and other medical personnel brought a civil action in the U.S. District Court of Montana challenging the "judicial bypass" provision in 50-20-212 (now repealed) by which a court could waive the requirement for parental notification of the minor's intent to seek an abortion. The District Court held the bypass provision unconstitutional because Bellotti v. Baird, 443 US 622 (1979), as interpreted by the District Court, required that judicial bypass mechanisms authorize waiver of notice requirements whenever the abortion would be in the best interests of the minor, not just when notification would not be in the minor's best interests. The Ninth Circuit Court, in Wicklund v. Salvagni, 93 F3d 567 (1996), affirmed, stating that it was bound by its prior decision in Glick v. McKay, 937 F2d 434 (1991), in which it struck down a similar parental notification and judicial bypass statute in Nevada. The U.S. Supreme Court pointed out that in Ohio v. Akron Center for Reproductive Health, 497 US 502 (1990) (Akron II), it had upheld a parental notification statute that was virtually indistinguishable from 50-20-212 (now repealed) and in the Akron II opinion declined to decide whether a parental notification statute must have a "judicial bypass" provision to be constitutional, holding only that the Ohio statute at issue in Akron II satisfied any criteria that might be required for a judicial bypass of a parental consent statute. The Supreme Court pointed out that the Ninth Circuit Court affirmed the District Court decision based only upon its previous decision in Glick, and that decision, the Supreme Court said, simply cannot be squared with its decision in Akron II. Because the statute at issue in Akron II was upheld and because that statute is virtually indistinguishable from 50-20-212 (now repealed), the Supreme Court held that 50-20-212 (now repealed) was also constitutional. The Supreme Court held that the court of appeals should have drawn no conclusions from the fact that the statute at issue in Bellotti allowed a court to bypass the parental consent to an abortion if it found that the abortion was in the best interests of the minor, while the statute at issue in the present case allows bypass of notification if notice is not in the best interests of the minor. Lambert v. Wicklund, 520 US 292 (1997). See also Intermtn. Planned Parenthood v. St. (Cause No. BDV 97-477) (June 29, 1998) (First Judicial District Court ruling (not appealed to Montana Supreme Court) that the law banning partial-birth abortion procedure infringed on a woman's right to privacy under Art. II, sec. 10, Mont. Const.), and Planned Parenthood of Missoula v. St. (judgment of the First Judicial District, Lewis & Clark County, Dec. 29, 1999, declaring provisions of the Montana Abortion Control Act and the Woman's Right-to-Know Act unconstitutional under Art. II. sec. 10, Mont. Const.). In Planned Parenthood of Mont. v. St., 2015 MT 31, 378 Mont. 151, 342 P.3d 684, the Supreme Court concluded that the 2011 and 2013 parental notification and consent laws were not "substantively identical" to the 1995 laws considered in Wicklund for the purposes of issue preclusion.

50-20-502. Legislative purpose and findings.

Case Notes

Abortion Notice and Consent Laws — No Issue Preclusion — Summary Judgment Improper: The plaintiff challenged the constitutionality of the Parental Notice of Abortion Act of 2011 and the Parental Consent for Abortion Act of 2013. Based on Lambert v. Wicklund, 520 US 292 (1997), and Intermtn. Planned Parenthood v. St. (Cause No. BDV 97-477) (June 29, 1998), a

First Judicial District Court ruling not appealed to the Montana Supreme Court, the District Court granted the plaintiff summary judgment, holding that the earlier rulings prevented the state from challenging the constitutionality of the two acts. On appeal, the Supreme Court reversed and remanded the matter for further proceedings. In analyzing the four factors of issue preclusion, the Supreme Court concluded that the 2011 and 2013 laws were not "substantively identical" to the 1995 laws analyzed in the earlier rulings for the purposes of issue preclusion. Planned Parenthood of Mont. v. St., 2015 MT 31, 378 Mont. 151, 342 P.3d 684.

50-20-509. Procedure for judicial waiver of consent.

Compiler's Comments

2017 Amendment: Chapter 358 in (2) in last sentence substituted "2-15-1029" for "47-1-201". Amendment effective July 1, 2017.

Severability: Section 48, Ch. 358, L. 2017, was a severability clause.

Part 6

Montana Pain-Capable Unborn Child Protection Act

Part Compiler's Comments

Effective Date: This part is effective October 1, 2021.

Preamble: The preamble attached to Ch. 307, L. 2021, provided: "WHEREAS, pain receptors are present throughout an unborn child's entire body no later than 16 weeks after fertilization, and nerves link these receptors to the brain's thalamus and subcortical plate by no later than 20 weeks gestational age; and

WHEREAS, by 8 weeks after fertilization, an unborn child reacts to stimuli that would be recognized as painful if applied to an adult human, for example, by recoiling; and

WHEREAS, in the unborn child, application of painful stimuli is associated with significant increases in stress hormones known as the stress response; and

WHEREAS, subjection to painful stimuli is associated with long-term harmful neurodevelopmental effects, such as altered pain sensitivity and, possibly, emotional, behavioral, and learning disabilities later in life; and

WHEREAS, for the purposes of surgery on unborn children, fetal anesthesia is routinely administered and is associated with a decrease in stress hormones compared to their level when painful stimuli are applied without anesthesia; and

WHEREAS, there is substantial medical evidence that an unborn child is capable of experiencing pain by 20 weeks gestational age; and

WHEREAS, the state asserts a compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that they are capable of feeling pain; and

WHEREAS, an abortion occurring later in pregnancy may increase the risk to the woman of the occurrence of infection, sepsis, heavy bleeding, or a ruptured or perforated uterus."

Part Case Notes

Abortion Legislation Challenged — Application of Preliminary Injunction Before 2023 Amendments — District Court Did Not Manifestly Abuse Discretion in Granting Preliminary Injunction by Determining Plaintiffs Made Prima Facie Showing That Challenged Laws Were Unconstitutional. Planned Parenthood of Mont. v. St., 2022 MT 157, 409 Mont. 378, 515 P.3d 301. (Annotator's note: See changes to preliminary injunction standard made by sec. 1, Ch. 43, L. 2023.)

Part 7

Montana Abortion-Inducing Drug Risk Protocol Act

Part Compiler's Comments

Effective Date: This part is effective October 1, 2021.

Preamble: The preamble attached to Ch. 309, L. 2021, provided: "WHEREAS, in September 2000, the U.S. Food and Drug Administration (FDA) approved the distribution and use of mifepristone (brand name Mifeprex), originally referred to as "RU-486", an abortion-inducing drug, under the authority of 21 C.F.R. 314.520, also referred to as "Subpart H", which is the only FDA approval process that allows for postmarketing restrictions. Specifically, the Code of Federal Regulations provides for accelerated approval of certain drugs that are shown to be effective but "can be safely used only if distribution or use is restricted". The approved FDA protocol for Mifeprex/mifepristone was modified in March 2016; however, the FDA still requires that the distribution and use of Mifeprex/mifepristone be under the supervision of a qualified health care provider who has the ability to assess the duration of pregnancy, diagnose ectopic pregnancies, and provide surgical intervention or who has made plans to provide surgical intervention through another qualified physician; and

WHEREAS, court testimony by Planned Parenthood and other abortion providers has demonstrated that providers routinely and intentionally failed to follow the September 2000 FDA-approved protocol for Mifeprex/mifepristone. See, e.g., Planned Parenthood Cincinnati Region v. Taft, 459 F. Supp. 2d 626 (S.D. Oh. 2006); and

WHEREAS, the use of Mifeprex/mifepristone presents significant medical risks, including but not limited to uterine hemorrhage, viral infections, abdominal pain, cramping, vomiting, headache, fatigue, and pelvic inflammatory disease. Medical evidence demonstrates that women who use abortion-inducing drugs risk four times more complications than those who undergo surgical abortions. At least 3% to 8% of medical abortions fail to evacuate the pregnancy tissue and require surgical completion. One percent will fail to kill the fetus. If surgical completion is required after a failed medical abortion, the risk of premature delivery in a subsequent pregnancy is more than three times higher. Failure rates increase as gestational age increases. The gestational age range of 63 to 70 days has been inadequately studied. The 2016 FDA gestational age extension was based on only one study worldwide of little more than 300 women; and"

WHEREAS, a woman's ability to provide informed consent depends on the extent to which the woman receives information sufficient to make an informed choice. The decision to abort "is an important, and often a stressful one, and it is desirable and imperative that it be made with full knowledge of its nature and consequences". Planned Parenthood v. Danforth, 428 U.S. 52, 67 (1976); and

WHEREAS, in recent years, physicians have developed a method to potentially reverse the effects of Mifeprex/mifepristone. This abortion pill reversal or "rescue" process has been discussed in a peer-reviewed study and is based on decades of the safe use of progesterone to stabilize and continue pregnancies. Progesterone has been used safely in pregnancies for decades and is used in in vitro fertilization, infertility treatments, and high-risk pregnancies, including those experiencing preterm labor. Using progesterone to reverse the effects of Mifeprex/mifepristone is a targeted response that is safe for the woman; and

WHEREAS, abortion "record keeping and reporting provisions that are reasonably directed to the preservation of maternal health and that properly respect a patient's confidentiality and privacy are permissible". Planned Parenthood v. Danforth, 428 U.S. 80 at 52, 79-81 (1976).

Severability: Section 16, Ch. 309, L. 2021, was a severability clause.

Part Case Notes

Abortion Legislation Challenged — Application of Preliminary Injunction Before 2023 Amendments — District Court Did Not Manifestly Abuse Discretion in Granting Preliminary Injunction by Determining Plaintiffs Made Prima Facie Showing That Challenged Laws Were Unconstitutional. Planned Parenthood of Mont. v. St., 2022 MT 157, 409 Mont. 378, 515 P.3d 301. (Annotator's note: See changes to preliminary injunction standard made by sec. 1, Ch. 43, L. 2023.)

50-20-709. Reporting on chemical abortions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 166, L. 2023. Amendment effective October 1, 2023.

Part 8

Infant Safety and Care Act

Part Compiler's Comments

Effective Date: Section 11, Ch. 392, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 3, 2023.

Severability: Section 10, Ch. 392, L. 2023, was a severability clause.

Part 9

Licensure and Regulation of Abortion Clinics

50-20-901. Definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

50-20-902. Licensure of abortion clinics — application — fee.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

50-20-903. Department regulation of abortion clinics — rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

50-20-904. Inspections.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 10
Dismemberment Abortion Prohibition Act

Part Compiler's Comments

Preamble: The preamble attached to Ch. 490, L. 2023, provided: "WHEREAS, at 12 weeks' gestation, an unborn human being can open and close fingers, starts to make sucking motions, senses stimulation from the world outside the womb, and can likely experience pain, and, as the Supreme Court in Gonzales v. Carhart, 550 U.S. 124 (2007), recognized, the unborn human being has taken on "the human form" in all relevant aspects; and

WHEREAS, many abortion procedures performed after 12 weeks' gestation are dismemberment abortion procedures, which involve "tearing apart and extracting piece-by-piece from the uterus what was until then a living child.. [and which are] usually done during the 15 to 18 week stage of development, at which time the unborn child's heart is already beating", West Alabama Women's Ctr. v. Williamson, 900 F.3d 1310 (11th Cir. 2018); and

WHEREAS, the dismemberment abortion procedure involves the use of clamps, grasping forceps, tongs, scissors, and similar instruments that through the convergence of two rigid levers slide, crush, or grasp a portion of an unborn human being's body in order to cut it, rip it off, or crush it; and

WHEREAS, the Legislature find that the intentional commission of such acts for nontherapeutic or elective reasons is a barbaric practice, is dangerous for the pregnant woman, and is demeaning to the medical profession; and

WHEREAS, a law regulating abortion, like other health and welfare laws, is entitled to a strong presumption of validity, and it must be sustained if there is a rational basis on which the Legislature could have thought that it would serve legitimate state interests; and

WHEREAS, Montana's legitimate interest in regulating abortion generally and the performance of the dismemberment abortion procedure specifically includes "respect for and preservation of prenatal life at all stages of development; the protection of maternal health and safety; the elimination of particularly gruesome or barbaric medical procedures; the preservation of the integrity of the medical profession; the mitigation of fetal pain; and the prevention of discrimination on the basis of race, sex, or disability", Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022); and

WHEREAS, an article published in Obstetrics and Gynecology in 2004 reported that abortion carries significant physical and psychological risks to the pregnant woman that increase with gestational age, and, in abortions performed after 8 weeks' gestation, the relative physical and psychological risks escalate exponentially as gestational age increases; and

WHEREAS, as the second trimester progresses, in the vast majority of uncomplicated pregnancies, the maternal health risks of undergoing an abortion are greater than the risks of carrying a pregnancy to term; and

WHEREAS, dismemberment abortion procedures carry inherent risks of infection, bleeding, damage to other genitourinary and gastrointestinal organs, incomplete emptying of the uterus, cervical laceration, and uterine perforation; and

WHEREAS, the Charlotte Lozier Institute reports that dismemberment abortion procedures and other abortion procedures performed after the first trimester account for "a disproportionate amount of abortion-related morbidity and mortality."

Severability: Section 10, Ch. 490, L. 2023, was a severability clause.

50-20-1001. Short title.

Compiler's Comments

Effective Date: Section 11, Ch. 490, L. 2023, provided that this section is effective on passage and approval. Approved May 16, 2023.

50-20-1002. Definitions.

Compiler's Comments

Effective Date: Section 11, Ch. 490, L. 2023, provided that this section is effective on passage and approval. Approved May 16, 2023.

50-20-1003. Dismemberment abortion procedures prohibited — penalty.

Compiler's Comments

Effective Date: Section 11, Ch. 490, L. 2023, provided that this section is effective on passage and approval. Approved May 16, 2023.

50-20-1005. Professional sanctions — civil fines — enforcement.

Compiler's Comments

Effective Dates — Contingency: Section 11, Ch. 490, L. 2023, provided: "(1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 4] [50-20-1004] and [section 5(2) and (3)] [50-20-1005(2) and (3)] are effective on the later of:

(a) passage and approval; or

(b) the date the department of public health and human services certifies in writing to the code commissioner that the form required under [section 4] [50-20-1004] has been created." Subsections (1) and (4) effective May 16, 2023.

50-20-1006. Construction.

Compiler's Comments

Effective Date: Section 11, Ch. 490, L. 2023, provided that this section is effective on passage and approval. Approved May 16, 2023.

50-20-1007. Right of intervention.

Compiler's Comments

Effective Date: Section 11, Ch. 490, L. 2023, provided that this section is effective on passage and approval. Approved May 16, 2023.

CHAPTER 21
CADAVERS AND AUTOPSIES

Part 1
General Provisions

Part Law Review Articles

The Montana Coroner System: An Archaic Inadequacy in Need of Reform, Pfaff & MacKenzie, 36 Mont. L. Rev. 1 (1975).

50-21-101. Procurement of cadavers.

Compiler's Comments

2017 Amendment: Chapter 318 inserted (2) concerning procurement of cadaver specimens from nationally accredited nontransplant anatomic banks; and made minor changes in style. Amendment effective October 1, 2017.

50-21-102. Procedure to procure cadavers.

Compiler's Comments

2017 Amendment: Chapter 318 inserted (8) concerning contracting with nationally accredited nontransplant anatomic bank for conducting anatomical dissection or surgical demonstration and training; and made minor changes in style. Amendment effective October 1, 2017.

1995 Amendments: Chapter 418 in (2) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.
Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-21-103. Limitations on right to perform autopsy or dissection.

Compiler's Comments

2017 Amendment: Chapter 318 near beginning after "dissect a human body" inserted "conduct surgical demonstration or training on a human body"; and made minor changes in style. Amendment effective October 1, 2017.

1995 Amendment: Chapter 546 in (5) substituted "department of corrections" for "department of corrections and human services" and immediately after inserted reference to Department of Public Health and Human Services; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

50-21-104. Autopsies.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Disclosure of Investigation Reports: County Attorneys, law enforcement personnel, and Coroners must release reports of accident investigations, autopsies, and related tests to persons specifically listed in statutes. Public access to the results of investigations not covered by statute is left to the discretion of the public official following the guidelines set forth in this opinion and 37 A.G. Op. 107 (1978). 37 A.G. Op. 112 (1978).

50-21-106. Penalty for unauthorized postmortem examinations.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

CHAPTER 22
DETERMINATION OF DEATH

Part 1
General Provisions

Part Case Notes

Action to Be Dismissed Upon Death of Either Spouse During Pendency of Dissolution Proceeding — ". . . until death do you part": One spouse in a dissolution action died shortly after a hearing was held on his petition for dissolution of marriage, but no judgment had yet been entered, either written or oral. In affirming the District Court in dismissing the petition, the Supreme Court held that death terminates a marriage as a matter of law; therefore, there is nothing for the court to dissolve. The death of either spouse during the pendency of a dissolution action prior to the entry of judgment divests the court of all jurisdiction over the action, including matters involving the distribution of property. In re Marriage of Lawrence, 212 M 327, 687 P2d 1026, 41 St. Rep. 1771 (1984).

50-22-101. Determination of death.

Commissioner's Comment

Commissioner's Comment to 1980 Uniform Act

[Section 1 of the Uniform Act (see compiler's comments to 1983 version — 1980 Uniform Law)] provides comprehensive bases for determining death in all situations. It is based on a ten-year evolution of statutory language on this subject. The first statute passed in Kansas in 1970. In 1972, Professor Alexander Capron and Dr. Leon Kass refined the concept further in "A Statutory Definition of the Standards for Determining Human Death: An Appraisal and a Proposal," 121 Pa.L.Rev. 87. In 1975, the Law and Medicine Committee of the American Bar Association (ABA) drafted a Model Definition of Death Act. In 1978, the National Conference of Commissioners on Uniform State Laws (NCCUSL) completed the Uniform Brain Death Act. It was based on the prior work of the ABA. In 1979, the American Medical Association (AMA) created its own Model Determination of Death statute. In the meantime, some twenty-five state legislatures adopted statutes based on one or another of the existing models.

The interest in these statutes arises from modern advances in lifesaving technology. A person may be artificially supported for respiration and circulation after all brain functions cease irreversibly. The medical profession, also, has developed techniques for determining loss of brain functions while cardiorespiratory support is administered. At the same time, the common law definition of death cannot assure recognition of these techniques. The common law standard for determining death is the cessation of all vital functions, traditionally demonstrated by "an absence of spontaneous respiratory and cardiac functions." There is, then, a potential disparity between current and accepted biomedical practice and the common law.

The proliferation of model acts and uniform acts, while indicating a legislative need, also may be confusing. All existing acts have the same principal goal—extension of the common law to include the new techniques for determination of death. With no essential disagreement on policy, the associations which have drafted statutes met to find common language. This Act contains that common language, and is the result of agreement between the ABA, AMA, and NCCUSL.

Part (1) codifies the existing common law basis for determining death—total failure of the cardiorespiratory system. Part (2) extends the common law to include the new procedures for determination of death based upon irreversible loss of all brain functions. The overwhelming majority of cases will continue to be determined according to part (1). When artificial means of support preclude a determination under part (1), the Act recognizes that death can be determined by the alternative procedures.

Under part (2), the entire brain must cease to function, irreversibly. The "entire brain" includes the brain stem, as well as the neocortex. The concept of "entire brain" distinguishes determination of death under this Act from "neocortical death" or "persistent vegetative state." These are not deemed valid medical or legal bases for determining death.

This Act also does not concern itself with living wills, death with dignity, euthanasia, rules on death certificates, maintaining life support beyond brain death in cases of pregnant women or of organ donors, and protection for the dead body. These subjects are left to other law.

This Act is silent on acceptable diagnostic tests and medical procedures. It sets the general legal standard for determining death, but not the medical criteria for doing so. The medical profession remains free to formulate acceptable medical practices and to utilize new biomedical knowledge, diagnostic tests, and equipment.

It is unnecessary for the Act to address specifically the liability of persons who make determinations. No person authorized by law to determine death, who makes such a determination in accordance with the Act, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts or the acts of others based on that determination. No person who acts in good faith, in reliance on a determination of death, should, or will be, liable for damages in any civil action or subject to prosecution in any criminal proceeding for his acts. There is no need to deal with these issues in the text of this Act.

Time of death, also, is not specifically addressed. In those instances in which time of death affects legal rights, this Act states the bases for determining death. Time of death is a fact to be determined with all others in each individual case, and may be resolved, when in doubt, upon expert testimony before the appropriate court.

Finally, since this Act should apply to all situations, it should not be joined with the Uniform Anatomical Gift Act so that its application is limited to cases of organ donation.

Commissioner's Comment to 1978 Uniform Act

[Section 1 of the Uniform Act (see compiler's comments to 1977 version — 1978 Uniform Law)] legislates the concept of brain death. The Act does not preclude a determination of death under other legal or medical criteria, including the traditional criteria of cessation of respiration and circulation. Other criteria are practical in cases where artificial life-support systems are not utilized. Even those criteria are indicative of brain death.

"Functioning" is a critical word in the Act. It expresses the idea of purposeful activity in all parts of the brain, as distinguished from random activity. In a dead brain, some meaningless cellular processes, detectable by sensitive monitoring equipment, could create legal confusion if the word "activity" were substituted for "functioning".

Compiler's Comments

1983 Amendment: Substituted entire section (see 1983 Session Law) for "A human body with irreversible cessation of total brain function, as determined according to usual and customary standards of medical practice, is dead for all legal purposes."

Source of 1983 Version — 1980 Uniform Law: The 1983 version of this section is an enactment of the Uniform Determination of Death Act (1980), drafted by the National Conference of Commissioners on Uniform State Laws.

Source of 1977 Version — 1978 Uniform Law: The 1977 version of 50-22-101 was based on the Uniform Brain Death Act of the National Conference of Commissioners on Uniform State Laws, adopted in 1978. There were some differences, however, which can be seen readily by comparing the pre-1983 version of 50-22-101 (see Ch. 228, L. 1977) with the text of the Uniform Act:

"Section 1. [*Brain Death.*] For legal and medical purposes, an individual who has sustained irreversible cessation of all functioning of the brain, including the brain stem, is dead. A determination under this section must be made in accordance with reasonable medical standards.

Section 2. [*Short Title.*] This Act may be cited as the Uniform Brain Death Act."

CHAPTER 23
RABIES CONTROL

Part 1
Restrictions on Possession of Wild Animals

Part Compiler's Comments

Severability: Section 7, Ch. 448, L. 1981, was a severability section.

Part Administrative Rules

ARM 37.114.571 Rabies exposure.

50-23-101. Definitions.

Compiler's Comments

1995 Amendments: Chapter 418 substituted Department of Public Health for Department of Health and Environmental Sciences as defined term and in that definition and in definition of wild animal substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in second definition of Department substituted ""Department of public health and human services" means the department of public health and human services provided for in 2-15-2201" for ""Department of health and environmental sciences" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21"; in definition of wild animal substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-23-102. Prohibition of possession of wild animals — exceptions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-23-103. Quarantine — destruction — testing.

Compiler's Comments

1995 Amendments: Chapter 418 in (1) and (2) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1) and (2) substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-23-105. Authority to adopt rules.

Compiler's Comments

1995 Amendments: Chapter 418 substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Statement of Intent: The statement of intent attached to HB 152 (Ch. 448, L. 1981) provided: "A statement of intent is required for this bill because it creates rulemaking authority for the Department of Health and Environmental Sciences [now Department of Public Health and Human Services], with the approval of the Department of Livestock, to administer and implement law controlling rabies through limits on the possession of wild pets. Rulemaking is primarily needed to add a species of animal to those presently designated "wild animals" by the act if the chance of rabies occurring in that species increases beyond its present level. Coyotes are an example of a species which may become a rabies threat in the future.

As for other rules, most would clarify terms and phrases used in the bill. Examples of potential rule subject matter are:

(1) to clarify what will be considered a fur-bearing enterprise (50-23-102);

(2) to clarify what controls by zoological exhibitors will be considered to adequately prevent physical contact by the public with wild animals."

50-23-106. Injunction — recovery of costs.

Compiler's Comments

1995 Amendments: Chapter 418 in (1) in three places substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in three places substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

CHAPTER 30
CONSUMER PRODUCT SAFETY ACT

Part 1
General Provisions

Part Compiler's Comments

Severability Clause: Section 14, Ch. 394, L. 1975, was a severability clause.

Part Law Review Articles

A Framework for Analysis of Products Liability in Montana, Tobias & Rossbach, 38 Mont. L. Rev. 221 (1977).

50-30-102. Definitions.

Compiler's Comments

2021 Amendment: Chapter 535 in definition of court substituted "means the district court in the district where the violation occurs" for "means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs". Amendment effective October 1, 2021.

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-30-107. Powers and duties of department's agents.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 2
Hazardous Substances

50-30-204. Toxic defined.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-30-205. Highly toxic defined.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Duty to Warn: The duty of a drug manufacturer to warn of the dangers inherent in a prescription drug is satisfied if adequate warning is given to the physician who prescribes it. Hill v. Squibb & Sons, 181 M 199, 592 P2d 1383 (1979).

Expert Testimony Required: A plaintiff must produce expert testimony to sustain an action against a drug company for failure to warn adequately of side effects of its products. Hill v. Squibb & Sons, 181 M 199, 592 P2d 1383 (1979).

50-30-302. Notice and hearing required prior to prosecution.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-30-305. Exceptions to penalty.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-30-307. Detainer of misbranded or banned hazardous substance.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 31
MONTANA FOOD, DRUG, AND COSMETIC ACT

Chapter Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.

Part 1
General Provisions

Part Administrative Rules

ARM 37.110.101 Food standards.

Part Law Review Articles

A Framework for Analysis of Products Liability in Montana, Tobias & Rossbach, 38 Mont. L. Rev. 221 (1977).

50-31-103. Definitions.

Compiler's Comments

2019 Amendment: Chapter 186 inserted definition of cell-cultured edible product; in definition of hamburger or ground beef inserted second sentence concerning what the term does and does not include; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 239 in definition of food additive in (a) in third sentence inserted "the determination of safety under the conditions of the substance's intended use may be"; in definition of food service establishment substituted "retail food establishment defined in 50-50-102" for "restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food at retail to the public for consumption, either at or away from the point of service"; in definition of raw agricultural commodity substituted "has the meaning as provided in 50-50-102" for "means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing"; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 373 deleted definition of approved source that read: ""Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality"; deleted definition of artesian water that read: ""Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure"; substituted definition of bottled water for former definition that read: ""Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source and that is disinfected and placed in a sealed container or package for human consumption"; deleted definition of carbonated water or sparkling water that read: ""Carbonated water" or "sparkling water" means water that contains carbon dioxide"; deleted definition of demineralized water that read: ""Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and that contains not more than 10 parts per million total solids"; inserted definition of dietary supplement; deleted definition of distilled water that read: ""Distilled water" means purified water that has been vaporized and condensed"; deleted definition of drinking water that read: ""Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process"; deleted definition of fluoridated water that read: ""Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and that complies with the food and drug administration quality standards set forth in 21 CFR 103.35"; in definition of food inserted "dietary supplements"; in definition of food service establishment after "serves food" inserted "at retail"; deleted definition of mineral water that read: ""Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids"; in definition of placard after "retail" inserted "meat"; deleted definition of purified water that read: ""Purified water" means water that is produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the Pharmacopoeia of the United States of America, 1980"; substituted retail meat establishment for retail establishment as defined term; deleted definition of spring water that read: ""Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth"; deleted definition of water-bottling plant that read: ""Water-bottling plant" means a facility in which bottled water is produced"; deleted definition of well water that read: ""Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device using external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process"; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 172 deleted former definition of organic food that read: ""Organic food" means food that conforms to the definition in 50-31-222"; and made minor changes in style. Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7(2), Ch. 172, L. 1999, provided that this section is effective upon the implementation of a state organic certification program pursuant to 80-11-601(3). On Friday, June 14, 2002, the Department of Agriculture certified the passage of the petition to begin implementation of the organic certification program as referred to in 80-11-601 and also certified that implementation of the program had begun.

1997 Amendment: Chapter 42 in definition of consumer commodity, in (b), inserted parenthetical reference to the Federal Insecticide, Fungicide, and Rodenticide Act and in (c) inserted parenthetical reference to the United States Code; in definition of food additive, in (b)(iv), substituted "21 U.S.C. 603, et seq." for "21 U.S.C. 71, et seq."; in definition of pesticide chemical substituted "7 U.S.C. 136, et seq." for "7 U.S.C. 135 through 135k"; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendments: Chapter 418 in definition of consumer commodity, in (d) after "U.S.C.", inserted "201"; in definition of Department substituted "department of public health" for "department of health and environmental sciences"; in definition of State Board substituted "board of public health" for "board of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21"; deleted definition of State Board that read: ""State board" or "board" means the board of health and environmental sciences provided for in 2-15-2104"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In definition of hamburger increased from three to four the number of grades, substituted "regular hamburger" for "economy hamburger" and set lean content at no less than 70%, substituted "lean hamburger" for "regular hamburger" and set fat content at no greater than 22% and lean content at no less than 78%, decreased extra lean hamburger fat content from 18% to 16% and set lean content at no less than 84%, and inserted definition of super lean hamburger with fat content no greater than 12% and lean content no less than 88%; and made minor changes in style. Amendment effective March 20, 1991.

1989 Amendments: Chapter 169 inserted definitions of approved source, artesian water, bottled water, carbonated water, demineralized water, distilled water, drinking water, fluoridated water, mineral water, purified water, spring water, water-bottling plant, and well water; and made minor change in grammar.

Chapter 472 corrected internal reference in definition of consumer commodity; and made minor changes in phraseology. Amendment effective April 8, 1989.

1985 Amendment: Inserted (23) defining "Organic food", (29) defining "Processing", and (33) defining "Synthetically compounded". Amendment effective January 1, 1986.

1981 Amendment: Inserted (2) defining "Beef patty mix"; inserted "or ground beef" after "Hamburger" at the beginning of (16); deleted "and with or without the addition of seasoning, if no fat other that [sic] suet is incorporated in the hamburger, the total fat content does not exceed 20%, and" after "with or without the addition of suet" in (16); added the last sentence of (16) and (16)(a) through (16)(c) relating to grades of hamburger; deleted former (17) defining "imitation hamburger"; added "or retail establishment" at the end of (26); inserted (29) defining "retail establishment"; deleted former (30) defining "wallboard" signs; and made minor changes in grammar.

50-31-104. Department authorized to adopt rules.

Compiler's Comments

2021 Amendment: Chapter 320 inserted (3) prohibiting rulemaking regarding homemade food or a homemade food product. Amendment effective April 30, 2021.

50-31-106. Inspections and taking of samples authorized.

Compiler's Comments

2021 Amendment: Chapter 320 inserted (3) prohibiting inspecting or taking samples from producers. Amendment effective April 30, 2021.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-31-108. Regulations concerning additives.

Compiler's Comments

2021 Amendment: Chapter 320 inserted (4) prohibiting rulemaking related to food additives for homemade food or a homemade food product. Amendment effective April 30, 2021.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-31-109. Use of additives.

Law Review Articles

Regulation of Food Additives Never Added: An Odd Mixture of Science and Law, Krinsky, 37 Mont. L. Rev. 198 (1976).

50-31-110. Certain agricultural chemicals not color additives.

Compiler's Comments

2019 Amendment: Chapter 186 at beginning substituted "Subsections (5) and (6)" for "Subsections (4) and (5)". Amendment effective October 1, 2019.

2003 Amendment: Chapter 373 at beginning substituted references to subsections (4) and (5) of 50-31-103 for references to subsections (7) and (8) of 50-31-103; and made minor changes in style. Amendment effective October 1, 2003.

1989 Amendment: At beginning substituted reference to subsections (7) and (8) of 50-31-103 for reference to subsections (3) and (4) of 50-31-103.

1981 Amendment: Changed references to "Subsections (2) and (3)" of 50-31-103 to "Subsections (3) and (4)".

Part 2
Food and Bottled Water

Part Administrative Rules

ARM 37.110.101 Food standards.

50-31-201. Department authorized to adopt food standards.

Compiler's Comments

2021 Amendment: Chapter 320 inserted (4) prohibiting the adoption of food standards or regulations for homemade food or a homemade food product; and made minor changes in style. Amendment effective April 30, 2021.

Case Notes

Pleading of Conformity to Federal Act: Under former law, in an action for damages resultant from consumption of an unwholesome and deleterious article, an allegation in the answer of a dealer in foodstuffs in unbroken packages that the food sold conformed to the rules of Congress under the national pure food acts and therefore could not be considered adulterated or objectionable was a conclusion of the pleader, in the absence of a statement of facts from which it could be determined that the government would permit the sale of the article in the condition it was when sold. Bolitho v. Safeway Stores, Inc., 109 M 213, 95 P2d 443 (1939).

50-31-202. When food adulterated.

Compiler's Comments

1997 Amendment: Chapter 42 in (3) and in (4), in two places, inserted parenthetical references to the United States Code; and made minor changes in style. Amendment effective March 12, 1997.

Case Notes

No Requirement That Adulterated Food Poses Danger to Human Health — Embargo Justified — Summary Judgment Proper: The dairy filed a complaint against the state, challenging the state's embargo of the dairy's milk products following the discovery of a black substance in the milk. The dairy claimed that in order for milk to be contaminated, and thus adulterated, it must be dangerous to human health. The Supreme Court held that under the plain meaning of 50-31-509, there is no requirement that adulterated food be adulterated so as to be dangerous or fraudulent in order for it to be embargoed or detained. It is sufficient that the food is adulterated. When there was no evidence raising genuine issues of material fact concerning the scope of the embargo or the quantity and identity of the black substance, the District Court did not err when it granted summary judgment to the state on these issues. Clover Leaf Dairy v. St., 285 M 380, 948 P2d 1164, 54 St. Rep. 1203 (1997).

Abstracting of Components: Under former law, when pellets which were used for sheep feed were manufactured from screenings from the harvest of wheat by cooking and crushing the seeds, extracting the oils therefrom, and pressing the residue into pellets, it was error to give an instruction as to abstracting of valuable components, since the oil was removed from the seeds but nothing was removed from the pellets which was the product sold. Seaton Ranch Co. v. Mont. Vegetable Oil & Feed Co., 123 M 396, 217 P2d 549 (1950).

Civil Liability: Under former law, the Pure Food and Drug Act made the seller the insurer of the purity of food products sold by him, and guilty knowledge of its impurity was not an ingredient of the offense charged. Bolitho v. Safeway Stores, Inc., 109 M 213, 95 P2d 443 (1939).

Pleading of Adulteration: Under former law, a charge in a complaint that defendant sold and delivered to plaintiff's husband, for immediate use in his family, including plaintiff, adulterated meat containing "diseased, infected, putrid, decomposed, poisonous acid and animal matter", sufficiently charged defendant with a violation of the Pure Food and Drug Act and with a breach of duty constituting legal negligence. Kelley v. John R. Daily Co., 56 M 63, 181 P 326 (1919).

Law Review Articles

Retail Dealer's Liability for Injury Arising From Consumption of Adulterated Canned Food, Besancon, 2 Mont. L. Rev. 133 (1941).

50-31-203. When food misbranded.

Compiler's Comments

2019 Amendment: Chapter 186 inserted (14) concerning branding and misbranding of cell-cultured edible products as meat. Amendment effective October 1, 2019.

1999 Amendment: Chapter 172 deleted former (14) that read: "(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically grown" but does not conform to the definition in 50-31-222". Amendment effective on occurrence of contingency.

Contingent Effective Date: Section 7(2), Ch. 172, L. 1999, provided that this section is effective upon the implementation of a state organic certification program pursuant to 80-11-601(3). On Friday, June 14, 2002, the Department of Agriculture certified the passage of the petition to begin implementation of the organic certification program as referred to in 80-11-601 and also certified that implementation of the program had begun.

1997 Amendment: Chapter 42 in (11), in last sentence, substituted "frozen desserts as described in 81-22-101" for "frozen desserts as defined in 81-22-101"; and made minor changes in style. Amendment effective March 12, 1997.

1985 Amendment: Inserted (14) relating to mislabeling of food as organic. Amendment effective January 1, 1986.

50-31-204. Labeling requirements for products in semblance of honey or containing honey.

Case Notes

Civil Liability:

Under former law, the Pure Food and Drug Act made the seller the insurer of the purity of food products sold by him, and guilty knowledge of its impurity was not an ingredient of the offense charged. Bolitho v. Safeway Stores, Inc., 109 M 213, 95 P2d 443 (1939).

Under former law, liability under the Pure Food and Drug Act arose from a violation of the statute, and it was immaterial whether the foundation of an action based upon such violation was laid in negligence or warranty. Kelley v. John R. Daily Co., 56 M 63, 181 P 326 (1919).

Pleading Defendant's Duty: Under former law, a complaint alleging that at the time of the sale of impure food by defendant to plaintiff, defendant was engaged in selling at retail, to the public generally, meat and meat products for human consumption was sufficient to bring the case within the statute and disclose the duty defendant owed to the public, including plaintiff, to see that its food products offered for sale were not adulterated within the meaning of such statute. Kelley v. John R. Daily Co., 56 M 63, 181 P 326 (1919).

50-31-208. Sale of hamburger and beef patty mix.

Compiler's Comments

2019 Amendment: Chapter 186 in (3) in first sentence substituted "50-31-103(19)" for "50-31-103(18)". Amendment effective October 1, 2019.

2003 Amendment: Chapter 373 throughout section after "retail" inserted "meat"; at beginning of (1)(c) deleted "If there is no menu or label"; in (3) in first sentence after "grade" inserted "of hamburger or ground beef" and substituted "enumerated in 50-31-103(18)" for "defined in "50-31-103(24)"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: In (3), near beginning after "maximum fat", inserted "and minimum lean". Amendment effective March 20, 1991.

1989 Amendment: Near beginning of (3) changed "50-31-103(16)" to "50-31-103(24)".

1981 Amendment: Inserted "or retail establishment" after "food service establishment" throughout (1) and (2); substituted "beef patty mix" for "imitation hamburger" throughout (1) and (2); inserted "or label" after "menu" throughout (2); deleted "wallboard or" before "placard" in (2)(c) and (2)(d); added "or sold at retail" at the end of (2)(d); added (3) requiring that grade and fat content be displayed.

Part 3
Drugs and Devices

50-31-301. Definitions.

Compiler's Comments

1997 Amendment: Chapter 42 in definitions of established name and legend drug inserted parenthetical references to the United States Code; in definition of legend drug substituted "federal act" for "federal Food, Drug, and Cosmetic Act"; and made minor changes in style. Amendment effective March 12, 1997.

1983 Amendment: In (1)(b), after "Pharmacopoeia" deleted "under different official titles".

1981 Amendment: Deleted "and in the Homeopathic Pharmacopoeia" after "in the United States Pharmacopoeia" in (1)(b); deleted "unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply" at the end of (1)(b); added (4) through (7) defining "code imprint", "distributor", "solid dosage form", and "legend drug".

50-31-303. Certain drug advertisements considered false.

Compiler's Comments

1989 Amendment: In (1) substituted "a sexually transmitted" for "venereal".

Saving Clause: Section 21, Ch. 440, L. 1989, was a saving clause.

Severability: Section 22, Ch. 440, L. 1989, was a severability clause.

50-31-306. When drug or device misbranded.

Compiler's Comments

2011 Amendment: Chapter 156 in (1)(d) inserted "Salvia divinorum" and "synthetic cannabinoids". Amendment effective April 8, 2011.

1997 Amendment: Chapter 42 in (1)(d), (1)(f)(i), (1)(m)(i), (1)(n)(i), (1)(n)(ii), and (1)(p)(ii) inserted parenthetical references to the United States Code; and made minor changes in style. Amendment effective March 12, 1997.

50-31-307. Dispensing of prescription drugs.

Compiler's Comments

2021 Amendment: Chapter 454 in (1)(b) at end inserted "or directly dispenses the drug pursuant to 37-2-104"; in (1)(c) at end inserted "or practitioner, if the practitioner dispenses the drug"; and in (1)(d) at end inserted "or practitioner, if the practitioner fills the prescription". Amendment effective October 1, 2021.

2015 Amendment: Chapter 206 in (1) inserted "if a practitioner licensed by law to administer or prescribe the drug"; in (1)(a) substituted "provides a written prescription" for "upon a written prescription of a practitioner licensed by law to administer the drug"; inserted (1)(b) regarding electronic transmission of prescription; in (1)(c) substituted "provides an oral prescription" for "upon an oral prescription of the practitioner"; in (1)(d) substituted "authorizes the refilling of a written, electronic, or oral prescription" for "refilling a written or oral prescription if the refilling is authorized by the practitioner"; in (2)(b) and (2)(c) after "administer" inserted "or prescribe"; and made minor changes in style. Amendment effective April 8, 2015.

2007 Amendment: Chapter 125 in (3) near beginning substituted "contraceptive, other than mifepristone" for "oral contraceptive". Amendment effective October 1, 2007.

1997 Amendment: Chapter 42 in (2)(c) inserted parenthetical reference to the United States Code. Amendment effective March 12, 1997.

1995 Amendments: Chapter 418 in (3) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (3) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: At end of introductory clause of (1) substituted "that falls in one of the categories in subsection (2) may be dispensed only" for "which"; deleted former (1)(a), (1)(b), and part of (1)(c) that read: "(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or

(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer such drug shall be dispensed only"; inserted (2) specifying what drugs must be dispensed according to subsection (1); inserted (3) allowing dispensing of oral contraceptives under certain circumstances; and made minor changes in phraseology and form. Amendment effective April 8, 1989.

Case Notes

Duty to Warn: The duty of a drug manufacturer to warn of the dangers inherent in a prescription drug is satisfied if adequate warning is given to the physician who prescribes it. Hill v. Squibb & Sons, 181 M 199, 592 P2d 1383 (1979).

Expert Testimony Required: A plaintiff must produce expert testimony to sustain an action against a drug company for failure to warn adequately of side effects of its products. Hill v. Squibb & Sons, 181 M 199, 592 P2d 1383 (1979).

50-31-308. Prescription drugs exempt from certain provisions of chapter.

Compiler's Comments

2015 Amendment: Chapter 206 in (1) inserted "electronic" and after "administer" inserted "or prescribe"; and made minor changes in style. Amendment effective April 8, 2015.

50-31-310. Narcotic and marijuana laws not affected.

Compiler's Comments

2011 Amendment: Chapter 156 inserted synthetic cannabinoids as an additional classification of drugs; and made minor changes in style. Amendment effective April 8, 2011.

50-31-311. New drug application required.

Compiler's Comments

1997 Amendment: Chapter 42 in (1)(a) inserted parenthetical reference to the United States Code; and made minor changes in style. Amendment effective March 12, 1997.

1981 Amendment: Inserted "Except as provided in Title 50, chapter 42" at the beginning of (1); substituted "may" for "shall" in the first sentence of (1).

50-31-312. Exemptions from new drug application requirement.

Compiler's Comments

2019 Amendment: Chapter 186 in (2) in introductory clause and in (2)(b) substituted "50-31-103(24)" for "50-31-103(23)". Amendment effective October 1, 2019.

2003 Amendment: Chapter 373 in (2) and (2)(b) substituted "50-31-103(23)" for "50-31-103(30)". Amendment effective October 1, 2003.

1997 Amendment: Chapter 42 in (1)(a) and (2)(c) inserted parenthetical references to the United States Code; in (1)(c) substituted "manufactured by an establishment licensed under 42

U.S.C. 262" for "licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, chapter 6A, sec. 262)"; and made minor changes in style. Amendment effective March 12, 1997.

1989 Amendment: Near beginning of (2) and in (2)(b) substituted "50-31-103(30)" for "50-31-103(21)".

50-31-314. Exemptions from code imprint requirement.

Compiler's Comments

1983 Amendment: Substituted "board of pharmacy" for "board of pharmacists".

50-31-315. List of code imprints to be provided.

Compiler's Comments

1983 Amendment: Substituted "board of pharmacy" for "board of pharmacists".

Part 5

Prohibited Acts, Penalties, and Remedies

50-31-501. Prohibited acts.

Compiler's Comments

2003 Amendment: Chapter 373 in (9) after "obliteration" substituted "or commission" for "or removal of the whole or any part of the labeling of or the doing" and after "cosmetic" inserted "or the removal, in whole or in part, of the labeling of a food, drug, device, or cosmetic"; in (13) after "drug" inserted "or device"; in (18) after "drug" inserted "device"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 546 in (16), after "other than to", deleted "the state board"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Case Notes

Civil Liability:

Under former law, the Pure Food and Drug Act made the seller the insurer of the purity of food products sold by him, and guilty knowledge of its impurity was not an ingredient of the offense charged. Bolitho v. Safeway Stores, Inc., 109 M 213, 95 P2d 443 (1939).

Under former law, liability under the Pure Food and Drug Act arose from a violation of the statute, and it was immaterial whether the foundation of an action based upon such violation was laid in negligence or warranty. Kelley v. John R. Daily Co., 56 M 63, 181 P 326 (1919).

Pleading Defendant's Duty: Under former law, a complaint alleging that at the time of the sale of impure food by defendant to plaintiff, defendant was engaged in selling at retail, to the public generally, meat and meat products for human consumption was sufficient to bring the case within the statute and disclose the duty defendant owed to the public, including plaintiff, to see that its food products offered for sale were not adulterated within the meaning of such statute. Kelley v. John R. Daily Co., 56 M 63, 181 P 326 (1919).

50-31-504. Notice and hearing required prior to prosecution.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-31-506. Penalties.

Compiler's Comments

1981 Amendment: Extended the penalties to violation of 50-31-313 or 50-31-315; made minor changes in grammar.

Case Notes

Reliance on Guaranty: Section 27-110, R.C.M. 1947 (since repealed), was not open to the construction that the presence of a guaranty executed by the wholesaler, jobber, or manufacturer as to the purity of an article of food sold in the original, unbroken package and found adulterated was a defense to an action against the dealer for damages resulting from illness caused by eating the food and did not relieve him from civil liability under section 74-321, R.C.M. 1947 (since repealed). Bolitho v. Safeway Stores, Inc., 109 M 213, 95 P2d 443 (1939).

Knowledge of Impurity: Under former law, the seller of food products was made insurer of their purity, and guilty knowledge on his part was not an ingredient of the offense prohibited; the obligation was personal and could not be avoided by showing that the impure food was purchased from a foreign concern and bore the stamp of approval by the government inspectors. Kelley v. John R. Daily Co., 56 M 63, 181 P 326 (1919).

50-31-507. Exceptions to penalties.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Reliance on Guaranty: Section 27-110, R.C.M. 1947 (since repealed), was not open to the construction that the presence of a guaranty executed by the wholesaler, jobber, or manufacturer as to the purity of an article of food sold in the original, unbroken package and found adulterated was a defense to an action against the dealer for damages resulting from illness caused by eating the food and did not relieve him from civil liability under section 74-321, R.C.M. 1947 (since repealed). Bolitho v. Safeway Stores, Inc., 109 M 213, 95 P2d 443 (1939).

Knowledge of Impurity: Under former law, the seller of food products was made insurer of their purity, and guilty knowledge on his part was not an ingredient of the offense prohibited; the obligation was personal and could not be avoided by showing that the impure food was purchased from a foreign concern and bore the stamp of approval by the government inspectors. Kelley v. John R. Daily Co., 56 M 63, 181 P 326 (1919).

50-31-509. Detainer of adulterated or misbranded articles.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Added the last two sentences in (1) relating to an agreement by the owner to dispose of embargoed articles and to nonliability of the state; inserted "and a disposal agreement is not executed as provided in subsection (1), the agent" before "shall petition the justice of peace" near the beginning of (2); made minor changes in grammar.

Case Notes

Agency's Probable Cause Determination Reviewable by Courts — De Minimis Exception Applicable to Review: Unlike federal law, state law provides for judicial review of an agency's probable cause determination under this section. Agency actions under this section, including an agency's probable cause determination, are reviewable by the courts, and courts are not prohibited from applying the de minimis exception to review of the agency's probable cause determination. Clover Leaf Dairy v. St., 285 M 380, 948 P2d 1164, 54 St. Rep. 1203 (1997).

No Requirement That Adulterated Food Poses Danger to Human Health — Embargo Justified — Summary Judgment Proper: The dairy filed a complaint against the state, challenging the state's embargo of the dairy's milk products following the discovery of a black substance in the milk. The dairy claimed that in order for milk to be contaminated, and thus adulterated, it must be dangerous to human health. The Supreme Court held that under the plain meaning of this section, there is no requirement that adulterated food be adulterated so as to be dangerous or fraudulent in order for it to be embargoed or detained. It is sufficient that the food is adulterated. When there was no evidence raising genuine issues of material fact concerning the scope of the embargo or the quantity and identity of the black substance, the District Court did not err when it granted summary judgment to the state on these issues. Clover Leaf Dairy v. St., 285 M 380, 948 P2d 1164, 54 St. Rep. 1203 (1997).

Chocolate Inventory Destroyed — Contamination Exclusion Inapplicable: After discovering that a worker had been exposed to hepatitis, the owners of Helena's Parrot Confectionery (the Parrot) immediately alerted the city health department. When the state Department of Health and Environmental Sciences [now Department of Public Health and Human Services] subsequently placed an embargo on all candy, the Parrot, without testing for contamination, voluntarily destroyed its existing inventory and submitted a claim for the loss to its insurance company. Citing the high probability of contamination and the contamination exclusion in the insurance contract, the District Court granted summary judgment in favor of the insurance company. Adopting the contamination definitions in Am. Cas. Co. of Reading, Pa. v. Myrick, 304 F2d 179 (5th Cir. 1962), Hi-G, Inc. v. St. Paul Fire & Marine Ins. Co., 391 F2d 924 (1st Cir. 1968), and Auten v. Employers Nat'l Ins. Co., 722 SW 2d 468 (Tex. App. 1987), the Supreme Court reversed, holding that absent proof of "actual" contamination, the contamination exclusion does not bar coverage for the Parrot's losses. Duensing v. Traveler's Co., 257 M 376, 849 P2d 203, 50 St. Rep. 316 (1993).

CHAPTER 32
CONTROLLED SUBSTANCES

Chapter Commissioners' Note

The Uniform Controlled Substances Act is designed to supplant the Uniform Narcotic Drug Act, adopted by the National Conference of Commissioners on Uniform State Laws in 1933, and the Model State Drug Abuse Control Act, relating to depressant, stimulant, and hallucinogenic drugs, promulgated in 1966. With the enactment of the new Federal narcotic and dangerous drug law, the "Comprehensive Drug Abuse Prevention and Control Act of 1970" (Public Law 91-513, short title "Controlled Substances Act" [21 U.S.C.A. § 801, et seq.]), it is necessary that the States update and revise their narcotic, marihuana, and dangerous drug laws.

This Uniform Act was drafted to achieve uniformity between the laws of the several States and those of the Federal government. It has been designed to complement the new Federal narcotic and dangerous drug legislation and provide an interlocking trellis of Federal and State law to enable government at all levels to control more effectively the drug abuse problem.

The exploding drug abuse problem in the past ten years has reached epidemic proportions. No longer is the problem confined to a few major cities or to a particular economic group. Today it encompasses almost every nationality, race, and economic level. It has moved from the major urban areas into the suburban and even rural communities, and has manifested itself in every State in the Union.

Much of this major increase in drug use and abuse is attributable to the increased mobility of our citizens and their affluence. As modern American society becomes increasingly mobile, drugs clandestinely manufactured or illegally diverted from legitimate channels in one part of a State are easily transported for sale to another part of that State or even to another State. Nowhere is this mobility manifested with greater impact than in the legitimate pharmaceutical industry. The lines of distribution of the products of this major national industry cross in and out of a State innumerable times during the manufacturing or distribution processes. To assure the continued free movement of controlled substances between States, while at the same time securing such States against drug diversion from legitimate sources, it becomes critical to approach not only the control of illicit and legitimate traffic in these substances at the national and international levels, but also to approach this problem at the State and local level on a uniform basis.

A main objective of this Uniform Act is to create a coordinated and codified system of drug control, similar to that utilized at the Federal level, which classifies all narcotics, marihuana, and dangerous drugs subject to control into five schedules, with each schedule having its own criteria for drug placement. This classification system will enable the agency charged with implementing it to add, delete, or reschedule substances based upon new scientific findings and the abuse potential of the substance.

Another objective of this Act is to establish a closed regulatory system for the legitimate handlers of controlled drugs in order better to prevent illicit drug diversion. This system will require that these individuals register with a designated State agency, maintain records, and make biennial inventories of all controlled drug stocks.

The Act sets out the prohibited activities in detail, but does not prescribe specific fines or sentences, this being left to the discretion of the individual States. It further provides innovative law enforcement tools to improve investigative efforts and provides for interim education and training programs relating to the drug abuse problem.

The Uniform Act updates and improves existing State laws and insures legislative and administrative flexibility to enable the States to cope with both present and future drug problems. It is recognized that law enforcement may not be the ultimate solution to the drug abuse problem. It is hoped that present research efforts will be continued and vigorously expanded, particularly as they relate to the development of rehabilitation, treatment, and educational programs for addicts, drug dependent persons, and potential drug abusers.

Chapter Compiler's Comments

Deviation From Uniform Act: Although Montana law on controlled substances is based extensively on the Uniform Controlled Substances Act, some sections of Montana law are not based on the Uniform Act. Likewise, some sections of the Uniform Act were not adopted. The sections not based on the uniform law are 50-32-233, 50-32-305, 50-32-313, and 50-32-401 through 50-32-405. The uniform law sections not adopted in Montana are 401 through 409, 501, 503 through 507, 601, 602, and 604 through 607. Under each section of Montana law, the corresponding section of uniform law is listed in a compiler's comment with the catchline "source".

Severability Clause: Section 30, Ch. 412, L. 1973, was a severability clause.

Chapter Administrative Rules

Title 24, chapter 174, subchapter 14, ARM Dangerous Drug Act.

Part 1
General Provisions

50-32-101. Definitions.

Compiler's Comments

2013 Amendment: Chapter 135 inserted definition of dangerous drug analogue; and made minor changes in style. Amendment effective October 1, 2013.

2001 Amendments — Composite Section: Chapter 388 in definition of drug substituted "has the same meaning as provided in 37-7-101" for "means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

(iii) a substance, other than food, intended to affect the structure or a function of the body of humans or animals; and

(iv) a substance intended for use as a component of an article specified in subsection (13)(a)(i), (13)(a)(ii), or (13)(a)(iii).

(b) Drug does not include a device or its components, parts, or accessories"; substituted definition of prescription for former definition that read: ""Prescription" has the meaning that it has in 37-7-101"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 198 in definition of practitioner inserted (c) concerning a physician licensed to practice medicine or a dentist licensed to practice dentistry in another state; and made minor changes in style.

Applicability: Section 2, Ch. 198, L. 1995, provided: "[This act] applies to prescriptions written on and after October 1, 1995."

1983 Amendments: Chapter 155 inserted (14) defining "hashish".

Chapter 247, in (3), substituted "board of pharmacy" for "board of pharmacists".

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (8); and changed internal references to the department and the board.

Chapter 379 substituted "drug enforcement administration" for "bureau of narcotics and dangerous drugs" in (4); deleted a reference to the official Homeopathic Pharmacopoeia in (13)(a)(i).

Source: Section 101, Uniform Controlled Substances Act.

Case Notes

Hashish Not Marijuana — Definitions Harmonized: A medical marijuana card that was issued pursuant to the former Medical Marijuana Act as set forth in 50-46-101 through 50-46-210 (now repealed) did not entitle the defendant to possess hashish, which is specifically differentiated in 50-32-101. The Act was clear and unambiguous on its face, and the District Court's interpretation appropriately harmonized the statutes. St. v. Pirello, 2012 MT 155, 365 Mont. 399, 282 P.3d 662.

Ingestion of Dangerous Drugs Considered Constructive Possession When Accompanied by Evidence of Knowing and Voluntary Possession: The state sought to revoke a juvenile youth's probation on grounds that the youth's urinalysis tested positive for methamphetamines, opiates, and marijuana. The youth argued that once the drugs were ingested, the youth no longer had dominion or control over them and thus could not be considered to be in possession of drugs. In a case of first impression, the Supreme Court considered whether constructive possession can be proved by a positive urinalysis. The court agreed with the youth that once a substance is ingested and then assimilated into a person's bloodstream, the person who ingested it ceases to exercise dominion and control over the substance, but the court also concluded that the presence of an illegal substance in the body constitutes circumstantial evidence of prior possession of that substance, if even for a short time. However, based on statutory definitions, the presence of a dangerous drug in one's body, standing alone, is insufficient to sustain a conviction for possession of dangerous drugs because possession also requires proof that the drug was knowingly or voluntarily ingested. Thus, the presence of a controlled substance in a person's blood or urine constitutes sufficient circumstantial evidence to prove prior possession beyond a reasonable doubt only when accompanied by other corroborating evidence of knowing and voluntary possession, such as admission of drug use. Here, the youth admitted using methamphetamine, which provided direct evidence that the youth knowingly and voluntarily possessed methamphetamine as charged. However, the youth made no admission of using opiates or marijuana, so there was no corroborating evidence to support the positive urinalysis for those substances. Thus, the determination that the youth illegally possessed opiates and marijuana was reversed. In re R.L.H., 2005 MT 177, 327 M 520, 116 P3d 791 (2005).

Hashish Not Dangerous Drug: The information, filed prior to the 1983 amendment of this section, charged the defendant with possession of more than 1 gram of hashish in violation of 45-9-102(1). Section 45-9-102(1) refers to the definition of dangerous drug in this section. This section did not, prior to the 1983 amendment, define hashish. Charging an individual with the possession of hashish, without mentioning its derivation from marijuana, does not charge that individual with a crime. The District Court properly dismissed the information, and the Supreme Court affirmed. St. v. Kelman, 199 M 481, 649 P2d 1292, 39 St. Rep. 1545 (1982).

Possession of Each Drug in Schedules a Separate Crime: It was proper for the County Attorney to charge defendant with three counts for possession of three prohibited drugs. The Legislature intended to provide a distinct crime for each of the drugs listed in the schedules. St. v. Meader, 184 M 32, 601 P2d 386 (1979); see also St. v. Meadors, 177 M 100, 580 P2d 903 (1978).

Failure to Republish Schedule: Failure of the Board and the Department to revise and republish schedules as required by 50-32-209 did not result in the decriminalization of dangerous drugs. The Legislature intended the original five schedules to be effective until the Board of Pharmacists (now Board of Pharmacy) and the Department of Health and Environmental Sciences (now Department of Public Health and Human Services) carry out their statutory duty. St. v. Meader, 184 M 32, 601 P2d 386 (1979).

Finding Marijuana Hallucinogenic — Unnecessary: Marijuana is grouped with hallucinogenic drugs, but this does not call for the trier of fact to make a specific finding as to its hallucinogenic capabilities. The Legislature has made that determination. The determination for the trier of fact is whether the substance introduced at trial is in fact marijuana, as defined by 50-32-101. St. v. Petko, 177 M 229, 581 P2d 425 (1978), followed in St. v. Farnsworth, 240 M 328, 783 P2d 1365, 46 St. Rep. 2165 (1989).

Definitions — Application to Montana Dangerous Drug Act: Montana does not have two separate drug acts in force; sections 54-301 through 54-327, R.C.M. 1947 (now in Title 50, ch. 32), were intended to amend and be included as part of Montana Dangerous Drug Act, and definitions found in this section apply to Title 45, ch. 9, MCA. State ex rel. Lance v. District Court, 168 M 297, 542 P2d 1211 (1975).

Federal Drug Law Not to Preempt Montana Drug Law: Federal Controlled Substances Act, 21 U.S.C. § 903, does not preempt Montana law on narcotic drugs, Title 54, R.C.M. 1947 (now Title 45, ch. 9, and Title 50, ch. 32, MCA). State ex rel. Lance v. District Court, 168 M 297, 542 P2d 1211 (1975).

50-32-102. Uniformity of construction.

Compiler's Comments

Source: Section 603, Uniform Controlled Substances Act.

50-32-103. Board to administer chapter.

Commissioners' Note

The Act vests the authority to administer its provisions in the appropriate person or agency within the State. The "appropriate" person or agency may be one or more persons, or one or more agencies, or a combination. The enacting State should designate that person or agency which has the means to implement, enforce, and regulate the provisions of the Act. For example, authority could be vested in the Office of the Attorney General, a Department of Health, a Division of Public Safety, or such other agency within the State responsible for regulating and enforcing the drug laws. An alternative might be a division of authority whereby one agency might be responsible for controlling drugs under this Article, another agency might be designated to regulate the legitimate industry under Article III, and still another agency might be charged with enforcement. In any event, the ultimate authority for determining the appropriate person or agency is vested in the enacting State.

To bring a substance under control through the administrative procedures, the designated State authority will make findings with respect to the eight criteria hereinafter enumerated and issue an order controlling the given substance, if it has a potential for abuse. To avoid potential State Constitutional problems, as well as allegations of improper legislative delegation of authority, a procedure has been set out which will require substances controlled by Federal laws to be controlled under the State law after the designated authority is notified and after the expiration of thirty days from the date of publication in the Federal Register of a final order controlling the substance under Federal law. However, the designated authority in the State may object to inclusion of the substance under this Act. It must give public notice of its objections and afford an opportunity for any interested party to be heard on the matter. The designated authority makes a final decision based upon that hearing, which is considered final unless specifically acted upon in a contrary manner by the legislature. If the designated authority publicly objects to inclusion of a substance under the controls of this Act, control is automatically stayed pending the outcome of the hearing and the designated authority's final decision. Once a final decision is rendered controlling the substance, the stay automatically terminates and the substance is deemed controlled under this Act.

The eight criteria to be considered with regard to a substance are as follows:

Section 201 [see compiler's comment] sets out the criteria to be considered for the control and classification of drugs into the several schedules. These criteria consist of the degree of their abuse potential, known effect, harmfulness and level of accepted medical use. All controlled substances are contained in either Schedule I, II, III, IV or V. This classification achieves one of the main objectives of the Uniform Act, which is to create a coordinated, codified system of drug control and regulation.

The Act recognizes that some States have had more stringent laws relating to substances than did the former Federal laws. The Uniform Act follows the federal Controlled Substances Act and lists all of the controlled substances in five schedules which are identical with the Federal law. The Uniform Act is not intended to prevent a State from adding or removing substances from the schedules, or from reclassifying substances from one schedule to another, provided the procedures specified in Section 201 are followed.

(1) Its actual or relative potential for abuse—

These are the criteria which will be used most often to control drugs and will provide the basis for the greatest controversy. The term "potential for abuse" is found in the definition of a "depressant or stimulant drug" in the Drug Control Amendments of 1965 (21 U.S.C. 201(v)) and is characterized further in the regulations (21 CFR 166.2(e)) promulgated under those regulations as follows:

"The Director of the Bureau of Narcotics and Dangerous Drugs may determine that a substance has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect if:

"(1) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or

"(2) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or

"(3) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

"(4) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community."

These regulations follow and extend the suggestions contained in House Report No. 130, 89th Congress, First Session, page 7 (1965).

The report went further in its discussion of the "potential" aspect of the term. It stated that it did not intend that potential for abuse be determined on the basis of "isolated or occasional non-therapeutic purposes." The House Interstate and Foreign Commerce Committee felt that there must exist "a substantial potential for the occurrence of significant diversions from legitimate channels, significant use by individuals contrary to professional advice, or substantial capability of creating hazards to the health of the user or the safety of the community." (at page 7)

There are two points that should be emphasized in this definition. First, the House Committee was speaking of "potential" rather than "actual" abuse. In considering a drug for control, it would not be necessary to show that abuse presently exists but only that there are indications of a potential for abuse. This is borne out by the Committee's statement that "the Secretary of Health, Education, and Welfare should not be required to wait until a number of lives have been destroyed or substantial problems have already arisen before designating a drug as subject to controls of the bill." (at page 7). Thus, the incidence of present abuse is not the test which must be applied. The test is a determination of future or potential abuse. The second point of emphasis is that in speaking of "substantial" potential the term "substantial" means more than a mere scintilla of isolated abuse, but less than a preponderance. Therefore, documentation that, say, several hundred thousand dosage units of a drug have been diverted would be "substantial" evidence of abuse despite the fact that tens of millions of dosage units of that drug are legitimately used in the same time period. The normal way in which such diversion is shown is by accountability audits of the legitimate sources of distribution, such as manufacturers, wholesalers, pharmacies and doctors.

Misuse of a drug in suicides and attempted suicides, as well as injuries resulting from unsupervised use also would be regarded as indicative of a drug's potential for abuse.

(2) Scientific evidence of its pharmacological effects—

The state of knowledge with respect to the uses of a specific drug are, of course, major considerations, e. g., it is vital to know whether or not a drug has an hallucinogenic effect if it is to be controlled because of that effect.

(3) The statement of current scientific knowledge regarding the substance—

Criteria (2) and (3) are closely related. However, (2) is primarily interested in pharmacological effects and (3) deals with all scientific knowledge with respect to the substance.

(4) Its history and current pattern of abuse—

To determine whether or not a drug should be controlled, the designated State authority must know the pattern of abuse of that substance, including the social, economic and ecological characteristics of the segments of the population involved in such abuse.

(5) The scope, duration, and significance of abuse—

Not only must the designated State authority know the pattern of abuse, but it must know whether the abuse is widespread. It must also know whether it is a passing fad, like smoking banana peels, or whether it is a significant chronic abuse problem like heroin addiction. In reaching this decision, the State authority should consider the economics of regulation and enforcement attendant to such a decision. In addition, it should be aware of the social significance and impact of such a decision upon those people, especially the young, that would be affected by it.

(6) What, if any, risk there is to the public health—

The designated State authority must have been the best available knowledge of the pharmacological properties of any drug under consideration. If a drug creates no danger to the public health, it would be inappropriate to control the drug under this Act.

(7) Its psychic or physiological dependence liability—

There must be an assessment of the extent to which a drug is physically addictive or psychologically habit forming, if such information is known.

(8) Whether the substance is an immediate precursor of a substance already controlled—

This criterion allows inclusion of immediate precursors on this basis alone into the appropriate schedule and thus safeguards against possibilities of clandestine manufacture.

The overall intent of this Section is to create reasonable flexibility within the Uniform Act so that, as new substances are discovered or found to have an abuse potential, they can speedily be brought under control without constant resort to the legislature. Such flexibility will allow the laws to keep in step with new trends in drug abuse and new scientific information. States should consider establishing a Scientific Advisory Committee consisting of leading medical and pharmaceutical professionals to advise the appropriate person or agency on control of substances.

This Section [§ 301] will permit a State to cover the costs of actual registration and control by charging reasonable fees. However, the Section does not permit a State to charge exorbitant fees as a means of fully implementing the regulatory provisions of the Act and thereby avoiding the need for additional State appropriations.

Compiler's Comments

Source — Montana Codification: Sections 201(part), 301, Uniform Controlled Substances Act. See also 50-32-104 and 50-32-201 through 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' notes under 50-32-103 are the complete commissioners' notes to Sections 201 and 301 of the Uniform Act.

Administrative Rules

ARM 24.174.401 Fee schedule.

Title 24, chapter 174, subchapter 14, ARM Dangerous Drug Act.

50-32-104. Board's authority limited.

Commissioners' Note

The Act vests the authority to administer its provisions in the appropriate person or agency within the State. The "appropriate" person or agency may be one or more persons, or one or more agencies, or a combination. The enacting State should designate that person or agency which has the means to implement, enforce, and regulate the provisions of the Act. For example, authority could be vested in the Office of the Attorney General, a Department of Health, a Division of Public Safety, or such other agency within the State responsible for regulating and enforcing the drug laws. An alternative might be a division of authority whereby one agency might be responsible for controlling drugs under this Article, another agency might be designated to regulate the legitimate industry under Article III, and still another agency might be charged with enforcement. In any event, the ultimate authority for determining the appropriate person or agency is vested in the enacting State.

To bring a substance under control through the administrative procedures, the designated State authority will make findings with respect to the eight criteria hereinafter enumerated and issue an order controlling the given substance, if it has a potential for abuse. To avoid potential State Constitutional problems, as well as allegations of improper legislative delegation of authority, a procedure has been set out which will require substances controlled by Federal laws to be controlled under the State law after the designated authority is notified and after the expiration of thirty days from the date of publication in the Federal Register of a final order controlling the substance under Federal law. However, the designated authority in the State may object to inclusion of the substance under this Act. It must give public notice of its objections and afford an opportunity for any interested party to be heard on the matter. The designated authority makes a final decision based upon that hearing, which is considered final unless specifically acted upon in a contrary manner by the legislature. If the designated authority publicly objects to inclusion of a substance under the controls of this Act, control is automatically stayed pending the outcome of the hearing and the designated authority's final decision. Once a final decision is rendered controlling the substance, the stay automatically terminates and the substance is deemed controlled under this Act.

The eight criteria to be considered with regard to a substance are as follows:

Section 201 [see compiler's comment] sets out the criteria to be considered for the control and classification of drugs into the several schedules. These criteria consist of the degree of their abuse potential, known effect, harmfulness and level of accepted medical use. All controlled substances are contained in either Schedule I, II, III, IV or V. This classification achieves one of the main objectives of the Uniform Act, which is to create a coordinated, codified system of drug control and regulation.

The Act recognizes that some States have had more stringent laws relating to substances than did the former Federal laws. The Uniform Act follows the Federal Controlled Substances Act and lists all of the controlled substances in five schedules which are identical with the Federal law. The Uniform Act is not intended to prevent a State from adding or removing substances from the schedules, or from reclassifying substances from one schedule to another, provided the procedures specified in Section 201 are followed.

(1) Its actual or relative potential for abuse—

These are the criteria which will be used most often to control drugs and will provide the basis for the greatest controversy. The term "potential for abuse" is found in the definition of a "depressant or stimulant drug" in the Drug Control Amendments of 1965 (21 U.S.C. 201(v)) and is characterized further in the regulations (21 CFR 166.2(e)) promulgated under those regulations as follows:

"The Director of the Bureau of Narcotics and Dangerous Drugs may determine that a substance has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect if:

"(1) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or

"(2) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or

"(3) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

"(4) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community."

These regulations follow and extend the suggestions contained in House Report No. 130, 89th Congress, First Session, page 7 (1965).

The report went further in its discussion of the "potential" aspect of the term. It stated that it did not intend that potential for abuse be determined on the basis of "isolated or occasional non-therapeutic purposes." The House Interstate and Foreign Commerce Committee felt that there must exist "a substantial potential for the occurrence of significant diversions from legitimate channels, significant use by individuals contrary to professional advice, or substantial capability of creating hazards to the health of the user or the safety of the community." (at page 7)

There are two points that should be emphasized in this definition. First, the House Committee was speaking of "potential" rather than "actual" abuse. In considering a drug for control, it would not be necessary to show that abuse presently exists but only that there are indications of a potential for abuse. This is borne out by the Committee's statement that "the Secretary of Health, Education, and Welfare should not be required to wait until a number of lives have been destroyed or substantial problems have already arisen before designating a drug as subject to controls of the bill." (at page 7). Thus, the incidence of present abuse is not the test which must be applied. The test is a determination of future or potential abuse. The second point of emphasis is that in speaking of "substantial" potential the term "substantial" means more than a mere scintilla of isolated abuse, but less than a preponderance. Therefore, documentation that, say, several hundred thousand dosage units of a drug have been diverted would be "substantial" evidence of abuse despite the fact that tens of millions of dosage units of that drug are legitimately used in the same time period. The normal way in which such diversion is shown is by accountability audits of the legitimate sources of distribution, such as manufacturers, wholesalers, pharmacies and doctors.

Misuse of a drug in suicides and attempted suicides, as well as injuries resulting from unsupervised use also would be regarded as indicative of a drug's potential for abuse.

(2) Scientific evidence of its pharmacological effects—

The state of knowledge with respect to the uses of a specific drug are, of course, major considerations, e. g., it is vital to know whether or not a drug has an hallucinogenic effect if it is to be controlled because of that effect.

(3) The statement of current scientific knowledge regarding the substance—

Criteria (2) and (3) are closely related. However, (2) is primarily interested in pharmacological effects and (3) deals with all scientific knowledge with respect to the substance.

(4) Its history and current pattern of abuse—

To determine whether or not a drug should be controlled, the designated State authority must know the pattern of abuse of that substance, including the social, economic and ecological characteristics of the segments of the population involved in such abuse.

(5) The scope, duration, and significance of abuse—

Not only must the designated State authority know the pattern of abuse, but it must know whether the abuse is widespread. It must also know whether it is a passing fad, like smoking banana peels, or whether it is a significant chronic abuse problem like heroin addiction. In reaching this decision, the State authority should consider the economics of regulation and enforcement attendant to such a decision. In addition, it should be aware of the social significance and impact of such a decision upon those people, especially the young, that would be affected by it.

(6) What, if any, risk there is to the public health—

The designated State authority must have been the best available knowledge of the pharmacological properties of any drug under consideration. If a drug creates no danger to the public health, it would be inappropriate to control the drug under this Act.

(7) Its psychic or physiological dependence liability—

There must be an assessment of the extent to which a drug is physically addictive or psychologically habit forming, if such information is known.

(8) Whether the substance is an immediate precursor of a substance already controlled—

This criterion allows inclusion of immediate precursors on this basis alone into the appropriate schedule and thus safeguards against possibilities of clandestine manufacture.

The overall intent of this Section is to create reasonable flexibility within the Uniform Act so that, as new substances are discovered or found to have an abuse potential, they can speedily be brought under control without constant resort to the legislature. Such flexibility will allow the laws to keep in step with new trends in drug abuse and new scientific information. States should consider establishing a Scientific Advisory Committee consisting of leading medical and pharmaceutical professionals to advise the appropriate person or agency on control of substances.

Compiler's Comments

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103 and 50-32-201 through 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-104 is the complete commissioners' note to Section 201 of the Uniform Act.

50-32-105. Board to conduct educational programs.

Commissioners' Note

[Sections 50-32-105 and 50-32-106], setting out the education and research provisions, [are] designed to make it clear that education and research are an integral part of the total law enforcement effort. Broad language is used in order to provide maximum latitude.

Of primary importance are subsections [(3) and (4) of 50-32-106] authorizing persons engaged in legitimate research to withhold the identities of research subjects and allowing the State to authorize possession and distribution of controlled substances. These provisions will tie into proposed Federal law and will allow legitimate researchers to carry on much needed research without fear of exposing either themselves or their research subjects to criminal prosecution.

It should be noted that a grant of Federal immunity would preempt any State grant or denial of immunity. However, the converse would not be true, and a researcher in possession of controlled substances under a State grant of immunity could be prosecuted under Federal law if the Federal government elected not to confer immunity. However, it is unlikely that this situation will arise.

Compiler's Comments

Source: Section 508(part), Uniform Controlled Substances Act. See also 50-32-106 wherein Montana codified part of Section 508 of the Uniform Act. The commissioners' note under 50-32-105 is the complete commissioners' note to Section 508 of the Uniform Act.

50-32-106. Board to encourage research.

Commissioners' Note

[See commissioners' note to 50-32-105.]

Compiler's Comments

Source: Section 508(part), Uniform Controlled Substances Act. See also 50-32-105 wherein Montana codified part of Section 508 of the Uniform Controlled Substances Act. The commissioners' note under 50-32-105 is the complete commissioners' note to Section 508 of the Uniform Act.

Part 2

Scheduling of Dangerous Drugs

Part Compiler's Comments

Source of 1983 Amendments: The updated list of controlled substances is from Parts 1308.11 through 1308.15 of the Code of Federal Regulations.

Part Administrative Rules

ARM 24.174.1412 Additions, deletions, and rescheduling of dangerous drugs.

Part Case Notes

Possession of Each Drug in Schedules a Separate Crime: It was proper for the County Attorney to charge defendant with three counts for possession of three prohibited drugs. The Legislature intended to provide a distinct crime for each of the drugs listed in the schedules. St. v. Meader, 184 M 32, 601 P2d 386 (1979).

Failure to Republish Schedule: Failure of the Board and the Department to revise and republish schedules as required by 50-32-209 did not result in the decriminalization of dangerous drugs. The Legislature intended the original five schedules to be effective until the Board of Pharmacists and the Department of Health and Environmental Sciences (now Department of Public Health and Human Services) carry out their statutory duty. St. v. Meader, 184 M 32, 601 P2d 386 (1979), followed in St. v. Briner, 253 M 158, 831 P2d 1365, 49 St. Rep. 402 (1992).

50-32-201. General criteria to be considered.

Commissioners' Note

The Act vests the authority to administer its provisions in the appropriate person or agency within the State. The "appropriate" person or agency may be one or more persons, or one or more agencies, or a combination. The enacting State should designate that person or agency which has the means to implement, enforce, and regulate the provisions of the Act. For example, authority could be vested in the Office of the Attorney General, a Department of Health, a Division of Public Safety, or such other agency within the State responsible for regulating and enforcing the drug laws. An alternative might be a division of authority whereby one agency might be responsible for controlling drugs under this Article, another agency might be designated to regulate the legitimate industry under Article III, and still another agency might be charged with enforcement. In any event, the ultimate authority for determining the appropriate person or agency is vested in the enacting State.

To bring a substance under control through the administrative procedures, the designated State authority will make findings with respect to the eight criteria hereinafter enumerated and issue an order controlling the given substance, if it has a potential for abuse. To avoid potential State Constitutional problems, as well as allegations of improper legislative delegation of authority, a procedure has been set out which will require substances controlled by Federal laws to be controlled under the State law after the designated authority is notified and after the expiration of thirty days from the date of publication in the Federal Register of a final order controlling the substance under Federal law. However, the designated authority in the State may object to inclusion of the substance under this Act. It must give public notice of its objections and afford an opportunity for any interested party to be heard on the matter. The designated authority makes a final decision based upon that hearing, which is considered final unless specifically acted upon in a contrary manner by the legislature. If the designated authority publicly objects to inclusion of a substance under the controls of this Act, control is automatically stayed pending the outcome of the hearing and the designated authority's final decision. Once a final decision is rendered controlling the substance, the stay automatically terminates and the substance is deemed controlled under this Act.

The eight criteria to be considered with regard to a substance are as follows:

Section 201 [see compiler's comment] sets out the criteria to be considered for the control and classification of drugs into the several schedules. These criteria consist of the degree of their abuse potential, known effect, harmfulness and level of accepted medical use. All controlled substances are contained in either Schedule I, II, III, IV or V. This classification achieves one of the main objectives of the Uniform Act, which is to create a coordinated, codified system of drug control and regulation.

The Act recognizes that some States have had more stringent laws relating to substances than did the former Federal laws. The Uniform Act follows the Federal Controlled Substances Act and lists all of the controlled substances in five schedules which are identical with the Federal law. The Uniform Act is not intended to prevent a State from adding or removing substances from the schedules, or from reclassifying substances from one schedule to another, provided the procedures specified in Section 201 are followed.

(1) Its actual or relative potential for abuse—

These are the criteria which will be used most often to control drugs and will provide the basis for the greatest controversy. The term "potential for abuse" is found in the definition of a "depressant or stimulant drug" in the Drug Control Amendments of 1965 (21 U.S.C. 201(v)) and is characterized further in the regulations (21 CFR 166.2(e)) promulgated under those regulations as follows:

"The Director of the Bureau of Narcotics and Dangerous Drugs may determine that a substance has a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect if:

"(1) There is evidence that individuals are taking the drug or drugs containing such a substance in amounts sufficient to create a hazard to their health or to the safety of other individuals or of the community; or

"(2) There is significant diversion of the drug or drugs containing such a substance from legitimate drug channels; or

"(3) Individuals are taking the drug or drugs containing such a substance on their own initiative rather than on the basis of medical advice from a practitioner licensed by law to administer such drugs in the course of his professional practice; or

"(4) The drug or drugs containing such a substance are new drugs so related in their action to a drug or drugs already listed as having a potential for abuse to make it likely that the drug will have the same potentiality for abuse as such drugs, thus making it reasonable to assume that there may be significant diversions from legitimate channels, significant use contrary to or without medical advice, or that it has a substantial capability of creating hazards to the health of the user or to the safety of the community."

These regulations follow and extend the suggestions contained in House Report No. 130, 89th Congress, First Session, page 7 (1965).

The report went further in its discussion of the "potential" aspect of the term. It stated that it did not intend that potential for abuse be determined on the basis of "isolated or occasional non-therapeutic purposes." The House Interstate and Foreign Commerce Committee felt that there must exist "a substantial potential for the occurrence of significant diversions from legitimate channels, significant use by individuals contrary to professional advice, or substantial capability of creating hazards to the health of the user or the safety of the community." (at page 7)

There are two points that should be emphasized in this definition. First, the House Committee was speaking of "potential" rather than "actual" abuse. In considering a drug for control, it would not be necessary to show that abuse presently exists but only that there are indications of a potential for abuse. This is borne out by the Committee's statement that "the Secretary of Health, Education, and Welfare should not be required to wait until a number of lives have been destroyed or substantial problems have already arisen before designating a drug as subject to controls of the bill." (at page 7). Thus, the incidence of present abuse is not the test which must be applied. The test is a determination of future or potential abuse. The second point of emphasis is that in speaking of "substantial" potential the term "substantial" means more than a mere scintilla of isolated abuse, but less than a preponderance. Therefore, documentation that, say, several hundred thousand dosage units of a drug have been diverted would be "substantial" evidence of abuse despite the fact that tens of millions of dosage units of that drug are legitimately used in the same time period. The normal way in which such diversion is shown is by accountability audits of the legitimate sources of distribution, such as manufacturers, wholesalers, pharmacies and doctors.

Misuse of a drug in suicides and attempted suicides, as well as injuries resulting from unsupervised use also would be regarded as indicative of a drug's potential for abuse.

(2) Scientific evidence of its pharmacological effects—

The state of knowledge with respect to the uses of a specific drug are, of course, major considerations, e. g., it is vital to know whether or not a drug has an hallucinogenic effect if it is to be controlled because of that effect.

(3) The statement of current scientific knowledge regarding the substance—

Criteria (2) and (3) are closely related. However, (2) is primarily interested in pharmacological effects and (3) deals with all scientific knowledge with respect to the substance.

(4) Its history and current pattern of abuse—

To determine whether or not a drug should be controlled, the designated State authority must know the pattern of abuse of that substance, including the social, economic and ecological characteristics of the segments of the population involved in such abuse.

(5) The scope, duration, and significance of abuse—

Not only must the designated State authority know the pattern of abuse, but it must know whether the abuse is widespread. It must also know whether it is a passing fad, like smoking banana peels, or whether it is a significant chronic abuse problem like heroin addiction. In reaching this decision, the State authority should consider the economics of regulation and enforcement attendant to such a decision. In addition, it should be aware of the social significance and impact of such a decision upon those people, especially the young, that would be affected by it.

(6) What, if any, risk there is to the public health—

The designated State authority must have been the best available knowledge of the pharmacological properties of any drug under consideration. If a drug creates no danger to the public health, it would be inappropriate to control the drug under this Act.

(7) Its psychic or physiological dependence liability—

There must be an assessment of the extent to which a drug is physically addictive or psychologically habit forming, if such information is known.

(8) Whether the substance is an immediate precursor of a substance already controlled—

This criterion allows inclusion of immediate precursors on this basis alone into the appropriate schedule and thus safeguards against possibilities of clandestine manufacture.

The overall intent of this Section is to create reasonable flexibility within the Uniform Act so that, as new substances are discovered or found to have an abuse potential, they can speedily be brought under control without constant resort to the legislature. Such flexibility will allow the laws to keep in step with new trends in drug abuse and new scientific information. States should consider establishing a Scientific Advisory Committee consisting of leading medical and pharmaceutical professionals to advise the appropriate person or agency on control of substances.

Compiler's Comments

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103, 50-32-104, and 50-32-202 through 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-201 is the complete commissioners' note to Section 201 of the Uniform Act.

50-32-202. Designation of drug as dangerous drug.

Commissioners' Note

[See commissioners' note to 50-32-201.]

Compiler's Comments

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103, 50-32-104, 50-32-201, and 50-32-203 through 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-201 is the complete commissioners' note to Section 201 of the Uniform Act.

50-32-203. Effect of rescheduling under federal law.

Commissioners' Note

[See commissioners' note to 50-32-201.]

Compiler's Comments

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103, 50-32-104, 50-32-201, 50-32-202, 50-32-204, and 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-201 is the complete commissioners' note to Section 201 of the Uniform Act.

50-32-204. Immediate precursors.

Commissioners' Note

[See commissioners' note to 50-32-201.]

Compiler's Comments

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103, 50-32-104, 50-32-201 through 50-32-203, and 50-32-205 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-201 is the complete commissioners' note to Section 201 of the Uniform Act.

50-32-205. Nonprescription drugs not to be scheduled.

Commissioners' Note

[See commissioners' note to 50-32-201.]

Compiler's Comments

2009 Amendment: Chapter 61 after "Cosmetic Act" deleted "and 50-31-307(2)(b) of the Montana Food, Drug, and Cosmetic Act". Amendment effective March 25, 2009.

1989 Amendment: Corrected internal reference; and made minor change in phraseology. Amendment effective April 8, 1989.

Source: Section 201(part), Uniform Controlled Substances Act. See also 50-32-103, 50-32-104, and 50-32-201 through 50-32-204 wherein Montana codified other parts of Section 201 of the Uniform Act. The commissioners' note under 50-32-201 is the complete commissioners' note to Section 201 of the Uniform Act.

Case Notes

Sale of Over-the-Counter Nasal Products — No Exclusion of Methamphetamine: Barker was convicted of possession of methamphetamine but sought postconviction relief based on the argument that because over-the-counter nasal products contain methamphetamine, the Board of Pharmacy had wrongly failed to exclude the drug from a schedule. The Supreme Court concluded that the District Court did not err when it failed to grant Barker's petition for postconviction relief because Barker could not demonstrate that either state or federal law allows the over-the-counter sale of the drug itself. The Supreme Court also noted that this same argument had been rejected in U.S. v. Caperell, 938 F2d 975 (9th Cir. 1991). St. v. Barker, 257 M 31, 847 P2d 300, 50 St. Rep. 147 (1993).

50-32-206. Use of names of scheduled drugs.

Compiler's Comments

Source: Section 202, Uniform Controlled Substances Act.

50-32-207. Order forms for drugs in Schedules I and II.

Commissioners' Note

This Section requires order forms for the distribution of any Schedule I or II substances. It, too, is tied into the proposed Federal system and compliance with the Federal order form requirements should be sufficient to fulfill any State order form requirements. Thus, economic waste resulting from duplication will again be avoided.

Compiler's Comments

Source: Section 307, Uniform Controlled Substances Act.

50-32-208. Prescription and medical requirements for scheduled drugs — penalty.

Commissioners' Note

This Section draws on existing State and Federal law with the exception that emergency provisions have been added with regard to the filling of oral prescriptions. This was done in recognition of common accepted practice between physicians and pharmacists.

Compiler's Comments

2015 Amendment: Chapter 206 in (1)(a) and (2) inserted "electronic"; and made minor changes in style. Amendment effective April 8, 2015.

1981 Amendment: Added (5) providing a penalty.

Source: Section 308, Uniform Controlled Substances Act.

50-32-209. Republication of schedules.

Compiler's Comments

1997 Amendment: Chapter 113 in first sentence, after "republish", inserted "additions, deletions, or other changes to" and at end substituted "at times determined by the board" for "annually"; in second sentence, after "republish", inserted "additions, deletions, or other changes"; and made minor changes in style. Amendment effective March 20, 1997.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

1981 Amendment: Added the last sentence of the section relating to publication in the administrative rules.

Source: The first sentence was derived from Section 213, Uniform Controlled Substances Act.

Case Notes

Failure to Republish Schedules: Failure to revise and republish schedules did not result in the decriminalization of dangerous drugs. The Legislature did not intend the Board of Pharmacists to have the power, by inaction, to decriminalize the possession of all types of drugs and substances. The Legislature intended the original five schedules to be effective until the Board and the Department of Health and Environmental Sciences (now Department of Public Health and Human Services) carry out their statutory duty. St. v. Meader, 184 M 32, 601 P2d 386 (1979), followed in St. v. Briner, 253 M 158, 831 P2d 1365, 49 St. Rep. 402 (1992).

50-32-221. Criteria for placement of drug in Schedule I.

Commissioners' Note

Based upon these criteria, hallucinogenic substances and certain narcotic substances are included in the same schedule ([50-32-222]). This is primarily because both groups of drugs have no accepted use in the United States and both have a high potential for abuse. However, hallucinogenic substances in Schedule I are not treated [in the Uniform Act] in the same manner for penalty purposes as narcotic substances. (See Prohibited Acts A, Section 401 [not adopted in Montana].)

Experimental substances found to have a potential for abuse in early testing will also be included in Schedule I. When those substances are accepted by the Federal Food and Drug Administration as being safe and effective, they will then be considered to have an accepted medical use for treatment in the United States, and thus, will be eligible to be shifted to an appropriate schedule based upon the criteria set out in [50-32-223, 50-32-225, 50-32-228, and 50-32-231].

Compiler's Comments

Source: Section 203, Uniform Controlled Substances Act.

50-32-222. Specific dangerous drugs included in Schedule I.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 150, L. 2023, inserted (1)(p), (1)(dd), and (1)(gg), adding brorphine, fluorofentanyl, and isotonitazene as Schedule I opiates; in (1)(ll) at end inserted "(optical and geometric isomers only)"; deleted former (1)(pp) and former (2) (see sec. 1, Ch. 150, L. 2023, for former text); inserted (2) concerning substituted fentanyls; in (4)(z) substituted "3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b,d] pyran" for "3-hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,8,9-trimethyl-6H-dibenzo[b,d]pyran"; in (4)(ee) after "psilocyn" inserted "also known as psilocin"; in (4)(ff) near beginning of introductory clause inserted "neutral compounds, and their corresponding acids"; in (4)(ff)(i) substituted "delta 9 (delta 1)" for "delta 1 (delta 9)"; in (4)(ff)(ii) substituted "delta 8 (delta 6)" for "delta 6"; in (4)(ff)(iii) substituted "delta 6a, 10a, (delta 3,4)" for "delta 3,4"; in (4)(mm) near middle inserted "in an administrative rule regulating controlled substances, or approved for use by the United States food and drug administration, that is"; in (4)(nn) substituted current introductory clause concerning substituted amphetamines for former introductory clause (see sec. 1, Ch. 150, L. 2023, for former text); inserted (6)(d) concerning substituted benzodiazepines; inserted (7) concerning following the scheduling of substituted benzodiazepines under federal law; and made minor changes in style. Amendment effective October 1, 2023.

Section 11, Ch. 746, L. 2023, inserted text in (4)(ff) (see Ch. 150 note); substituted text in (4)(ff)(i), (4)(ff)(ii), and (4)(ff)(iii) (see Ch. 150 note); and made minor changes in style. Amendment effective May 22, 2023.

Severability: Section 15, Ch. 746, L. 2023, was a severability clause.

2019 Amendments — Composite Section: Chapter 3 in (4)(h) before "DOET" deleted "is". Amendment effective October 1, 2019.

Chapter 134 in (9) at end substituted "the same schedule it is placed in by the United States drug enforcement administration" for "Schedule II". Amendment effective April 12, 2019.

2013 Amendment: Chapter 135 in (1)(a), (1)(b), (1)(c), and (1)(kk) inserted aliases; inserted (4)(b), (4)(f), (4)(i), (4)(j), (4)(u), (4)(mm), and (4)(nn) adding AMT, 2C-T-7, 5-MeO-DIPT, 5-MeO-DMT, hashish, substituted cathinones, and compounds structurally derived from 2-amino-1-phenyl-1-propane as Schedule I hallucinogenic substances; inserted (4)(kk)(i) and (4)(kk)(ii) concerning synthetic cannabinoid analogues; deleted former (4)(kk)(xi) through (4)(kk)(xv) (see 2013 Session Law for former text); inserted (6)(a) adding GHB as a Schedule I depressant; inserted (7)(e) and (7)(g) adding 4-Methylaminorex and BZP as Schedule I stimulants; inserted (10) adding dangerous drug analogues as Schedule I substances; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 156 inserted (4)(gg) regarding synthetic cannabinoids; inserted (4)(hh) regarding Salvia divinorum; inserted (5)(b) related to synthetic cannabinoids approved by U.S. food and drug administration; and made minor changes in style. Amendment effective April 8, 2011.

1997 Amendment: Chapter 113 at end of (1)(d) inserted exception clause; inserted (1)(h) concerning alpha-methylthiofentanyl; in (1)(k), (1)(l), (1)(hh), (1)(ii), (1)(pp), and (1)(aaa) inserted aliases; inserted (2) concerning isomers; at end of (3)(j) inserted "except hydrochloride salt"; deleted former (3)(a) through (3)(bb) (see 1997 Session Law for text); inserted (4)(a) through (4)(ff) listing hallucinogenic substances; inserted (5) concerning isomers; deleted former (5)(a) and (5)(b) that read: "(a) fenethylline; and

(b) n-ethylamphetamine"; inserted (7)(a) through (7)(g) listing stimulants; inserted (8) concerning substances subject to emergency scheduling; deleted former (6) that read: "(6) For purposes of subsection (3) only, the term "isomer" includes the optical, position, and geometric isomers"; and made minor changes in style. Amendment effective March 20, 1997.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

Source: The 1997 amendments make this section generally analogous to the listing of Schedule I drugs published by the U.S. Food and Drug Administration at 21 CFR 1308.11.

1991 Amendment: Inserted (1)(a), (1)(j), (1)(k), (1)(gg), (1)(hh), (1)(jj), (1)(oo), (1)(pp), and (1)(zz) and deleted sufentanil in schedule of opiates; inserted (3)(b), (3)(f), (3)(n), (3)(p), and (3)(q) in schedule of hallucinogenic substances; and in (4) schedule of depressants inserted methaqualone.

1983 Amendment: In introduction, substituted present language (see 1983 Session Law) for "The dangerous drugs listed in this section are included in Schedule I:"; at beginning of (1), inserted "Opiates. Unless specifically excepted or listed in another schedule,"; in middle of (1), deleted "unless specifically excepted" after "ethers"; added (1)(f), (1)(p), (1)(pp), (1)(rr), and (1)(ss) to list of opiates; in (1)(m), deleted "dextrorphan"; at beginning of (2), inserted "Opium derivatives. Unless specifically excepted or listed in another schedule,"; in middle of (2), deleted "unless specifically excepted" after "salts of isomers"; added to list of opium derivatives reference to drotebanol; in (2)(v), substituted "pholcodine" for "phocludine"; at beginning of (3), inserted "Hallucinogenic substances. Unless specifically excepted or listed in another schedule,"; in middle of (3), substituted "substances" for "drugs"; deleted "unless specifically excepted" after "salts of isomers"; in (3)(g), substituted "4-methyl-2,5-dimethoxy-amphetamine" for "4-methyl 1-2, 5-dimethoxylamphetamine"; added (3)(s), (3)(t), (3)(u), (3)(v), and (3)(w) to list of hallucinogenic substances; inserted (4) through (6) relating to depressants, stimulants, and isomers; in (7), inserted "listed in subsection (3)" after "tetrahydrocannabinols"; and made minor phraseology changes.

Source: Section 204, Uniform Controlled Substances Act.

50-32-223. Criteria for placement of drug in Schedule II.

Compiler's Comments

Source: Section 205, Uniform Controlled Substances Act.

50-32-224. Specific dangerous drugs included in Schedule II.

Commissioners' Note

Schedule II now includes only those substances principally considered as Class "A" narcotic drugs, i. e., narcotics dispensed only upon written prescription. It is contemplated that if stringent control of a nonnarcotic substance is required, the substance could be administratively added to Schedule II based upon the criteria set out in [50-32-223].

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 150, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 134 in (1)(a) near end inserted "naloxegol"; inserted (2)(cc) concerning thiafentanil; in (5)(a) substituted "in oral solution in a drug product approved for marketing by the United States food and drug administration" for former description of dronabinol (see 2019 Session Law for former text); and made minor changes in style. Amendment effective April 12, 2019.

2013 Amendment: Chapter 135 inserted (1)(a)(viii) and (1)(a)(xv) adding dihydroetorphine and oripavine as Schedule II substances; inserted (2)(z) and (2)(bb) adding remifentanil and tapentadol as Schedule II opiates; inserted (3)(c) adding lisdexamfetamine as a Schedule II stimulant; inserted (6)(a) adding ANPP as a Schedule II immediate precursor substance; and made minor changes in style. Amendment effective October 1, 2013.

1997 Amendment: Chapter 113 at end of (1) inserted "are included in this category"; in (1)(a), after "apomorphine", inserted "thebaine-derived butorphanol" and after "nalbuphine" inserted "nalmefene"; at end of (1)(a)(iii) deleted "extracts"; in (1)(d), after "coca leaves", inserted "including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers, and derivatives"; inserted (2)(f) concerning carfentanil; inserted (2)(k) concerning levo-alphacetylmethadol; inserted (4)(b) concerning glutethimide; deleted former (5) (see 1997 Session Law for text); in (5), at end of introductory clause, inserted "include the following"; at end of (5)(a) and (5)(b) inserted aliases; inserted (6) concerning immediate precursors; and made minor changes in style. Amendment effective March 20, 1997.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

Source: The 1997 amendments make this section generally analogous to the listing of Schedule II drugs published by the U.S. Food and Drug Administration at 21 CFR 1308.12.

1991 Amendment: In (2) schedule of opiates inserted alfentanil and sufentanil; in (4) schedule of depressants deleted methaqualone; and inserted (6) schedule of hallucinogenic substances.

1983 Amendment: In introduction, substituted "Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section" for "The dangerous drugs listed in this section are included in Schedule II:"; at beginning of (1), inserted "Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule,"; in middle of (1), substituted "substances" for "drugs, except those narcotic drugs listed in other schedules,"; in (1)(a), after "opium or opiate" inserted phrase beginning ", excluding apomorphine"; inserted (1)(a)(i) through (1)(a)(xvi) listing opiates and compounds, derivatives, or preparations thereof; in (1)(b), deleted "isomer" after "compound";

substituted "substances" for "drugs"; substituted "(1)(a) of this section" for "(a)"; substituted "except that these substances do not include" for "but not including"; in (1)(d), substituted "substances" for "drugs"; substituted "except that these substances do not include" for "but not including"; substituted "extraction of coca leaves, which extractions" for "extractions"; inserted (1)(e) relating to poppy straw; at beginning of (2), inserted "Opiates. Unless specifically excepted or listed in another schedule,"; in middle of (2), inserted "esters, and ethers" after "isomers,"; at end of (2), inserted ", dextrorphan and levopropoxyphene excepted"; in (2)(n), inserted "(meperidine)"; inserted (2)(v) "bulk dextropropoxyphene (nondosage forms)"; at beginning of (3), inserted "Stimulants. Unless specifically excepted or listed in another schedule,"; in middle of (3), substituted "substances" for "drugs"; after "having a" deleted "potential for abuse associated with a"; at beginning of (3)(c), deleted "any drug which contains any quantity of"; inserted (4) and (5) relating to depressants and immediate precursors; and made minor phraseology changes.

Source: Section 206, Uniform Controlled Substances Act.

50-32-225. Criteria for placement of drug in Schedule III.

Commissioners' Note

Schedule III includes two categories of drugs—those narcotic drugs formerly considered Class "B" narcotics, and stimulant and depressant drugs formerly included under both the Model State Drug Abuse Control Act and the Federal Drug Abuse Control Amendments of 1965.

Subsection [(3) of 50-32-226], which includes the former Class "B" narcotic drugs, reflects two changes. First, all calculations have been shifted from the historic apothecary system of measurement to the metric system to bring them in line with the general movement by many scientific groups and industries, including the pharmaceutical industry, to the metric system. Second, all dosage-strength calculations have been adjusted to correspond to the more modern 5 cc. teaspoon as a unit dose rather than the historic 3.69 cc. teaspoon size, upon which all previous calculations were made.

Compiler's Comments

Source: Section 207, Uniform Controlled Substances Act.

50-32-226. Specific dangerous drugs included in Schedule III.

Commissioners' Note

Schedule III includes two categories of drugs—those narcotic drugs formerly considered Class "B" narcotics, and stimulant and depressant drugs formerly included under both the Model State Drug Abuse Control Act and the Federal Drug Abuse Control Amendments of 1965.

Subsection [(3)], which includes the former Class "B" narcotic drugs, reflects two changes. First, all calculations have been shifted from the historic apothecary system of measurement to the metric system to bring them in line with the general movement by many scientific groups and industries, including the pharmaceutical industry, to the metric system. Second, all dosage-strength calculations have been adjusted to correspond to the more modern 5 cc. teaspoon as a unit dose rather than the historic 3.69 cc. teaspoon size, upon which all previous calculations were made.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 150, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 134 deleted former (4)(c) and (4)(d) that read: "(c) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone (hydrocodone) per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts"; inserted (5)(tt) and (5)(hhh) adding methasterone and prostanozol as Schedule III anabolic steroids; inserted (6) regarding hallucinogenic substances and alternative names; inserted (7) regarding anticonvulsant substances; and made minor changes in style. Amendment effective April 12, 2019.

2013 Amendment: Chapter 135 inserted (2)(d), (2)(e), (2)(f), (2)(g), (2)(i), (2)(j), (2)(k), (2)(r), (2)(t), (2)(u), and (2)(v) adding additional depressants in the list of Schedule III dangerous drugs; inserted (5)(a) through (5)(y), (5)(aa), (5)(dd) through (5)(ff), (5)(mm) and (5)(nn), (5)(uu), (5)(ww), (5)(zz), (5)(aaa), (5)(ccc), (5)(iii), (5)(jjj), and (5)(nnn) adding additional anabolic steroids to the list of Schedule III dangerous drugs; in (5) inserted aliases; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 108 inserted (4)(i) relating to buprenorphine; and made minor changes in style. Amendment effective March 30, 2007.

1997 Amendment: Chapter 113 inserted (2)(a) and (2)(b) concerning certain unscheduled compounds or suppository dosage; deleted former (2)(c) concerning glutethimide; at end of (2)(k) inserted last three sentences concerning trade names; deleted former (2)(k) and (2)(l) (see 1997 Session Law for text); in (4)(c), after "dihydrocodeinone", inserted "(hydrocodone)"; in (4)(d), after "dihydrocodeinone" inserted "(hydrocodone)"; in (5) inserted first full sentence defining anabolic steroid and at beginning of second sentence inserted "Unless specifically excepted or listed in another schedule" and at end, after "containing", substituted "any quantity of the following substances is an anabolic steroid, including salts, isomers, and salts of isomers whenever the existence of those salts of isomers is possible within the specific chemical designation" for "an anabolic steroid, including but not limited to the following"; deleted former (5)(a) through (5)(d) (see 1997 Session Law for text); inserted (5)(b) providing: "(b) chlorotestosterone, also known as 4-chlortestosterone"; inserted (5)(d) through (5)(f), (5)(i), (5)(k), (5)(l), (5)(q), and (5)(y) (see 1997 Session Law for text); deleted former (5)(h) that read: "(h) dihydromesterone"; deleted former (5)(k) and (5)(l) that read: "(k) formyldienolone;

(l) 4-hydroxy-19-nortestosterone"; substituted (5)(p) concerning methyltestosterone for "17-methyltestosterone"; deleted former (5)(r) that read: "(r) methyltrienolone"; deleted former (5)(t) that read: "(t) norbolethone"; deleted former (5)(v) that read: "(v) normethandrolone"; deleted former (5)(z) that read: "(z) quinbolone"; deleted (5)(cc) that read: "(cc) stenbolone"; and made minor changes in style. Amendment effective March 20, 1997.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

Source: The 1997 amendments make this section generally analogous to the listing of Schedule III drugs published by the U.S. Food and Drug Administration at 21 CFR 1308.13.

1991 Amendments: Chapter 36 in (2) schedule of depressants inserted tiletamine and zolazepam or any of their salts.

Chapter 42 inserted (5) schedule of anabolic steroids.

1983 Amendment: In introduction, substituted present language (see 1983 Session Law) for "The dangerous drugs listed in this section are included in Schedule III:"; inserted (1) relating to stimulants; at beginning of (2), substituted "Depressants. Unless specifically excepted or" for "unless"; in middle of (2), substituted "substances" for "drugs"; after "having" deleted "a potential for abuse associated with"; in (2)(a), substituted "substance" for "drug"; after "salt" substituted "thereof" for "of a derivative of barbituric acid, except those drugs which are specifically listed in other schedules"; deleted former (1)(g), which read: "phencyclidine"; inserted (2)(j) and (2)(k) relating to items containing amobarbital, secobarbital, or pentobarbital; at beginning of (4), inserted "Narcotic drugs. Unless specifically excepted or listed in another schedule,"; in middle of (4), after "containing" deleted "limited quantities of"; at end of (4), inserted "calculated as the free anhydrous base or alkaloid in the following limited quantities"; in (4)(a) and (4)(b), after "codeine" deleted "or any of its salts"; in (4)(c) and (4)(d), after "dihydrocodeinone" deleted "or any of its salts"; in (4)(e), after "dihydrocodeine" deleted "or any of its salts"; in (4)(f), after "ethylmorphine" deleted "or any of its salts" and inserted "active, nonnarcotic" before "ingredients"; in (4)(h), after "morphine" deleted "or any of its salts"; and made minor phraseology changes.

Source: Section 208(part), Uniform Controlled Substances Act. See also 50-32-227 wherein Montana codified part of Section 208 of the Uniform Act.

50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III.

Compiler's Comments

Source: Section 208(part), Uniform Controlled Substances Act. See also 50-32-226 wherein Montana codified part of Section 208 of the Uniform Act.

50-32-228. Criteria for placement of drug in Schedule IV.

Compiler's Comments

Source: Section 209, Uniform Controlled Substances Act.

50-32-229. Specific dangerous drugs included in Schedule IV.

Commissioners' Note

Schedule IV contains certain tranquilizing drugs and long-acting barbiturates. All substances contained in the schedule must be dispensed on prescription.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 150, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 134 inserted (1)(f) adding tramadol as a Schedule IV narcotic drug; inserted (7) providing that hypnotic substances include suvorexant; inserted (8) providing that anorexiant substances include lorcaserin; inserted (9) providing that gastrointestinal substances include eluxadoline; inserted (10) providing that general anesthetic substances include alfaxalone; and made minor changes in style. Amendment effective April 12, 2019.

2013 Amendment: Chapter 135 inserted (1)(b), (1)(d), and (1)(e) adding butorphanol, difenoxin, and pentazocine as Schedule IV narcotic drugs; inserted (2)(o), (2)(w), (2)(xx), and (2)(zz) adding dichloralphenazone, fospropofol, zaleplon, and zopiclone as Schedule IV depressants; inserted (4)(g) and (4)(k) adding modanfinil and sibutramine as Schedule IV stimulants; in (4)(a) inserted alias; in (6) after "contains any quantity of" substituted "carisoprodol" for "pentazocine" and at end inserted "isomers, and salts of isomers"; and made minor changes in style. Amendment effective October 1, 2013.

1999 Amendment: Chapter 253 inserted (5)(c) allowing immediate accessibility of ephedrine by licensed physician for patient care; and made minor changes in style. Amendment effective April 5, 1999.

1997 Amendments: Chapter 103 inserted (5) concerning ephedrine.

Chapter 113 inserted (2)(vv) concerning zolpidem; and made minor changes in style. Amendment effective March 20, 1997.

Preamble: The preamble attached to Ch. 103, L. 1997, provided: "WHEREAS, the Legislature finds it appropriate to address the availability and sale of "look-alike" or "act-alike" drugs, which are over-the-counter substances that both look and act like illegal stimulants; and

WHEREAS, the Legislature considers "look-alike" or "act-alike" drugs to be dangerous because those drugs not only have an effect on the body similar to illegal stimulants, such as amphetamines, but they are relatively inexpensive and readily available for purchase by anyone of any age; and

WHEREAS, ephedrine is an over-the-counter stimulant drug sold primarily in convenience stores and truck stops as a bronchodilator in the treatment of asthma, but it is also a drug with a history of abuse and growing misuse among young people; and

WHEREAS, ephedrine is the primary ingredient in the illicit manufacture of a Schedule II prescription drug, methamphetamine, and an illegal and highly addictive drug, methcathinone; and

WHEREAS, the Legislature finds it appropriate to place single entity ephedrine products in the schedule of dangerous drugs to limit their sale to legitimate, medically related prescription sale only."

Sources: Chapter 103, L. 1997, is based on Act 570 of the Illinois Controlled Substances Act.

The 1997 amendment in Ch. 113 makes this section generally analogous to the listing of Schedule IV drugs published by the U.S. Food and Drug Administration at 21 CFR 1308.14.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

1991 Amendment: In (2) schedule of depressants inserted bromazepam, camazepam, clobazam, clotiazepam, cloxazolam, delorazepam, estazolam, ethyl loflazepate, fludiazepam, flunitrazepam, haloxazolam, ketazolam, loprazolam, lormetazepam, medazepam, midazolam, nimetazepam, nitrazepam, nordiazepam, oxazolam, pinazepam, quazepam, tetrazepam, and triazolam; and in (4) schedule of stimulants inserted cathine, fencamfamin, fenproporex, and mefenorex.

1983 Amendment: In introduction, substituted present language (see 1983 Session Law) for "The following dangerous drugs are included in Schedule IV:"; inserted (1) relating to narcotic drugs; at beginning of (2), inserted "Depressants. Unless specifically excepted or listed in another schedule,"; in middle of (2), after "following" substituted "substances, including . . . chemical designation" for "drugs having a potential for abuse associated with a depressant effect on the central nervous system"; added to list of depressants references to alprazolam, chlordiazepoxide, clorazepate, diazepam, halazepam, lorazepam, mebutamate, oxazepam, prazepam, and temazepam; in (2)(q), inserted "(mephobarbital)"; inserted (3), (4), and (5) relating to fenfluramine, stimulants, and other substances; and made minor phraseology changes.

Source: Section 210(part), Uniform Controlled Substances Act. See also 50-32-230 wherein Montana codified part of Section 210 of the Uniform Act.

50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV.

Commissioners' Note

Schedule IV contains certain tranquilizing drugs and long-acting barbiturates. All substances contained in the schedule must be dispensed on prescription.

Compiler's Comments

Source: Section 210(part), Uniform Controlled Substances Act. See also 50-32-229 wherein Montana codified part of Section 210 of the Uniform Act.

50-32-231. Criteria for placement of drug in Schedule V.

Compiler's Comments

Source: Section 211, Uniform Controlled Substances Act.

50-32-232. Specific dangerous drugs included in Schedule V.

Commissioners' Note

While it is contemplated that Schedule V drugs will be sold on a restricted over-the-counter sale basis for a valid medical purpose, this Section is not intended to supersede prescription requirements in those States where such substances cannot be sold except on a prescription-only status.

While this Schedule only contains narcotic drugs formerly considered as Class "X" (exempt over-the-counter drugs), the criteria set out in [50-32-231] are broad enough to include other over-the-counter preparations which meet those criteria and are in need of some limited form of control.

The comments to [50-32-226(3)] relating to the metric system and the dosage-strength calculations apply equally as well to Schedule V.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 150, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 134 inserted (4) adding approved cannabidiol drugs as Schedule V drugs; inserted (5) regarding anticonvulsant substances including ezogabine and brivaracetam; and made minor changes in style. Amendment effective April 12, 2019.

2013 Amendment: Chapter 135 inserted (3) adding certain depressants to the list of substances classified as Schedule V dangerous drugs. Amendment effective October 1, 2013.

2007 Amendment: Chapter 108 deleted former (1) that read: "(1) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing buprenorphine and its salts is included in this category"; and made minor changes in style. Amendment effective March 30, 2007.

1997 Amendment: Chapter 113 inserted (1) concerning narcotic drugs; deleted former (2) and (3) that read: "(2) Buprenorphine.

(3) Propylhexedrine"; inserted (3) concerning stimulants; deleted (4) that read: "(4) Pyrovalerone"; adjusted subsection references; and made minor changes in style. Amendment effective March 20, 1997.

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

1991 Amendment: In (2) substituted "buprenorphine" for "loperamide"; in (3) inserted propylhexedrine; and in (4) inserted pyrovalerone.

1983 Amendment: In introduction, substituted present language (see 1983 Session Law) for "The following dangerous drugs are included in Schedule V:"; at beginning of (1), inserted "Narcotic drugs containing nonnarcotic active medicinal ingredients."; near beginning of first complete sentence relating to any compound, mixture, or preparation, after "containing" deleted "limited quantities of"; after "drugs" substituted "or its salts . . . which include" for "which also contains"; in (1)(a), after "codeine" deleted "or any of its salts"; inserted (1)(b) relating to dihydrocodeine, (1)(c) relating to ethylmorphine, (1)(e) relating to opium, and (1)(f) relating to difenoxin; inserted (2) relating to loperamide; and made minor phraseology changes.

Source: Section 212, Uniform Controlled Substances Act.

Deviation From Uniform Controlled Substances Act: This section specifically eliminated subsections (b)(2), (b)(3), and (b)(5) of the uniform law.

50-32-233. Exempt anabolic steroid products.

Compiler's Comments

Saving Clause: Section 9, Ch. 113, L. 1997, was a saving clause.

Effective Date: Section 10, Ch. 113, L. 1997, provided: "[This act] is effective on passage and approval". Approved March 20, 1997.

Part 3
Annual Registration

Part Compiler's Comments

Preamble: The preamble attached to Ch. 273, L. 1999, provided: "WHEREAS, Title 50, chapter 32, MCA, requires the Department of Commerce to administer a program under rules adopted by the Board of Pharmacy providing for the registration of persons and institutions that may manufacture, distribute, or administer dangerous drugs; and

WHEREAS, it is the registration system under Title 50, chapter 32, part 3, MCA, that allows hospitals, physicians, and other persons and health care institutions that have legitimate uses for dangerous drugs to possess or administer those drugs; and

WHEREAS, section 50-32-101(12), MCA, provides for a category of a possessor of dangerous drugs known as a "distributor", who is a person or facility that receives dangerous drugs from one registered source and makes them available to another person who is also registered under the law; and

WHEREAS, institutions, such as hospitals and other health care facilities, that do not themselves prescribe or administer dangerous drugs but do receive those drugs from one source and make them available to a physician to administer to a patient are registered pursuant to Title 50, chapter 32, part 3, MCA, as a "distributor", as defined in section 50-32-101(12), MCA; and

WHEREAS, Montana is seeing the development of new and expanding types of health care facilities intended to fill the growing needs of a category of patients who require surgery but do not require hospitalization and who may therefore have surgery performed at an ambulatory surgical facility, soon to be called an "outpatient center for surgical services" pursuant to the terms of Senate Bill No. 116; and

WHEREAS, few if any of the existing ambulatory surgical facilities have themselves been registered for the possession of dangerous drugs because most existing facilities are operationally connected to hospitals or physicians who already have a registration issued by the Department of Commerce; and

WHEREAS, the rules adopted by the Board of Pharmacy pursuant to section 50-32-103(2), MCA, and administered by the Department of Commerce do not provide for the registration of ambulatory surgical facilities or outpatient centers for surgical services as distributors or any other class of registered entity; and

WHEREAS, the registration of ambulatory surgical facilities or outpatient centers for surgical services to allow the facilities or centers to make drugs available for preoperation, operation, and postoperation surgical purposes will provide health care consumers with greater options for the performance of outpatient surgery; and

WHEREAS, the registration of ambulatory surgical facilities or outpatient centers for surgical services will not increase the possibility that dangerous drugs will be used by unauthorized persons because an ambulatory surgical facility or outpatient center for surgical services must still receive those drugs from a registered distributor and because physicians or other persons registered to administer or prescribe drugs will still need to administer or prescribe the drugs possessed by an ambulatory surgical facility or outpatient facility for surgical services."

Part Administrative Rules

Title 24, chapter 174, subchapter 14, ARM Dangerous Drug Act.

50-32-301. Annual registration required for manufacturer, distributor, or dispenser.

Commissioners' Note

This Section requires any person who engages in, or intends to engage in, the manufacture, distribution, or dispensing of controlled substances to be registered by the State. Practitioners who administer, as that term is defined in [50-32-101(1)], or who prescribe, will be required to register; however, under [other] sections they may be exempt from the record-keeping requirements. By registering every individual dealing with controlled substances, the State will know who is responsible for a substance and who is dealing in these substances. The tighter registration requirements imposed by this Section are designed to close the gaps in State laws and thus eliminate many of these sources of diversion, both actual and potential.

Common and contract carriers, warehousemen, ultimate users, and agents of registrants are specifically exempted from the registration requirements since to require otherwise would be extremely burdensome and afford little increase in protection against diversion.

Annual registration is called for so that a licensee can be screened and the registration lists purified should the need arise. In addition, the annual registration requirement will be a form of check on persons authorized to deal in controlled substances.

Compiler's Comments

1981 Amendment: Deleted "on or after January 1, 1974" after "state must" in (1).

Source: Section 302(part), Uniform Controlled Substances Act. See also 50-32-302 through 50-32-304 wherein Montana codified other parts of Section 302 of the Uniform Act. The commissioners' note under 50-32-301 is the complete commissioners' note to Section 302 of the Uniform Act.

50-32-302. Exceptions to registration requirement.

Commissioners' Note

[See commissioners' note to 50-32-301.]

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 302(part), Uniform Controlled Substances Act. See also 50-32-301, 50-32-303, and 50-32-304 wherein Montana codified other parts of Section 302 of the Uniform Act. The commissioners' note under 50-32-301 is the complete commissioners' note to Section 302 of the Uniform Act.

50-32-303. Waiver of registration requirement for practitioners licensed by federal government.

Commissioners' Note

[See commissioners' note to 50-32-301.]

Compiler's Comments

Source: Section 302(part), Uniform Controlled Substances Act. See also 50-32-301, 50-32-302, and 50-32-304 wherein Montana codified other parts of Section 302 of the Uniform Act. The commissioners' note under 50-32-301 is the complete commissioners' note to Section 302 of the Uniform Act.

50-32-304. Waiver of registration requirement when in public interest.

Commissioners' Note

[See commissioners' note to 50-32-301.]

Compiler's Comments

Source: Section 302(part), Uniform Controlled Substances Act. See also 50-32-301 through 50-32-303 wherein Montana codified other parts of Section 302 of the Uniform Act. The commissioners' note under 50-32-301 is the complete commissioners' note to Section 302 of the Uniform Act.

50-32-305. Separate registration required.

Compiler's Comments

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

50-32-306. Criteria for registration of manufacturers and distributors.

Commissioners' Note

[Sections 50-32-306 through 50-32-308 set] out the criteria under which a State authority registers persons to engage in the various activities concerning controlled substances. There is required a showing by the applicant of the maintenance of adequate safeguards against diversion, of compliance with State and local laws, and of his previous experience in the manufacture or distribution of such substances. These criteria are almost identical to those which the Attorney General must consider in registering an applicant under the Federal Controlled Substances Act except for antitrust considerations, which were not considered applicable to the State control procedures. Thus, any particular applicant need meet only one set of criteria for both Federal and State registration.

In addition, registration under the Federal Controlled Substances Act will be deemed sufficient for registration under State law. Since the criteria for Federal and State registration are virtually identical, nothing would be served by requiring a registrant under Federal law to go through a similar procedure in registering under State law. Wasteful duplication would be the only result. Under the proposed system, a single form will suffice to register an applicant under both State and Federal law.

Practitioners are to be registered to prescribe or dispense substances in Schedules II through V, comprising all substances with recognized medical uses, if they are authorized to prescribe or dispense under the laws of the State. If those practitioners wish to conduct research in nonnarcotic substances in Schedules II through V, the State authority has within its discretion the right to require, or not require, a separate registration. It is felt that such permissive language will be most beneficial to those States who wish to keep close tabs on all those individuals who conduct research within their borders.

Practitioners who are registered under Federal law to conduct research with respect to Schedule I substances are permitted to conduct that research in a State solely upon notification to the appropriate State authority of a valid Federal registration.

Compiler's Comments

Source: Section 303(part), Uniform Controlled Substances Act. See also 50-32-307 and 50-32-308 wherein Montana codified other parts of Section 303 of the Uniform Act. The commissioners' note under 50-32-306 is the complete commissioners' note to Section 303 of the Uniform Act.

50-32-307. Manufacture and distribution limited by registration.

Commissioners' Note

[See commissioners' note to 50-32-306.]

Compiler's Comments

Source: Section 303(part), Uniform Controlled Substances Act. See also 50-32-306 and 50-32-308 wherein Montana codified other parts of Section 303 of the Uniform Act. The commissioners' note under 50-32-306 is the complete commissioners' note to Section 303 of the Uniform Act.

50-32-308. Criteria for registration of practitioners.

Commissioners' Note

[See commissioners' note to 50-32-306.]

Compiler's Comments

Source: Section 303(part), Uniform Controlled Substances Act. See also 50-32-306 and 50-32-307 wherein Montana codified other parts of Section 303 of the Uniform Act. The commissioners' note under 50-32-306 is the complete commissioners' note to Section 303 of the Uniform Act.

50-32-309. Registrants to maintain records and inventories.

Commissioners' Note

This Section, which requires registrants to prepare inventories and records of all stocks of Schedule I through V substances, ties into the proposed Federal system and should prove to be more than adequate for State record-keeping purposes. By tying the State and Federal systems together, different "paper" requirements will be avoided and wasteful duplication eliminated. However, if a State sees a need for any additional recordkeeping or inventory requirements, this provision provides the appropriate State agency with the authority to promulgate those rules.

This Section is also intended to exempt those individuals exempted by Federal law from recordkeeping and inventory requirements.

Compiler's Comments

Source: Section 306, Uniform Controlled Substances Act.

50-32-310. Inspections authorized.

Commissioners' Note

The purpose of this Section is to codify certain recent United States Supreme Court decisions, in particular Camara v. Municipal Court of the City and County of San Francisco, 387 U.S. 523 (1967), See v. City of Seattle, 387 U.S. 541 (1967), and Colonnade Catering Corp. v. U. S., 397 U.S. 72 (1970), with regard to inspection warrants. [See, also, Kramer Grocery v. U. S., 1968, 294 F.Supp. 65; U. S. v. Stinack Sales Co., 1968, 387 F.2d 849.] The Section sets out in very careful terms the procedures and restrictions for obtaining and using an administrative inspection warrant. This is of vital importance to the States since they are involved in the regulation of the legitimate drug industry and must have the ability to inspect records, books and premises if access to them is denied. By having a carefully delineated code section dealing with administrative inspection warrants, law enforcement officers will be more certain of what is needed to obtain them and the courts can apply a uniform standard. Perhaps even more important, the industry being inspected will have more certainty as to its rights and obligations in this area.

It should be noted that the Supreme Court, in Camara v. Municipal Court spoke of the requirement of "probable cause" for issuance of an administrative inspection warrant. But the Court was not, however, speaking in terms of criminal probable cause, which would require a specific knowledge of the condition of the particular building to be inspected. Instead, rejecting the criminal probable cause argument, it required merely a valid public interest in the effective enforcement of a particular public health or safety act which justified the intrusion contemplated.

Although this Section codifies the Court's view for administrative inspection warrants, it in no way affects criminal probable cause as that phrase is defined under present criminal statutes or case law.

Finally, it should be noted that while Section 402(a)(4) [not adopted in Montana] makes it a violation of the Act to refuse entry into any premises for inspection, it is contemplated that such inspection will have been authorized under the rules set out in this Section.

Compiler's Comments

Source — Montana Changes: Section 502, Uniform Controlled Substances Act. The Montana inspection provision of 50-32-310 simply authorizes an administrative inspection, while the Uniform Act provides at great length for procedures for obtaining such warrants.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-32-311. Revocation or suspension of registration.

Commissioners' Note

This Section sets out the grounds upon which a State authority may revoke or suspend a registration. Subsection [(1)] sets out the criteria upon which a registration can be revoked or suspended during the year in which that particular registration is in force. In denial of registration renewal situations for manufacturers or distributors, the criteria in this subsection should not be used. Instead, the State authority should apply the broader criteria set out in [50-32-306] relating to initial registration.

Subsection [(2)] allows the State authority in its discretion to limit the revocation or suspension of a registration to a particular substance rather than revoking or suspending the whole registration. This will be especially effective where, for example, a manufacturer committed a criminal violation, but certain mitigating circumstances militate against removing his full registration. Instead, his right to manufacture a particular substance could be suspended or revoked. This would put him out of the business of manufacturing in the substance or schedule in which he committed the violation, but would not totally remove his livelihood.

Subsection [(3)] relates to forfeitures of controlled substances where the registrant who has the right to possess those substances has his registration revoked. This Section has purposely been drafted to be permissive rather than mandatory. Thus, for example, if the registration of a sole medical practitioner or a community pharmacy in a small town were revoked, the State authority could in its discretion allow the revoked registrant to sell those substances to a new owner-registrant so that the inhabitants of the particular town would not have to go without needed pharmaceutical supplies.

Upon a final order of revocation of a registration, the State must promptly notify the Federal Bureau of Narcotics and Dangerous Drugs. Such a provision is necessary since revocation of a State registration is grounds for denial, suspension, or revocation of a Federal registration.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Source: Section 304, Uniform Controlled Substances Act.

50-32-312. Procedure for denial, suspension, revocation of, or refusal to renew registration.

Commissioners' Note

This Section requires the State authority to serve upon a registrant an order to show cause why his registration should not be revoked or suspended or his registration renewal refused prior to taking such action. The order will contain enough information to fully apprise the registrant of the charges against him and will be served at least 30 days before his current registration expires. All proceedings will be conducted under appropriate administrative procedures. If, during the pendency of an administrative hearing to deny a renewal registration, the registration runs out, this Section keeps the old registration in force until the administrative hearing is completed.

Subsection [(2)] allows the State authority, in cases of imminent danger to the public health or safety, to suspend the registration simultaneously with the institution of proceedings to revoke, suspend, or refuse a renewal. Such an emergency situation can occur when, for example, a practitioner, knowing that action is being taken to revoke his registration, begins to buy and divert large quantities of controlled substances. Rather than having to wait until all administrative proceedings have been completed and allow substantial diversion of these substances, the State authority may act immediately to suspend the registration. It may then place all controlled substances under seal until the administrative hearing is completed.

Compiler's Comments

Source: Section 305, Uniform Controlled Substances Act.

50-32-313. Practitioner's failure to register a misdemeanor.

Compiler's Comments

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

50-32-314. Board to adopt rules for registration of outpatient center for surgical services.

Compiler's Comments

2013 Amendment: Chapter 135 in (1) in second sentence substituted "50-32-101(13)" for "50-32-101(12)". Amendment effective October 1, 2013.

2007 Amendment: Chapter 502 throughout section substituted "outpatient center for surgical services" for "ambulatory surgical facilities"; in (2) near middle after "allow" substituted "that center" for "those facilities"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 52, Ch. 502, L. 2007, was a saving clause.

Effective Date: Section 3, Ch. 273, L. 1999, provided that this section is effective on passage and approval. Approved April 6, 1999.

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

Part 4
Transfer of Precursors to Controlled Substances

Part Administrative Rules

Title 23, chapter 12, subchapter 7, ARM Controlled substances.

50-32-401. Report required for precursor to controlled substance.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 759, L. 2023. Amendment effective July 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: In (3)(c), substituted "board of pharmacy" for "board of pharmacists".

Statement of Intent: The statement of intent adopted with Ch. 227, L. 1979, provided: "Those substances listed in section 1 can be procured from most commercial chemical warehouses just as numerous other chemicals can be obtained. However, those substances listed in section 1 can be used in the manufacture of several different dangerous drugs, including amphetamine, methamphetamine and phencyclidine. The intent of the legislation requiring reporting is to monitor commercial sales of those chemicals that can be readily used to produce dangerous drugs. Two purposes will be served by mandatory reporting. First of all, it will deter those who do not have a legitimate need for the chemicals from making purchases, knowing that the purchase will be reported. Secondly, by monitoring the sales the Department of Justice will be "tipped" to large purchases by illegitimate purchasers thereby preventing the possible manufacture and consumption of a controlled drug."

Incorporation Into Existing Law: Sections 50-32-401 through 50-32-405 were enacted without any codification instructions. The apparent intent of the Legislature was that they become part of the Title 50, ch. 32, and the Code Commissioner has codified them accordingly. This arrangement may affect other sections in ch. 32, including 50-32-103. See 1-11-103(4).

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

50-32-402. Reports required — exceptions.

Compiler's Comments

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

50-32-403. Common reporting form.

Compiler's Comments

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

50-32-404. Loss, theft, or other discrepancy to be reported.

Compiler's Comments

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

50-32-405. Violation — penalties.

Compiler's Comments

1999 Amendment: Chapter 432 in (1) and (2) after "report" substituted "distribution" for "sale or transfer"; and made minor changes in style. Amendment effective October 1, 1999.

Section Not Part of Uniform Act: This section is not part of the Uniform Controlled Substances Act.

Part 5

Regulation of Ephedrine and Pseudoephedrine

Part Compiler's Comments

Effective Date: Section 9, Ch. 572, L. 2005, provided that this part is effective July 1, 2005.

Part Administrative Rules

Title 23, chapter 12, subchapter 8, ARM Regulation of ephedrine or pseudoephedrine.

50-32-501. Restricted possession, purchase, or other transfer of ephedrine or pseudoephedrine — exceptions — penalties

Compiler's Comments

2015 Amendment: Chapter 251 in (1) inserted "or more than 3.6 grams per day"; and made minor changes in style. Amendment effective January 1, 2016.

50-32-502. Restricted sale and access to ephedrine or pseudoephedrine products — exceptions — penalties.

Compiler's Comments

2015 Amendment: Chapter 251 in (3)(b) substituted "3.6 grams base weight" for "9 grams"; in (3)(c) before "driver's license" inserted "valid", before "photo identification" inserted "valid government-issued", inserted "type of identification presented, including the identification number and issuing governmental entity, the time and date", after "name" inserted "and address", and at end substituted "name of the ephedrine or pseudoephedrine product sold, including the number of grams contained in the product" for "number of grams of the product, mixture, or preparation purchased or acquired"; inserted (3)(d) regarding the purchaser's signed acknowledgment; in (3)(e) in first sentence substituted "3.6 grams per day" for "9 grams" and inserted "or more than 9 grams" and inserted last sentence concerning the limits; in (4) substituted "and enter the records into the recordkeeping and monitoring system provided for in 50-32-503" for "in a secure, centralized location" and deleted former last sentence that read: "The licensed pharmacy or certified retail establishment provided for in subsection (1) shall provide access to sales records by law enforcement officials"; in (5)(b) substituted current text concerning ephedrine or pseudoephedrine for "products containing ephedrine or pseudoephedrine that are in liquid, liquid capsule, or gel capsule form if ephedrine or pseudoephedrine is not the only active ingredient"; inserted (5)(d) concerning a product dispensed pursuant to a prescription; inserted (6)(a) providing for a fine; in (6)(b) after "knowingly" deleted "or negligently" and substituted "10 days" for "1 year"; inserted (7) concerning preemption; and made minor changes in style. Amendment effective January 1, 2016.

50-32-503. Electronic recordkeeping and monitoring system.

Compiler's Comments

Effective Date: Section 5, Ch. 251, L. 2015, provided: "[This act] is effective January 1, 2016."

Part 6

Help Save Lives From Overdose Act

Part Compiler's Comments

Effective Date: Section 19, Ch. 253, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 3, 2017.

Preamble: The preamble attached to Ch. 253, L. 2017, provided: "WHEREAS, according to data from the United States Centers for Disease Control and Prevention (CDC), more than 28,000 deaths in the United States in 2014 involved opioid-related overdoses. In 2015, nationwide overdose deaths involving opioids rose to more than 33,000. The CDC also reports that deaths involving heroin have more than tripled since 2010, with more than 10,500 persons dying in 2014 and almost 13,000 dying in 2015. More than 60% of the opioid-related overdose deaths in 2015 were attributed to primarily illicit opioids, including heroin, to synthetic opioids other than methadone, or to a mixture of the two. The CDC calls opioid-related deaths a national epidemic; and

WHEREAS, many opioid-related overdose deaths could be prevented by the timely administration of an opioid antagonist, such as naloxone hydrochloride. Naloxone is a prescription medication that, when administered to a person experiencing an opioid-related overdose, restores the person to consciousness and normal breathing. Naloxone has been in use for more than 30 years and is virtually always effective when administered correctly. Furthermore, naloxone is nonaddictive and has no potential for abuse; and

WHEREAS, treatment of a suspected opioid-related drug overdose must be performed by someone other than the person overdosing, and, for this reason, the United States Food and Drug Administration labels naloxone for third-party administration. Naloxone can be successfully administered outside of a clinical setting or facility by friends, family members, or bystanders who have received minimal training in overdose recognition and naloxone administration; and

WHEREAS, it is common for a family member or friend to be the first one to find a person who is experiencing a drug overdose. It is also common for first responders, such as law enforcement officers or firefighters, to be among the first persons on the scene of a reported drug overdose. Studies show widespread success in preventing deaths from opioid-related overdoses through timely administration of naloxone. It is imperative, therefore, that persons who are in a position to render timely assistance to an overdose victim have immediate access to naloxone when it is needed; and

WHEREAS, overdose education and naloxone distribution programs that train family members, friends, and others in a position to assist someone experiencing an opioid-related overdose can effectively reduce opioid overdose death rates. Moreover, naloxone distribution for administration by nonmedical experts can be highly cost-effective; and

WHEREAS, an opioid-related overdose is a medical emergency. After the administration of naloxone, it is critical to summon emergency medical assistance. However, persons who witness an overdose are sometimes reluctant to call 9-1-1 for fear of being arrested and prosecuted for a crime. Thirty-six states and the District of Columbia have passed laws providing limited immunity to persons who call for help when someone has experienced an opioid-related overdose; and

WHEREAS, numerous state and national public health and other organizations support increased access to naloxone, including the American Medical Association, the American Society of Addiction Medicine, the American Pharmacists Association, the United States Conference of Mayors, the National Governors Association, the federal Office of National Drug Control Policy, the American Public Health Association, the Harm Reduction Coalition, the National Association of State Alcohol and Drug Abuse Directors, the American Association of Poison Control Centers, and state and local law enforcement and other organizations representing first responders."

50-32-609. Good Samaritan protections.

Compiler's Comments

2021 Amendment: Chapter 363 inserted (3) excepting a person reporting a crime under 45-5-502 or 45-5-503 from the provisions of 45-5-601(2)(a); and made minor changes in style. Amendment effective October 1, 2021.

2019 Amendment: Chapter 265 in (1)(a) at end substituted "or" for "and"; inserted (2) providing a safe harbor from certain drug crimes for pregnant women seeking dependency treatment; inserted (5)(c) that reads: "create a new cause of action or other source of criminal liability for a pregnant woman with a substance use disorder who does not seek or receive evaluation, treatment, or support services for a substance use disorder"; and made minor changes in style. Amendment effective July 1, 2019.

CHAPTER 33
BLOOD AND BLOOD PRODUCTS

Part 1
General Provisions

50-33-102. Furnishing of blood, blood products, and human tissue, organs, or bones declared service and not sale.

Compiler's Comments

1987 Amendment: In two places, after "derivatives", inserted "human tissue, organs, or bones"; and in first sentence, after "transfusing", inserted "transplanting, or transferring".

50-33-104. Immunity of blood banks and tissue banks.

Compiler's Comments

1987 Amendment: In two places, after "blood bank", inserted "or tissue bank"; in two places, after "blood products", inserted "or tissue products"; after "transfusing" inserted "transplanting, or transferring"; after "derivatives" inserted "human tissue, organs, or bones"; and near end of section, after "blood banks", inserted "or the American association of tissue banks".

CHAPTER 37
FIREWORKS

Part 1
General Provisions

Part Administrative Rules

Title 23, chapter 12, subchapter 5, ARM Fireworks.

Title 24, chapter 144, subchapter 7, ARM Fireworks wholesalers.

50-37-102. Where chapter not to apply.

Compiler's Comments

1989 Amendment: Inserted (3) providing that chapter does not authorize fireworks sale within city or town that has banned sale under 7-33-4206. Amendment effective April 3, 1989.

1985 Amendment: Near beginning of (1) after "holding a permit", substituted "issued under 50-37-107" for "from any municipality".

50-37-103. Unlawful sale, transportation, or use of fireworks.

Compiler's Comments

1985 Amendment: In (3) in first sentence, after "fireworks", substituted "without a current fireworks wholesaler permit or in violation of' for "except as enumerated in"; inserted (4) and (5) relating to sale of fireworks by mail or near church; in (6) after "pyrotechnics", inserted "fireworks as defined in 50-37-101, or permissible fireworks as enumerated in 50-37-105"; and inserted (6)(b) through (6)(d) relating to discharge of fireworks near sales location, vehicle, or person or animal.

50-37-104. Lawful sales or uses of fireworks — "no smoking" sign — wholesaler's permit.

Compiler's Comments

2001 Amendment: Chapter 483 throughout section after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (1), at beginning inserted "Subject to subsection (2)", and inserted second sentence requiring the posting of a "no smoking" sign; inserted (2) through (4) relating to fireworks wholesaler permit and adoption of rules.

Statement of Intent: The statement of intent attached to Ch. 598, L. 1985, provided: "It is the intent of the legislature that the department of commerce [now department of labor and industry] adopt rules that include the setting of a permit fee to cover the costs of administering the fireworks wholesaler permit program and to establish rules that provide a monitoring and information function. The rules should elicit pertinent information from the applicant, such as business name and location, mailing address, suppliers, products to be sold under the permit, etc. The rules should provide for conveying of information to the applicant at the time of application, such as responsibilities under Montana law, federal law, and both state and federal administrative rules."

Attorney General's Opinions

"Explosives" Not to Include Small Arms Ammunition or Fireworks: The term "explosives" in 45-5-623 does not include small arms ammunition or fireworks permitted to be sold to the public under this section. 42 A.G. Op. 83 (1988).

50-37-105. Permissible fireworks.

Compiler's Comments

2021 Amendment: Chapter 68 at beginning substituted "Permissible fireworks include and are limited to those that meet the definition of consumer fireworks as provided in 27 CFR 555.11" for "Permissible fireworks, excluding sky rockets, roman candles, and bottle rockets, include and are limited to those that meet the definition of "common fireworks" as set forth in the U.S. department of transportation's Hazardous Materials Regulations, 49 CFR, parts 173.88 and 173.100, as they read on January 1, 1985"; at end substituted "16 CFR, parts 1500 and 1507" for "16 CFR, part 1507, as it read on January 1, 1985"; and made minor changes in style. Amendment effective March 23, 2021.

1985 Amendment: Substituted entire text (see 1985 Session Law) for former text that read: "Permissible fireworks, excluding sky rockets, roman candles, daygo bombs, firecrackers, and bottle rockets, include and are limited to the following:

(1) helicopter type spinners, the total pyrotechnic composition not to exceed 20 grams each in weight;

(2) cylindrical fountains, the total pyrotechnic composition not to exceed 25 grams each in weight and the inside tube diameter not to exceed three-fourths of an inch;

(3) cone fountains, the total pyrotechnic composition not to exceed 50 grams each in weight;

(4) wheels, the total pyrotechnic composition not to exceed 60 grams in weight for each driver unit (but there may be any number of drivers on any one wheel) and the inside bore of driver tubes not to be over one-half of an inch;

(5) illuminating torches and colored fire in any form, the total pyrotechnic composition not to exceed 100 grams each in weight;

(6) sparklers and dipped sticks, the total pyrotechnic composition not to exceed 100 grams each in weight (pyrotechnic composition containing any chlorate not to exceed 5 grams); and

(7) whistles without report, the total pyrotechnic composition not to exceed 40 grams each in weight."

50-37-106. Sale of fireworks restricted to certain dates.

Compiler's Comments

2003 Amendment: Chapter 108 in first sentence after "may offer" inserted "permissible" and after "fireworks" inserted "as defined in 50-37-105". Amendment effective March 24, 2003.

2001 Amendment: Chapter 182 at end of introductory clause inserted "only during the following periods"; inserted (2) allowing sale of fireworks from December 29 through December 31; and made minor changes in style. Amendment effective April 3, 2001.

1999 Amendments Not Codified: Because of the temporary nature of the changes made by sec. 1, Ch. 284, L. 1999, the code commissioner has not codified the following amendments: Section 1, Ch. 284, at beginning of (1) inserted exception clause; inserted (2) allowing sale of fireworks on December 30 and 31, 1999; and made minor changes in style. Amendment effective October 1, 1999, and terminates January 1, 2000.

50-37-107. Supervised public display of fireworks authorized.

Compiler's Comments

2007 Amendment: Chapter 449 in (1) near beginning, in (2)(a) near middle, and in (2)(b) near beginning after "investigation" substituted "section" for "program"; in (2)(b) after "chief of the" substituted "local governmental fire agency organized under Title 7, chapter 33" for "fire department"; and made minor changes in style. Amendment effective June 1, 2007.

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

1985 Amendment: In (2)(a) and (2)(b) substituted "city, town, or county" for "municipality" and in (2)(b) before "chief", inserted "state fire marshal or the"; and deleted former (6) that read: "The term "municipalities" includes cities and incorporated towns."

1981 Amendment: Substituted "The state fire marshal or the governing body" for "The state fire marshal and the governing body" in (1).

50-37-108. General liability insurance required for public display.

Compiler's Comments

2007 Amendment: Chapter 449 near beginning after "investigation" substituted "section" for "program". Amendment effective June 1, 2007.

2003 Amendment: Chapter 387 near middle after "require" substituted "a person planning a public display of fireworks to provide proof of general liability insurance in a reasonable amount as determined by rules adopted by the department of justice" for "a bond considered adequate by the state fire prevention and investigation program or governing body from the licensee in a sum not less than $500, conditioned for the payment of all damages which may be caused either to a person or persons or to property by reason of the licensed display and arising from any acts of the licensee, his agents, employees, or subcontractors". Amendment effective October 1, 2003.

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

1985 Amendment: At beginning of section substituted "state fire marshal or the governing body of the city, town, or county" for "governing body of the municipality" and after "bond" substituted "considered adequate by the state fire marshal or governing body" for "deemed adequate by the municipality".

50-37-109. Confiscation.

Compiler's Comments

2007 Amendment: Chapter 449 near beginning after "investigation" substituted "section" for "program" and after "constable" inserted "officer of a governmental fire agency organized under Title 7, chapter 33, or firewarden"; and made minor changes in style. Amendment effective June 1, 2007.

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

CHAPTER 39
FIRE PROTECTION EQUIPMENT

Chapter Administrative Rules

Title 24, chapter 144, ARM Fire protection and fireworks wholesalers.

Part 1
Regulation of Sales, Installation, and Servicing

50-39-101. License and endorsements required.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) near beginning after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 481 inserted (4) regarding construction of chapter to fire protection equipment installation by licensed electricians.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendment: Chapter 514 in (1), in first sentence, substituted "commerce" for "justice"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 396 in (1), near beginning of first sentence before "person", deleted "natural", after "person" inserted "or entity", after "obtain a" substituted "license" for "certificate of registration", after "justice" substituted "before engaging in the business of" for "prior to", after "servicing" deleted "or installing", after "extinguishers" inserted "or before engaging in the business of selling, servicing, or installing", and after "alarm systems" inserted "special agent fire suppression systems" and in second sentence substituted language relating to endorsements for certain services for former second sentence that read: "A person or firm shall obtain from the department a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems prior to engaging in the business"; inserted (2) requiring license and endorsement to be displayed at business and requiring installer or service persons to carry copies; and inserted (3) providing for misdemeanor penalty.

Applicability: Section 10, Ch. 396, L. 1993, provided: "Licenses issued under 50-39-101 through 50-39-105 [50-39-105 now repealed] before October 1, 1993, expire on December 31, 1993, after which those holding such licenses are subject to the provisions of [this act]."

1991 Amendment: In two places substituted reference to Department of Justice for reference to State Fire Marshal; and made minor changes in style. Amendment effective April 29, 1991.

50-39-102. Application for license and endorsements.

Compiler's Comments

2001 Amendment: Chapter 483 at end of (1) after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1997 Amendments: Chapter 481 inserted (3)(b) requiring Department to issue specific endorsement to applicant with certification letter issued by national testing agency approved by Department; and made minor changes in style.

Chapter 492 in (2), after "The department shall", deleted "annually"; and in (3)(c), at beginning, deleted "annually" and inserted "at time intervals prescribed by the department and". Amendment effective July 1, 1997.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

Preamble: The preamble attached to Ch. 492, L. 1997, provided: "WHEREAS, the Legislature finds that delays in licensing board responses to complaints of misconduct by licensees and unlicensed practice that result in frustration on behalf of the public, licensees, and boards is caused by a lack of personnel to assist with compliance issues; and

WHEREAS, licensing boards collect and accumulate sufficient funds from the fees charged to licensees to meet the cost of compliance and enforcement personnel, but these same boards often lack the authority to expend the funds that they collect; and

WHEREAS, the delayed processing and the accumulating complaint backlog have a deleterious effect on the productivity and reputation of the licensees; and

WHEREAS, the Legislature finds that certain licensing boards need to be granted temporary spending authority to address the delayed processing and accumulated complaint backlog; and

WHEREAS, a uniformly flexible approach to license renewal scheduling would also reduce frustration on the part of licensees and the public that they serve; and

WHEREAS, inflexible examination dates for license applicants in the plumbing and electrical fields have caused undue hardship with no discernable public benefit; and

WHEREAS, the Committee on Business and Labor desires to alleviate these and other related problems by appropriating funds for certain professional and occupational boards that need additional compliance specialists, by allowing the Department of Commerce [function now in Department of Labor and Industry] to establish license renewal dates by rule, and by allowing electrical and plumbing apprentices to take the examination required for licensure before the apprenticeships expire."

1995 Amendment: Chapter 514 in (1) substituted "commerce" for "justice". Amendment effective July 1, 1995.

1993 Amendment: Chapter 396 in (1), near beginning after "for", substituted "a license and any endorsements" for "licenses, permits, or certificates"; in (2), before "issue", inserted "annually" and after "license" inserted "and endorsement"; in (2)(a), before "services", inserted "sales or" and after "licensed" substituted "and endorsed" for "and who pays the required fee"; in (2)(b) substituted "submits satisfactory proof that the applicant is insured to engage in the business covered by the license and endorsement or endorsements" for "The department shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the department and who pays the required fee"; in (3) substituted language requiring Department to issue endorsement on passage of examination and to annually renew endorsements upon payment of fee for (4) that read: "(4) The department shall issue a sales permit to an applicant who submits the information required by the department on the application form, who submits satisfactory proof that he deals only in equipment that meets the standards and regulations of the department, and who pays the required fee"; and made minor changes in style.

Applicability: Section 10, Ch. 396, L. 1993, provided: "Licenses issued under 50-39-101 through 50-39-105 [50-39-105 now repealed] before October 1, 1993, expire on December 31, 1993, after which those holding such licenses are subject to the provisions of [this act]."

1991 Amendment: Throughout section substituted reference to Department of Justice for reference to State Fire Marshal; and made minor changes in style. Amendment effective April 29, 1991.

50-39-103. Inspections, examinations, and hearings authorized.

Compiler's Comments

2001 Amendment: Chapter 483 throughout section after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 514 substituted present language concerning Department of Justice inspecting facilities at request of Department of Commerce and Department of Commerce's consideration of the inspection reports for former language that read: "The department of justice may conduct inspections, examinations, or hearings to determine an applicant's qualifications." Amendment effective July 1, 1995.

1993 Amendment: Chapter 396 after "hearings" substituted "to determine an applicant's qualifications" for "prior to the issuance of licenses, permits, or certificates".

Applicability: Section 10, Ch. 396, L. 1993, provided: "Licenses issued under 50-39-101 through 50-39-105 [50-39-105 now repealed] before October 1, 1993, expire on December 31, 1993, after which those holding such licenses are subject to the provisions of [this act]."

1991 Amendment: Near beginning substituted "department of justice" for "state fire marshal". Amendment effective April 29, 1991.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-39-107. Rulemaking authority.

Compiler's Comments

2001 Amendment: Chapter 483 after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 514 substituted "commerce" for "justice". Amendment effective July 1, 1995.

1993 Statement of Intent: The statement of intent attached to Ch. 396, L. 1993, provided: "A statement of intent is required for this bill because the bill gives the department of justice [now department of labor and industry] authority to adopt administrative rules. The rules should provide for the use of current industry testing procedures and ensure that consumers receive safe and effective fire protection equipment."

Applicability: Section 10, Ch. 396, L. 1993, provided: "Licenses issued under 50-39-101 through 50-39-105 [50-39-105 now repealed] before October 1, 1993, expire on December 31, 1993, after which those holding such licenses are subject to the provisions of [this act]."

50-39-108. Definitions.

Compiler's Comments

2001 Amendment: Chapter 483 in definitions of apprentice, endorsement, inspection, and license after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

CHAPTER 40
SMOKING IN PUBLIC PLACES

Part 1
Montana Clean Indoor Air Act

Part Administrative Rules

Title 37, chapter 113, ARM Montana Clean Indoor Air Act.

Part Law Review Articles

Here's Smoking at You, Kid: Has Tobacco Product Placement in the Movies Really Stopped?, Adler, 60 Mont. L. Rev. 243 (1999).

50-40-101. Short title.

Compiler's Comments

Severability Clause: Section 9, Ch. 368, L. 1979, was a severability clause.

50-40-102. Intent — purpose.

Compiler's Comments

2005 Amendment: Chapter 268 substituted current text concerning legislative findings and purpose for the part for former text that read: "The legislature, mindful of its constitutional obligations under Article II, section 3, and Article IX of the Montana constitution, has enacted the Montana Clean Indoor Air Act of 1979. It is the legislature's intent that the requirements of this part provide adequate remedies for the protection of the environmental life support system. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke." Amendment effective October 1, 2005.

Preamble: The preamble attached to Ch. 268, L. 2005, provided: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

Nonseverability: Section 13, Ch. 268, L. 2005, was a nonseverability clause.

2003 Amendment: Chapter 361 inserted first two sentences relating to constitutional obligations and legislative intent. Amendment effective April 16, 2003.

Preamble: The preamble attached to Ch. 361, L. 2003, provided: "WHEREAS, Article II, section 3, of the Montana Constitution enumerates certain inalienable individual rights, including the right to a clean and healthful environment, the right of pursuing life's basic necessities, the right of enjoying and defending an individual's life and liberty, the right of acquiring, possessing, and protecting property, and the right of seeking individual safety, health, and happiness in all lawful ways; and

WHEREAS, the constitutionally enumerated rights are by their very nature bound to result in competing interests in specific fact situations; and

WHEREAS, Article IX, section 1, of the Montana Constitution provides that the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations and directs the Legislature to provide for the administration and enforcement of this duty and also directs the Legislature to provide adequate remedies for the protection of the environmental life support system from degradation and to provide adequate remedies to prevent unreasonable depletion and degradation of natural resources; and

WHEREAS, the Legislature has reviewed the intent of the framers of the 1972 Montana Constitution as evidenced in the verbatim transcripts of the constitutional convention; and

WHEREAS, there is no indication that one enumerated inalienable right is intended to supersede other inalienable rights, including the right to use property in all lawful means; and

WHEREAS, the Legislature, mindful of its constitutional obligation to provide for the administration and enforcement of the constitution, has enacted a comprehensive set of laws to accomplish the goals of the constitution, including the Montana Clean Indoor Air Act of 1979, Title 50, chapter 40, part 1, MCA; the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA; the Clean Air Act of Montana, Title 75, chapter 2, parts 1 through 4, MCA; water quality laws, Title 75, chapter 5, MCA; The Natural Streambed and Land Preservation Act of 1975, Title 75, chapter 7, part 1, MCA; The Montana Solid Waste Management Act, Title 75, chapter 10, part 2, MCA; The Montana Hazardous Waste Act, Title 75, chapter 10, part 4, MCA; the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, MCA; the Montana Megalandfill Siting Act, sections 75-10-901 through 75-10-945, MCA; the Montana Underground Storage Tank Installer and Inspector Licensing and Permitting Act, Title 75, chapter 11, part 2, MCA; the Montana Underground Storage Tank Act, Title 75, chapter 11, part 5, MCA; the Montana Major Facility Siting Act, Title 75, chapter 20, MCA; the Open-Space Land and Voluntary Conservation Easement Act, Title 76, chapter 6, MCA; the Environmental Control Easement Act, Title 76, chapter 7, MCA; The Strip and Underground Mine Siting Act, Title 82, chapter 4, part 1, MCA; The Montana Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, MCA; The Opencut Mining Act, Title 82, chapter 4, part 4, MCA; and The Nongame and Endangered Species Conservation Act, Title 87, chapter 5, part 1, MCA."

Severability: Section 39, Ch. 361, L. 2003, was a severability clause.

Retroactive Applicability: Section 41, Ch. 361, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to actions for judicial review or other causes of action challenging the issuance of a permit, petition for review, amendment, license, arbitration, action, certificate, or inspection that are pending but not yet decided on or after [the effective date of this act]." Effective April 16, 2003.

Case Notes

Self-Government Local Governments Not Prohibited From Adopting No-Smoking Ordinances Affecting Gambling Establishments: Former section 7-1-120 (now repealed) provided: "An establishment that has been granted a permit under Title 23, chapter 5, part 6, for the placement of video gambling machines on the premises is exempt from any local government ordinance that is more restrictive than the provisions of Title 50, chapter 40, part 1", which is the Montana Clean Indoor Air Act of 1979. Under Art. XI, sec. 6, Mont. Const., "A local government unit adopting a self-government charter may exercise any power not prohibited by this constitution, law, or charter." To exempt is not to prohibit. A prohibition cuts off the power to act in the first instance. An exemption assumes that there is authority or power to act and grants freedom or immunity from that power. Section 7-1-120 did not effect an express prohibition of self-governing powers. Therefore, it did not preempt any no-smoking ordinances adopted by a self-governing entity. The state argued that it had preempted the area of state-licensed video gambling machines and that city ordinances limiting or prohibiting smoking in buildings open to the public, one ordinance of which expressly applied to premises with state licenses for video gambling machines, were inconsistent with that preemption. Section 7-1-112(5) prohibits a local government with self-government powers from exercising the power to regulate any form of gambling. The cities' clean air ordinances are not an attempt to regulate gambling in contravention of the 7-1-112(5) prohibition; the ordinances regulate clean indoor air, and if that regulation incidentally impacts video gambling machine establishments, that fact does not invalidate the ordinances. The ordinances have incidental impacts on all buildings open to the public. (See 2005 amendment.) Am. Cancer Soc'y v. St., 2004 MT 376, 325 M 70, 103 P3d 1085 (2004).

50-40-103. Definitions.

Compiler's Comments

2020 Amendment by Initiative: Initiative Measure No. 190 in definition of smoking or to smoke at end deleted "for a debilitating medical condition as provided for in Title 50, chapter 46". Amendment effective January 1, 2021.

Severability: Section 55, Initiative Measure No. 190, was a severability clause.

2013 Amendment: Chapter 123 in definition of smoking or to smoke after "product" substituted "and includes the use of marijuana for a debilitating medical condition" for "including marijuana intended for medical use"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 7 in definition of smoking at end included reference to medical marijuana; and made minor changes in style. Amendment effective March 16, 2011.

2005 Amendment: Chapter 268 inserted definitions of bar and incidental to the service of alcoholic beverages or gambling operations; in definition of enclosed public place near middle substituted "that the general public is allowed to enter or that serves" for "used by the general public or serving", at end of introductory clause inserted "the following", substituted (c) concerning public and private office buildings for "offices", in (d) inserted "and other forms of public transportation", in (e) at beginning deleted "educational or", in (f) after "assembly" inserted "facilities", inserted (h) concerning bars, inserted (i) concerning community college facilities, inserted (j) concerning facilities of the university system, and inserted (k) concerning public schools; in definition of place of work at end substituted "where one or more individuals work" for "where more than one employee works"; deleted definition of smoking area that read: ""Smoking area" means a designated area in which smoking is permitted"; and made minor changes in style. Amendment effective October 1, 2005.

Preamble: The preamble attached to Ch. 268, L. 2005, provided: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

Nonseverability: Section 13, Ch. 268, L. 2005, was a nonseverability clause.

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1981 Amendment: Added "open to the public" at the end of (2); inserted (4) and (6) defining "Person" and "Smoking area"; and substituted "Place of work" for "Working area" in (7).

Case Notes

Attached Smoking Shelters Subject to Montana Clean Indoor Air Act: Although the smoking structures attached to the casinos had two small vents near the top of the exterior walls, the structures constituted more than mere roofed shelters and were "places of work" within the meaning of the Montana Clean Indoor Air Act. The smoking structures had four walls, multiple large glass windows, inside entrances, roofs, carpeting, heating, air conditioning, electricity, and gaming machines. MC, Inc. v. Cascade City-County Bd. of Health, 2015 MT 52, 378 Mont. 267, 343 P.3d 1208.

50-40-104. Smoking in enclosed public places prohibited — notice to public — places where prohibition inapplicable.

Compiler's Comments

2011 Amendment: Chapter 19 deleted former (4) that read: "(4) The proprietor or manager of a business licensed under 23-5-611(1)(a) or (1)(c) may not allow any member of the public who is under 18 years of age to be present in any area of the establishment in which smoking is permitted"; deleted former (5)(a) that read: "(a) until September 30, 2009, bars, provided that smoke from the bar does not infiltrate into areas where smoking is prohibited under this section"; and made minor changes in style. Amendment effective October 1, 2011.

2005 Amendment: Chapter 268 substituted (1) prohibiting smoking in enclosed public place with exceptions for former text that read: "(1) The proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs;

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;

(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or

(d) designate and reserve the entire area as a nonsmoking area"; in (2) at end substituted "that smoking in the enclosed public place is prohibited" for "whether or not areas within the establishment have been reserved for nonsmokers"; deleted former (3) that read: "(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment"; inserted (4) prohibiting person under 18 from being present in area in which smoking is permitted; inserted (5) exempting places from prohibition on smoking in enclosed public place; and made minor changes in style. Amendment effective October 1, 2005.

Preamble: The preamble attached to Ch. 268, L. 2005, provided: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

Nonseverability: Section 13, Ch. 268, L. 2005, was a nonseverability clause.

Effective Date: Section 4, Ch. 281, L. 1991, which chapter enacted subsection (4) of this section, provided: "[This act] is effective July 1, 1991."

1989 Amendment: At beginning of (1) deleted "Except for those enclosed public places provided for in 50-40-105 and as provided in 50-40-201"; inserted (1)(d) relating to designation of nonsmoking area; and made minor changes in phraseology. Amendment effective April 5, 1989.

1985 Amendment: Near beginning of (1) inserted "and as provided in 50-40-201".

1981 Amendment: Added "by posting a sign that is clearly visible to the public stating this designation" at the end of (1)(c); and added (3) relating to establishments containing both a restaurant and a tavern.

Case Notes

Board of Health — Regulations and Administrative Rules: A Great Falls bar sued when the Board of Health sought to enforce regulations against smoking in the bar's partially enclosed patio. The District Court entered summary judgment for the bar, finding the regulations conflicted with administrative rules. The Supreme Court reviewed the matter de novo and reversed and remanded for entry of summary judgment in favor of the Board of Health. The Supreme Court found that the regulations were not in conflict with administrative rules. Totem Beverages, Inc. v. Great Falls-Cascade County Bd. of Health, 2019 MT 273, 397 Mont. 527, 452 P.3d 923.

Attached Smoking Shelters Subject to Montana Clean Indoor Air Act: Although the smoking structures attached to the casinos had two small vents near the top of the exterior walls, the structures constituted more than mere roofed shelters and were "places of work" within the meaning of the Montana Clean Indoor Air Act. The smoking structures had four walls, multiple large glass windows, inside entrances, roofs, carpeting, heating, air conditioning, electricity, and gaming machines. MC, Inc. v. Cascade City-County Bd. of Health, 2015 MT 52, 378 Mont. 267, 343 P.3d 1208.

50-40-108. Enforcement.

Compiler's Comments

2005 Amendment: Chapter 268 near middle after "enforced by the" inserted "department and the department's designees" and after "health" inserted "and the boards' designees"; and made minor changes in style. Amendment effective October 1, 2005.

Preamble: The preamble attached to Ch. 268, L. 2005, provided: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

Nonseverability: Section 13, Ch. 268, L. 2005, was a nonseverability clause.

50-40-110. Rulemaking required.

Compiler's Comments

Preamble: The preamble attached to Ch. 268, L. 2005, provided: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

Nonseverability: Section 13, Ch. 268, L. 2005, was a nonseverability clause.

Effective Date: This section is effective October 1, 2005.

50-40-115. Penalties.

Compiler's Comments

Preamble: The preamble attached to Ch. 268, L. 2005, provided: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

Nonseverability: Section 13, Ch. 268, L. 2005, was a nonseverability clause.

Effective Date: This section is effective October 1, 2005.

Part 2
Government Offices and Work Areas

50-40-201. Local government buildings — smoking prohibited.

Compiler's Comments

2011 Amendment: Chapter 19 in (2) in first sentence near middle after the first "only" deleted "must be smoke-free on January 1, 2006" and at end after "smoke-free" deleted "as soon as practicable on or after January 1, 2006, but no later than July 1, 2006" and in second sentence near end after "smoke-free" deleted "as soon as practicable after January 1, 2006, but no later than July 1, 2006"; and made minor changes in style. Amendment effective October 1, 2011.

2005 Amendment: Chapter 268 substituted (1) concerning all parts of buildings maintained by political subdivision for former text that read: "In offices and work areas in buildings maintained by a political subdivision, except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, the governing body of the political subdivision shall, except as provided in subsection (2), arrange nonsmoking and smoking areas in a convenient area"; substituted (2) concerning deadlines for smoke-free buildings owned or leased and occupied by political subdivisions for former text that read: "The governing body of a political subdivision may designate any building maintained by it as smoke-free"; and in (3) near beginning substituted "contained in" for "authorized by". Amendment effective October 1, 2005.

Preamble: The preamble attached to Ch. 268, L. 2005, provided: "WHEREAS, numerous studies have found that tobacco smoke is a major contributor to indoor air pollution and that breathing secondhand smoke, also known as environmental tobacco smoke, is a cause of disease in healthy nonsmokers, including diseases such as heart disease, stroke, respiratory disease, and lung cancer; and

WHEREAS, the National Cancer Institute determined in 1999 that secondhand smoke is responsible for the early deaths of up to 65,000 Americans annually; and

WHEREAS, The National Toxicology Program of the U.S. Department of Health and Human Services has listed secondhand smoke as a known carcinogen; and

WHEREAS, a study of hospital admissions for acute myocardial infarction in Helena, Montana, before, during, and after a local ordinance eliminating smoking in workplaces and public places was in effect, has determined that laws to enforce smoke-free workplaces and public places may be associated with a reduction in morbidity from heart disease; and

WHEREAS, the U.S. Surgeon General has determined that the simple separation of smokers and nonsmokers within the same air space may reduce, but does not eliminate, the exposure of nonsmokers to secondhand smoke; and

WHEREAS, the Environmental Protection Agency has determined, as of the introduction date of this bill, that secondhand smoke cannot be reduced to safe levels in businesses by high rates of ventilation and that air cleaners, which are only capable of filtering the particulate matter and odors in smoke, do not eliminate the known toxins in secondhand smoke; and

WHEREAS, it has been determined by the Centers for Disease Control and Prevention that the risk of acute myocardial infarction and coronary heart disease associated with exposure to tobacco smoke is nonlinear at low doses, increasing rapidly with relatively small doses, such as those received from secondhand smoke or actively smoking one or two cigarettes a day; and

WHEREAS, the Centers for Disease Control and Prevention warns that all patients at increased risk of coronary heart disease or with known coronary artery disease should avoid all indoor environments that permit smoking; and

WHEREAS, numerous economic analyses examining restaurant and hotel receipts and controlling for economic variables have shown either no difference or a positive economic impact after enactment of laws requiring workplaces to be smoke-free; and

WHEREAS, smoking is a potential cause of fires, and cigarette and cigar burns and ash stains on merchandise and fixtures cause economic damage to businesses; and

WHEREAS, creation of smoke-free workplaces is sound economic policy and provides the maximum level of employee health and safety."

Nonseverability: Section 13, Ch. 268, L. 2005, was a nonseverability clause.

1999 Amendment: Chapter 274 in middle of (1) after "college district" substituted "the governing body of the political subdivision shall, except as provided in subsection (2)" for "in which seven or more employees of the political subdivision are employed, the manager or person in charge of the work area shall"; inserted (2) authorizing governing body of political subdivision to designate building maintained by it as smoke-free; inserted (3) providing that authorized restrictions imposed by governing body apply uniformly to employees and public; and made minor changes in style. Amendment effective July 1, 1999.

1991 Amendment: In two places, before reference to political subdivision, deleted reference to state; and made minor changes in style. Amendment effective May 1, 1991.

1989 Amendment: Near middle inserted exception clause for a designated school or community college facility; and made minor change in phraseology.

Attorney General's Opinions

Designation of County Building as Nonsmoking Area — Seven-Employee Threshold: The seven-employee threshold (deleted by 1999 amendment) that triggers application of this section applies to the building rather than an individual office or work area located in the building. In a county building in which at least seven employees work, the managers or supervisors of the work areas may agree to designate one smoking area in the building, with the remainder of the building designated as nonsmoking. 44 A.G. Op. 17 (1991).

CHAPTER 42
DIMETHYL SULFOXIDE (DMSO)

Part 1
General Provisions

50-42-105. Physician not subject to disciplinary action.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

CHAPTER 43
CALCIUM-EAP, HARNOSAL, AND PHOSETAMIN

Part 1
General Provisions

50-43-106. Physician not subject to disciplinary action.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

CHAPTER 48
LICENSURE AND REGULATION OF TATTOOING AND BODY-PIERCING ESTABLISHMENTS

Chapter Compiler's Comments

Effective Date: Section 21, Ch. 386, L. 2005, provided that this chapter is effective January 1, 2006.

Chapter Administrative Rules

Title 37, chapter 112, ARM Body art and cosmetics.

Part 1
General Provisions

50-48-102. Definitions.

Compiler's Comments

2007 Amendment: Chapter 150 in definition of local health officer substituted "50-1-101" for "50-2-101". Amendment effective October 1, 2007.

CHAPTER 49
FOOD AND NUTRITION

Part 1
Montana Access to Food and Nutrition Act

Part Compiler's Comments

Preamble: The preamble attached to Ch. 569, L. 1991, provided: "WHEREAS, many Montana households are experiencing hunger and are not participating in food programs; and

WHEREAS, food programs are not available in all parts of the state or in all public schools; and

WHEREAS, the state of Montana has no mechanism to coordinate food programs to assure the most effective and efficient use of food programs; and

WHEREAS, nutrition education and monitoring are not generally available, and they are valuable services to improve health and prevent chronic diseases."

Effective Date: Section 11, Ch. 569, L. 1991, provided that this part is effective July 1, 1991.

50-49-103. Definitions.

Compiler's Comments

1997 Amendment: Chapter 171 deleted definition of Council that read: ""Council" means the state advisory council on food and nutrition established in 2-15-2210"; and made minor changes in style.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences as provided in 2-15-2101". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-49-106. Gifts and grants.

Compiler's Comments

1997 Amendment: Chapter 171 at beginning substituted "department" for "council".

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

50-49-107. Public health nutritionist — appointment and duties.

Compiler's Comments

1997 Amendment: Chapter 171 deleted former (2) that read: "provide staff assistance to the council"; and made minor changes in style.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

Part 2
Montana Local Food Choice Act

Part Compiler's Comments

Effective Date: Section 34, Ch. 320, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 30, 2021.

50-49-202. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 347, L. 2023. Amendment effective October 1, 2023.

50-49-203. Exemptions from regulations — transactions — information required — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 347, L. 2023. Amendment effective October 1, 2023.

CHAPTER 50
RETAIL FOOD ESTABLISHMENTS

Chapter Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.

Title 37, chapter 110, subchapter 2, ARM Retail food establishments.

Title 37, chapter 110, subchapter 5, ARM Cottage food operations.

Part 1
General Provisions

50-50-101. Purpose of regulation.

Compiler's Comments

2015 Amendment: Chapter 239 substituted "Regulation required under this chapter is intended" for "Regulation of establishments defined in 50-50-102 is required"; and made minor changes in style. Amendment effective October 1, 2015.

50-50-102. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 347, L. 2023. Amendment effective October 1, 2023.

2015 Amendment: Chapter 239 deleted definition that read: ""Baked goods" means breads, cakes, candies, cookies, pastries, and pies that are not potentially hazardous foods"; in definition of consumer after "food" deleted "is not operating an establishment"; inserted definitions of contract cook, cottage food operation, cottage food products, direct sale, domestic residence, mobile food establishment, registered area, and temporary food establishment; deleted definition that read: ""Establishment" means a retail food manufacturing establishment, meat market, food service establishment, perishable food dealer, or water hauler.

(b) The term does not include people who gather to exchange in nonmonetary transactions:

(i) high-acid canned goods, including but not limited to tomato sauce, fruits, pickles, or other vinegar-based foods;

(ii) home-brewed beer; or

(iii) dehydrated fruits and vegetables"; in definition of farmer's market substituted "food stand" for "roadside stand" and inserted "under 7-21-3301"; deleted definition that read: ""Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public at retail, with or without charge.

(b) The term does not include:

(i) operations, vendors, or vending machines that sell or serve only packaged, nonperishable foods in their unbroken, original containers;

(ii) a private organization serving food only to its members;

(iii) custom meat cutters or wild game processors who cut, process, grind, package, or freeze game meat for the owner of the carcass for consumption by the owner or the owner's family, pets, or nonpaying guests;

(iv) an establishment, as defined in 50-51-102, that serves food only to its registered guests and day visitors"; deleted definition that read: ""Perishable food dealer" means an operation that is in the business of purchasing and selling perishable food to the public at retail"; in definition of person after "means" substituted "an individual" for "a person"; in definition of potentially hazardous food substituted current definition for "means a food that is natural or synthetic and is in a form capable of supporting:

(i) the rapid and progressive growth of infectious or toxigenic microorganisms; or

(ii) the growth and toxin production of Clostridium botulinum.

(b) The term includes cut melons, garlic and oil mixtures, a food of animal origin that is raw or heat-treated, and a food of plant origin that is heat-treated or consists of raw seed sprouts.

(c) The term does not include:

(i) an air-cooled, hard-boiled egg with intact shell;

(ii) a food with a hydrogen ion concentration (pH) level of 4.6 or below when measured at 24 degrees C (75 degrees F);

(iii) a food with a water activity (aw) value of 0.85 or less;

(iv) a food in an unopened hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; or

(v) a food for which laboratory evidence is accepted by the department as demonstrating that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur"; deleted definition that read: ""Preserves" means processed fruit or berry jams, jellies, compotes, fruit butters, marmalades, chutneys, fruit aspics, fruit syrups, or similar products that have a hydrogen ion concentration (pH) of 4.6 or below when measured at 24 degrees C (75 degrees F) and that are aseptically processed, packaged, and sealed.

(b) The term does not include:

(i) tomatoes or food products containing tomatoes; or

(ii) any other food substrate or product preserved by any method other than that described in subsection (15)(a)"; substituted "raw agricultural commodity" for "raw and unprocessed farm products" as defined term, in (a) in first sentence substituted "any food in its raw, unaltered state, including fruits, vegetables, raw honey, and grains" for "fruits, vegetables, and grains sold at a farmer's market in their natural state that are not packaged and labeled and are not", inserted second sentence regarding commodity in a container, and in (b) inserted "The term does not include an agricultural commodity that has been altered by being"; in definition of retail food establishment substituted current definition for former definition that read: ""Retail food manufacturing establishment" means an operation and the buildings or structures used to manufacture or prepare food for sale or human consumption at retail.

(b) The term does not include:

(i) milk producers' facilities, milk pasteurization facilities, or milk product manufacturing plants;

(ii) slaughterhouses, meat packing plants, or meat depots; or

(iii) producers or harvesters of raw and unprocessed farm products"; and made minor changes in style. Amendment effective October 1, 2015.

2015 Amendment Not Codified: Because of the temporary nature of the changes made by sec. 1, Ch. 185, L. 2015, the code commissioner has not codified the following amendments: in definitions of establishment and raw and unprocessed farm product inserted language concerning raw honey; and made minor changes in style. Amendment effective April 2, 2015, and terminates October 1, 2015.

2013 Amendment: Chapter 302 in definition of establishment inserted (b) exempting nonmonetary exchange of certain foods and beverages; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 357 in definition of food service establishment in (b)(iv) at end inserted "and day visitors". Amendment effective May 9, 2011.

2003 Amendments — Composite Section: Chapter 474 deleted definition of commercial establishment that read: ""Commercial establishment" means an establishment operated primarily for profit.

(b) The term does not include a farmer's market"; inserted definition of consumer; in definition of establishment near beginning after "means a" inserted "retail", after "food service establishment" deleted "food warehouse, frozen food plant, commercial food processor", and after "hauler" deleted "not regulated as a public water supply system as provided in Title 75, chapter 6"; deleted definition of food manufacturing establishment that read: ""Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants"; in definition of food service establishment near end of (a) after "public" inserted "at retail", at beginning of (b)(i) substituted "operations" for "establishments", and inserted (b)(iii) concerning custom meat cutters or wild game processors; deleted definition of food warehouse that read: ""Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets.

(b) The term does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs"; deleted definition of frozen food plant that read: ""Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis"; inserted definitions of local board of health and local health officer; in definition of meat market near beginning substituted "an operation" for "a commercial establishment" and near end before "sale" inserted "retail"; in definition of perishable food dealer near beginning substituted "an operation" for "a person or commercial establishment" and at end inserted "at retail"; in definition of person at end deleted "engaged in operating, owning, or offering services of an establishment"; inserted definitions of regulatory authority, retail, and retail food manufacturing establishment; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 528 in definition of person near middle after "cooperative group" inserted "the state or a political subdivision of the state"; and made minor changes in style. Amendment effective January 1, 2004.

2001 Amendment: Chapter 428 in definition of establishment inserted last clause including water haulers not regulated as a public water supply system; inserted definition of water hauler; and made minor changes in style. Amendment effective April 30, 2001.

1997 Amendment: Chapter 412 in definition of food service establishment inserted (c) excluding establishment defined in 50-51-102. Amendment effective July 1, 1998.

1995 Amendments: Chapter 315 inserted definitions of baked goods, farmer's market, potentially hazardous food, preserves, and raw and unprocessed farm products; in definition of commercial establishment inserted (b) excluding farmer's market; and made minor changes in style. Amendment effective March 31, 1995.

Chapter 418 in definition of Board substituted "board of public health" for "board of health and environmental sciences"; in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 deleted definition of Board that read: ""Board" means the board of health and environmental sciences, provided for in 2-15-2104"; in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences, provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Inserted definitions of commercial establishment and food warehouse; and in definition of establishment inserted "food warehouse".

1987 Amendment: Inserted definition of nonprofit organization.

50-50-103. Department authorized to adopt rules — advisory council.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 347, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 28 in (1) at beginning inserted exception clause; inserted (3)(b) concerning commercially processed wild game or fish meat served by nonprofit retail food establishments; and made minor changes in style. Amendment effective February 17, 2017.

2015 Amendment: Chapter 239 in (1)(a) in first sentence substituted "retail food establishments and cottage food operations" for "establishments defined in 50-50-102" and substituted "The rules may address sanitation standards related to" for "including coverage of" and in second sentence substituted "facilities and may address other controls" for "sanitary facilities and controls"; inserted (1)(b) regarding licensure; inserted (1)(c) regarding registration of cottage food operations; inserted (2) regarding adoption of rules; in (3) substituted current text regarding cottage food products for "(a) The department and local health authorities may not adopt rules prohibiting the sale of baked goods and preserves by nonprofit organizations or by persons selling baked goods or preserves at farmer's markets or exclusively for a charitable community purpose.

(b) The department and local health authorities may not require that foods sold pursuant to this subsection (2) be prepared in certified or commercial kitchens"; in (4)(b) in first sentence after "representatives of the" substituted current member composition requirements for "food establishments and representatives of state and local government" and inserted second and third sentences concerning appointment criteria; and made minor changes in style. Amendment effective October 1, 2015.

2011 Amendment: Chapter 208 in (2)(a) after "persons" inserted "selling baked goods or preserves" and at end inserted "or exclusively for a charitable community purpose". Amendment effective April 18, 2011.

Preamble: The preamble attached to Ch. 208, L. 2011, provided: "WHEREAS, homemade foods are often the staple of fundraising efforts at the grassroots level in many communities where impromptu, nonprofessionally organized events that include homemade food are conducted to benefit individuals or organizations; and

WHEREAS, some fundraising events are not organized or sponsored by a nonprofit entity that has attained that status by meeting the requirements of 26 U.S.C. 501; and

WHEREAS, in many small communities, only a handful of nonprofit organizations are registered with the Internal Revenue Services as tax-exempt organizations; and

WHEREAS, many groups or individuals that want to offer their assistance to others by making and donating homemade foods for charitable purposes do not have the option of being affiliated with a registered nonprofit organization; and

WHEREAS, 50-50-202, MCA, is anti-community because it limits and eliminates the ability of community-based organizations, churches, and individuals from offering "the fruits of their kitchen labors" for fundraising purposes."

2009 Amendment: Chapter 482 in (3)(a) near beginning after "shall" substituted "establish" for "use", near middle after "rules or" inserted "to review any", and at end after "legislation" inserted "related to the provisions of this chapter"; in (3)(c) inserted second sentence requiring the department to provide copies of certain proposed legislation for review by the task force or advisory council; and made minor changes in style. Amendment effective May 10, 2009.

2003 Amendment: Chapter 528 inserted (3) concerning the composition and use of a food safety task force or advisory council. Amendment effective January 1, 2004.

1995 Amendment: Chapter 315 inserted (2) prohibiting Department and local health authorities from adopting rules to prohibit sale of baked goods and preserves by nonprofit organization or at farmer's market and prohibiting Department and local health authorities from requiring baked goods and preserves to be prepared in certified or commercial kitchen. Amendment effective March 31, 1995.

50-50-104. Cooperative agreements authorized.

Attorney General's Opinions

Local Health Boards Required to Inspect Food Establishments and Participate in Enforcement: In light of clear statutory provisions that place a mandatory duty upon a local health board and its officer to participate in inspection and enforcement of health laws regarding food establishments, the discretionary language of 50-50-305 simply allows an inspection program to be more accountable by permitting the Department to restrict funds going to the local board if it is not a functioning board or if it is not conducting inspections or enforcing legal provisions in a satisfactory manner. The language does not imply that the inspection and enforcement duties are discretionary. Therefore, local boards of health are required to inspect food establishments and to participate in enforcing state laws that govern those establishments. 46 A.G. Op. 3 (1995).

50-50-105. Diseased person not to handle food.

Compiler's Comments

2015 Amendment: Chapter 239 near beginning inserted "retail food" and after "processing of food" inserted provision regarding local health officer determinations. Amendment effective October 1, 2015.

50-50-106. Injunctions.

Compiler's Comments

2003 Amendment: Chapter 474 at beginning of first sentence substituted "The regulatory authority" for "Notwithstanding any other provision of this chapter, the department, local, county, or district health officer or sanitarian", after "against" substituted "any continued" for "the continuation of an alleged", and at end inserted "or rule adopted by the department under this chapter". Amendment effective January 1, 2004.

50-50-107. County attorney to prosecute violations.

Compiler's Comments

2003 Amendment: Chapter 474 near beginning substituted "regulatory authority" for "department". Amendment effective January 1, 2004.

50-50-108. Violation — misdemeanor.

Compiler's Comments

2003 Amendment: Chapter 474 near beginning after "who" inserted "purposefully or knowingly"; and made minor changes in style. Amendment effective January 1, 2004.

50-50-109. Civil penalties — injunctions not barred.

Compiler's Comments

2015 Amendment: Chapter 239 in (1) substituted "A retail food establishment or a cottage food operation" for "An establishment". Amendment effective October 1, 2015.

50-50-110. Costs and expenses — recovery by department or county.

Compiler's Comments

2015 Amendment: Chapter 239 in first sentence substituted "a retail food establishment or a cottage food operation" for "an establishment". Amendment effective October 1, 2015.

2003 Amendment: Chapter 474 in first sentence in two places substituted "regulatory authority" for "department or county". Amendment effective January 1, 2004.

50-50-116. Conditions for cottage food operation exemption from licensure and routine facility inspection.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

50-50-117. Registration of cottage food operations — fee.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

50-50-120. Temporary food establishment requirements.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

50-50-121. Requirements for farmer's markets.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 347, L. 2023. Amendment effective October 1, 2023.

Effective Date: This section is effective October 1, 2015.

50-50-126. Nonprofit retail food establishments authorized to serve wild game and fish meat — rulemaking — definitions.

Compiler's Comments

2019 Amendment: Chapter 3 in (3) deleted definition that read: ""Retail food establishment" has the same meaning as provided in 50-50-102." Amendment effective October 1, 2019.

Effective Date: Section 6, Ch. 28, L. 2017, provided: "[This act] is effective on passage and approval." Approved February 17, 2017.

Part 2
Licensing

Part Case Notes

Health Permit Requirements — Relevance of Prior Licensing: In an action to rescind contract for bakery, after Department of Health notified purchasers of deficiencies needing correction, the purchasers closed the bakery and gave the keys to seller, who had stated in the contract that to his knowledge he had complied with government regulations and who fixed the deficiencies, received a health license, and opened the bakery, which he had operated for almost 17 years prior to the sale to purchasers. It was not error for the judge to refuse admission of conditional health licenses granted seller in 1968 and 1969 on the ground that they were so remote in time as to have little if any probative value and were therefore not relevant to issue whether seller knew at time of sale that the bakery would not meet health standards. Preston v. McDonnell, 203 M 64, 659 P2d 276, 40 St. Rep. 297 (1983).

50-50-201. License or permit required.

Compiler's Comments

2015 Amendment: Chapter 239 in (1)(a) inserted "and subsection (1)(b)(i) of this section" and substituted "a retail food establishment" for "an establishment"; inserted (1)(b) regarding permit for temporary food establishment; in (2) in two places inserted "retail food"; in (3) and (4)(a) inserted "retail food establishment"; in (4)(a) inserted exception clause; inserted (4)(b) regarding temporary food establishment permit; inserted (5) and (6) regarding tribal agreement with department and license issuance when there is no agreement; and made minor changes in style. Amendment effective October 1, 2015.

1997 Amendment: Chapter 366 substituted (4) regarding validity of a license contingent on being signed in accordance with 50-50-214 for former language that read: "Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located."

1997 Statement of Intent: The statement of intent attached to Ch. 366, L. 1997, provided: "A statement of intent is required for this bill because [section 1] [30-16-104] grants rulemaking authority to the board of review established in 30-16-302 for the purpose of implementing a one-stop business licensing pilot project required by the 54th Legislature."

1987 Amendment: At beginning of (1) inserted exception clause.

Case Notes

Failure to Produce License as a Defense: Offered evidence to show that plaintiff did not have the license required by section 27-111, R.C.M. 1947 (now repealed), authorizing him to conduct his restaurant business at the time he was evicted by his landlord before expiration of the lease was immaterial, since the fact alone would not tend to prove that he could not have procured one upon placing the premises in a sanitary condition. Quong v. McEvoy, 70 M 99, 224 P 266 (1924).

50-50-202. Exemptions from license requirement.

Compiler's Comments

2015 Amendment: Chapter 239 in (1) at beginning of first sentence substituted "A retail food establishment" for "Establishments", near middle of first sentence after "licensure" inserted "under this chapter", and inserted second sentence regarding permissible entities; substituted (2) regarding nonmonetary transaction exemption for former (2) through (4) that read: "(2) (a) A license is not required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection:

(i) must be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(ii) prior to each operation, shall register with the local health officer or sanitarian on forms provided by the department.

(b) Nonprofit organizations or persons selling baked goods or preserves exclusively for a charitable community purpose are exempt from registration if they notify the local health officer or sanitarian, by phone or in person, before the event. The notification required is limited to the date and time of the event, items planned to be sold, and an estimate of the number of people expected to be served at the event.

(3) (a) (i) A license is not required of a gardener, farm owner, or farm operator who sells raw and unprocessed farm products or whole shell eggs at a farmer's market.

(ii) Whole shell eggs sold at a farmer's market by a farm owner or operator must:

(A) be clean, free of cracks, and stored in clean cartons;

(B) be kept at a temperature established by the department; and

(C) carry a label indicating the name and address of the farm owner or operator selling the eggs.

(b) A license is not required of a person:

(i) selling or offering hot coffee or hot tea at a farmer's market; or

(ii) selling baked goods or preserves at a farmer's market or exclusively for a charitable community purpose.

(c) Coffee or tea exempted under this subsection (3) may not be prepared or served with fresh milk or cream.

(4) (a) A farmer's market that is an organized market authorized by a municipal or county authority shall keep registration records of all individuals and organizations that sell baked goods or preserves at the market.

(b) The registration records must include but are not limited to the name of the seller, the seller's address and telephone number, the products sold by the seller, and the date the products were sold.

(c) The registration records must be made available to the local health officer or the officer's agent"; and made minor changes in style. Amendment effective October 1, 2015.

2015 Amendment Not Codified: Because of the temporary nature of the changes made by sec. 2, Ch. 185, L. 2015, the code commissioner has not codified the following amendment: in (3)(a)(i) after "gardener" inserted "apiarist". Amendment effective April 2, 2015, and terminates October 1, 2015.

2013 Amendments — Composite Section: Chapter 89 inserted (3)(b)(i) exempting sale of hot coffee or hot tea from licensure requirements; inserted (3)(c) prohibiting use of fresh milk or cream in preparation of coffee or tea; and made minor changes in style. Amendment effective March 27, 2013.

Chapter 94 in (3)(a)(i) after "unprocessed farm products" inserted "or whole shell eggs"; inserted (3)(a)(ii) providing requirements for whole shell eggs sold at farmer's markets; and made minor changes in style. Amendment effective March 27, 2013.

2011 Amendment: Chapter 208 inserted (2)(b) pertaining to notification and exemption from registration regarding nonprofit organizations; in (3)(b) inserted "or exclusively for a charitable community purpose"; and made minor changes in style. Amendment effective April 18, 2011.

Preamble: The preamble attached to Ch. 208, L. 2011, provided: "WHEREAS, homemade foods are often the staple of fundraising efforts at the grassroots level in many communities where impromptu, nonprofessionally organized events that include homemade food are conducted to benefit individuals or organizations; and

WHEREAS, some fundraising events are not organized or sponsored by a nonprofit entity that has attained that status by meeting the requirements of 26 U.S.C. 501; and

WHEREAS, in many small communities, only a handful of nonprofit organizations are registered with the Internal Revenue Services as tax-exempt organizations; and

WHEREAS, many groups or individuals that want to offer their assistance to others by making and donating homemade foods for charitable purposes do not have the option of being affiliated with a registered nonprofit organization; and

WHEREAS, 50-50-202, MCA, is anti-community because it limits and eliminates the ability of community-based organizations, churches, and individuals from offering "the fruits of their kitchen labors" for fundraising purposes."

2003 Amendment: Chapter 528 in (1) near middle after "of the state" inserted "that employ a full-time sanitarian"; and made minor changes in style. Amendment effective January 1, 2004.

1995 Amendment: Chapter 315 inserted (3) exempting gardeners, farm owners, and farm operators who sell raw and unprocessed farm products at farmer's market and persons who sell baked goods and preserves at farmer's market from licensure requirements; inserted (4) requiring organized farmer's market to keep certain registration records; and made minor changes in style. Amendment effective March 31, 1995.

1987 Amendment: Inserted (2) relating to operation for less than 14 days per year by nonprofit organization.

50-50-203. Application for license or permit.

Compiler's Comments

2015 Amendment: Chapter 239 in (1) inserted exception clause and before "license" inserted "retail food establishment"; in (1)(b) inserted "filed using"; inserted (2) regarding local regulator authority and local board of review; and made minor changes in style. Amendment effective October 1, 2015.

1997 Amendment: Chapter 366 at end inserted "or is an application for a license that is in compliance with rules established by the board of review established in 30-16-302".

1997 Statement of Intent: The statement of intent attached to Ch. 366, L. 1997, provided: "A statement of intent is required for this bill because [section 1] [30-16-104] grants rulemaking authority to the board of review established in 30-16-302 for the purpose of implementing a one-stop business licensing pilot project required by the 54th Legislature."

50-50-205. License fee — late fee — preemption of local authority — exception.

Compiler's Comments

2017 Amendment: Chapter 305 in (1)(b) substituted current text setting fees for licensure as retail food establishment for former text that read: "The department shall set the fees by rule according to retail food establishment complexity". Amendment effective October 1, 2017.

2015 Amendment: Chapter 239 in (1)(a) in first sentence inserted exception clause; in (1)(b) substituted current text regarding setting fees for "License fees are:

(i) $85 for each license issued to an establishment that does not have more than two employees working at any one time; and

(ii) $115 for establishments not referred to in subsection (1)(b)(i)"; in (2)(a) near end substituted "retail food establishment" for "establishment"; in (3) substituted "inspections of the retail food establishment" for "visits to the establishment"; inserted (5) and (6) regarding fee collection, fee charged, and use of fee revenue; inserted (7) regarding whole shell eggs at a farmer's market; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 482 in (1)(a) at beginning deleted "Except as provided in subsection (1)(b)", near middle before "a fee" inserted "or renewed", and after "fee" substituted "as provided in subsection (1)(b)" for "of $90"; in (1)(b) substituted language specifying license fees for "For each license issued to an establishment that does not have more than two employees working at any one time, the department shall collect a fee of $60, which must be deposited in accordance with the percentages provided in subsection (1)(a)"; and made minor changes in style. Amendment effective May 10, 2009.

2003 Amendment: (Temporary version) Chapter 528 in (1)(a) at beginning of first sentence inserted exception clause and at end increased fee from $60 to $75 and in second sentence near beginning after "deposit" substituted "88%" for "85%" and near middle decreased percentage to be deposited into the general fund and into the account in 50-50-216 from 7.5% to 6%; inserted (1)(b) establishing a license fee of $60 for an establishment that does not have more than two employees working at any one time; and made minor changes in style. Amendment effective January 1, 2004, and terminates December 31, 2004.

(Version effective January 1, 2005) In (1)(a) at beginning of first sentence inserted exception clause and at end increased fee from $60 to $90 and in second sentence near beginning after "deposit" substituted "90%" for "85%" and near middle decreased percentage to be deposited into the general fund and into the account in 50-50-216 from 7.5% to 5%; inserted (1)(b) establishing a license fee of $60 for an establishment that does not have more than two employees working at any one time; and made minor changes in style. Amendment effective January 1, 2005.

1997 Amendment: Chapter 366 inserted (4) regarding payment of fees by credit card and discounting of license fees; and made minor changes in style.

1997 Statement of Intent: The statement of intent attached to Ch. 366, L. 1997, provided: "A statement of intent is required for this bill because [section 1] [30-16-104] grants rulemaking authority to the board of review established in 30-16-302 for the purpose of implementing a one-stop business licensing pilot project required by the 54th Legislature."

1991 Amendment: In (1), at end of first sentence, raised fee from $30 to $60 and in second sentence, after "collected", substituted "under this section into" for "in the state special revenue fund to the credit of", deleted subsection reference to 50-2-108, and after "50-2-108" substituted "7.5% of the fees into the general fund, and 7.5% of the fees into the account provided for in 50-50-216" for "and the balance of the fees in the state general fund"; at end of (2) substituted "account provided for in 50-50-216" for "state general fund"; inserted (3) prohibiting county or local government from imposing additional inspection fee or charge unless violation of chapter or rule persists and is not corrected in two visits; and made minor changes in style.

1989 Amendment: Inserted (2) requiring collection of a $25 late fee.

1983 Amendments: Chapter 336 increased fee from $20 to $30; after "deposit" deleted "receipts" and inserted "85% of the fees collected in the earmarked revenue fund to the credit of the local board inspection fund account created by 50-2-108(2) and the balance of the fees".

Chapter 281 substituted "state special revenue fund" for "earmarked revenue fund".

50-50-207. Expiration date of license.

Compiler's Comments

2005 Amendment: Chapter 34 in (2) inserted reference to subsection (5)(a) of 30-12-203 and substituted "50-50-201" for "50-50-207". Amendment effective March 18, 2005.

Effective Date — Applicability: Section 4, Ch. 34, L. 2005, provided: "[This act] is effective on passage and approval [approved March 18, 2005] and applies to weighing devices licensed or renewed on or after [the effective date of this act]."

1997 Amendment: Chapter 366 in (1), at beginning, inserted exception clause; and inserted (2) regarding expiration of certain license renewals.

1997 Statement of Intent: The statement of intent attached to Ch. 366, L. 1997, provided: "A statement of intent is required for this bill because [section 1] [30-16-104] grants rulemaking authority to the board of review established in 30-16-302 for the purpose of implementing a one-stop business licensing pilot project required by the 54th Legislature."

50-50-208. Local board to report number of licensees to department.

Compiler's Comments

2015 Amendment: Chapter 239 in first sentence substituted "licensed retail food establishments, excluding temporary food establishments" for "establishments" and after "jurisdiction" deleted "that are licensed under this chapter"; inserted second sentence regarding cottage food operations; and made minor changes in style. Amendment effective October 1, 2015.

50-50-209. Cancellation of license.

Compiler's Comments

2015 Amendment: Chapter 239 in (1) inserted exception clause and substituted "cancel the license of a retail food establishment" for "cancel a license"; inserted (2) regarding cancellation by local regulatory authority; and made minor changes in style. Amendment effective October 1, 2015.

50-50-211. Notice and hearing required.

Compiler's Comments

2015 Amendment: Chapter 239 in (1) in first sentence after "license" inserted "of a retail food establishment"; inserted (2) regarding local regulatory authority procedure for cancellation of permit and opportunity to respond; and made minor changes in style. Amendment effective October 1, 2015.

50-50-212. Cancellation of license or permit for multiple-type establishment.

Compiler's Comments

2015 Amendment: Chapter 239 in first and second sentence substituted "multiple-type retail food establishment" for "multiple-type establishment" and in second sentence inserted "including a mobile food establishment"; and made minor changes in style. Amendment effective October 1, 2015.

50-50-213. Return of license or permit for alteration or destruction.

Compiler's Comments

2015 Amendment: Chapter 239 in first sentences substituted "license of a retail food establishment" for "license" and after "multiple-type" inserted "retail food"; and made minor changes in style. Amendment effective October 1, 2015.

50-50-214. Notification of and validation by local health officer.

Compiler's Comments

2015 Amendment: Chapter 239 in (1)(a) near beginning inserted "retail food establishment" and near middle before "establishment is" inserted "retail food"; in (1)(b) substituted "retail food establishment license" for "license under this chapter" and before "license will" inserted "retail food establishment"; in (1)(c) inserted "retail food establishment"; inserted (2) regarding temporary food establishment permit; and made minor changes in style. Amendment effective October 1, 2015.

1997 Amendment: Chapter 366 in (1), at end, inserted "or until the license is otherwise validated by the local health officer and is in accordance with rules established by the board of review established in 30-16-302".

1997 Statement of Intent: The statement of intent attached to Ch. 366, L. 1997, provided: "A statement of intent is required for this bill because [section 1] [30-16-104] grants rulemaking authority to the board of review established in 30-16-302 for the purpose of implementing a one-stop business licensing pilot project required by the 54th Legislature."

50-50-215. Refusal by local health officer — appeal to board.

Compiler's Comments

2015 Amendment: Chapter 239 inserted (1)(b) regarding cottage food operator or temporary food establishment permit; in (2) substituted "as provided in subsection (1)" for "not to validate a license"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-50-217. Water hauler requirements.

Compiler's Comments

Effective Date: Section 4, Ch. 428, L. 2001, provided that this section is effective on passage and approval. Approved April 30, 2001.

Part 3
Inspections

Part Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-50-301. Health officers and sanitarians to make investigations and inspections — training requirements.

Compiler's Comments

2021 Amendment: Chapter 320 inserted (4) exempting producers selling homemade food or homemade food products from inspections unless an illness or outbreak is suspected to be directly related to the food or food products. Amendment effective April 30, 2021.

2015 Amendment: Chapter 239 in (1) in first sentence near middle inserted "retail food"; inserted (3) regarding cottage food operation; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 528 in (1) near middle of first sentence after "establishments" inserted "once a year" and inserted second sentence allowing an inspection more than once a year; inserted (2) requiring that a person conducting an inspection be certified and trained; and made minor changes in style. Amendment effective January 1, 2004.

1991 Amendment: After "officers" inserted "sanitarians-in-training", before "sanitarians" inserted "registered", and after "sanitarians" deleted "or other authorized persons"; and made minor changes in style.

Attorney General's Opinions

Local Health Boards Required to Inspect Food Establishments and Participate in Enforcement: In light of clear statutory provisions that place a mandatory duty upon a local health board and its officer to participate in inspection and enforcement of health laws regarding food establishments, the discretionary language of 50-50-305 simply allows an inspection program to be more accountable by permitting the Department to restrict funds going to the local board if it is not a functioning board or if it is not conducting inspections or enforcing legal provisions in a satisfactory manner. The language does not imply that the inspection and enforcement duties are discretionary. Therefore, local boards of health are required to inspect food establishments and to participate in enforcing state laws that govern those establishments. 46 A.G. Op. 3 (1995).

50-50-302. Health officers and sanitarians to have free access.

Compiler's Comments

2015 Amendment: Chapter 239 in (1) substituted "retail food establishments licensed or permitted under this chapter" for "establishments"; inserted (2) regarding cottage food operation investigations; and made minor changes in style. Amendment effective October 1, 2015.

1991 Amendment: After "officers" inserted "sanitarians-in-training and", after "sanitarians" substituted "must be provided" for "and other authorized persons shall have", and after "hours" inserted "for the purpose of conducting investigations and inspections as required under this chapter".

50-50-303. Licensee or registrant to furnish food samples.

Compiler's Comments

2015 Amendment: Chapter 239 substituted "A licensee or a registrant under Title 50, chapter 50, part 2" for "Persons licensed under part 2". Amendment effective October 1, 2015.

50-50-304. Discovery of food capable of causing food-borne illness.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

50-50-305. Department to pay local board for inspections and enforcement.

Compiler's Comments

2015 Amendment: Chapter 239 in (1) at beginning inserted "Subject to the provisions of subsection (2)", near middle inserted "retail food establishments, including mobile food", and at end after "chapter" deleted "provided, however, that"; in (2)(a) at beginning inserted "The provisions of subsection (1) apply only if" and at end inserted "meet the requirements listed in subsection (2)(b)"; in (2)(b) inserted introductory language; and made minor changes in style. Amendment effective October 1, 2015.

1991 Amendment: In (1) deleted subsection reference to 50-2-108 and after "chapter" inserted "and enforcing the provisions of this chapter"; in (1)(b) inserted "sanitarians-in-training" and before "sanitarians" inserted "registered"; in (1)(b)(i), before "enforcement", inserted "inspections and"; inserted (1)(b)(ii) requiring local health board to meet minimum program performance standards established under rules adopted by Department; in (2), after "health", inserted "pursuant to subsection (1)" and after "authority and" substituted "must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose" for "shall be in addition to the funds appropriated under 50-2-108 through 50-2-114"; inserted (3) authorizing Department to use funds in account not paid to local health board within any jurisdiction not qualifying to receive payments from account to enforce provisions of chapter and adopted rules; and made minor changes in style.

1991 Statement of Intent: The statement of intent attached to Ch. 732, L. 1991, provided: "A statement of intent is required for this bill because it amends 50-50-305 to grant the department of health and environmental sciences [now department of public health and human services] authority to adopt rules to establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and the documentation of work performed.

Also, it is recognized that the exact nature of performance standards is still in the developmental stage. Therefore, it is intended that these performance standards be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final standards."

1983 Amendment: In (1), substituted "the local board inspection fund account created by 50-2-108(2)" for "any general fund appropriation to the department".

Attorney General's Opinions

Local Health Boards Required to Inspect Food Establishments and Participate in Enforcement: In light of clear statutory provisions that place a mandatory duty upon a local health board and its officer to participate in inspection and enforcement of health laws regarding food establishments, the discretionary language of this section simply allows an inspection program to be more accountable by permitting the Department to restrict funds going to the local board if it is not a functioning board or if it is not conducting inspections or enforcing legal provisions in a satisfactory manner. The language does not imply that the inspection and enforcement duties are discretionary. Therefore, local boards of health are required to inspect food establishments and to participate in enforcing state laws that govern those establishments. 46 A.G. Op. 3 (1995).

Part 4
Frozen Food Lockers

50-50-402. Plant owner not responsible for violation of game laws.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-50-403. Liability of frozen food plant operators restricted.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 51
HOTELS, MOTELS, AND ROOMINGHOUSES

Chapter Compiler's Comments

Severability Clause: Section 11, Ch. 18, L. 1967, was a severability clause.

Chapter Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.
Title 37, chapter 111, subchapter 1, ARM Public sleeping accommodations.
Title 37, chapter 111, subchapter 3, ARM Bed and breakfast establishments.

Part 1
General Provisions

50-51-101. Findings and purpose of regulation or guidelines.

Compiler's Comments

2011 Amendment: Chapter 334 in (1) in first sentence near beginning substituted "is benefited by regulation or voluntary guidelines for" for "requires control and regulation of" and after "accommodations and" deleted "the control, inspection, and regulation", and in second sentence inserted "or application of voluntary guidelines to"; in (2) in third sentence substituted "department actions" for "department rules", in fourth sentence after "believes that" substituted current text for "rules governing certain small or seasonal establishments must be limited to requirements meant to ensure", in fifth sentence at beginning inserted "The guidelines should be voluntary and address", and inserted six and seventh sentences regarding regulation of small, seasonal establishments; and made minor changes in style. Amendment effective October 1, 2011.

1997 Amendment: Chapter 412 in (1), in first sentence after "space accommodations", deleted "as defined in 50-51-102 hereof,"; inserted (2) concerning small or seasonal establishments; and made minor changes in style. Amendment effective July 1, 1998.

50-51-102. Definitions.

Compiler's Comments

2015 Amendment: Chapter 177 in definition of seasonal establishment substituted "no more than 40 people" for "between 9 and 40 people"; in definition of small establishment substituted "no more than 24 people" for "between 9 and 24 people"; and made minor changes in style. Amendment effective April 2, 2015.

2011 Amendments — Composite Section: Chapter 334 in definitions of seasonal establishment and small establishment substituted "was open for the purpose of accommodating guests" for "operated". Amendment effective October 1, 2011.

Chapter 357 inserted definition of day visitor; in definition of guest ranch in (c) inserted "recreational activities that include but are not limited to", inserted "hiking, biking, snowmobiling", and inserted "and day visitors"; and made minor changes in style. Amendment effective May 9, 2011.

1999 Amendment: Chapter 264 in definition of seasonal establishment at end of first sentence substituted "on average a day" for "at one time" and inserted second sentence concerning determination of average number a day; in definition of small establishment at end of first sentence substituted "on average a day" for "at one time" and inserted second sentence concerning determination of average number a day; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendments: Chapter 350 inserted definition of bed and breakfast; added "bed and breakfast" to definition of establishment; near middle of definition of person, after "services of a", inserted "bed and breakfast"; substituted definition of tourist home for former definition that read "means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public"; and made minor changes in style.

Chapter 412 in definitions of establishment and person inserted "guest ranch, outfitting and guide facility"; inserted definitions of guest ranch, outfitting and guide facility, seasonal establishment, and small establishment; and made minor changes in style. Amendment effective April 28, 1997.

1995 Amendments: Chapter 366 deleted definition of Board that read: ""Board" means the board of health and environmental sciences"; deleted definition of commercial establishment that read: ""Commercial establishment" means an establishment operated primarily for profit"; in definition of establishment, after "boardinghouse", deleted "retirement home"; in definition of person, after "tourist home", deleted "retirement home"; in definition of roominghouse, after ""boardinghouse"", deleted "or "retirement home""; and made minor changes in style.

Chapter 418 in definition of Board substituted "board of public health" for "board of health and environmental sciences"; and in definition of Department substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 deleted definition of Board that read: ""Board" means the board of health and environmental sciences"; in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Inserted definitions of commercial establishment and establishment; in definition of "person", after "motel", inserted "boardinghouse"; and made minor change in style.

1983 Amendment: Near beginning of (5), after "Roominghouse" inserted "boardinghouse"; at end of (5) after "nursing" deleted "services on a full-time basis" and inserted "or personal-care services provided by the facility".

50-51-103. Department authorized to adopt rules or guidelines.

Compiler's Comments

2011 Amendment: Chapter 334 in (3) in first sentence substituted current text for "The department shall adopt rules governing guest ranches and outfitting and guide facilities" and in second sentence in two places substituted "guidelines" for "rules"; in (3)(a) at beginning substituted "address" for "ensure"; deleted former (3)(d) that read: "(d) establish staggered license expiration dates by implementing an initial licensing period determined by the department"; in (4) substituted current text for "Rules adopted to implement subsection (3) must be adopted through negotiated rulemaking pursuant to the Montana Negotiated Rulemaking Act"; in (5) substituted current text for "The department shall develop guidelines for county sanitarians to ensure the uniform application of rules statewide. The guidelines must be relative to each type of establishment"; in (6) substituted current text for "Upon receiving an application for licensure, the department shall timely provide the applicant with a copy of the rules appropriate for the applicant's type of establishment"; and made minor changes in style. Amendment effective October 1, 2011.

2001 Amendment: Chapter 7 in (3)(b) at end substituted "ensure adequate and sanitary refuse collection and disposal" for "refuse disposal system"; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendments: Chapter 350 near beginning of first sentence, before "rules" deleted "and enforce", after "rules" deleted "to preserve", and inserted "governing the operation of bed and breakfasts, hotels, motels, roominghouses, boardinghouses, and tourist homes to protect" and in second sentence, at beginning, substituted "may" for "shall", near middle, after "safety", deleted "code", and inserted "food service, rules for bed and breakfast establishments, staggered license expiration dates, and reimbursement of local governments for inspections and enforcement"; and made minor changes in style. Amendment effective April 22, 1997.

Chapter 412 in (2), at beginning, substituted "Rules applicable to a hotel, motel, roominghouse, boardinghouse, or tourist home" for "These rules"; inserted (3), (4), (5), and (6) concerning rules governing guest ranches and outfitting and guide facilities, negotiated rulemaking, guidelines for county sanitarians, and provision of rules to establishments; and made minor changes in style. Amendment effective July 1, 1998.

1997 Statement of Intent: The statement of intent attached to Ch. 350, L. 1997, provided: "A statement of intent is required for this bill because additional rulemaking authority, beyond that already granted by 50-51-103 and 50-52-102, is being given to the department of public health and human services. The rulemaking authority will allow the department to adopt rules for establishments regulated by Title 50, chapter 51, in the following areas:

(1) requirements for food service;
(2) requirements for bed and breakfast establishments;
(3) requirements to implement staggered license expiration dates; and
(4) requirements addressing reimbursement of local governments for inspections and enforcement.

The amended rulemaking authority in 50-52-102 will clarify the department's authority to adopt rules for establishments regulated by Title 50, chapter 52, in the following areas:

(1) requirements to ensure that establishments have safe and sanitary facilities and systems;
(2) requirements for service buildings or facilities;
(3) requirements for plan review;
(4) requirements addressing nuisances that could cause the spread of disease or illness;
(5) requirements to implement staggered license expiration dates;
(6) requirements addressing licensing of establishments and operator requirements; and
(7) requirements addressing reimbursement of local governments for inspection and enforcement."

Attorney General's Opinions

Construction Standards — Hotel Pools: Section 50-51-103 (see Title 50, ch. 53, part 1) authorizes the Department of Health and Environmental Sciences (now Department of Public Health and Human Services) to adopt legislative rules having the force of law concerning construction standards relating to safety for swimming pools operated in connection with hotels, motels, or tourist homes. 39 A.G. Op. 18 (1981).

50-51-107. Provision of nursing services or personal-care services by facility prohibited.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: In (1), after "nursing services" deleted "to residents on a full-time basis" and inserted "or personal-care services"; inserted last sentence of (1) relating to third-party providers; in (2) before "appropriate" substituted "may require" for "provide for" and after "appropriate" inserted "care or".

50-51-108. Rules for bed and breakfast establishments.

Compiler's Comments

1997 Statement of Intent: The statement of intent attached to Ch. 350, L. 1997, provided: "A statement of intent is required for this bill because additional rulemaking authority, beyond that already granted by 50-51-103 and 50-52-102, is being given to the department of public health and human services. The rulemaking authority will allow the department to adopt rules for establishments regulated by Title 50, chapter 51, in the following areas:

(1) requirements for food service;
(2) requirements for bed and breakfast establishments;
(3) requirements to implement staggered license expiration dates; and
(4) requirements addressing reimbursement of local governments for inspections and enforcement.

The amended rulemaking authority in 50-52-102 will clarify the department's authority to adopt rules for establishments regulated by Title 50, chapter 52, in the following areas:

(1) requirements to ensure that establishments have safe and sanitary facilities and systems;
(2) requirements for service buildings or facilities;
(3) requirements for plan review;
(4) requirements addressing nuisances that could cause the spread of disease or illness;
(5) requirements to implement staggered license expiration dates;
(6) requirements addressing licensing of establishments and operator requirements; and
(7) requirements addressing reimbursement of local governments for inspection and enforcement."

Effective Date: Section 11(1), Ch. 350, L. 1997, provided: "[Sections 2, 6, 7 [50-51-103, 50-51-108, and 50-52-102], and 10 and this section] are effective on passage and approval." Approved April 22, 1997.

50-51-114. Emergency lodging program — definitions.

Compiler's Comments

2021 Amendment: Chapter 503 in (2) at beginning of introductory clause substituted "The purpose of the program is to provide emergency lodging" for "Except as provided in subsection (8), participating establishments may receive a tax credit as provided in 15-30-2381 and 15-31-171 for providing emergency lodging"; deleted former (3) and (8) (see 2021 Session Law for former text); and made minor changes in style. Amendment effective January 1, 2022.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2015 Amendment: Chapter 388 throughout section substituted references to emergency lodging for references to temporary emergency lodging; in (1) near beginning before "emergency" deleted "voluntary temporary"; in (2) and (3) after "individual" inserted "or family"; substituted text in (2)(a) concerning imminent need of shelter for former text that read: "displaced from the individual's residence because of temporary immediate danger to the individual posed by an assault, as described in 45-5-206, or potential assault by a partner or family member, as defined in 45-5-206"; in (6) in last sentence before "statewide" inserted "appropriate" and after "organizations" deleted "that work with victims of disaster and domestic violence"; and made minor changes in style. Amendment effective May 4, 2015.

Retroactive Applicability: Section 6, Ch. 388, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014."

Effective Date: This section is effective October 1, 2007.

Applicability: Section 5, Ch. 375, L. 2007, provided: "[This act] applies to tax years beginning after December 31, 2007."

50-51-115. Emergency lodging — liability for damages.

Compiler's Comments

2015 Amendment: Chapter 388 in (1) and (2) before "emergency" deleted "temporary"; and made minor changes in style. Amendment effective May 4, 2015.

Retroactive Applicability: Section 6, Ch. 388, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014."

Effective Date: This section is effective October 1, 2007.

Applicability: Section 5, Ch. 375, L. 2007, provided: "[This act] applies to tax years beginning after December 31, 2007."

Part 2
Licensing

50-51-201. License required.

Compiler's Comments

2011 Amendment: Chapter 334 in (2) substituted current text for "A guest ranch or an outfitting and guide facility that does not meet the definitions in 50-51-102 and that provides accommodations to fewer than nine people during each day of operation is not required to obtain a license under subsection (1)"; deleted former (3) that read: "(3) Guest ranches and outfitting and guide facilities need not apply for a license pursuant to this chapter for the first time until the later of:

(a) the completion of negotiated rulemaking and public notification by the department of the necessity for those guest ranches or outfitting and guide facilities to obtain a license pursuant to this chapter; or

(b) July 1, 1998"; and made minor changes in style. Amendment effective October 1, 2011.

1997 Amendments: Chapter 350 in (1), at beginning, substituted "A person" for "Each year, every person" and near middle inserted "bed and breakfast" (voided in July 1, 1998, version).

Chapter 412 in (1), at beginning, substituted exception clause for "Each year, every", substituted "an establishment" for "a hotel, motel, tourist home, boardinghouse, or roominghouse", and before "procure a license" inserted "annually"; inserted (2) excepting certain guest ranches and outfitting and guide facilities from licensure requirement of subsection (1); inserted (3) concerning date by which guest ranches and outfitting and guide facilities must apply for license; and made minor changes in style. Amendment effective July 1, 1998.

1995 Amendment: Chapter 366 in (1), after "boardinghouse", deleted "retirement home"; and made minor changes in style.

1991 Amendment: In (1), after "tourist home", inserted "boardinghouse".

50-51-204. License fee — late fee.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 482 in (1)(a) substituted first sentence requiring the department to collect fees for "There shall be paid to the department with each application for such license or for renewal of such license an annual license fee of $40"; inserted (1)(b) establishing initial and renewal license fees; in (2)(a) near beginning before "fee" inserted "renewal"; and made minor changes in style. Amendment effective May 10, 2009.

1991 Amendment: In (1), at end of first sentence, increased license fee from $30 to $40 and in second sentence, after "collected", substituted "under this section into" for "in the state special revenue fund to the credit of", deleted subsection reference to 50-2-108, and substituted "11.25% of the fees into the general fund, and 3.75% of the fees into the account provided for in 50-51-110" for "and the balance of the fees in the general fund"; and at end of (2) substituted "account provided for in 50-51-110" for "state general fund".

1989 Amendment: Inserted (2) requiring collection of a $25 late fee.

1983 Amendments: Chapter 336 increased fee from $20 to $30; substituted last sentence allocating 85% of the fees to the state special revenue fund and the remainder to the general fund for "These fees shall be deposited with the state treasury to the credit of the general fund."

Chapter 281, in last sentence, substituted "state special revenue fund" for "earmarked revenue fund".

50-51-207. Expiration date of license.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 350 in (1), at beginning, inserted exception clause; inserted (2) pertaining to the issuance of licenses with staggered expiration dates by the Department; and made minor changes in style.

Chapter 412 at beginning of (1) inserted exception clause; and inserted (2) concerning expiration date of licenses. Amendment effective July 1, 1998.

The only difference between the amendments was grammatical distinctions in the final sentence of subsection (2). Therefore, the Code Commissioner has not printed a version of this section to be effective July 1, 1998.

50-51-211. Notice and hearing required.

Compiler's Comments

1983 Amendment: Near middle of last sentence, substituted "department" for "board".

50-51-212. Cancellation of license for multiple-type establishment — definition.

Compiler's Comments

1997 Amendment: Chapter 350 in definition of multiple-type establishment inserted "bed and breakfast"; and made minor changes in style.

50-51-215. Refusal by local health officer — appeal to board.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Inspections

Part Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-51-301. Health officers to make investigations and inspections.

Compiler's Comments

1991 Amendment: Substituted present text concerning investigations and inspections pursuant to rules for former text that read: "(1) The department, through its employees and through local, county, and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this chapter.

(2) Each local, county, or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules of the department may direct and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the department may direct".

1991 Statement of Intent: The statement of intent attached to Ch. 730, L. 1991, provided: "A statement of intent is required for this bill because it amends 50-51-301 and 50-51-303 to grant the department of health and environmental sciences [now department of public health and human services] authority to adopt rules.

It is intended that the department adopt rules to:

(1) require health officers and sanitarians to make reports to the department concerning investigations and inspections of establishments licensed under Title 50, chapter 51; and

(2) establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and documentation of work performed.

Also, it is recognized that the exact nature of necessary reporting requirements and performance standards is still in the developmental stages. Therefore, it is intended that these requirements be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final requirements."

50-51-302. Health officers to have free access.

Compiler's Comments

1991 Amendment: Substituted present text concerning access to establishments for investigations and inspections for former text that read: "All persons authorized by this chapter or by regulations adopted under this chapter shall have free access at all reasonable hours to any of the establishments listed and defined in 50-51-102 for the purpose of making inspections".

50-51-303. Department to pay local board for inspections and enforcement.

Compiler's Comments

1991 Amendment: In (1) deleted subsection reference to 50-2-108 and near end inserted "and enforcing the provisions of this chapter"; in (1)(b) inserted "sanitarians-in-training" and before "sanitarians" inserted "registered"; in (1)(b)(i) inserted "inspections and"; inserted (1)(b)(ii) concerning performance standards; in (2), after "health", inserted "pursuant to subsection (1)" and at end substituted "must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be available for the same purpose" for "shall be in addition to the funds appropriated under 50-2-108 through 50-2-114"; inserted (3) concerning use of funds; and made minor changes in style.

1991 Statement of Intent: The statement of intent attached to Ch. 730, L. 1991, provided: "A statement of intent is required for this bill because it amends 50-51-301 and 50-51-303 to grant the department of health and environmental sciences [now department of public health and human services] authority to adopt rules.

It is intended that the department adopt rules to:

(1) require health officers and sanitarians to make reports to the department concerning investigations and inspections of establishments licensed under Title 50, chapter 51; and

(2) establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and documentation of work performed.

Also, it is recognized that the exact nature of necessary reporting requirements and performance standards is still in the developmental stages. Therefore, it is intended that these requirements be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final requirements."

1983 Amendment: In (1), substituted "the local board inspection fund created by 50-2-108(2)" for "any general fund appropriation to the department".

Commissioner Correction: The bracketed word "account" in (1) was added by the Code Commissioner to use the correct name of the fund account created by 50-2-108(2).

Part 4
Penalties

50-51-401. Civil penalties — injunctions not barred.

Compiler's Comments

2011 Amendment: Chapter 334 deleted former (2) that read: "(2) Penalties may not be assessed against a guest ranch or outfitter and guide facility unless the guest ranch or outfitting and guide facility receives a written notice of a violation and fails to correct the violation within 30 days"; and made minor changes in style. Amendment effective October 1, 2011.

1997 Amendment: Chapter 412 inserted (2) concerning assessment of penalties against guest ranch or outfitting and guide facility; and made minor changes in style. Amendment effective July 1, 1998.

CHAPTER 52
TOURIST CAMPGROUNDS AND TRAILER COURTS

Chapter Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.

Title 37, chapter 111, subchapter 12, ARM Trailer courts, campgrounds, youth camps, and work camps.

Part 1
General Provisions

50-52-101. Definitions.

Compiler's Comments

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1983 Amendment: Deleted definition of "board" as board of health and environmental sciences; deleted definition of "tourist campground", which read: "Tourist campground means a place used for public camping primarily by automobile tourists where persons can camp or secure tents or park individual trailers or truck trailers for camping and sleeping purposes"; inserted definitions of "campground", "establishment", "parcel of land", "political subdivision", "work camp", and "youth camp"; in (5) deleted "tourist" before "campground" and inserted at end of (5) "work camp or youth camp"; rewrote (7) (see 1983 Session Law) from "trailer court means a parcel of land offered to the public and usually designated a trailer court, trailer park, or mobile home park upon which two or more spaces are occupied or intended for occupancy by trailers or mobile homes for nonrecreational dwelling purposes".

50-52-102. Department to adopt rules.

Compiler's Comments

1997 Amendment: Chapter 350 near beginning, after "department", substituted "may" for "shall", after "youth camps" substituted "to protect the public health and safety" for "to insure sanitation and protect public health", and after "safety" inserted "The rules may include rules to"; and inserted (1) through (7) providing specific areas of public health and safety that may be included in the Department's rules. Amendment effective April 22, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 350, L. 1997, provided: "A statement of intent is required for this bill because additional rulemaking authority, beyond that already granted by 50-51-103 and 50-52-102, is being given to the department of public health and human services. The rulemaking authority will allow the department to adopt rules for establishments regulated by Title 50, chapter 51, in the following areas:

(1) requirements for food service;
(2) requirements for bed and breakfast establishments;
(3) requirements to implement staggered license expiration dates; and
(4) requirements addressing reimbursement of local governments for inspections and enforcement.

The amended rulemaking authority in 50-52-102 will clarify the department's authority to adopt rules for establishments regulated by Title 50, chapter 52, in the following areas:

(1) requirements to ensure that establishments have safe and sanitary facilities and systems;
(2) requirements for service buildings or facilities;
(3) requirements for plan review;
(4) requirements addressing nuisances that could cause the spread of disease or illness;
(5) requirements to implement staggered license expiration dates;
(6) requirements addressing licensing of establishments and operator requirements; and

(7) requirements addressing reimbursement of local governments for inspection and enforcement."

1983 Amendment: Deleted "tourist" before "campgrounds"; and inserted "work camps, and youth camps".

Statement of Intent: The statement of intent attached to HB 420 (Ch. 341, L. 1983) read: "A statement of intent is required for House Bill 420 [Ch. 341, L. 1983] because it adds authority for the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to adopt rules setting sanitation standards for work camps and youth camps. The law presently allows the department to set standards for trailer courts and tourist campgrounds ensuring a level of sanitation adequate to protect public health. The need for similar uniform state standards for work camps and youth camps has become apparent, largely because such facilities are not uniformly regulated across the state and are subject to local standards ranging from stringent to minimal. Therefore, it is the intent of House Bill 420 [Ch. 341, L. 1983] to give the department authority to set sanitation standards for both work camps and youth camps which ensure adequate facilities exist for proper sewage disposal, require storage and disposal of solid waste in a manner adequate to prevent contamination and spread of disease, ensure that food is handled and food service maintained in a manner sufficient to prevent food-related illness, ensure that water supplies are adequate and uncontaminated, and define general housekeeping practices needed to ensure sanitation."

Saving Clause: Section 8, Ch. 341, L. 1983, was a saving clause.

Severability: Section 9, Ch. 341, L. 1983, was a severability section.

Case Notes

Blanket Approval Not Given for Expansion of Trailer Park — Mandamus Properly Denied: Where the appellant brought an action for mandamus to compel the county to issue a permit for construction of an addition to a trailer park, alleging that he had been given "blanket approval" in 1968 for all future additions when he submitted his original application for the initial construction permit, the District Court did not err in holding that the county did not give such blanket approval and in refusing to issue the writ. The record shows that the appellant acknowledged his duty to obtain a permit at each stage of expansion and that he did in fact apply for such a permit at each stage. Had the appellant received "blanket approval", these applications would have been idle gestures. There is therefore substantial evidence to support the District Court's findings and judgment. Bailey v. Dept. of Health and Environmental Sciences, 204 M 253, 664 P2d 325, 40 St. Rep. 825 (1983).

50-52-103. Duty to obtain license and permit inspections.

Compiler's Comments

1983 Amendment: In introductory clause substituted "an establishment" for "a tourist campground or trailer court"; rewrote (1) (see 1983 Session Law), which read: "obtain a license from the department".

Statement of Intent: The statement of intent attached to HB 420 (Ch. 341, L. 1983) read: "A statement of intent is required for House Bill 420 [Ch. 341, L. 1983] because it adds authority for the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to adopt rules setting sanitation standards for work camps and youth camps. The law presently allows the department to set standards for trailer courts and tourist campgrounds ensuring a level of sanitation adequate to protect public health. The need for similar uniform state standards for work camps and youth camps has become apparent, largely because such facilities are not uniformly regulated across the state and are subject to local standards ranging from stringent to minimal. Therefore, it is the intent of House Bill 420 [Ch. 341, L. 1983] to give the department authority to set sanitation standards for both work camps and youth camps which ensure adequate facilities exist for proper sewage disposal, require storage and disposal of solid waste in a manner adequate to prevent contamination and spread of disease, ensure that food is handled and food service maintained in a manner sufficient to prevent food-related illness, ensure that water supplies are adequate and uncontaminated, and define general housekeeping practices needed to ensure sanitation."

Saving Clause: Section 8, Ch. 341, L. 1983, was a saving clause.

Severability: Section 9, Ch. 341, L. 1983, was a severability section.

50-52-105. Violation of chapter a misdemeanor.

Compiler's Comments

2001 Amendment: Chapter 257 in (2) in second sentence substituted "department of revenue, as provided in 15-1-504" for "state treasurer"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1987 Amendment: In (2), after "Fines", inserted "except justice's court fines".

1983 Amendment: In (2) substituted "establishment" for "tourist campground or trailer court".

Statement of Intent: The statement of intent attached to HB 420 (Ch. 341, L. 1983) read: "A statement of intent is required for House Bill 420 [Ch. 341, L. 1983] because it adds authority for the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to adopt rules setting sanitation standards for work camps and youth camps. The law presently allows the department to set standards for trailer courts and tourist campgrounds ensuring a level of sanitation adequate to protect public health. The need for similar uniform state standards for work camps and youth camps has become apparent, largely because such facilities are not uniformly regulated across the state and are subject to local standards ranging from stringent to minimal. Therefore, it is the intent of House Bill 420 [Ch. 341, L. 1983] to give the department authority to set sanitation standards for both work camps and youth camps which ensure adequate facilities exist for proper sewage disposal, require storage and disposal of solid waste in a manner adequate to prevent contamination and spread of disease, ensure that food is handled and food service maintained in a manner sufficient to prevent food-related illness, ensure that water supplies are adequate and uncontaminated, and define general housekeeping practices needed to ensure sanitation."

Saving Clause: Section 8, Ch. 341, L. 1983, was a saving clause.

Severability: Section 9, Ch. 341, L. 1983, was a severability section.

Severability Clause: Section 7, Ch. 383, L. 1973, was a severability clause.

50-52-106. Injunction.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 420 (Ch. 341, L. 1983) read: "A statement of intent is required for House Bill 420 [Ch. 341, L. 1983] because it adds authority for the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to adopt rules setting sanitation standards for work camps and youth camps. The law presently allows the department to set standards for trailer courts and tourist campgrounds ensuring a level of sanitation adequate to protect public health. The need for similar uniform state standards for work camps and youth camps has become apparent, largely because such facilities are not uniformly regulated across the state and are subject to local standards ranging from stringent to minimal. Therefore, it is the intent of House Bill 420 [Ch. 341, L. 1983] to give the department authority to set sanitation standards for both work camps and youth camps which ensure adequate facilities exist for proper sewage disposal, require storage and disposal of solid waste in a manner adequate to prevent contamination and spread of disease, ensure that food is handled and food service maintained in a manner sufficient to prevent food-related illness, ensure that water supplies are adequate and uncontaminated, and define general housekeeping practices needed to ensure sanitation."

Saving Clause: Section 8, Ch. 341, L. 1983, was a saving clause.

Severability: Section 9, Ch. 341, L. 1983, was a severability section.

50-52-107. Civil penalties — injunctions not barred.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 731, L. 1991, provided: "A statement of intent is required for this bill because it amends 50-52-301 and 50-52-302 to grant the department of health and environmental sciences [now department of public health and human services] authority to adopt rules.

It is intended that the department adopt rules to:

(1) require health officers and sanitarians to make investigations and inspections of campgrounds, trailer courts, work camps, and youth camps and make reports to the department; and

(2) establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and the documentation of work performed.

Also, it is recognized that the exact nature of necessary reporting requirements and performance standards is still in the developmental stages. Therefore, it is intended that these requirements be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final requirements."

50-52-108. Costs and expenses — recovery by department or county.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 731, L. 1991, provided: "A statement of intent is required for this bill because it amends 50-52-301 and 50-52-302 to grant the department of health and environmental sciences [now department of public health and human services] authority to adopt rules.

It is intended that the department adopt rules to:

(1) require health officers and sanitarians to make investigations and inspections of campgrounds, trailer courts, work camps, and youth camps and make reports to the department; and

(2) establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and the documentation of work performed.

Also, it is recognized that the exact nature of necessary reporting requirements and performance standards is still in the developmental stages. Therefore, it is intended that these requirements be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final requirements."

Part 2
Licensing

50-52-202. License fee — late fee.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 482 in (1)(a) substituted current language concerning license fee for "Each application shall be accompanied by a fee of $40"; inserted (1)(b) establishing license fees; in (3)(a) near beginning before "fee" inserted "renewal"; and made minor changes in style. Amendment effective May 10, 2009.

1991 Amendment: In (1) raised fee from $30 to $40; in (2), after "collected", substituted "under subsection (1) into" for "in the state special revenue fund to the credit of", deleted subsection reference to 50-2-108, and substituted "11.25% of the fees into the general fund, and 3.75% of the fees collected under subsection (1) into the account provided for in 50-52-210" for "and the balance of the fees in the state general fund"; at end of (3) substituted "account provided for in 50-20-210" for "state general fund"; and made minor changes in style.

1991 Statement of Intent: The statement of intent attached to Ch. 731, L. 1991, provided: "A statement of intent is required for this bill because it amends 50-52-301 and 50-52-302 to grant the department of health and environmental sciences [now department of public health and human services] authority to adopt rules.

It is intended that the department adopt rules to:

(1) require health officers and sanitarians to make investigations and inspections of campgrounds, trailer courts, work camps, and youth camps and make reports to the department; and

(2) establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and the documentation of work performed.

Also, it is recognized that the exact nature of necessary reporting requirements and performance standards is still in the developmental stages. Therefore, it is intended that these requirements be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final requirements."

1989 Amendment: Inserted (3) requiring collection of a $25 late fee.

1983 Amendments: Chapter 336, in (1), increased fee from $20 to $30; in (2), substituted language allocating 85% of the fees to the state special revenue fund and the remainder to the general fund for "Fees collected by the department shall be deposited in the state general fund."

Chapter 281, in (2) in language added by Ch. 336, substituted "state special revenue fund" for "earmarked revenue fund".

50-52-203. Expiration date of license.

Compiler's Comments

1997 Amendment: Chapter 350 in (1), at beginning, inserted exception clause and at end inserted "unless canceled for cause"; and inserted (2) pertaining to the issuance of licenses with staggered expiration dates by the Department.

50-52-209. Refusal by local health officer — appeal to board.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-52-210. Special revenue account.

Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 731, L. 1991, provided: "A statement of intent is required for this bill because it amends 50-52-301 and 50-52-302 to grant the department of health and environmental sciences [now department of public health and human services] authority to adopt rules.

It is intended that the department adopt rules to:

(1) require health officers and sanitarians to make investigations and inspections of campgrounds, trailer courts, work camps, and youth camps and make reports to the department; and

(2) establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and the documentation of work performed.

Also, it is recognized that the exact nature of necessary reporting requirements and performance standards is still in the developmental stages. Therefore, it is intended that these requirements be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final requirements."

Part 3
Inspections

Part Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-52-301. Health officers and sanitarians to make investigations and inspections.

Compiler's Comments

1991 Amendment: At beginning of section substituted "State and" for "The department or", after "officers" inserted "sanitarians-in-training", before "sanitarians" inserted "registered", after "shall" substituted "make investigations and inspections of establishments and make reports to the department as required under rules adopted by the department" for "inspect establishments during reasonable hours as necessary"; and made minor changes in style.

1991 Statement of Intent: The statement of intent attached to Ch. 731, L. 1991, provided: "A statement of intent is required for this bill because it amends 50-52-301 and 50-52-302 to grant the department of health and environmental sciences [now department of public health and human services] authority to adopt rules.

It is intended that the department adopt rules to:

(1) require health officers and sanitarians to make investigations and inspections of campgrounds, trailer courts, work camps, and youth camps and make reports to the department; and

(2) establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and the documentation of work performed.

Also, it is recognized that the exact nature of necessary reporting requirements and performance standards is still in the developmental stages. Therefore, it is intended that these requirements be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final requirements."

1983 Amendment: Substituted "establishments" for "tourist campgrounds and trailer courts"; deleted former (2), which read: "supervise the inspection of tourist campgrounds or trailer courts by local health officers, sanitarians, or other authorized persons as necessary".

1983 Statement of Intent: The statement of intent attached to HB 420 (Ch. 341, L. 1983) read: "A statement of intent is required for House Bill 420 [Ch. 341, L. 1983] because it adds authority for the Department of Health and Environmental Sciences [now Department of Public Health and Human Services] to adopt rules setting sanitation standards for work camps and youth camps. The law presently allows the department to set standards for trailer courts and tourist campgrounds ensuring a level of sanitation adequate to protect public health. The need for similar uniform state standards for work camps and youth camps has become apparent, largely because such facilities are not uniformly regulated across the state and are subject to local standards ranging from stringent to minimal. Therefore, it is the intent of House Bill 420 [Ch. 341, L. 1983] to give the department authority to set sanitation standards for both work camps and youth camps which ensure adequate facilities exist for proper sewage disposal, require storage and disposal of solid waste in a manner adequate to prevent contamination and spread of disease, ensure that food is handled and food service maintained in a manner sufficient to prevent food-related illness, ensure that water supplies are adequate and uncontaminated, and define general housekeeping practices needed to ensure sanitation."

Saving Clause: Section 8, Ch. 341, L. 1983, was a saving clause.

Severability: Section 9, Ch. 341, L. 1983, was a severability section.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-52-302. Department to pay local board for inspection and enforcement.

Compiler's Comments

1991 Amendment: Near middle of (1) deleted subsection reference to 50-2-108 and after "chapter" inserted "and enforcing the provisions of this chapter"; in (1)(b) inserted "sanitarians-in-training" and before "sanitarians" inserted "registered"; in (1)(b)(i), before "enforcement", inserted "inspections and"; inserted (1)(b)(ii) providing that local board meet minimum program performance standards established under rules adopted by Department; in (2), after "health", inserted "pursuant to subsection (1)" and at end, after "and", substituted "must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose" for "shall be in addition to the funds appropriated under 50-2-108 through 50-2-114"; inserted (3) authorizing funds in account not paid to local health board to be used by Department within jurisdiction not qualifying to receive payments from fund to enforce chapter and adopted rules; and made minor changes in style.

1991 Statement of Intent: The statement of intent attached to Ch. 731, L. 1991, provided: "A statement of intent is required for this bill because it amends 50-52-301 and 50-52-302 to grant the department of health and environmental sciences [now department of public health and human services] authority to adopt rules.

It is intended that the department adopt rules to:

(1) require health officers and sanitarians to make investigations and inspections of campgrounds, trailer courts, work camps, and youth camps and make reports to the department; and

(2) establish minimum program performance standards that must be met in order for the local board of health to receive payments from the local board inspection fund account.

It is intended that minimum performance standards include but not be limited to measures necessary to ensure the accuracy of inspection reports and to allow statewide standardization of inspections and the documentation of work performed.

Also, it is recognized that the exact nature of necessary reporting requirements and performance standards is still in the developmental stages. Therefore, it is intended that these requirements be adopted only after close coordination with local health departments and boards and extensive solicitation of comments prior to adoption of final requirements."

1983 Amendment: In (1), substituted "the local board inspection fund created by 50-2-108(2)" for "any general fund appropriation to the department".

Commissioner Correction: The word "account" in (1) was added by the Code Commissioner to use the correct name of the fund account created by 50-2-108(2).

CHAPTER 53
PUBLIC SWIMMING POOLS AND SWIMMING AREAS

Chapter Administrative Rules

ARM 37.5.117 Certain Title 50 programs — applicable hearing procedures.

Title 37, chapter 115, ARM Pools, spas, and other water features.

Chapter Attorney General's Opinions

Health Club Pools: The statutes in Title 50, ch. 53, concerning public swimming pools apply to health club swimming pools. 39 A.G. Op. 18 (1981).

Construction Standards — Interpretive Rules: Title 50, ch. 53, authorizes the Department of Health and Environmental Sciences (now Department of Public Health and Human Services) to adopt interpretive rules, which do not have the force of law, concerning construction standards relating to safety for public swimming pools generally. A court may give interpretive rules the force of law if it is so persuaded, but it is free to substitute its judgment for that of the agency. See 2 K. Davis, Administrative Law Treatise, § 7.10 (2d ed. 1979). 39 A.G. Op. 18 (1981).

Construction Standards — Hotel Pools: Section 50-51-103 authorizes the Department of Health and Environmental Sciences (now Department of Public Health and Human Services) to adopt legislative rules having the force of law concerning construction standards relating to safety for swimming pools operated in connection with hotels, motels, or tourist homes. 39 A.G. Op. 18 (1981).

Part 1
General Provisions

50-53-101. Purpose of regulation.

Compiler's Comments

1985 Amendment: At end inserted "and safety".

Saving Clause: Section 5, Ch. 646, L. 1985, was a saving clause.

50-53-102. Definitions.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 150 in definition of local health officer substituted "50-1-101" for "50-2-101". Amendment effective October 1, 2007.

Chapter 310 inserted definitions of lazy river, splash deck, wading pool, and wave pool; in definition of public swimming pool in (a) near beginning after "pool" deleted "and bathhouses", after "wading" inserted "or other aquatic therapy or recreation", after "including" inserted "but not limited to", and at end inserted "splash decks, water slides, lazy rivers, and wave pools" and in (b)(i) after "property" inserted "including the private common area property of owner-occupied condominium developments"; and made minor changes in style. Amendment effective October 1, 2007.

Code Commissioner Correction: Pursuant to sec. 75, Ch. 44, L. 2007, in (3) the code commissioner substituted "50-1-101" for "50-2-101".

2003 Amendment: Chapter 93 in definition of public swimming pool at end of first sentence inserted "and spas"; and inserted definitions of spa and tourist home. Amendment effective October 1, 2003.

1995 Amendments: Chapter 418 in definition of Department substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences, provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Inserted definitions of local board of health and local health officer. Amendment effective January 1, 1992.

1985 Amendment: Deleted former (1) that read: ""Board" means the board of health and environmental sciences, provided for in 2-15-2104".

Saving Clause: Section 5, Ch. 646, L. 1985, was a saving clause.

50-53-103. Department rules.

Compiler's Comments

2021 Amendment: Chapter 146 in (1)(c) at end inserted clause directing the department to promulgate rules allowing training courses and certifications for pool operators to be conducted online. Amendment effective October 1, 2021.

2007 Amendment: Chapter 310 inserted (1)(b) concerning fees for plan review; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 483 in (2) near middle after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1991 Amendment: In (1), in introductory clause after "rules", inserted "relating to the operation of public swimming pools and public bathing places, including rules"; and inserted (1)(b) through (1)(e) requiring rules regarding licensing of operators, enforcement procedures, cooperative agreements, and performance standards. Amendment effective April 27, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 708, L. 1991, provided: "A statement of intent is required for this bill because [section 2] [50-53-103] requires the department of health and environmental sciences [now department of public health and human services] to adopt rules relating to licensing of public swimming pools and public bathing places, enforcement procedures, cooperative agreements, procedures for hearings to be held by local boards of health, and performance standards for local boards of health, health officers, and sanitarians. Sanitation and safety standards contained in rules already adopted by the department and currently published in Title 16, chapter 10, subchapters 12, 13, and 15, Administrative Rules of Montana, may be incorporated into new department rules as standards for licensing public swimming pools and public bathing places."

1985 Amendment: In (1) substituted "rules setting standards to ensure sanitation and safety" for "rules for sanitation" and at end of sentence, after "health", inserted "and safety"; and in (2) substituted language regarding when rules are effective for "The department shall supervise the sanitation of public swimming pools and public bathing places".

Saving Clause: Section 5, Ch. 646, L. 1985, was a saving clause.

1985 Statement of Intent: The statement of intent attached to Ch. 646, L. 1985, provided: "A statement of intent is needed for House Bill 114 because it grants the department of health and environmental sciences [now department of public health and human services] express authority to adopt enforceable, binding rules setting safety standards for public swimming pools and bathing places.

The department presently has the authority to ensure that public swimming pools and bathing places are safe. However, the section of the law granting the department authority to make binding rules relating to swimming facilities omits mention of safety standards. Therefore, the rules the department has adopted to indicate the safety measures it considers necessary to protect public health are not legally binding, except in regard to pools in hotels, motels, roominghouses, tourist homes, boardinghouses, or retirement homes, for which the department has separate regulatory authority under other statutes.

Therefore, it is the intent of the legislature that the department of health and environmental sciences [now department of public health and human services] has express rulemaking authority to adopt binding safety standards for swimming pools and bathing places, including construction specifications and operational requirements."

50-53-104. Powers of health officers — enforcement authority.

Compiler's Comments

1991 Amendment: In (1), after "places", inserted "and otherwise conduct investigations", after "department" inserted "have been or", and after "violated" inserted "and make reports to the department concerning the inspections"; and substituted (4) regarding filing of complaints for former (4) that read: "(4) enforce rules adopted by the department". Amendment effective January 1, 1992.

50-53-107. Pool operation to be sanitary, healthful, and safe — when lifeguard not required.

Compiler's Comments

2003 Amendment: Chapter 93 inserted (3) requiring a tourist home to display a sign informing guests that a lifeguard is not on duty and exempting tourist homes from having an individual competent in cardiopulmonary resuscitation on the premises; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendment: In (2)(b) after "competent in" deleted "basic water safety measures by the American red cross; and".

1983 Amendment: Inserted (2) regarding when lifeguard is not required for privately owned public pool.

Case Notes

Failure to Provide Expert Testimony Regarding Adequacy of Swimming Pool Depth for Diving — Summary Judgment Proper: Plaintiff was injured diving into a municipal swimming pool and sued the city for negligence and strict liability. Administrative rules adopted in 1985 set standards articulating board lengths for various pool depths, but the rules apply only to pools constructed or remodeled after June 28, 1985, and the pool in question was constructed in 1972, so the rules did not apply. Further, this section does not define a particular standard of conduct to which public pool operators must conform, but rather imposes a general duty on a city to keep a pool safe. Absent an applicable standard, plaintiff was required to present expert testimony to assist jurors in determining whether the pool depth was unreasonably dangerous for the diving board length. Plaintiff offered no expert testimony on the subject, thus failing to establish a prima facie case of liability, so the District Court properly granted summary judgment to the city. Dayberry v. E. Helena, 2003 MT 321, 318 M 301, 80 P3d 1218 (2003).

No Medical Evidence Establishing Violation of CPR-Trained Personnel Law as Proximate Cause of Drowning: After the drowning death of a 22-year old man in Custer's Inn's swimming pool, a wrongful death action was filed, alleging that the inn's violation of state law requiring the inn to have a CPR-trained personnel on duty proximately caused the drowning death. In affirming the District Court's grant of summary judgment for the inn, the Supreme Court ruled that, despite the violation by the inn of pool safety statutes, the estate failed to produce any medical expert who could testify with any reasonable degree of medical certainty that the victim would have survived if the inn had had CPR-trained staff on duty. As a result, the failure to provide the staff could not be construed as the proximate cause of drowning. Schwabe v. Custer's Inn Associates, 2000 MT 325, 303 M 15, 15 P3d 903, 57 St. Rep. 1370 (2000).

50-53-108. Unauthorized construction or operation a public nuisance.

Compiler's Comments

1985 Amendment: At end inserted "and safety".

Saving Clause: Section 5, Ch. 646, L. 1985, was a saving clause.

50-53-115. Special requirements for flow-through hot springs pools.

Compiler's Comments

2007 Amendment: Chapter 422 in (3) at end substituted "9.4" for "8.5". Amendment effective October 1, 2007.

1995 Statement of Intent: The statement of intent attached to Ch. 155, L. 1995, provided: "A statement of intent is required for this bill because the bill gives the department of health and environmental sciences [now department of public health and human services] authority to adopt administrative rules. It is the intent of the legislature that in adopting rules to implement [section 1] [50-53-115], the department consult with flow-through hot springs pool owners. The rules should set out standards for hot springs pools maintained at 106 degrees F or less and used primarily for soaking, pools under 100 degrees F and used primarily for swimming, and shallow pools designed primarily for young children."

Effective Date: Section 3, Ch. 155, L. 1995, provided: "[This act] is effective on passage and approval." Approved March 16, 1995.

Part 2
Licensure of Public Swimming Pools and Bathing Places

Part Compiler's Comments

1991 Statement of Intent: The statement of intent attached to Ch. 708, L. 1991, provided: "A statement of intent is required for this bill because [section 2] [50-53-103] requires the department of health and environmental sciences [now department of public health and human services] to adopt rules relating to licensing of public swimming pools and public bathing places, enforcement procedures, cooperative agreements, procedures for hearings to be held by local boards of health, and performance standards for local boards of health, health officers, and sanitarians. Sanitation and safety standards contained in rules already adopted by the department and currently published in Title 16, chapter 10, subchapters 12, 13, and 15, Administrative Rules of Montana, may be incorporated into new department rules as standards for licensing public swimming pools and public bathing places."

Effective Date: Section 20(2), Ch. 708, L. 1991, provided that this part, except for 50-53-203, is effective January 1, 1992.

50-53-201. License required — validation.

Compiler's Comments

2007 Amendment: Chapter 310 in (2) at end of first sentence deleted "unless more than one public swimming pool is operated on the same premises by the same person, in which case a single license is required for all public swimming pools on the premises" and inserted second sentence and (2)(a) and (2)(b) concerning when public swimming pool is separate; in (3) near middle after "50-53-206" inserted "if applicable"; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 93 in (1) at beginning deleted "Except as provided in subsection (3)"; deleted former (3) that read: "(3) The state or a political subdivision of the state owning or operating a public swimming pool or public bathing place is not required to obtain a license under subsection (1) but is required to comply with the health and safety requirements in part 1, this part, and department rules"; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 42 in (3) substituted "part 1" for "50-53-101 through 50-53-109"; and made minor changes in style. Amendment effective March 12, 1997.

50-53-202. Application for and right to license.

Compiler's Comments

2007 Amendment: Chapter 310 in (3) at end after "50-53-206" inserted "if applicable"; and made minor changes in style. Amendment effective October 1, 2007.

1997 Amendment: Chapter 42 in (2) substituted "part 1" for "50-53-101 through 50-53-109". Amendment effective March 12, 1997.

50-53-203. License fee and late fee — disposition.

Compiler's Comments

2007 Amendment: Chapter 310 in (1) at end increased fee from $75 to $200; substituted (1)(b) concerning application for spa or wading pool for former text that read: "The fee for an original or renewal license for a public swimming pool or public bathing place operated in conjunction with a campground, trailer court, work camp, youth camp, hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home is $50"; in (2) near end of first sentence after "$25" inserted "for each calendar month after the renewal due date"; in (3) inserted introductory clause concerning local board of health inspections and enforcement activities; inserted (4) concerning delegation of inspection and enforcement activities to department; and made minor changes in style. Amendment effective October 1, 2007.

1997 Amendment: Chapter 42 in (4) substituted "part 1" for "50-53-101 through 50-53-109". Amendment effective March 12, 1997.

1993 Amendment: Chapter 277 in (1)(b) substituted "campground, trailer court, work camp, youth camp, hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home" for "public accommodation"; and made minor changes in style.

Effective Date: Section 20(1), Ch. 708, L. 1991, provided that this section is effective on passage and approval. Approved April 27, 1991.

50-53-204. License expiration — nontransferability.

Compiler's Comments

1997 Amendment: Chapter 42 in (1) and (2) substituted "part 1" for "50-53-101 through 50-53-109". Amendment effective March 12, 1997.

50-53-206. Validation of license required.

Compiler's Comments

2007 Amendment: Chapter 310 in (1)(a) at beginning inserted "If the local board of health conducts its own inspections and enforcement activities for the public swimming pools and public bathing places within its jurisdiction"; inserted (2) concerning when validation is not required; and made minor changes in style. Amendment effective October 1, 2007.

1997 Amendment: Chapter 42 in (1) substituted "part 1" for "50-53-101 through 50-53-109". Amendment effective March 12, 1997.

50-53-207. Refusal of health officer to validate — appeal to board.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in two places, and in (3) substituted "part 1" for "50-53-101 through 50-53-109"; and made minor changes in style. Amendment effective March 12, 1997.

50-53-209. Cooperative agreements — inspections.

Compiler's Comments

2003 Amendment: Chapter 93 inserted (3) requiring the department to enter into cooperative agreements with the department of fish, wildlife, and parks and other agencies operating public swimming pools or bathing places to enforce certain laws and rules. Amendment effective October 1, 2003.

50-53-211. Denial, suspension, or cancellation of license — multiple pool facility.

Compiler's Comments

1997 Amendment: Chapter 42 in (1) substituted "part 1" for "50-53-101 through 50-53-109"; and made minor changes in style. Amendment effective March 12, 1997.

50-53-212. Administrative enforcement — notice — department hearing.

Compiler's Comments

1997 Amendment: Chapter 42 in (3) substituted "part 1" for "50-53-101 through 50-53-109"; and made minor changes in style. Amendment effective March 12, 1997.

50-53-216. Civil penalties — other enforcement not barred.

Compiler's Comments

1997 Amendment: Chapter 42 in (1) substituted "part 1" for "50-53-101 through 50-53-109"; and made minor changes in style. Amendment effective March 12, 1997.

50-53-217. Recovery of costs by department or local jurisdiction.

Compiler's Comments

1997 Amendment: Chapter 42 in two places substituted "part 1" for "50-53-101 through 50-53-109" and near end substituted "public bathing place" for "public bathing facility". Amendment effective March 12, 1997.

50-53-218. Department to pay board for inspections or enforcement, or both.

Compiler's Comments

1997 Amendment: Chapter 42 in (1), in first sentence, in (2), and in (3) substituted "part 1" for "50-53-101 through 50-53-109". Amendment effective March 12, 1997.

CHAPTER 57
WHOLESALE FOOD ESTABLISHMENTS

Chapter Administrative Rules

Title 37, chapter 110, subchapter 3, ARM Food manufacturing establishments.

Part 1
General Provisions

Part Compiler's Comments

Effective Date: Section 35(1), Ch. 474, L. 2003, provided that this part is effective January 1, 2004.

50-57-101. Purpose.

Compiler's Comments

2007 Amendment: Chapter 395 near middle after "establishments" deleted "and wholesale and retail nonprescription drug manufacturers". Amendment effective October 1, 2007.

50-57-102. Definitions.

Compiler's Comments

2015 Amendment: Chapter 239 in definition of retail food establishment substituted "has the meaning provided in 50-50-102" for "means an establishment, as defined in 50-50-102, that provides food directly to the consumer"; and made minor changes in style. Amendment effective October 1, 2015.

2007 Amendment: Chapter 395 in definition of consumer in (b) and (d) after "food" deleted "or nonprescription drugs"; in definition of establishment at end after "bottler" deleted "wholesale nonprescription drug manufacturer, or retail nonprescription drug manufacturer"; deleted definition of nonprescription drug that read: ""Nonprescription drug" means an article, other than food, that is available without a prescription from a health practitioner licensed by the department of labor and industry and that is:

(i) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of a disease in humans or animals;

(ii) intended to affect the structure or function of the body of humans or animals; or

(iii) intended for use as a component of any article specified in subsections (8)(a)(i) and (8)(a)(ii).

(b) The term does not include devices, as defined in 50-31-103"; deleted definition of nonprescription drug manufacturer that read: ""Nonprescription drug manufacturer" means an entity engaged in the manufacturing, processing, preparing, or packaging of nonprescription drugs for sale or human consumption at retail or wholesale"; in definition of retail after "food" deleted "or nonprescription drugs"; in definition of wholesale in (a) and (b) after "food" deleted "or nonprescription drugs"; and made minor changes in style. Amendment effective October 1, 2007.

50-57-105. Diseased person not to handle food.

Compiler's Comments

2007 Amendment: Chapter 395 at end after "food" deleted "or nonprescription drugs". Amendment effective October 1, 2007.

Part 2
Licensing

Part Compiler's Comments

Effective Date: Section 35(1), Ch. 474, L. 2003, provided that this part is effective January 1, 2004.

50-57-205. License fee — late renewal fee — allocation of fees.

Compiler's Comments

2009 Amendment: Chapter 482 in (1) near middle after "issued" inserted "or renewed", substituted "$115" for "$90", and deleted former second sentence that read: "For an operation containing an establishment and a retail food establishment, as provided in 50-57-201(3), the department shall collect one fee of $90 for each license". Amendment effective May 10, 2009.

Effective Date: Section 35, Ch. 474, L. 2003, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2004.

(2) [Section 14] [version effective January 1, 2005] is effective January 1, 2005."

Termination: Section 36, Ch. 474, L. 2003, provided: "[Section 13] [temporary version] terminates December 31, 2004."

Part 3
Inspections

Part Compiler's Comments

Effective Date: Section 35(1), Ch. 474, L. 2003, provided that this part is effective January 1, 2004.

CHAPTER 60
BUILDING CONSTRUCTION STANDARDS

Chapter Compiler's Comments

Saving Clause: Section 14, Ch. 504, L. 1977, was a saving clause.

Severability Clause: Section 15, Ch. 504, L. 1977, was a severability clause.

Chapter Administrative Rules

Title 24, chapter 301, ARM Building codes.

Part 1
General Provisions

50-60-101. Definitions.

Compiler's Comments

2003 Amendment: Chapter 443 inserted definition of city or town; deleted definition of county jurisdictional area that read: ""County jurisdictional area" means the entire county, or an area or areas within the county, designated by the board of county commissioners as subject to the county building code, excluding any area that is within the limits of an incorporated municipality"; in definitions of local building department and local legislative body at end substituted "county, city, or town" for "municipality"; deleted definition of municipal jurisdictional area that read: ""Municipal jurisdictional area" means the area within the limits of an incorporated municipality"; deleted definition of municipality that read: ""Municipality" means any incorporated city or town"; and made minor changes in style. Amendment effective October 1, 2003.

Transition: Section 25, Ch. 443, L. 2003, provided: "(1) A municipality is responsible for completing inspections that are required for those building, electrical, plumbing, and mechanical permits issued by the municipality in an extended jurisdictional area prior to October 1, 2003.

(2) A project in an extended jurisdictional area that required a building permit prior to October 1, 2003, is subject to city or town jurisdiction until the project is completed. A municipality may not apply its building code to a new project after October 1, 2003.

(3) A county that has not adopted a building code prior to [the effective date of this section] [effective April 21, 2003] may adopt a building code, but the building code may not be effective before October 1, 2003."

2001 Amendments — Composite Section: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "part 17" for "part 18"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 546 inserted definition of county jurisdictional area; substituted definition of municipal jurisdictional area as within limits of incorporated municipality for "means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request of a municipality with the written consent of the county in which the municipality is located, the department may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4½ miles of the corporate limits of a municipality;

(ii) all of any platted subdivision that is partially within 4½ miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, that is partially within 4½ miles of the corporate limits of a municipality.

(c) Distances must be measured in a straight line on a horizontal plane.

(d) The initial written consent by a county to an extended municipal jurisdiction area must disclose the scope of the building codes to be enforced, the type of structures to be subject to the building codes, and the schedule of fees to be charged for permits. If after the county's initial written consent, the municipality wishes to change either the scope of the building codes enforced or the type of structures covered, the changes must first be approved in writing by the county. Unapproved changes result in the rescission of the county approval of the extended municipal jurisdiction area"; in definition of municipality at end deleted "and its jurisdictional area as defined in this section"; and made minor changes in style. Amendment effective May 1, 2001.

Retroactive Applicability: Section 12, Ch. 546, L. 2001, provided: "[Sections 2(12) and 8] [50-60-101(12) and 50-60-314 (now repealed)] apply retroactively, within the meaning of 1-2-109, to a municipal jurisdictional area as defined in 50-60-101 created before [the effective date of this act]." Effective May 1, 2001.

1997 Amendments: Chapter 42 in definition of factory-built building, in (b), substituted "National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C. 5401, et seq.)" for "HUD, National Mobile Home Construction and Safety Act of 1974"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 331 inserted definitions of alteration, primary function area, public building, public sidewalk, and site; adjusted subsection reference; and made minor changes in style.

Chapter 488 inserted definition of code enforcement program; in definition of municipal jurisdictional area, at beginning of (b) after "request", inserted "of a municipality with the written request of the county in which the municipality is located" and inserted (d) relating to the scope of building code enforcement; and made minor changes in style. Amendment effective July 1, 1998.

Applicability: Section 9, Ch. 331, L. 1997, provided: "[This act] applies to the construction or alteration of buildings subject to the provisions of [this act] for which applicable building permits are obtained on or after October 1, 1997."

1985 Amendments: Chapter 33 inserted definition of "Factory-built building" and substituted present definition of "Recreational vehicle" for "anything defined as a recreational vehicle in the edition of NPPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with 50-60-401".

Chapter 140 in (10)(b) substituted "department" for "council".

Chapter 352 in (4) changed "department of administration" to "department of commerce" and "Title 2, chapter 15, part 10" to "Title 2, chapter 15, part 18".

1981 Amendment: Deleted definition of "public place".

Case Notes

Process for Establishing County Building Code Jurisdictional Area Based on Franchise Limitation Unconstitutional: The 2001 Legislature enacted Senate Bill No. 242 (SB 242), which established a process for designating a county building code jurisdictional area and eliminating municipal jurisdictional areas by an election procedure limited to record owners of real property instead of the general constituency. When questioned regarding the constitutionality of the process, the Supreme Court noted that because voting rights cases involve a fundamental political right, strict scrutiny required the state to demonstrate a compelling governmental interest in restricting the voting franchise. The court concluded that: (1) the application and enforcement of building codes is an issue of public safety that affects all persons living in the area, not just record owners of real property; (2) governmental entities that oversee building codes are not special-purpose units whose functions and actions exclusively or disproportionately affect record owners of real property over other constituents in the area that do not own real property; and (3) elections to determine who may impose and enforce building codes in a given area are general interest elections rather than special interest elections. The state failed to show a compelling interest in limiting the voting franchise to only record owners of real property, and because the valid provisions of SB 242 were not severable from the invalid provisions, the court held that SB 242 was invalid in its entirety. (However, see Ch. 443, L. 2003, wherein the Legislature amended the voting procedure to address the franchise limitation.) Finke v. State ex rel. McGrath, 2003 MT 48, 314 M 314, 65 P3d 576 (2003). See also Kramer v. Union School District, 395 US 621 (1969).

Restrictive Covenant as to Mobile Home to Include Modular Home: Court erred in not granting plaintiff an injunction to prevent defendant from installing a modular home where grant deed contained a restrictive covenant that provided no trailers or mobile homes could be used as a permanent residence. DeLaurentis v. Vainio, 169 M 520, 549 P2d 461 (1976), followed in Newman v. Wittmer, 277 M 1, 917 P2d 926, 53 St. Rep. 516 (1996).

Attorney General's Opinions

Status of Municipal Jurisdictional Areas Created Prior to 2001 Legislation Eliminating Donut Areas: The legislative history of the amendment that created 50-60-314 (now repealed) indicates an intent that the retroactive provisions of the 2001 legislation override existing municipal jurisdiction pending the outcome of an election regarding continuation of the jurisdictional area beyond the corporate limits of the municipality. Therefore, a municipal jurisdictional area existing under this section prior to May 1, 2001, loses jurisdiction to enforce municipal building code provisions as of May 1, 2001, but that jurisdiction could be revived if approved by voters in the election required under 50-60-314 (now repealed) prior to December 31, 2001. 49 A.G. Op. 11 (2001).

Who May Vote in Elections Concerning Municipal Jurisdictional Areas: Prior to 2001, state law provided authority for municipal governments, with the consent of the counties in which they were located, to exercise building code enforcement jurisdiction in an area within 4.5 miles of the city known as the municipal jurisdictional area or donut area. The 2001 Legislature sought to eliminate that extraterritorial municipal jurisdiction by providing for county elections on various provisions allowing for either county or municipal building code enforcement. The question arose as to who should vote in the elections. The Attorney General held that real property owners, as defined in this section, in the jurisdictional area in question were the proper electorate. Under 13-19-106, a ballot list must be compiled that includes every record owner of real property in the county or municipal jurisdictional area who fits the definition of owner and whose ownership interest appears of record, and county election officials should use the property records in existence on the date 30 days prior to the election day to determine who is eligible to vote. (See 2003 amendment.) 49 A.G. Op. 11 (2001).

Request for Approval of Any Extension of Municipal Area Required: Under this section, approval of finite boundaries of a municipal jurisdictional area is accomplished following a request by the municipality. The statute does not automatically extend the jurisdictional area when corporate limits are extended. Therefore, any extension of a delineated municipal jurisdictional area beyond the corporate limits of a municipality must be accomplished pursuant to the procedure outlined in ARM 8.70.211 (now repealed) and this section, requiring the municipality to submit a new request for approval of the extension and requiring the Department of Commerce (function now in Department of Labor and Industry) to act on the request following the requisite public hearing and related administrative procedures. (See 2001 and 2003 amendments.) 46 A.G. Op. 16 (1996).

Meaning of Public Place: Employees present in a building in the course of their employment were not "the public" for purposes of determining whether a building was a "public place" as defined in this section prior to 1981 amendment. 38 A.G. Op. 3 (1979).

Enforcement of Building Code — Applicability: Prior to 1981 amendment, state building codes could be enforced in public buildings regardless of location and in nonpublic buildings located within municipalities and their jurisdictional area as defined in this section. 38 A.G. Op. 3 (1979).

50-60-102. Applicability — local government energy conservation standards.

Compiler's Comments

2017 Amendment: Chapter 11 inserted (1)(e) concerning traffic control devices; in (2) after "for the buildings" inserted "and equipment"; and made minor changes in style. Amendment effective October 1, 2017.

2009 Amendment: Chapter 300 in (5)(a) and (5)(b) at beginning inserted "Subject to subsection (6)"; inserted (6) authorizing local governments with building code enforcement programs to adopt voluntary incentive-based energy conservation standards for new construction; and made minor changes in style. Amendment effective October 1, 2009.

2003 Amendment: Chapter 443 in (1)(a) near middle after "located within" substituted "a county, city, or town" for "the municipality's or county's jurisdictional area" and near end after "legislative body" deleted "or board of county commissioners"; in (2) at beginning of second sentence substituted "A county, city, or town" for "Local governments", near middle after "enforce within" substituted "the area of its jurisdiction" for "their jurisdictional areas", and at end substituted "county, city, or town" for "respective local government"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 47 in (1) in introduction substituted "state building code, as defined in 50-60-203(3), does not apply" for "state building codes do not apply"; in (2) in second sentence near middle substituted "state building code" for "state building codes"; and made minor changes in style. Amendment effective March 16, 2001.

1997 Amendment: Chapter 488 in two places in (1)(a) inserted "of any size"; in (1)(c), after "refineries", inserted "and pulp and paper mills"; inserted (1)(d) providing that state building codes do not apply to certain industrial process piping, vessels, equipment, and process-related structures; and made minor changes in style. Amendment effective July 1, 1998.

1993 Amendments: Chapter 383 at beginning of (1) and (2) inserted exception clause; inserted (5) concerning applicability of the State Building Code relating to energy conservation, adopted pursuant to 50-60-203(1), to residential buildings; and made minor changes in style.

Chapter 444 inserted (1)(c) exempting petroleum refineries from State Building Code provisions. Amendment effective April 21, 1993.

1989 Amendment: In (2) substituted "buildings referred to in subsection (1)" for "aforementioned buildings" and deleted last sentence that read: "The state may not enforce the state building code under 50-60-205 for those buildings."

1987 Amendment: Inserted (1)(b) exempting mines and mine buildings from state building code.

1981 Amendment: Substituted entire text of (1) (see 1981 Session Law) for former language, which read: "Outside municipalities and their jurisdictional area, as defined by 50-60-101(9), parts 1 through 4 apply to "public places", as defined in 50-60-101(11)".

Case Notes

State Building Code Not Applicable to Federal Military Installations: The application of the state building code to construction projects undertaken by the federal government on its military installations and the collection of permit fees related to the construction constitute an impermissible regulation and taxation by the state of the federal government in violation of the supremacy clause of the United States Constitution. U.S. v. St., 699 F. Supp. 835, 45 St. Rep. 2411 (D.C. Mont. 1988).

Attorney General's Opinions

Inclusion of Multiunit Condominiums, Rental Cabins and Extended Motel Units, and Lodging Houses in Building Code Compliance: The plain language of this section excludes residential buildings containing less than five dwelling units from the provisions of the state building code. The section does not require the exclusion from state building code compliance of multiunit condominiums that use separation walls, rental cabins and extended motel units that contain cooking units, or lodging houses, including bed and breakfast establishments. 45 A.G. Op. 3 (1993).

Enforcement of Building Code: Prior to 1981 amendment, the state building code could be enforced in public buildings regardless of location and in nonpublic buildings located within municipalities and their jurisdictional area as defined in 50-60-101. 38 A.G. Op. 3 (1979).

50-60-103. Administration by department.

Compiler's Comments

2005 Amendment: Chapter 68 in introductory clause, near middle of (1), and at end of (2) after "through" substituted "7" for "4". Amendment effective March 24, 2005.

Effective Date — Applicability: Section 6, Ch. 68, L. 2005, provided: "[This act] is effective on passage and approval and applies to inspections conducted on or after [the effective date of this act]." Effective March 24, 2005.

1999 Amendment: Chapter 473 inserted (7) requiring consultation with the building codes council; and made minor changes in style. Amendment effective October 1, 1999.

50-60-104. Inspection fees.

Compiler's Comments

1997 Amendments: Chapter 240 after "factory-built buildings" deleted "recreational vehicles".

Chapter 346 near end, after "recreational vehicles", deleted "tramways". Amendment effective July 1, 1997.

Chapter 357 inserted second sentence requiring that fees be commensurate with cost of inspections and with appropriations. Amendments effective July 1, 1997.

Administrative Rules

ARM 24.301.138 Building codes — calculation of fees.
ARM 24.301.139 Investigation fees assessed for work commencing without building permit.
ARM 24.301.461 Electrical inspection fees.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-60-105. Hearings authorized.

Compiler's Comments

2005 Amendment: Chapter 68 near middle after "through" substituted "7" for "4". Amendment effective March 24, 2005.

Effective Date — Applicability: Section 6, Ch. 68, L. 2005, provided: "[This act] is effective on passage and approval and applies to inspections conducted on or after [the effective date of this act]." Effective March 24, 2005.

50-60-106. Powers and duties of counties, cities, and towns.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 269, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 300 in (3)(b) inserted last three sentences authorizing local governments with building code enforcement programs to adopt voluntary incentive-based energy conservation standards for new construction. Amendment effective October 1, 2009.

2007 Amendment: Chapter 98 in (1) at beginning of first sentence inserted "As allowed by Title 50, chapter 60, part 3" and near end of second sentence after "code" inserted "enforcement program"; in (2)(d) at beginning of third sentence after "A" substituted "county, city, or town certified pursuant to 50-60-302" for "local building department" and after "action of" substituted "its building official" for "an authorized officer" and near beginning of fourth sentence after "purposes of" inserted "subsection (2)(a) and" and at end substituted "all work authorized by those permits has been fully approved by the building official having jurisdiction" for "the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building"; in (2)(g) after "collected by the" deleted "municipality or" and after "county" inserted "city, or town"; in (3)(b) near beginning after "issued by the" substituted "building code enforcement authority having jurisdiction" for "local building department" and at end after "code" inserted "or other county, city, or town ordinance or resolution that pertains to the proposed construction"; deleted former (3)(c) that read: "(c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the county, city, or town under which the county, city, or town will provide reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by the parties. County, city, or town powers of enforcement may not be exercised"; inserted (4) allowing building inspections outside jurisdictional limits under certain conditions; inserted (5) disallowing duplicative building inspections when buildings may be annexed into an inspecting city or town's jurisdiction subsequent to a requested inspection; and made minor changes in style. Amendment effective March 30, 2007.

2003 Amendment: Chapter 443 in (1) in first sentence near end after "within the" substituted "limits of a city or town" for "municipal jurisdictional area" and before "of the state" substituted "city or town" for "municipalities" and inserted second sentence providing that the approval of plans, issuance of permits and similar documents, and enforcement of building regulations for the portion of a county covered by a county building code are the responsibility of the county; in (2) in introductory clause near beginning after "Each" substituted "county, city, or town" for "municipality or county"; in (2)(a) and (2)(b) near middle after "state" substituted "building code or county, city, or town building code" for "or municipal building code"; in (2)(d) in first sentence after "violation of the" substituted "state building code or county, city, or town building code" for "applicable state or municipal building code"; in (3) in introductory clause near beginning after "Each" substituted "county, city, or town with a building enforcement program that has been certified" for "municipality or county certified" and at end after "within" substituted "the area of its jurisdiction" for "its jurisdictional area"; in (3)(b) near end after "state" substituted "building code or county, city, or town building code" for "or municipal building code"; and in (3)(c) in first sentence near middle in two places substituted "county, city, or town" for "municipality or county" and at beginning of second sentence substituted "County, city, or town" for "Municipal or county". Amendment effective October 1, 2003.

1999 Amendment: Chapter 473 inserted (1)(c) requiring each municipality or county to provide a checklist and the relevant permit or notice of plan disapproval within 10 working days of submission; in (1)(d) in second sentence after "sending by" deleted "registered or"; in (2)(g)(i) at beginning inserted exception clause; inserted (2)(g)(iii) providing that 0.5% of fees and charges be allocated to the building codes education program; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 488 in (2) substituted "Each municipality or county certified under 50-60-302 shall, within its jurisdictional area" for "Each municipality may"; in (2)(a), before "provisions", inserted "applicable"; at beginning of first sentence in (2)(c) inserted "during and in the course of construction", in middle, after "building", inserted "that is being constructed", and before "state" inserted "applicable" and inserted fourth sentence defining during and in the course of construction; at end of (2)(d) inserted "as provided in 50-60-107"; at beginning of

(2)(e) inserted "issue"; inserted language in (2)(f) requiring municipality or county to ensure construction-related fees or charges imposed are reasonable and uniform and outlining use and deposition of fees; inserted introductory clause in (3) providing authority for municipality or county certified under 50-60-302; in (3)(a) substituted "collection of fees and charges related to construction" for "collection of reasonable fees, which shall be comparable to fees imposed or prescribed by existing local building regulations"; inserted (3)(c) authorizing municipality or county to enter into private contract with owner to provide reviews, inspections, orders, and occupancy certificates and prohibiting enforcement by municipality or county; and made minor changes in style. Amendment effective July 1, 1998.

Case Notes

Zoning Amendment Considered Illegal Spot Zoning — Little Test: Duck Creek Properties (Duck Creek), a Florida general partnership, owned 323 acres of undeveloped land in the Hebgen Lake Zoning District. In order to increase development options and the value of the property, Duck Creek sought a zoning change from R-10, which allowed one single-family unit for each 10 acres, to planned unit development (PUD), which permitted more diverse uses at much higher density. The resolution approving the zoning amendment was ultimately approved by the Gallatin County Board of County Commissioners, but was then challenged by two nonprofit corporations. The District Court voided the resolution as illegal spot zoning, and the Board and Duck Creek appealed to the Supreme Court. All parties agreed that Little v. Bd. of County Comm'rs, 193 M 334, 631 P2d 1282 (1981), correctly stated the applicable law, and the Supreme Court examined all three prongs of the Little test, including whether: (1) the requested use is significantly different from the prevailing use in the area; (2) the area in which the requested use is to apply is small, although not solely in physical size, including how many separate landowners will benefit from the zone classifications; and (3) the requested change is more in the nature of special legislation designed to benefit one or a few landowners at the expense of the surrounding landowners or the general public. Under the first prong, prevailing use need not exclude existing use, and the District Court determined that higher density uses under the proposed PUD would have conflicted with the predominately rural and residential character of the surrounding properties. Under the second prong, the size of the area, it was shown that the Duck Creek parcel was owned by a single entity and that the rezoning would benefit only one landowner. Under the third prong, the District Court found that the Duck Creek parcel was extremely sensitive in its importance to wildlife and wildlife habitat, and the court gave that fact significant weight in evaluating the public welfare, convenience, and necessity. State and national wildlife agencies testified regarding the deleterious effects that a rezone would have on public lands and resources, including the negative impact on habitat for elk, moose, bison, and trout, as well as on grizzly bear habitat and migration. Thus, the District Court properly concluded that the PUD zoning request represented special legislation designed to benefit one landowner at the expense of surrounding landowners and the general public. The court did not err in holding, pursuant to Little, that the proposed Duck Creek parcel was illegal spot zoning. Greater Yellowstone Coalition, Inc. v. Bd. of County Comm'rs of Gallatin County, 2001 MT 99, 305 M 232, 25 P3d 168 (2001). The Little test for spot zoning was applied in N. 93 Neighbors, Inc. v. Flathead County Bd. of County Comm'rs, 2006 MT 132, 332 M 327, 137 P3d 557 (2006), Lake County First v. Polson City Council, 2009 MT 322, 352 M 489, 218 P3d 816 (2009), and Plains Grains L.P. v. Bd. of County Commr's, 2010 MT 155, 357 Mont. 61, 238 P.3d 332.

Issuance of Building Permit — City-County Zoning Plan — Injunction: Developers of a proposed shopping center applied to the city for a building permit and requested the Board of County Commissioners to zone their proposed site for commercial development. Residential landowners adjacent to the proposed shopping center sought to enjoin the issuance of the building permit and the zoning. The injunction as to the building permit was properly granted, it being the only way of preserving the status quo until the legal zoning issues could be resolved. Additionally, the city could properly refuse to issue the building permit where the proposed use was not in compliance with the joint city-county master zoning plan. Little v. Bd. of County Comm'rs, 193 M 334, 631 P2d 1282, 38 St. Rep. 1124 (1981).

Standing to Challenge Issuance of Permit: Residential landowners adjacent to a proposed shopping center challenged the issuance of a city building permit. Because of an estimated increase of 10,000 cars a day over neighborhood streets, the landowners had standing to challenge the issuance of the permit because they would be injured in a manner the general public would not. Little v. Bd. of County Comm'rs, 193 M 334, 631 P2d 1282, 38 St. Rep. 1124 (1981).

50-60-107. Certificate of occupancy.

Compiler's Comments

2003 Amendment: Chapter 443 in (1) near middle after "state" substituted "building code or county, city, or town building code" for "or municipal building code"; in (2) before "agencies" substituted "county, city, or town" for "municipal" and near end after "state" substituted "agency or county, city, or town" for "or municipal"; and made minor changes in style. Amendment effective October 1, 2003.

50-60-109. Injunctions authorized.

Compiler's Comments

2005 Amendment: Chapter 68 in (1) near beginning after "state building" inserted "plumbing, elevator, or electrical"; and made minor changes in style. Amendment effective March 24, 2005.

Effective Date — Applicability: Section 6, Ch. 68, L. 2005, provided: "[This act] is effective on passage and approval and applies to inspections conducted on or after [the effective date of this act]." Effective March 24, 2005.

2003 Amendment: Chapter 443 in (1) near middle after "state" substituted "building code or county, city, or town building code" for "or municipal building code"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Injunction Initiated by Application — No Right to Jury Trial: In an action to stop work based on the failure to obtain a building permit, the city may apply for an injunction with notice, and a complaint and a summons are not required. Under applicable statutes and because it is an action in equity, an injunction is granted by a judge and there is no right to a jury trial. City of Great Falls v. Forbes, 2011 MT 12, 359 Mont. 140, 247 P.3d 1086.

50-60-110. Violation a misdemeanor.

Compiler's Comments

2005 Amendment: Chapter 68 near beginning after "through" substituted "7" for "4" and near end after "state building" inserted "plumbing, elevator, or electrical"; and made minor changes in style. Amendment effective March 24, 2005.

Effective Date — Applicability: Section 6, Ch. 68, L. 2005, provided: "[This act] is effective on passage and approval and applies to inspections conducted on or after [the effective date of this act]." Effective March 24, 2005.

2003 Amendment: Chapter 443 near end after "building code or" substituted "county, city, or town" for "a municipal". Amendment effective October 1, 2003.

50-60-115. Building codes council — purpose and structure.

Compiler's Comments

2007 Amendment: Chapter 44 in (2)(g) after "department of" inserted "public"; and in (2)(h) at end substituted "state electrical board" for "board of electricians". Amendment effective October 1, 2007.

2005 Amendment: Chapter 303 inserted (2)(j) concerning licensed elevator mechanic; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 443 in (1) in first sentence at end substituted "counties, cities, or towns" for "local governments"; in (2)(d) substituted "county, city, or town" for "municipal"; and made minor changes in style. Amendment effective October 1, 2003.

Effective Date: This section is effective October 1, 1999.

50-60-116. Continuing education — funding support from building fees — special account.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

50-60-117. Building code interpretations — central registry.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

50-60-118. Examination of single-family dwelling plans — statewide approval for model plans — fee adjustments — mandatory checklist.

Compiler's Comments

2003 Amendment: Chapter 443 in (5)(a) at end substituted "of counties, cities, and towns" for "of municipalities and counties"; and in (5)(d) near middle after "department or" substituted "a county, city, or town" for "a municipality or county". Amendment effective October 1, 2003.

Effective Date: This section is effective October 1, 1999.

Part 2
State Building Code

Part Administrative Rules

Title 24, chapter 301, subchapter 1, ARM Adoption and incorporation by reference of Uniform and Model Codes having general applicability.

Title 24, chapter 301, subchapter 3, ARM Plumbing requirements.

Title 24, chapter 301, subchapter 4, ARM Electrical requirements.

Title 24, chapter 301, subchapter 5, ARM Requirements for recreational vehicles and factory-built buildings.

Title 24, chapter 301, subchapter 6, ARM Elevators, escalators, and moving walks.

Title 24, chapter 301, subchapter 9, ARM Building accessibility rules.

Part Case Notes

State Building Code Not Applicable to Federal Military Installations: The application of the state building code to construction projects undertaken by the federal government on its military installations and the collection of permit fees related to the construction constitute an impermissible regulation and taxation by the state of the federal government in violation of the supremacy clause of the United States Constitution. U.S. v. St., 699 F. Supp. 835, 45 St. Rep. 2411 (D.C. Mont. 1988).

50-60-201. Purpose of state building code.

Compiler's Comments

1999 Amendment: Chapter 473 inserted (8) requiring the state building code to provide a broadly uniform system of building code interpretations; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendments: Chapter 331 inserted (4) providing that the state building code ensure that newly constructed public buildings and certain altered public buildings are accessible to persons with disabilities; in (5) substituted language ensuring statewide uniformity in the inspection and enforcement of exterior features for certain public buildings for accessibility for people with disabilities for former language that read: "ensure that any new buildings constructed with public funds are accessible to and functional for physically handicapped persons according to the principles applicable to accessibility to public buildings for handicapped persons adopted, recommended, or issued as Part II, Uniform Federal Accessibility Standards, as it reads in the Federal Register dated August 7, 1984, and as the department may amend by rule to reflect changes in the principles"; and made minor changes in style.

Chapter 472 in (5) substituted "persons with physical disabilities" for "physically handicapped persons" and "persons with disabilities" for "handicapped persons" (voided by Ch. 331); and made minor changes in style.

Applicability: Section 9, Ch. 331, L. 1997, provided: "[This act] applies to the construction or alteration of buildings subject to the provisions of [this act] for which applicable building permits are obtained on or after October 1, 1997."

1985 Amendment: In (4) near beginning inserted "any new" before "buildings" and after "functional for physically handicapped persons", substituted remaining text of (4) relating to federal accessibility standards for "where practicable and feasible".

Uniform Standards: The Uniform Federal Accessibility Standards referred to in 50-60-201(4) are found at 49 Federal Register 31528.

Case Notes

Local Building Code Not Zoning Ordinance — No Legal Authority for City to Adopt — Code Invalid and Unenforceable: The District Court ruled that the city had no legal authority to adopt or enforce a local building code that prohibited wooden roof materials in certain areas of the city. The District Court rejected the city's argument that the rule was a zoning ordinance. The city appealed to the Supreme Court, which affirmed and agreed with the District Court that the local code contravened state law, which designated the Department of Labor and Industry as the sole agency with the authority to promulgate building regulations. Helena v. Svee, 2014 MT 311, 377 Mont. 158, 339 P.3d 32.

50-60-202. Department to be sole state agency to promulgate building regulations — exception.

Compiler's Comments

2007 Amendment: Chapter 449 in second sentence after "investigation" substituted "section" for "program"; and made minor changes in style. Amendment effective June 1, 2007.

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

50-60-203. Department to adopt state building code by rule.

Compiler's Comments

2023 Amendments — Composite Section: Section 3, Ch. 435, L. 2023, in (2) near middle substituted "subsections (5) and (6)" for "subsection (5)"; inserted (6) concerning prohibitions on energy source; and made minor changes in style. Amendment effective May 4, 2023.

Section 1, Ch. 560, L. 2023, inserted (8) concerning use of refrigerants. Amendment effective October 1, 2023.

Section 2, Ch. 578, L. 2023, inserted (5)(b) concerning solar panels and electric vehicles; and made minor changes in style. Amendment effective October 1, 2023.

Section 1, Ch. 660, L. 2023, inserted (9) and (10) concerning use of place of religious worship to accommodate temporary overnight visitors. Amendment effective May 19, 2023.

2021 Amendment: Chapter 273 in (2) in middle inserted "except as provided in subsection (5)"; inserted (5) excluding installation of a fire sprinkler system in a single-family dwelling or a residential building that contains no more than two dwelling units from the state building code; and made minor changes in style. Amendment effective April 22, 2021.

2005 Amendment: Chapter 130 in (5)(b) at beginning after "state" substituted "county, city, or town" for "or local government"; and made minor changes in style. Amendment effective October 1, 2005.

1999 Amendment: Chapter 486 inserted (5)(a) and (5)(b) regarding medical gas piping. Amendment effective April 27, 1999.

1997 Amendments: Chapter 140 at end of (4), after "appliances", deleted "in single-family dwellings".

Chapter 331 in (1)(a), in first sentence, inserted "accessibility to persons with disabilities".

Chapter 488 in (1)(a) substituted second sentence providing that adoption, amendment, or repeal of rule is significant public interest under 2-3-103 for former sentence that read: "The department may amend or repeal the rules"; and made minor changes in style. Amendment effective July 1, 1998.

Applicability: Section 9, Ch. 331, L. 1997, provided: "[This act] applies to the construction or alteration of buildings subject to the provisions of [this act] for which applicable building permits are obtained on or after October 1, 1997."

1993 Amendment: Chapter 383 inserted (1)(b) requiring Department to conform rules concerning conservation of energy to policies established under 50-60-801 and Title 90, chapter 4, part 10; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 383, L. 1993, provided: "A statement of intent is necessary for this bill because it directs the department of commerce, in adopting rules pertaining to energy conservation in buildings under the provisions of 50-60-203, to conform those rules to the policy provided in [section 1] [50-60-801] and to the relevant policies that may be developed according to the provisions of Senate Bill No. 225 [Ch. 242, L. 1993].

This bill also requires that the department of commerce design a labeling sticker describing the energy efficiency measures in newly constructed homes. In designing this energy labeling sticker, the department of commerce should consult with the department of natural resources and conservation and with interested building industry and consumer groups.

It is the intent of the legislature that the department of commerce adhere to the recommendations related to energy efficiency in residential buildings developed under the auspices of House Joint Resolution No. 31, adopted by the 1991 legislature.

In accordance with the recommendations resulting from the directive of House Joint Resolution No. 31, the legislature intends that rules pertaining to energy conservation in certain residential buildings may not apply to those buildings containing less than five dwelling units and not otherwise subject to the state building code unless an affordable energy-efficient housing program is established as provided by House Bill No. 10 [Ch. 496, L. 1993]. The coordination instruction in [section 7] reflects this intent.

It is further the intent of the legislature that in applying the energy conservation provisions of the state building code to certain residential buildings as provided in [section 2] [50-60-102], the enforcement of those provisions be accomplished through builder self-certification as provided in [section 4] [50-60-802] and not through enforcement by the department of commerce, except for those residential structures containing five or more dwelling units or for those residential structures otherwise subject to the state building code."

1991 Amendment: Inserted (4) concerning rules permitting installation of below-grade liquefied petroleum gas-burning appliances.

1991 Statement of Intent: The statement of intent attached to Ch. 350, L. 1991, provided: "Because many areas of Montana lack access to natural gas, it is necessary and desirable that energy alternatives be available. The legislature declares that below-grade liquefied petroleum gas appliances are not inherently hazardous if properly installed and further determines that it is appropriate to allow below-grade liquefied petroleum gas appliances to be installed in single-family dwellings notwithstanding the prohibition on the installation of those appliances by the Uniform Mechanical Code and the Uniform Plumbing Code. It is the intent of the legislature that the department of commerce adopt rules governing installation requirements for below-grade liquefied petroleum gas-burning appliances in single-family dwellings."

Case Notes

Violation of Administrative Code — Evidence of Negligence: Plaintiff was injured when she opened an elevator door and fell 15 feet because the elevator car was not at the floor level. The trial court found defendants negligent as a matter of law and submitted causation and contributory negligence to the jury. Defendants appealed. The trial court's negligence ruling was premised on defendant's violation of an administrative safety code. The Supreme Court held that with respect to the operation of an elevator, the premises owner owes the highest degree of care. The court relied on Stepanek v. Kober Constr., 191 M 430, 625 P2d 51, 38 St. Rep. 385 (1981), to hold that violation of an administrative code is evidence of negligence but is not negligence per se. The fact that the Legislature mandated the adoption of the administrative code does not change this holding. The Legislature did not adopt the code by reference. Therefore, violation of the code was evidence of negligence and not negligence per se. Because this evidence was unrefuted as regards the premises owner, who merely defended by showing reliance on the elevator company, the trial court was correct in directing a finding of negligence against the premises owner. The premises owner would be liable under nondelegable duty. The elevator company judgment was vacated to determine if a code violation existed at the time of the last inspection. Cash v. Otis Elevator Co., 210 M 319, 684 P2d 1041, 41 St. Rep. 1077 (1984).

50-60-204. Public hearing required — effective date of certain rules.

Compiler's Comments

1997 Amendment: Chapter 488 in (1), after "code", inserted "is a matter of significant public interest for the purposes of 2-3-103 and"; and near beginning of first sentence in (2), after "hearing", inserted "with adequate public notice pursuant to 2-3-103". Amendment effective July 1, 1998.

1995 Amendments: Chapter 418 in (2), in first sentence, substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (2), in first sentence, substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

1981 Amendment: Deleted the obsolete reference to the board of warm air heating, ventilation, and air conditioning in (2).

50-60-205. When state building code applies — health care facility and public health center doors.

Compiler's Comments

2003 Amendment: Chapter 443 in (1) near beginning after "If" substituted "a county, city, or town" for "a municipality or county" and near middle after "within the" substituted "county, city, or town" for "municipal or county jurisdictional area". Amendment effective October 1, 2003.

1997 Amendment: Chapter 93 at end of (2) inserted "or to a public health center as defined in 7-34-2102". Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1983 Amendment: Inserted (2) relating to automatic closing doors.

50-60-206. Variances to state building code.

Attorney General's Opinions

Applicability of Statute: This section has reference only to the powers of the Department of Commerce and does not apply to boards of building code appeals established by municipalities. 41 A.G. Op. 74 (1986).

50-60-211. Inspections.

Compiler's Comments

2003 Amendment: Chapter 443 in (3)(a) at end substituted "county, city, or town building code" for "municipal or county building code"; and at beginning of (3)(b)(i) and (3)(b)(ii) substituted "Counties, cities, and towns" for "Municipalities and counties". Amendment effective October 1, 2003.

Applicability: Section 9, Ch. 331, L. 1997, provided: "[This act] applies to the construction or alteration of buildings subject to the provisions of [this act] for which applicable building permits are obtained on or after October 1, 1997."

50-60-212. Disclaimer.

Compiler's Comments

2003 Amendment: Chapter 443 near beginning after "by a" substituted "county, city, or town" for "municipality or county". Amendment effective October 1, 2003.

Applicability: Section 9, Ch. 331, L. 1997, provided: "[This act] applies to the construction or alteration of buildings subject to the provisions of [this act] for which applicable building permits are obtained on or after October 1, 1997."

50-60-213. Accessible exterior routes — exceptions.

Compiler's Comments

2003 Amendment: Chapter 443 in (5)(c) at end after "state" substituted "building code or county, city, or town building code" for "or local government building code"; and in (7) after "state" substituted "counties, cities, and towns" for "municipalities, and counties". Amendment effective October 1, 2003.

Applicability: Section 9, Ch. 331, L. 1997, provided: "[This act] applies to the construction or alteration of buildings subject to the provisions of [this act] for which applicable building permits are obtained on or after October 1, 1997."

50-60-214. Alteration of primary function area.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 34, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

Applicability: Section 9, Ch. 331, L. 1997, provided: "[This act] applies to the construction or alteration of buildings subject to the provisions of [this act] for which applicable building permits are obtained on or after October 1, 1997."

Part 3

County, City, and Town Building Codes

Part Administrative Rules

Title 24, chapter 301, subchapter 2, ARM Local government enforcement.

Part Case Notes

Process for Establishing County Building Code Jurisdictional Area Based on Franchise Limitation Unconstitutional: The 2001 Legislature enacted Senate Bill No. 242 (SB 242), which established a process for designating a county building code jurisdictional area and eliminating municipal jurisdictional areas by an election procedure limited to record owners of real property instead of the general constituency. When questioned regarding the constitutionality of the process, the Supreme Court noted that because voting rights cases involve a fundamental political right, strict scrutiny required the state to demonstrate a compelling governmental interest in restricting the voting franchise. The court concluded that: (1) the application and enforcement of building codes is an issue of public safety that affects all persons living in the area, not just record owners of real property; (2) governmental entities that oversee building codes are not special-purpose units whose functions and actions exclusively or disproportionately affect record owners of real property over other constituents in the area that do not own real property; and (3) elections to determine who may impose and enforce building codes in a given area are general interest elections rather than special interest elections. The state failed to show a compelling interest in limiting the voting franchise to only record owners of real property, and because the valid provisions of SB 242 were not severable from the invalid provisions, the court held that SB 242 was invalid in its entirety. (However, see Ch. 443, L. 2003, wherein the Legislature amended the voting procedure to address the franchise limitation.) Finke v. State ex rel. McGrath, 2003 MT 48, 314 M 314, 65 P3d 576 (2003). See also Kramer v. Union School District, 395 US 621 (1969).

Admissibility of Codes: Tenants of a commercial building totally destroyed by fire brought a negligence action against the landlord for failure to comply with city building, fire, and safety codes. An expert witness, extensively experienced with the applicability of the codes, provided uncontradicted testimony to establish their relevancy. Sufficient evidence thereby existed in the record to send the issue of the codes' applicability to the jury. Swenson v. Buffalo Bldg. Co., 194 M 141, 635 P2d 978, 38 St. Rep. 1588 (1981).

Part Attorney General's Opinions

Status of Municipal Jurisdictional Areas Created Prior to 2001 Legislation Eliminating Donut Areas: The legislative history of the amendment that created 50-60-314 (now repealed) indicates an intent that the retroactive provisions of the 2001 legislation override existing municipal jurisdiction pending the outcome of an election regarding continuation of the jurisdictional area beyond the corporate limits of the municipality. Therefore, a municipal jurisdictional area existing under 50-60-101 prior to May 1, 2001, loses jurisdiction to enforce municipal building code provisions as of May 1, 2001, but that jurisdiction could be revived if approved by voters in the election required under 50-60-314 (now repealed) prior to December 31, 2001. 49 A.G. Op. 11 (2001).

Who May Vote in Elections Concerning Municipal Jurisdictional Areas: Prior to 2001, state law provided authority for municipal governments, with the consent of the counties in which they were located, to exercise building code enforcement jurisdiction in an area within 4.5 miles of the city known as the municipal jurisdictional area or donut area. The 2001 Legislature sought to eliminate that extraterritorial municipal jurisdiction by providing for county elections on various provisions allowing for either county or municipal building code enforcement. The question arose as to who should vote in the elections. The Attorney General held that real property owners, as defined in 50-60-101, in the jurisdictional area in question were the proper electorate. Under 13-19-106, a ballot list must be compiled that includes every record owner of real property in the county or municipal jurisdictional area who fits the definition of owner and whose ownership interest appears of record, and county election officials should use the property records in existence on the date 30 days prior to the election day to determine who is eligible to vote. (See amendment made by Ch. 443, L. 2003.) 49 A.G. Op. 11 (2001).

50-60-301. County, city, and town building codes authorized — health care facility and public health center doors — fee adjustment for model plans.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 411, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 300 in (2)(a) at beginning inserted exception clause; inserted (2)(b) authorizing local governments with building code enforcement programs to adopt voluntary incentive-based energy conservation standards for new construction; and made minor changes in style. Amendment effective October 1, 2009.

2003 Amendment: Chapter 443 in (1) in introductory clause near beginning after "body of" substituted "a county, city, or town" for "a municipality or county", near middle after "apply to" substituted "the county, city, or town" for "the municipal or county jurisdictional area", and at end inserted "or resolution, as appropriate"; in (2) at beginning substituted "A county, city, or town" for "A municipal or county"; in (4) in introductory clause near middle after "one site" substituted "the county, city, or town" for "the municipality or county"; and in (4)(b) near middle before "may impose" substituted "county, city, or town" for "municipality or county". Amendment effective October 1, 2003.

2001 Amendment: Chapter 150 inserted (1)(a) and (1)(b) authorizing a municipality or county by ordinance to adopt a building code or to authorize the adoption of a building code by administrative action; and made minor changes in style. Amendment effective March 28, 2001.

1999 Amendment: Chapter 473 inserted (4) regarding plan fees for the same single-family dwelling plan constructed at more than one site; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 93 at end of (3) inserted "or to a public health center as defined in 7-34-2102". Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1983 Amendment — Codification: Inserted (3) relating to automatic closing doors, which was actually enacted as (2) of 50-60-205. By committee amendment during the legislative process, the subsection was made to address local as well as state building code provisions; therefore, the code commissioner codified the subsection in this section as well as 50-60-205.

Case Notes

Interpretation of Uniform Building Code Ordinance Matter of Law — Violation May Constitute Negligence Per Se: Chambers was injured after falling into a pit at the Helena garbage transfer station. A Uniform Building Code (UBC) ordinance required guardrails on most landings and ramps, except on the loading side of loading docks. The District Court held that the pit did not fit the loading dock exception and that the city's failure to install guardrails was negligence per se. The city argued that interpretation of the UBC ordinance was a finding of fact that the trial court improperly removed from the province of the jury because the court made credibility determinations and weighed the evidence. Chambers maintained that, like statutes, interpretation of a UBC ordinance is a question of law. The Supreme Court agreed with Chambers. Violation of a UBC ordinance is a matter of law, violation of which may constitute negligence per se, and in this case, it was undisputed that the city was subject to the ordinance and that there were no guardrails installed along the transfer station pit. Chambers was a member of the class of persons that the ordinance was designed to protect and met the elements of negligence per se. Further, pursuant to Montana pattern jury instructions, it is up to the jury to decide whether a statute has been violated. Once the trial court determined that the city was negligent per se, the jury instruction should not have been given because there were no more undisputed issues regarding violation of the statute. The only remaining determination was whether the loading dock exception applied to the pit, and that was a statutory interpretation for the court to decide. The plain language of the UBC ordinance and its exception did not include a pit design such as that used at the transfer station, so the trial court correctly interpreted the ordinance and held the city negligent per se. Chambers v. Helena, 2002 MT 142, 310 M 241, 49 P3d 587 (2002).

Failure to Follow Uniform Building Code as Negligence Per Se — Denial of Judgment NOV Reversed: Rosauers Supermarket undertook remodeling for which ALSC was the architect. As a change order to the remodeling, Rosauers asked that a walk-in freezer be removed and that the access door to a walkway over the freezer be closed off. Unknown to Rosauers and its employee, Pierce, the door was never closed off even though the freezer was removed. Pierce was injured when he fell through a false ceiling after stepping off the walkway, assuming that the freezer was still in place and that it would support him. After a jury verdict finding no negligence on the part of ALSC, Pierce moved for judgment NOV, which was denied by virtue of the fact that the District Court failed to grant the motion within 45 days. The Supreme Court found that ALSC had knowledge of the change order and knew that without the access door being blocked, the door and walkway would leave an unsafe condition after the freezer was removed. Citing Herbst v. Miller, 252 M 503, 830 P2d 1268 (1992), the Supreme Court also found that failure to place a guardrail around the walkway in accordance with the Uniform Building Code caused an unsafe condition in violation of the code, which constituted negligence per se on the part of ALSC. For this reason, the Supreme Court held that the District Court erred when it denied Pierce's motion for judgment NOV by failing to grant the motion with 45 days. Pierce v. ALSC Architects, P.S., 270 M 97, 890 P2d 1254, 52 St. Rep. 93 (1995).

Area Not Ramp Under Uniform Building Code: In a slip and fall case, the lower court applied the Uniform Building Code to the case on the basis that, as a matter of law, the area where the plaintiff fell was a ramp subject to the provisions of the Code. The Supreme Court reversed and remanded the case for a new trial, stating that all the evidence was to the effect that the area in question was not a ramp and that it was error to apply the Code in this case. Knutson v. Barbour, 266 M 170, 879 P2d 696, 51 St. Rep. 749 (1994).

Failure to Maintain Handrail in Violation of City Building Code as Negligence Per Se: At the time plaintiff was injured, the city of Belgrade had by ordinance adopted the Uniform Building Code, clearly requiring handrails on stairwells in all buildings in town. The failure to maintain the building in conformance with the city ordinance constituted negligence per se, notwithstanding that the state building code did not require handrails. Plaintiff was entitled to an instruction on negligence per se. Herbst v. Miller, 252 M 503, 830 P2d 1268, 49 St. Rep. 40 (1992), clarified, as to application of the Uniform Building Code, in Knutson v. Barbour, 266 M 170, 879 P2d 696, 51 St. Rep. 749 (1994), and followed in Pierce v. ALSC Architects, P.S., 270 M 97, 890 P2d 1254, 52 St. Rep. 93 (1995).

Duty to Enforce Code Arises Upon Issuance of Final Certificate of Occupancy: Prior to final inspection by the city building inspector and issuance of a final certificate of occupancy, a building that was being remodeled was destroyed by fire. Although the building inspector had the duty of enforcing the building code requirement that the building be equipped with an operational fire-extinguishing system, the duty did not arise until the city issued the final certificate of occupancy. Massman v. Helena, 237 M 234, 773 P2d 1206, 46 St. Rep. 764 (1989).

Dual Regulation Constitutional: Under former law, concurrent regulation of plumbers by the state under 50-60-505 and by certain municipalities under this section did not deny the plumbers due process or the equal protection of the law. The state regulatory system was a valid exercise of police power over a lawful business. Billings Assoc. Plumbing, Heating & Cooling Contractors v. Bd. of Plumbers, 184 M 249, 602 P2d 597 (1979).

Attorney General's Opinions

Building Codes — Local Government: Local governing bodies are prohibited from adopting building codes more stringent than those adopted by the state. 37 A.G. Op. 81 (1977).

County Adoption of State Building Codes: Counties in Montana have the authority to establish a building code program and may adopt selected portions of the state building code, leaving the remaining portions of the code to be enforced by the Department of Commerce (now Department of Labor and Industry). 37 A.G. Op. 66 (1977).

50-60-302. Certification of county, city, or town building codes.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 269, L. 2023. Amendment effective October 1, 2023.

2003 Amendment: Chapter 443 in (1) in introductory clause at beginning substituted "A county, city, or town" for "A county or municipality"; in (2) in first sentence near middle after "certification of" substituted "county, city, and town" for "municipal and county", in second sentence after "county" substituted "city or town" for "or municipality", and in fourth sentence near beginning after "county" substituted "city, or town" for "or municipal" and near end after "county" substituted "city, or town" for "or municipality"; in (3) near middle after "enforcement within the" substituted "county, city, or town" for "municipal or county" and near end after "permitted by the" substituted "county, city, or town" for "local government"; in (4) in three places substituted "county, city, or town" for "local government"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 278 deleted former (3) that read: "(3) In addition to maintaining the continued compliance oversight required in subsection (1), the department shall require a detailed and fully documented annual report from a local government with a certified code enforcement program to ensure continued local government compliance with all requirements of applicable statutes and rules. If review of the annual report identifies compliance problems, the department shall immediately conduct an onsite evaluation"; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 64, Ch. 278, L. 2001, provided: "[This act] applies to special purpose districts beginning July 1, 2002."

1997 Amendment: Chapter 488 inserted (1)(a) prohibiting enforcement of municipal or county building code unless enforcement program certified by Department; at beginning of (1)(b) substituted "the current adopted code, a current list of fees to be imposed, and a current plan for enforcement" for "the code adopted and a plan for enforcement" and after "filed with" inserted "and approved by"; inserted (1)(c) prohibiting enforcement of municipal or county building code unless inspectors are state-licensed journeymen or nationally certified entity approved by Department; at end of first sentence in (2) inserted "which must include provisions for prompt revocation of certification for refusal or failure to comply with any applicable statute or rule", inserted second sentence authorizing Department to allow up to 6 months to correct identified code deficiency unless public health or safety threatened, inserted third sentence providing that failure to correct deficiency is basis for decertification, inserted fourth sentence authorizing Department to enjoin or seek writ of mandamus for continued failure to correct deficiencies, and inserted fifth sentence requiring Department rules to include provisions to ensure enforcement functions properly performed; inserted (3) requiring annual report from local government with certified code enforcement program; inserted (4) providing for state assumption of jurisdiction for enforcement within city or county, with local government retaining responsibility for completion of inspections and issuance of certificates if certification of local enforcement program revoked; inserted (5) providing procedures and responsibilities if local government voluntarily decertifies code enforcement program; and made minor changes in style. Amendment effective July 1, 1998.

50-60-303. County, city, or town appeal procedure.

Compiler's Comments

2003 Amendment: Chapter 443 in (1) and (2) at beginning substituted "If a county, city, or town" for "If a municipality or county"; in (1) near end after "ordinance" inserted "or resolution, as appropriate"; in (2) near middle after "within the" substituted "county, city, or town" for "municipal or county jurisdictional area"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 546 throughout section after "municipality" inserted "or county"; and made minor changes in style. Amendment effective May 1, 2001.

Unfunded Mandate Laws Superseded: Section 9, Ch. 546, L. 2001, provided: "The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116."

Case Notes

Process for Establishing County Building Code Jurisdictional Area Based on Franchise Limitation Unconstitutional: The 2001 Legislature enacted Senate Bill No. 242 (SB 242), which established a process for designating a county building code jurisdictional area and eliminating municipal jurisdictional areas by an election procedure limited to record owners of real property instead of the general constituency. When questioned regarding the constitutionality of the process, the Supreme Court noted that because voting rights cases involve a fundamental political right, strict scrutiny required the state to demonstrate a compelling governmental interest in restricting the voting franchise. The court concluded that: (1) the application and enforcement of building codes is an issue of public safety that affects all persons living in the area, not just record owners of real property; (2) governmental entities that oversee building codes are not special-purpose units whose functions and actions exclusively or disproportionately affect record owners of real property over other constituents in the area that do not own real property; and (3) elections to determine who may impose and enforce building codes in a given area are general interest elections rather than special interest elections. The state failed to show a compelling interest in limiting the voting franchise to only record owners of real property, and because the valid provisions of SB 242 were not severable from the invalid provisions, the court held that SB 242 was invalid in its entirety. (However, see Ch. 443, L. 2003, wherein the Legislature amended the voting procedure to address the franchise limitation.) Finke v. State ex rel. McGrath, 2003 MT 48, 314 M 314, 65 P3d 576 (2003). See also Kramer v. Union School District, 395 US 621 (1969).

Attorney General's Opinions

Authority of Municipal Board of Building Code Appeals — Modifications: A municipal board of building code appeals has authority to review the refusal of a building official to allow modifications and, if appropriate, to permit such modifications. 41 A.G. Op. 74 (1986).

50-60-304. Area of applicability of county, city, or town building code — enforcement.

Compiler's Comments

Effective Date: Section 28(1), Ch. 443, L. 2003, provided that this section is effective October 1, 2003.

Part 4

Factory-Built Buildings and Recreational Vehicles

Part Administrative Rules

ARM 24.301.204 Factory-built buildings.

Title 24, chapter 301, subchapter 5, ARM Requirements for recreational vehicles and factory-built buildings.

50-60-401. Department to adopt rules for factory-built buildings.

Compiler's Comments

1997 Amendment: Chapter 240 near middle, after "part", inserted "for the construction of factory-built buildings" and at end deleted "for the construction of factory-built buildings and recreational vehicles as defined in 50-60-101"; and made minor changes in style.

1985 Amendment: Substituted entire text (see 1985 Session Law) for "The department shall make rules embodying the fundamental principles adopted, recommended, or issued as USAS A119.1 and USAS A119.2 and amended from time to time by the United States of America standards institute (USASI), successor to the American standards association (ASA), and American national standards applicable to mobile homes and recreational vehicles as defined in 50-60-101."

Statement of Intent: The statement of intent attached to Ch. 33, L. 1985, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the department of administration (now commerce) to adopt rules providing standards for the construction of factory-built buildings. The bill provides that the department may adopt standards more stringent than nationally recognized construction standards. It is the intent of the legislature that if the department adopts more stringent standards, the standards should be aimed at addressing Montana's climatic demands and protection of Montana consumers."

Case Notes

Restrictive Covenant as to Mobile Home to Include Modular Home: Court erred in not granting plaintiff an injunction to prevent defendant from installing a modular home where grant deed contained a restrictive covenant that provided no trailers or mobile homes could be used as a permanent residence. DeLaurentis v. Vainio, 169 M 520, 549 P2d 461 (1976), followed in Newman v. Wittmer, 277 M 1, 917 P2d 926, 53 St. Rep. 516 (1996).

50-60-402. Factory-built buildings and recreational vehicles to comply with standards.

Compiler's Comments

1997 Amendment: Chapter 240 in (1), in two places after "factory-built building", deleted "or recreational vehicle"; in (2) and (3), after reference to factory-built building, deleted reference to recreational vehicle unit; inserted (4) regarding sale of new recreational vehicle in accordance with American National Standards Institute standards; and made minor changes in style.

1985 Amendment: Substituted "factory-built building(s)" for "mobile home" throughout section.

50-60-403. Use of independent testing laboratories authorized.

Compiler's Comments

1997 Amendment: Chapter 240 after "factory-built buildings" deleted "or recreational vehicles"; and made minor changes in style.

50-60-404. Enforcement of building construction standards for modular homes.

Compiler's Comments

2003 Amendment: Chapter 443 throughout section substituted "county, city, or town" for "municipality". Amendment effective October 1, 2003.

Part 5

Plumbing Installations

Part Compiler's Comments

Severability Clause: Section 2, Ch. 236, L. 1967, was a severability clause.

Part Administrative Rules

Title 24, chapter 301, subchapter 3, ARM Plumbing requirements.

50-60-502. No penalties for hiring unlicensed plumbers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-60-504. Department to prescribe minimum standards.

Compiler's Comments

2001 Amendment: Chapter 483 after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: Changed "department of administration" to "department of commerce".

50-60-505. Permit required.

Compiler's Comments

2001 Amendment: Chapter 483 at end of (1) after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (1) changed "department of administration" to "department of commerce".

Case Notes

Dual Regulation Constitutional: Under former law, concurrent regulation of plumbers by the state under this section and by certain municipalities under 50-60-301 did not deny the plumbers due process or the equal protection of the law. The state regulatory system was a valid exercise of police power over a lawful business. Billings Assoc. Plumbing, Heating & Cooling Contractors v. Bd. of Plumbers, 184 M 249, 602 P2d 597 (1979).

50-60-506. Exceptions to permit requirement.

Compiler's Comments

2003 Amendment: Chapter 443 in (3) near middle after "by a" substituted "county, city, or town" for "municipality" and before "building code" substituted "county, city, or town" for "municipal"; and made minor changes in style. Amendment effective October 1, 2003.

50-60-507. Application for and issuance of permit.

Compiler's Comments

2001 Amendment: Chapter 483 in first sentence in (1) after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (1) in first sentence, changed "department of administration" to "department of commerce" and after "or", inserted "its".

50-60-508. Permit fees.

Compiler's Comments

2001 Amendment: Chapter 483 near beginning of (1) after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1997 Amendment: Chapter 357 in (1), at end, inserted "and for other purposes as established by law"; in (2) inserted third sentence requiring that fees be commensurate with administration and enforcement costs; and made minor changes in style. Amendment effective July 1, 1997.

1992 Special Session Amendment: Chapter 11, Sp. L. July 1992, in (1), near beginning, inserted exception clause; and inserted (3) transferring $400,000 from the building codes state special revenue account to the general fund. Amendment effective August 6, 1992, and terminates September 2, 1992.

Severability: Section 7, Ch. 11, Sp. L. July 1992, was a severability clause.

1985 Amendment: In (1) changed "department of administration" to "department of commerce".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

50-60-509. Person commencing work without a permit to pay double the permit fee — exception.

Compiler's Comments

2001 Amendment: Chapter 483 near end of first sentence after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: Near end of the first sentence changed "department of administration" to "department of commerce".

50-60-510. Inspections to ensure compliance.

Compiler's Comments

2003 Amendment: Chapter 443 in first sentence near middle before "certified" substituted "county, city, or town" for "municipality or county"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 near middle of first sentence after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1997 Amendment: Chapter 379 in first sentence, after "representative", inserted "or a municipality or county certified to perform an inspection pursuant to 50-60-302 in order" and inserted second and third sentences regarding presentation of proof of licensure as part of an inspection; and made minor changes in style.

1985 Amendment: Changed "department of administration" to "department of commerce".

Case Notes

Inspection Not Mandatory: Inspection was not intended to be mandatory as evidenced by the use of the word "may" rather than "shall" or "must". Enforcement was intended to be selective. Billings Assoc. Plumbing, Heating & Cooling Contractors v. Bd. of Plumbers, 184 M 249, 602 P2d 597 (1979).

Attorney General's Opinions

Interpretation of Plumber Licensing Statutes by Board of Plumbers — Licensing Authority Restricted by Statute — Intention of Legislature — Penalty Statute Inapplicable: The Board of Plumbers has the legal authority to interpret Title 37, ch. 69, and the interpretation by the Board must be given deference unless it is incorrect. In interpreting the plumbing licensing statutes, the intent of the Legislature must be determined, and if that intent can be understood from a plain reading of the statutes, there is no need to look further. The statutes as well as the statutory history clearly indicated that a plumber's license is required only for a person who is: (1) working in the field of plumbing in an incorporated city or town; (2) working in the field of plumbing in an area served by a public water supply or sewer system; or (3) working in the field of plumbing and connects or disconnects plumbing to or from a public water supply or sewer system, unless an exemption is granted. There is no penalty applicable to an unlicensed person for whom a license is not required by statute. 47 A.G. Op. 21 (1998).

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-60-511. Duty of permittee regarding inspection and compliance.

Compiler's Comments

2001 Amendment: Chapter 483 in first sentence in (1) after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (1) changed "department of administration" to "department of commerce".

50-60-512. Department authorized to order work stopped for noncompliance.

Compiler's Comments

2001 Amendment: Chapter 483 near middle after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1985 Amendment: Changed "department of administration" to "department of commerce".

50-60-513. Suspension or revocation of permit.

Compiler's Comments

2001 Amendment: Chapter 483 near beginning after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: Changed "department of administration" to "department of commerce".

50-60-514. District court — jurisdiction — restraining orders.

Compiler's Comments

2001 Amendment: Chapter 483 near middle after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: Changed "department of administration" to "department of commerce".

Case Notes

Injunctive Relief Improper for Past Wrong: Injunctive relief cannot remedy a past wrong and was improper to compel appellants to obtain permits and pay fees for plumbing installations installed during the period from 1975 through 1977 in which a dual regulation system was in effect. Billings Assoc. Plumbing, Heating & Cooling Contractors v. Bd. of Plumbers, 184 M 249, 602 P2d 597 (1979).

50-60-515. Penalty for violations — exceptions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Injunctive Relief Improper for Past Wrong: Injunctive relief cannot remedy a past wrong and was improper to compel appellants to obtain permits and pay fees for plumbing installations installed during the period from 1975 through 1977 in which a dual regulation system was in effect. Billings Assoc. Plumbing, Heating & Cooling Contractors v. Bd. of Plumbers, 184 M 249, 602 P2d 597 (1979).

Part 6
Electrical Installations

Part Administrative Rules

Title 24, chapter 301, subchapter 4, ARM Electrical requirements.

50-60-602. Exceptions.

Compiler's Comments

2001 Amendment: Chapter 47 in (1)(a) after "communications equipment" substituted remainder of sentence referencing traffic signals, lights, and other devices owned by a public utility, the state, or other entities for "owned or operated by a public utility or a city"; inserted (1)(c) regarding mines and buildings subject to inspection under federal law; inserted (1)(d) regarding installation, alteration, or repair of certain equipment and cable; and made minor changes in style. Amendment effective March 16, 2001.

1993 Amendment: Chapter 444 inserted (1)(b) exempting petroleum refineries from the provisions of the state building construction standards pertaining to electrical installations; and made minor changes in style. Amendment effective April 21, 1993.

50-60-603. Electrical codes to be adopted by department by rule.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 47 in (1) at beginning substituted "The department of commerce shall adopt rules relating to the installation of wires and equipment" for "All installations in this state of wires and equipment" and at end after exception clause deleted "shall be made substantially in accord with building codes adopted by the department of commerce"; in (2) substituted text authorizing department of commerce to adopt NFPA 70 national electrical code or rules more stringent than NFPA 70 national electrical code for former (2) that read: "(2) Rules and standards relating to buildings and equipment shall be promulgated by the department"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 483 at end of (1) after "department of" substituted "labor and industry" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001. The amendment by Ch. 47 rendered the amendment by Ch. 483 void.

Code Commissioner Instruction: Pursuant to sec. 221, Ch. 483, L. 2001, in (1) the code commissioner changed "department of commerce" to "department of labor and industry".
1985 Amendment: In (1) changed "department of administration" to "department of commerce".

50-60-604. Inspections — electrical permits — fees.

Compiler's Comments

2003 Amendment: Chapter 443 in first sentence near middle before "certified" substituted "county, city, or town" for "municipality or county". Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 near beginning of first sentence after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1997 Amendments: Chapter 357 substituted "The fee must be commensurate with the expense of providing the inspection and with appropriations for other purposes" for "which may not exceed the expense of providing the inspection". Amendment effective July 1, 1997.

Chapter 379 in first sentence, after "commerce", inserted "or an authorized representative or a municipality or county certified to perform an inspection pursuant to 50-60-302" and after "issue" substituted "electrical permits" for "inspection tags" and inserted third and fourth sentences regarding presentation of proof of licensure as part of an inspection; and made minor changes in style.

1985 Amendment: Changed "department of administration" to "department of commerce".

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-60-605. Power supplier not to energize installation without electrical permit.

Compiler's Comments

2003 Amendment: Chapter 443 in second sentence near end before "certified" substituted "county, city, or town" for "municipality or county". Amendment effective October 1, 2003.

2001 Amendments — Composite Section: Chapter 47 in second sentence near middle after "department" inserted "of commerce", near end substituted "electrical permit" for "inspection tag", and at end inserted "or a municipality or county certified to enforce the electrical code pursuant to 50-60-302"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 483 near end after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

Code Commissioner Instruction: Pursuant to sec. 221, Ch. 483, L. 2001, the code commissioner changed "department of commerce" to "department of labor and industry".

1985 Amendment: Changed "department of administration" to "department of commerce".

50-60-607. Energizing electrical installation without permit — misdemeanor.

Compiler's Comments

2003 Amendment: Chapter 443 near end before "certified" substituted "county, city, or town" for "municipality or county". Amendment effective October 1, 2003.

2001 Amendments — Composite Section: Chapter 47 at beginning substituted "Any person" for "It is unlawful for a person" and after "installation under this part" substituted remainder of sentence regarding electrical permit not issued by department of commerce or municipality or county and guilt for commission of misdemeanor for "unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department of commerce"; and made minor changes in style. Amendment effective March 16, 2001.

Chapter 483 at end after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1985 Amendment: Changed "department of administration" to "department of commerce".

50-60-608. Injunction authorized.

Compiler's Comments

Effective Date: Section 9, Ch. 47, L. 2001, provided that this section is effective on passage and approval. Approved March 16, 2001.

Part 7
Elevators and Other Conveyances

Part Compiler's Comments

Effective Date: Section 26(1), Ch. 303, L. 2005, provided that this part is effective October 1, 2005.

Part Administrative Rules

Title 24, chapter 142, ARM Elevator licensing program.

Title 24, chapter 301, subchapter 6, ARM Elevators, escalators, and moving walks.

Part Case Notes

Violation of Administrative Code — Evidence of Negligence: Plaintiff was injured when she opened an elevator door and fell 15 feet because the elevator car was not at the floor level. The trial court found defendants negligent as a matter of law and submitted causation and contributory negligence to the jury. Defendants appealed. The trial court's negligence ruling was premised on defendant's violation of an administrative safety code. The Supreme Court held that with respect to the operation of an elevator, the premises owner owes the highest degree of care. The court relied on Stepanek v. Kober Constr., 191 M 430, 625 P2d 51, 38 St. Rep. 385 (1981), to hold that violation of an administrative code is evidence of negligence but is not negligence per se. The fact that the Legislature mandated the adoption of the administrative code does not change this holding. The Legislature did not adopt the code by reference. Therefore, violation of the code was evidence of negligence and not negligence per se. Because this evidence was unrefuted as regards the premises owner, who merely defended by showing reliance on the elevator company, the trial court was correct in directing a finding of negligence against the premises owner. The premises owner would be liable under nondelegable duty. The elevator company judgment was vacated to determine if a code violation existed at the time of the last inspection. Cash v. Otis Elevator Co., 210 M 319, 684 P2d 1041, 41 St. Rep. 1077 (1984).

Part Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-60-705. Authority of department — rulemaking.

Compiler's Comments

2007 Amendment: Chapter 44 in (2)(b) near end after "stairway" substituted "chairlifts" for "chairs". Amendment effective October 1, 2007.

Part 8
Residential Energy Efficiency

50-60-801. Statement of policy on residential energy efficiency.

Compiler's Comments

Preamble: The preamble attached to Ch. 383, L. 1993, provided: "WHEREAS, the Environmental Quality Council, as part of its study of energy policy under the requirements of House Joint Resolution No. 31, adopted in the 1991 Legislative Session, created a Residential Energy Efficiency Working Group (Working Group) to address a long-standing controversy surrounding residential energy efficiency and specifically the energy provisions of the state building code; and

WHEREAS, the Working Group included broad representation from energy utilities, the home building industry, energy consumers, state and local governments, the lending and real estate industries, low-income and conservation groups, and the building supply industry; and

WHEREAS, the Working Group met nine times during the 1992 interim and agreed that any final recommendations must be adopted by consensus and supported by all participants as a package, with all elements to be adopted or none at all; and

WHEREAS, the Working Group adopted by consensus the policy statement embodied in [section 1] [50-60-801] and then adopted by consensus a package of implementation strategies; and

WHEREAS, the implementation strategies include:

(1) information strategies for consumers, builders, building code officials, home inspectors, bankers, realtors, and appraisers, specifically encompassing education, training, and technical assessment and demonstration of conservation measures, as well as an energy labeling sticker and initiation of first steps toward a home energy rating system;

(2) financial strategies geared toward making energy-efficient new homes more affordable, including:

(a) petitioning the Federal Home Administration (FHA) to increase the upper limits of FHA home mortgages;

(b) initiating a residential mortgage program for energy-efficient homes under the Montana Board of Housing that would maintain a low down payment requirement and raise mortgage ceiling levels above FHA limits; and

(c) establishing a loan reserve account in the Department of Natural Resources and Conservation that allows the Board of Housing to sell bonds to enable it to offer loans above the FHA limit that would be funded by home buyers, utilities, and the State of Montana as provided in House Bill No. 10 [Ch. 496, L. 1993];

(3) energy provider strategies in which utilities would continue to offer on a voluntary basis incentive programs to their customers to purchase energy-efficient products or services; and

(4) building code strategies, including enforcement of the energy conservation provisions of the state building code in certain residential buildings through a combination of builder self-certification and state and local government enforcement for those residences currently subject to the state building code, as well as increasing the efficiency standards in the energy code according to the consensus levels adopted by the Working Group; and

WHEREAS, it is the consensus of the Working Group that implementation of the building code strategies relating to the applicability of the energy code to certain residences is contingent on the establishment, funding, and operation of the financial strategy concerning the Board of Housing program promoting the affordability of energy-efficient new homes; and

WHEREAS, this bill embodies those consensus recommendations of the Working Group requiring statutory authorization."

1993 Statement of Intent: The statement of intent attached to Ch. 383, L. 1993, provided: "A statement of intent is necessary for this bill because it directs the department of commerce, in adopting rules pertaining to energy conservation in buildings under the provisions of 50-60-203, to conform those rules to the policy provided in [section 1] [50-60-801] and to the relevant policies that may be developed according to the provisions of Senate Bill No. 225 [Ch. 242, L. 1993].

This bill also requires that the department of commerce design a labeling sticker describing the energy efficiency measures in newly constructed homes. In designing this energy labeling sticker, the department of commerce should consult with the department of natural resources and conservation and with interested building industry and consumer groups.

It is the intent of the legislature that the department of commerce adhere to the recommendations related to energy efficiency in residential buildings developed under the auspices of House Joint Resolution No. 31, adopted by the 1991 legislature.

In accordance with the recommendations resulting from the directive of House Joint Resolution No. 31, the legislature intends that rules pertaining to energy conservation in certain residential buildings may not apply to those buildings containing less than five dwelling units and not otherwise subject to the state building code unless an affordable energy-efficient housing program is established as provided by House Bill No. 10 [Ch. 496, L. 1993]. The coordination instruction in [section 7] reflects this intent.

It is further the intent of the legislature that in applying the energy conservation provisions of the state building code to certain residential buildings as provided in [section 2] [50-60-102], the enforcement of those provisions be accomplished through builder self-certification as provided in [section 4] [50-60-802] and not through enforcement by the department of commerce, except for those residential structures containing five or more dwelling units or for those residential structures otherwise subject to the state building code."

50-60-802. Enforcement of energy code through builder self-certification.

Compiler's Comments

2009 Amendment: Chapter 300 in (1) at beginning inserted exception clause; inserted (2) providing for certification to owner by builder if residential building meets or exceeds voluntary energy-efficient construction standards adopted by local government with jurisdiction; and made minor changes in style. Amendment effective October 1, 2009.

50-60-803. Energy labeling sticker.

Compiler's Comments

2001 Amendment: Chapter 483 near beginning of (1) and near middle of (2) after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 418 in (1), after first "department", inserted "of commerce" and substituted "department of environmental quality" for "department of natural resources and conservation"; and in (2), after "department", inserted "of commerce". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Part 9
Fire Mitigation Construction Techniques

Part Compiler's Comments

Effective Date — Applicability: Section 8, Ch. 443, L. 2007, provided: "[This act] is effective on passage and approval and applies on or after October 1, 2009." Approved May 8, 2007.

CHAPTER 61
FIRE SAFETY IN PUBLIC BUILDINGS

Chapter Administrative Rules

Title 23, chapter 12, subchapter 4, ARM Fire safety.

Part 1
General Provisions

50-61-101. Purpose of chapter.

Compiler's Comments

2003 Amendment: Chapter 387 near middle after "50-61-103 and to" substituted "allow" for "provide". Amendment effective October 1, 2003.

1991 Amendment: Near middle, after "50-61-103", deleted "to provide for fire escapes, fire-fighting apparatus, fire alarms"; and made minor changes in style. Amendment effective April 29, 1991.

50-61-102. Department of justice to administer chapter.

Compiler's Comments

2007 Amendment: Chapter 449 in (2) near middle after "municipality" substituted "or other governmental fire agency organized under Title 7, chapter 33" for "district, or fire service area", after "may" substituted "approve" for "certify", and after "municipal" substituted "or governmental fire agency" for "district, or fire service area"; and made minor changes in style. Amendment effective June 1, 2007.

1995 Amendment: Chapter 212 in (2), in two places, inserted "or fire service area"; and made minor changes in style.

1991 Amendment: In (1), in four places, substituted reference to Department of Justice for reference to State Fire Marshal; and inserted (2) regarding certification of a municipal or district fire inspection program for local enforcement. Amendment effective April 29, 1991.

1989 Amendment: Near end, after "adopted", inserted "under 50-3-102 and 50-3-103" and after "of" inserted "50-61-120 and 50-61-121 and". See contingent effective date compiler's comment.

Contingent Effective Date: Section 9, Ch. 506, L. 1989, was a contingency section that provided: "(1) [This act] is void if:

(a) the western fire chiefs association adopts at its annual meeting in August 1989 the proposed changes to article 77 of the uniform fire code that are specifically referred to as amendments to division II "storage", regarding smokeless powder and small arms primers for retail sales;

(b) the proposed changes are no more restrictive than the terms of [this act]; and

(c) the state fire marshal [now department of justice] adopts the amended provisions for storage of smokeless powder and small arms primers for retail sales by March 31, 1990.

(2) [This act] is effective April 1, 1990." The contingency did not occur, so the 1989 amendment became effective April 1, 1990.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-61-103. Application of chapter — definitions.

Compiler's Comments

2003 Amendment: Chapter 387 in definitions substituted current text for former text (see 2003 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2003.

The amendment to this section by Ch. 243, L. 2003, was rendered void by sec. 10, Ch. 387, L. 2003, a coordination section.

50-61-106. Unlawful to obstruct fire exit.

Compiler's Comments

1991 Amendment: Near middle, after "fire", substituted "exit, or any hallway, corridor, or entranceway leading to a fire exit" for "escape" and at end, after "required by", substituted "rules adopted by the department of justice" for "the provisions of this chapter or hallway, corridor, or entranceway leading thereto"; and made minor changes in style. Amendment effective April 29, 1991.

50-61-114. Fire chief and fire inspector to make inspections.

Compiler's Comments

2007 Amendment: Chapter 449 near middle of introductory clause after "chief" substituted "or fire inspector of the governmental fire agency organized under Title 7, chapter 33" for "of the fire department of each municipality, district, or fire service area". Amendment effective June 1, 2007.

2003 Amendment: Chapter 387 in (1) increased the time of mandatory entry for inspections from at least once each 12 months to at least once each 18 months; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 212 in introductory clause inserted "or fire service area"; and made minor changes in style.

1991 Amendment: In introductory clause, in two places, substituted "fire inspection program" for "fire department" and near middle, after "established", substituted "or a fire inspector of the department of justice" for "and the county sheriff or deputy fire marshals"; in (2), after "jurisdiction", substituted "according to priority schedules established by the department for conducting inspections of buildings and premises" for "at least once each 18 months"; and made minor changes in style. Amendment effective April 29, 1991.

1985 Amendment: In lead-in near middle, after "exists shall", deleted "enter into all buildings and upon all premises within their jurisdiction at least once each 6 months" and near end of lead-in after "violations of this chapter", substituted remainder of section (see 1985 Session Law) for "The inspection shall include but is not limited to testing fire alarms and fire extinguishers, examining fire hose, attachments, and other fire apparatus, and examining fire escapes. Copies of the inspection shall be filed in the office of the state fire marshal on forms to be provided by him".

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-61-115. Notice of violations.

Compiler's Comments

2007 Amendment: Chapter 449 in (2) at end after "remedied" deleted "which may not be more than 90 days"; and made minor changes in style. Amendment effective June 1, 2007.

1991 Amendment: In (1), near beginning after "found", substituted "that is not in compliance with fire safety rules promulgated by the department of justice" for "which requires the erection of fire escapes and upon which fire escapes have not been erected according to the provisions of this chapter or if fire hoses, fire extinguishers, fire alarms, or other fire apparatus is found to be lacking or defective or not in good working condition", near middle substituted "department" for "state fire marshal", and at end substituted "maintain the safety of the building" for "erect the fire escapes or maintain such fire apparatus"; in (2), after "within which", deleted "the fire escapes shall be erected or"; and made minor changes in style. Amendment effective April 29, 1991.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-61-116. Lessee who corrects violations entitled to reimbursement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-61-117. Prosecution of violations.

Compiler's Comments

1991 Amendment: Near beginning substituted "department of justice or other authorized officer to furnish the county attorney with all evidence of violations of rules adopted by the department" for "state fire marshal or any person authorized to act in his stead to file complaint for violations of the provisions of this chapter in any court of competent jurisdiction", near middle inserted "if the evidence discloses the fact that a violation has occurred", and at end substituted "the person committing the violation in the same manner as in other cases" for "all such complaints so filed"; and made minor changes in style. Amendment effective April 29, 1991.

50-61-118. Injunction authorized.

Compiler's Comments

1991 Amendment: Near middle substituted "maintain the safety of the building premises in accordance with rules adopted by the department of justice" for "erect fire escapes or to install and maintain fire alarms or fire extinguishers or other fire apparatus in accordance with this chapter"; and made minor changes in style. Amendment effective April 29, 1991.

50-61-120. Exceeding fire code limits for storage of smokeless powder and small arms primers.

Compiler's Comments

Contingent Effective Date: Section 9, Ch. 506, L. 1989, was a contingency section that provided: "(1) [This act] is void if:

(a) the western fire chiefs association adopts at its annual meeting in August 1989 the proposed changes to article 77 of the uniform fire code that are specifically referred to as amendments to division II "storage", regarding smokeless powder and small arms primers for retail sales;

(b) the proposed changes are no more restrictive than the terms of [this act]; and

(c) the state fire marshal [now department of justice] adopts the amended provisions for storage of smokeless powder and small arms primers for retail sales by March 31, 1990.

(2) [This act] is effective April 1, 1990." The contingency did not occur, so the section became effective April 1, 1990.

50-61-121. Restrictions on storage of smokeless powder and small arms primers.

Compiler's Comments

2007 Amendment: Chapter 449 in (1)(d)(ii) after "investigation" substituted "section" for "program" and after "justice or a" substituted "chief of a governmental fire agency organized under Title 7, chapter 33, or the chief's designee" for "fire marshal of the local jurisdiction". Amendment effective June 1, 2007.

1991 Amendment: In (1)(d)(ii) substituted "prevention and investigation program of the department of justice" for "marshal". Amendment effective April 29, 1991.

Contingent Effective Date: Section 9, Ch. 506, L. 1989, was a contingency section that provided: "(1) [This act] is void if:

(a) the western fire chiefs association adopts at its annual meeting in August 1989 the proposed changes to article 77 of the uniform fire code that are specifically referred to as amendments to division II "storage", regarding smokeless powder and small arms primers for retail sales;

(b) the proposed changes are no more restrictive than the terms of [this act]; and

(c) the state fire marshal [now department of justice] adopts the amended provisions for storage of smokeless powder and small arms primers for retail sales by March 31, 1990.

(2) [This act] is effective April 1, 1990." The contingency did not occur, so the section became effective April 1, 1990.

CHAPTER 62
FIRE HAZARDS

Chapter Administrative Rules

Title 23, chapter 12, subchapter 4, ARM Fire safety.

Part 1
Removal of Hazards

50-62-101. Entering of buildings for purpose of examination authorized.

Compiler's Comments

2007 Amendment: Chapter 449 near beginning after "investigation" substituted "section" for "program", after "chief" substituted "or chief's designee of a governmental fire agency organized under Title 7, chapter 33" for "of the fire department of each municipality or district", and after "a fire" substituted "agency" for "department"; and made minor changes in style. Amendment effective June 1, 2007.

1991 Amendment: At beginning substituted "officers of the state fire prevention and investigation program of the department of justice or" for "state fire marshal, his deputies and subordinates", near middle, after "established", deleted "or the county sheriff where no fire department exists", and after "may" inserted "as authorized by law"; and made minor changes in style. Amendment effective April 29, 1991.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-62-102. Structures or conditions creating fire hazard a public nuisance — order to remedy.

Compiler's Comments

2007 Amendment: Chapter 449 in (1) near end after "investigation" substituted "section" for "program" and after "other" substituted "person identified in 50-62-101" for "officer"; in (2) near beginning of first sentence in two places substituted "section" for "program", before "in 50-62-101" substituted "a person identified" for "an officer mentioned", and near middle before "shall order" substituted "section, officer, or other person" for "department or other officer"; in (3) near end after "investigation" substituted "section, officer of the section, or other person identified" for "program or other officer mentioned"; and made minor changes in style. Amendment effective June 1, 2007.

1991 Amendment: In (1), after "apparatus", inserted "or the existence of any combustible materials, flammable conditions, or other fire hazards", after "fire and" inserted "is dangerous to the safety of the building premises or to the public or", and after "vicinity" substituted "the state fire prevention and investigation program of the department of justice or other officer may declare the building or other structure to be a public nuisance and proceed according to 50-62-103 or subsection (2) of this section" for "is hereby declared to be a public nuisance"; inserted (2) and (3) regarding removal or remedy of the hazardous condition or material; and made minor changes in style. Amendment effective April 29, 1991.

50-62-103. Service of order to repair hazardous condition or demolish structure.

Compiler's Comments

2007 Amendment: Chapter 449 in (1) near beginning after "investigation" substituted "section" for "program", after "justice" substituted "an officer of the section, or any other person identified" for "or any officer mentioned", and near middle after "24 hours, the" substituted "section, officer, or person" for "program or officer"; in (2) at end of second sentence after "enforcement" substituted "of the order must be held in the district court in which the order is filed" for "thereof shall be had in that court"; and made minor changes in style. Amendment effective June 1, 2007.

1991 Amendment: At beginning of (1) substituted "fire prevention and investigation program of the department of justice" for "state fire marshal, a deputy state fire marshal", near middle, after "structure", substituted "constitutes a public nuisance for any reason identified in 50-62-102 and the condition cannot be removed or remedied within 24 hours, the program or officer" for "which for want of proper repair or by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections or defective heating apparatus or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, he", near end, after "order the", substituted "hazardous condition" for "structure", after "repaired" inserted "or the structure to be", and after "all" deleted "materials removed and all"; in (4), near beginning, substituted "department of justice" for "state fire marshal"; and made minor changes in style. Amendment effective April 29, 1991.

1983 Amendment: In (3), after "upon the owner" inserted "and any purchaser under contract for deed"; near beginning of (4) after "owner" inserted "or any purchaser under contract for deed"; after "unknown and" deleted "he"; and after "upon the owner" inserted "or any purchaser under contract for deed".

Case Notes

Municipal Ordinance Delegating Power — Standing to Challenge Order to Demolish Building: Provided that it meets due process requirements with respect to notice and does not conflict with state law, a municipal ordinance may be passed on the subject of fire safety and it may delegate power to the State Fire Marshal (now Department of Justice). An order to demolish a building issued under such an ordinance was upheld. The State Fire Marshal (now Department of Justice) has the power to provide for fire safety, and no one will be heard to question the validity of a statute unless his interests have been or are about to be prejudicially affected by the operation of the statute. State ex rel. Brooks v. Cook, 84 M 478, 276 P 958 (1929).

Notice: The rule that notice to one to appear and answer in a proceeding taken against him must be reasonable as to time to constitute due process of law means notice suitable to the particular case. Under that rule, a notice of not less than 5 or more than 10 days required to be given to defendant in a proceeding for the condemnation of a fire hazard under this chapter where he resides in or near the city in which the objectionable structure is situated is reasonable. It was the legislative intent that in every case of that nature at least reasonable notice shall be given and "the intention of the lawmaker constitutes the law". (Construed before amendment, Ch. 139, L. 1929.) State ex rel. Brooks v. Cook, 84 M 478, 276 P 958 (1929).

50-62-104. Answer of owner or occupant.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Near middle of (1) substituted "department of justice" for "said state fire marshal, a deputy state fire marshal". Amendment effective April 29, 1991.

Case Notes

Municipal Ordinance Delegating Power — Standing to Challenge Order to Demolish Building: Provided that it meets due process requirements with respect to notice and does not conflict with state law, a municipal ordinance may be passed on the subject of fire safety and it may delegate power to the State Fire Marshal (now Department of Justice). An order to demolish a building issued under such an ordinance was upheld. The State Fire Marshal (now Department of Justice) has the power to provide for fire safety, and no one will be heard to question the validity of a statute unless his interests have been or are about to be prejudicially affected by the operation of the statute. State ex rel. Brooks v. Cook, 84 M 478, 276 P 958 (1929).

50-62-105. Default judgment.

Compiler's Comments

1991 Amendment: Near middle substituted "department of justice or other officer" for "state fire marshal". Amendment effective April 29, 1991.

50-62-106. Hearing and judgment.

Compiler's Comments

1991 Amendment: Near beginning of (1) substituted "department of justice" for "state fire marshal, deputy state fire marshal"; and made minor changes in style. Amendment effective April 29, 1991.

50-62-107. Proceedings on failure to comply with order.

Compiler's Comments

1991 Amendment: In (1), near middle, and in (2), near beginning of first sentence, substituted reference to Department of Justice for reference to State Fire Marshal; in (2), at beginning of second sentence, substituted "The department or other officer" for "This person"; and made minor changes in style. Amendment effective April 29, 1991.

1981 Amendment: Substituted "may" for "shall" before "proceed to cause such building" in (1).

50-62-110. Appeal to department of justice.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: In three places substituted reference to Department of Justice for reference to State Fire Marshal. Amendment effective April 29, 1991.

50-62-111. Penalty for failure to comply with order to correct.

Compiler's Comments

1991 Amendment: Near middle, after "shall be", inserted "guilty of a misdemeanor and shall be" and near end increased maximum fine from $50 to $500. Amendment effective April 29, 1991.

50-62-112. Notice of violations.

Compiler's Comments

2007 Amendment: Chapter 449 in (1) near beginning after "defined in the" deleted "uniform" and after "code" inserted "adopted by the department of justice". Amendment effective June 1, 2007.

Effective Date: Section 4, Ch. 201, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 4, 1997.

CHAPTER 63
INVESTIGATION OF FIRES

Chapter Administrative Rules

Title 23, chapter 12, subchapter 4, ARM Fire safety.

Part 1
General Provisions

50-63-101. Examination of premises where fire occurred authorized.

Compiler's Comments

1991 Amendment: Near middle substituted "officers of the department of justice" for "the state fire marshal and each of his subordinates at all times of day or night" and after "may" inserted "as authorized by law". Amendment effective April 29, 1991.

50-63-102. Civil penalty for setting or leaving fire causing damage.

Compiler's Comments

2007 Amendment: Chapter 449 near end increased minimum civil penalty from $10 to $50 and deleted former second sentence that read: "If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years"; deleted former (2) that read: "(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than $10 or more than $100 or be imprisoned in the county jail not exceeding 60 days"; and made minor changes in style. Amendment effective June 1, 2007.

50-63-103. Liability of offender for damages and costs.

Compiler's Comments

2013 Amendment: Chapter 291 in first sentence at beginning inserted exception clause; and made minor changes in style. Amendment effective April 24, 2013.

Saving Clause: Section 4, Ch. 291, L. 2013, was a saving clause.

Applicability: Section 6, Ch. 291, L. 2013, provided: "[This act] applies to all actions and proceedings initiated after [the effective date of this act]." Amendment effective April 24, 2013.

2007 Amendment: Chapter 449 in second sentence near middle after "incurred" inserted "including but not limited to expenses incurred in investigation of the fire and administration of fire suppression"; and made minor changes in style. Amendment effective June 1, 2007.

Case Notes

Applicability to Private Landowners — Not Limited to Burning of Forest Materials: This section is applicable to private landowners and is not limited exclusively to the burning of forest materials. Whitehawk v. Clark, 238 M 14, 776 P2d 484, 46 St. Rep. 1053 (1989).

Elements of Arson — Presence — Identity of Arsonist: Presence at a fire at the time it was set is not a requisite to finding someone responsible for the fire, nor is the identity of the person who set the fire. Each is a factor to be weighed by the jury. The identity of the person who set the fire is also not a requisite to proving an agreement or conspiracy to set the fire. The jury need only find that a person agreed with another that the fire be set. Mtn. W. Farm Bureau Mut. Ins. Co. v. Girton, 215 M 408, 697 P2d 1362, 42 St. Rep. 500 (1985).

Evidence of Absent Home Owners' Responsibility Sufficient: In insurer's action for declaratory judgment that owners of house were responsible for setting it afire, jury verdict for insurer was supported by substantial evidence and was affirmed. The record on appeal showed that several months before the fire the owners moved valuable uninsured coin and stamp collections from the house; that they stored in the house valuable insured business inventory and equipment; that the house payments were a significant expense; that the house was at one time up for sale and did not sell; that the house was heavily insured; that an unusually large amount of gasoline, some in containers compatible with the arson scheme, was stored on the premises; that some of the arson paraphernalia belonged to the insureds; and that the scheme fit the insurance arsonist profile and was incompatible with other arson profiles. Mtn. W. Farm Bureau Mut. Ins. Co. v. Girton, 215 M 408, 697 P2d 1362, 42 St. Rep. 500 (1985).

Prior Statement of Defendant — Arson Suggestion: Insurer of house sought declaratory judgment that owners of house were responsible for fire that damaged it. The District Court allowed a witness to testify that several years before the fire one of the owners was interested in purchasing a building but the building's owner wanted a high price. The house owner stated in a laughing manner, "Why not torch it, maybe we could get a better price". The witness testified that he took the statement in jest. The testimony had little bearing on the past or present motive of the house owner, but admitting the testimony was within the court's discretion. Mtn. W. Farm Bureau Mut. Ins. Co. v. Girton, 215 M 408, 697 P2d 1362, 42 St. Rep. 500 (1985).

Applicability: This section applies only to the intentional setting or leaving of a fire. It does not apply to a fire in a slag pile that was thought to be dead for 20 years. Belue v. St., 199 M 451, 649 P2d 752, 39 St. Rep. 1516 (1982).

"Set Fire" Construed — Mental State: Analysis of both the purpose of Act, as shown by its title, and the language of the statute indicate that this section applies only to intentional setting of fires. Mont. Dept. of Natural Resources and Conservation v. Clark Fork Logging Co., Inc., 198 M 494, 646 P2d 1207, 39 St. Rep. 1146 (1982).

Limitation of Actions: Two-year Statute of Limitations, 27-2-207 or 27-2-211 (formerly 93-2607(part), R.C.M. 1947), was applicable to action under this section by the United States for damages to property caused by alleged negligence of defendants in setting forest fire. U.S. v. Eytcheson, 237 F. Supp. 371 (D.C. Mont. 1965).

50-63-104. Liability for forest or range fires.

Compiler's Comments

2015 Amendment: Chapter 389 in (1)(c)(ii) inserted last sentence concerning costs of restoring unimproved property; in (2) inserted definition of forest or range fire; and made minor changes in style. Amendment effective May 4, 2015.

Saving Clause: Section 2, Ch. 389, L. 2015, was a saving clause.

Applicability: Section 4, Ch. 389, L. 2015, provided: "[This act] applies to all actions and proceedings initiated after [the effective date of this act]." Effective May 4, 2015.

Saving Clause: Section 4, Ch. 291, L. 2013, was a saving clause.

Effective Date: Section 5, Ch. 291, L. 2013, provided that this section is effective on passage and approval. Approved April 24, 2013.

Applicability: Section 6, Ch. 291, L. 2013, provided: "[This act] applies to all actions and proceedings initiated after [the effective date of this act]." Effective April 24, 2013.

Part 2
Initial Investigation

50-63-201. Cause of fire to be investigated.

Compiler's Comments

2015 Amendment: Chapter 94 in first sentence substituted "determine the cause" for "determine the exact cause"; and made minor changes in style. Amendment effective October 1, 2015.

1991 Amendment: In second sentence substituted "department of justice" for "state fire marshal" and after "investigation" deleted "if he deems it necessary". Amendment effective April 29, 1991.

50-63-202. Fire chief or sheriff to conduct investigation.

Compiler's Comments

2007 Amendment: Chapter 449 in first sentence after "chief of the" substituted "governmental fire agency organized under Title 7, chapter 33, having jurisdiction or the chief's designee shall conduct" for "fire department shall make" and in second sentence after "shall" substituted "conduct" for "make" and at end after "investigation" inserted "or ensure that an investigation is conducted". Amendment effective June 1, 2007.

1995 Amendment: Chapter 212 in two places inserted "or fire service area"; and made minor changes in style.

50-63-203. Notification to department of justice — reports to be filed.

Compiler's Comments

2007 Amendment: Chapter 449 in (1) near end after "file" inserted "with the department"; and inserted (3) regarding filing of fire incident reports. Amendment effective June 1, 2007.

2003 Amendment: Chapter 387 in (1) near end after "cause" deleted "with the department"; in (2) near middle after "department" inserted "of justice" and at end after "fire" deleted "on forms furnished by the department"; deleted former (3) that read: "(3) Each official responsible for investigating fires shall file a fire incident report on each fire with the department. Reports shall be on forms and shall contain information prescribed by the department. These reports shall be sent to the department on a monthly basis or at intervals determined necessary by the department"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Throughout section substituted reference to Department of Justice for reference to State Fire Marshal; in (1), near middle after "life", inserted "or if it is determined that a criminal investigation is necessary" and after "notify the" substituted "department of justice and the appropriate law enforcement agency" for "state fire marshal"; in (3), at end of third sentence, substituted "monthly basis or at intervals determined necessary by the department" for "weekly basis"; and made minor changes in style. Amendment effective April 29, 1991.

Part 4
Information From Insurers

Part Compiler's Comments

Source: Chapter 145, L. 1979, was based on the Model Arson Reporting Immunity Bill.

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request.

Compiler's Comments

2007 Amendment: Chapter 449 in introductory clause near middle after "enforcement" substituted "agency or governmental fire agency organized under Title 7, chapter 33" for "or fire protection agency"; and made minor changes in style. Amendment effective June 1, 2007.

50-63-402. Insurer to report suspicious fires.

Compiler's Comments

2007 Amendment: Chapter 449 near middle after "enforcement" substituted "agency or governmental fire agency organized under Title 7, chapter 33" for "or fire protection agency"; and made minor changes in style. Amendment effective June 1, 2007.

50-63-403. Agencies to keep information confidential.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

50-63-404. Testimony of agency personnel in action to recover under insurance policy.

Compiler's Comments

2007 Amendment: Chapter 449 near beginning after "enforcement" substituted "agency and governmental fire agency" for "and fire protection agency". Amendment effective June 1, 2007.

CHAPTER 65
CIGARETTE STANDARDS

Chapter Compiler's Comments

Effective Date: Section 12, Ch. 318, L. 2007, provided that this chapter is effective May 1, 2008.

Part 1
General Provisions

50-65-102. Cigarette test method and performance standard — conditions on sale — alternative test method and performance standard.

Compiler's Comments

2013 Amendment: Chapter 28 deleted former (7) that read: "(7) The department of justice shall review the effectiveness of this section and report every 4 years to the legislature the state fire marshal's findings and, if appropriate, submit recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations may be submitted no later than January 1 of each 4-year period"; and made minor changes in style. Amendment effective October 1, 2013.

Preamble: The preamble attached to Ch. 28, L. 2013, provided: "WHEREAS, House Bill No. 142 (Chapter 126, Laws of 2011) required interim committees to "review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature"; and

WHEREAS, the Law and Justice Interim Committee voted to make the recommendations contained in this bill."

CHAPTER 71
OCCUPATIONAL SAFETY AND HEALTH

Chapter Compiler's Comments

Severability Clause: Section 27, Ch. 341, L. 1969, was a severability clause.

Chapter Administrative Rules

Title 24, chapter 30, ARM Industrial safety and health.

Chapter Case Notes

Liability of State to Suit — Active Duty U.S. Army Worker Injured While Assigned to National Guard — Tort Claim Not Barred: While in full-time service to the U.S. Army, Trankel was assigned to a Montana Army National Guard unit rebuilding armored vehicles and was injured by toxic chemicals during the rebuilding project. Trankel sued the state, asserting violations of the Occupational Health Act of Montana, the Montana Safety Act, and the Employee and Community Hazardous Chemical Information Act. The state contended that Feres v. U.S., 340 US 135, 95 L Ed 152, 71 S Ct 153 (1950), and Evans v. Mont. Nat'l Guard, 223 M 482, 726 P2d 1160 (1986), barred a claim that was incident to military service regardless of the substantive law upon which the claim was based, the status of the plaintiff at the time of injury, or the status of the party against whom the claim was made and that the alleged violations of the state Acts did not provide a private cause of action and could be enforced only through the administrative remedies provided for in the Acts. The District Court agreed with the state and dismissed Trankel's complaint with prejudice. On appeal, the Supreme Court distinguished Feres and related federal cases because they were based on federal rather than state tort claims, with little bearing on rights under state law and the Montana Constitution. The Supreme Court overruled the holding in Evans that the National Guard was not a political subdivision subject to suit, finding instead that the National Guard and the Department of Military Affairs were clearly governmental entities within the meaning of 2-9-101 and that the constitutional premise on which Evans was based did not apply. Consistent with other applications of Art. II, sec. 16, Mont. Const., any statute or court decision that deprives an employee of the right to full legal redress, as defined by general Montana tort law against third parties, is absolutely prohibited. Because Trankel was not employed by the Montana Army National Guard or the Department of Military Affairs at the time of injury, Trankel's claim against the state pursuant to the tort claims statutes was not barred. Further, applying the rationale in Pollard v. Todd, 148 M 171, 418 P2d 869 (1966), the

Supreme Court held that the statutory state Acts did not give rise to causes of action independent from a claim of negligence subject only to the administrative remedies contained in the Acts, but rather established duties, the violation of which is negligence per se. Trankel v. St., 282 M 348, 938 P2d 614, 54 St. Rep. 380 (1997), distinguishing Feres v. U.S., 340 US 135, 95 L Ed 152, 71 S Ct 153 (1950), U.S. v. Johnson, 481 US 681, 95 L Ed 2d 648, 107 S Ct 2063 (1987), and Stauber v. Cline, 837 F2d 395 (9th Cir. 1988); following Webb v. Mont. Masonry Constr. Co., 233 M 198, 761 P2d 343 (1988), Meech v. Hillhaven W., Inc., 238 M 21, 776 P2d 488 (1989), and Francetich v. St. Comp. Mut. Ins. Fund, 252 M 215, 827 P2d 1279 (1992); overruling Evans v. Mont. Nat'l Guard, 223 M 482, 726 P2d 1160 (1986); and followed in Lake v. St., 282 M 484, 938 P2d 698, 54 St. Rep. 442 (1997), and Oberson v. Federated Mut. Ins. Co., 2005 MT 329, 330 M 1, 126 P3d 459 (2005).

Part 1

Montana Occupational Safety and Health Act

Part Compiler's Comments

Preamble: The preamble attached to Ch. 27, L. 2009, provided: "WHEREAS, Montana's general occupational safety act, the Montana Safety Act, was enacted in 1969, prior to the adoption of the federal Occupational Safety and Health Act of 1970; and

WHEREAS, as a result of the enactment of the federal Occupational Safety and Health Act of 1970, federal law has become the basis for occupational safety and health regulation in the private sector; and

WHEREAS, states have responsibility for nonfederal public sector compliance with occupational safety and health regulations; and

WHEREAS, since the creation of the federal Occupational Safety and Health Administration, the Montana Safety Act and the Occupational Health Act of Montana do not reflect the reality of federal occupational safety and health regulation and enforcement in Montana's private sector; and

WHEREAS, the Montana Safety Act contains various archaic rulemaking and hearings provisions because it was enacted prior to the adoption of the Montana Administrative Procedure Act; and

WHEREAS, the Occupational Health Act of Montana, enacted in 1971, suffers from many of the same jurisdictional and procedural flaws as does the Montana Safety Act; and

WHEREAS, it is appropriate to modernize Montana's occupational safety and health laws for occupations other than those in mining and consolidate them into a unified body of law that reflects the scope of state regulation of general occupational safety and health matters as limited to public sector employment."

Saving Clause: Section 25, Ch. 27, L. 2009, was a saving clause.

Effective Date: Section 26, Ch. 27, L. 2009, provided that this part is effective July 1, 2009.

Part Law Review Articles

Workmen's Compensation: Back Injury Incurred in the Normal Course of Employment Is Not an Industrial Accident, Wertz, 27 Mont. L. Rev. 193 (1966).

50-71-113. Administrative authority — funding.

Compiler's Comments

2015 Amendment: Chapter 365 in (4) substituted "occupational safety and health administration fund" for "workers' compensation administration fund"; in (4) and (5) at end substituted "50-71-128" for "39-71-201"; and made minor changes in style. Amendment effective July 1, 2015.

50-71-115. Applicability of standards — exceptions.

Compiler's Comments

2021 Amendment: Chapter 240 deleted former (2)(d) that read: "(d) a tribal government recognized by the state"; and made minor changes in style. Amendment effective April 19, 2021.

50-71-119. Report of inspection — violations — penalty — appeal process.

Compiler's Comments

2015 Amendment: Chapter 365 in (3)(c) substituted "occupational safety and health administration fund provided for in 50-71-128" for "workers' compensation administration fund provided for in 39-71-201"; and made minor changes in style. Amendment effective July 1, 2015.

50-71-128. Occupational safety and health administration fund.

Compiler's Comments

Effective Date: Section 11(1), Ch. 365, L. 2015, provided that this section is effective July 1, 2015.

Part 2

Duties of Employer and Employee

Part Case Notes

No Error in Jury Instruction That Employer Assumed Contractual Duty to Provide Safe Workplace: The District Court did not abuse its discretion by instructing the jury that an employer had assumed the contractual duty to provide a subcontractor's workers with a safe workplace, including transportation from a parking lot to the jobsite. Because the nature of the contractual obligation constituted a material fact as to which no genuine issue existed, partial summary judgment on the issue was proper. Olson v. Shumaker Trucking & Excavating Contractors, Inc., 2008 MT 378, 347 M 1, 196 P3d 1265 (2008).

Duty to Inspect Superseded by Federal Act: The state's duty in this section to inspect hazardous workplaces was superseded by enactment of the federal Occupational Safety and Health Act of 1970, 29 U.S.C. 651, et seq. Thornock v. St., 229 M 67, 745 P2d 324, 44 St. Rep. 1786 (1987).

Employee of Independent Contractor: Under law at the time of the decision, neither city nor its supervising engineer had duty running to employee of independent contractor doing work for city to see that contractor complied with minimum safety standards as it had specifically agreed to do. Wells v. Stanley J. Thill & Associates, Inc., 153 M 28, 452 P2d 1015 (1969).

50-71-201. Employer to provide safe workplace and to purchase, furnish, and require use of health and safety items — safe practices.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1991 Amendment: In (2) substituted language requiring employer to purchase and furnish safety clothing and health and safety items other than footwear for "furnish and use and require the use of such safety devices and safeguards"; in (4), after "life", inserted "health"; and made minor changes in style.

Case Notes

Exclusivity Provision Properly Applied: One of the plaintiffs was employed by Carpets Plus, a corporation whose sole shareholder/president and secretary/treasurer were the defendants. This plaintiff was injured while assembling carpet racks at the Carpets Plus warehouse, which was owned by the defendants individually, and he claimed and received workers' compensation benefits for his injuries through Carpets Plus's compensation insurance. Later, the plaintiffs sued the defendants, alleging that they were negligent and failed to provide a safe workplace under the Montana Occupational Safety and Health Act. The District Court granted the defendants summary judgment, concluding that the defendants were acting at all relevant times in their capacities as corporate officers of Carpets Plus and were immune from suit under the exclusivity provision of the Workers' Compensation Act. The plaintiffs appealed, arguing that the exclusivity provision applies only to an employer and its employees and that because the defendants were the property owners of the warehouse, they were separate legal entities from Carpets Plus and the exclusivity provision should not apply. The Supreme Court affirmed, concluding that the defendants were protected from suit by the exclusivity provision because undisputed evidence demonstrated that the defendants were acting within the course and scope of their employment for Carpets Plus when they allegedly failed to provide the employee plaintiff with a safe work environment. George v. Bowler, 2015 MT 209, 380 Mont. 155, 354 P.3d 585.

Injured Independent Contractor — No Duty of Safety Imposed on Employer — Loaned Servant Doctrine Argument Rejected: The plaintiff, an independent contractor, was injured on a worksite while helping another contractor move a wall. On a summary judgment motion, the District Court determined that the Montana Occupational Safety and Health Act does not create a duty of safety running from an employer to an independent contractor. The Supreme Court affirmed, reasoning that the plain language of the statute excludes an independent contractor from the definition of "employee". Additionally, the plaintiff's claim that he was an employee under the loaned servant doctrine was rejected because he was responsible for his own work and hours. McDonald v. Ponderosa Enterprises, Inc., 2015 MT 160, 379 Mont. 379, 352 P.3d 14.

Nondelegable Duty to Provide Safe Workplace — Availability of Contributory Negligence Defense: The District Court held that defendant employer owed plaintiff employee a nondelegable duty of care to maintain a safe workplace and that employer's breach of that duty caused plaintiff's injuries as a matter of law. The District Court then allowed defendant to argue contributory negligence, which plaintiff asserted was an improper delegation of defendant's safe workplace duty. While recognizing the nondelegable duty under 50-71-201, the Supreme Court also noted that 27-1-702 imposes on a plaintiff the duty to conform to a standard of conduct for plaintiff's own protection so that plaintiff's conduct does not constitute a legally contributing cause that operates along with defendant's negligence in bringing about plaintiff's harm. Citing Edie v. Gray, 2005 MT 224, 328 M 354, 121 P3d 516 (2005), and Giambra v. Kelsey, 2007 MT 158, 338 M 19, 162 P3d 134 (2007), the court harmonized the two concepts by holding that establishing the existence of negligence per se settles only the questions of duty and breach, but a plaintiff must still prove causation before recovering damages, and a jury may weigh or compare evidence of negligence from a statutory violation that constitutes a proximate cause of the injury along with other evidence of negligence on the part of both parties. As provided in Shannon v. Howard S. Wright Constr. Co., 181 M 269, 593 P2d 438 (1979), and Stepanek v. Kober Constr., 191 M 430, 625 P2d 51, 38 St. Rep. 385 (1981), contributory negligence remains available as a defense to a defendant who has breached its nondelegable duty to provide a safe workplace if evidence demonstrates that: (1) the employee has some reasonable means or opportunity to avoid the hazard without endangering employment; or (2) the harm in question was not a reasonably foreseeable consequence of the employer's breach of the safety duty. In this case, the evidence created a genuine issue of material fact as to whether plaintiff had been contributorily negligent, so it was proper for the trial court to submit the issue to the jury and for the jury to apportion negligence between the parties in reaching a verdict. Olson v. Shumaker Trucking & Excavating Contractors, Inc., 2008 MT 378, 347 M 1, 196 P3d 1265 (2008).

No Exception Shown to Rule on Nonliability of Owner to Employee of Subcontractor — Summary Judgment Proper: Fabich filed for damages from an injury received after a fall from scaffolding while working as an employee of a subcontractor at defendant's power plant. The District Court found that defendant was not liable and granted summary judgment for defendant. Fabich appealed on grounds that the court incorrectly rejected Fabich's theories of liability. Generally, an owner, employer, or general contractor does not have a duty to prevent injuries to an independent contractor's employees, but Fabich asserted that defendant nevertheless had a duty under three recognized exceptions to the general rule, claiming that defendant negligently exercised retained control, that the activity was inherently dangerous, and that defendant had a nondelegable duty (see Umbs v. Sherrodd, Inc., 246 M 373, 805 P2d 519 (1991), and Beckman v. Butte-Silver Bow County, 2000 MT 112, 299 M 389, 1 P3d 348 (2000)). The Supreme Court examined each exception and affirmed summary judgment. First, Fabich's theory of negligence in exercising retained control failed because defendant did not retain control over the working circumstances. Second, the theory of inherently dangerous activity failed because the hazards associated with the job were normally encountered in the workplace and did not call for particular precautions. Third, there was nothing in the contract establishing that defendant assumed responsibility for initiating, maintaining, and supervising safety precautions, so defendant had no nondelegable duty. Absent a genuine issue of material fact regarding defendant's liability, summary judgment was proper. Fabich v. PPL Mont., LLC, 2007 MT 258, 339 M 289, 170 P3d 943 (2007).

Montana Safety Act Not Limited to Workplace — Question of Employer's Duty to Protect Life and Safety Precluding Summary Judgment: Moore employed Peyatt to haul hay from North Dakota to Montana. When the hay was being loaded onto Peyatt's truck, he was seriously injured. Because there was no workers' compensation coverage for the injury, Peyatt brought a claim against Moore under the Montana Safety Act for failure to provide a safe workplace, adopt safe practices, and do anything else necessary to protect Peyatt's life, health, and safety. The District Court concluded that Peyatt's place of employment was the truck, not the loading environment at the farm, and that because Moore did not have the right to exercise control over the loading environment, Moore could not have breached the duty to provide a safe workplace. Summary judgment was granted to Moore, Peyatt appealed, and the Supreme Court reversed. As a matter of law, Moore did not violate the duty to provide Peyatt with a safe workplace absent control over the location. However, the broad language of the Montana Safety Act does not limit the Act only to the workplace. Summary judgment also precluded Peyatt's claim under 50-71-201(4) to present evidence that Moore failed to do anything else necessary to protect Peyatt's life, health, and safety. Because there was a genuine issue of material fact whether Moore breached that duty, the case was remanded for a jury determination of whether Moore was liable for breach of that duty. Peyatt v. Moore, 2004 MT 341, 324 M 249, 102 P3d 535 (2004). See also Stratemeyer v. Lincoln County, 276 M 67, 915 P2d 175 (1996).

Preclusion of Evidence of Federal Safety Standards Not Error Absent Contract Guaranteeing Safety by Contractor on Jobsite: Grover was a carpenter who was injured after falling from the roof of a home that he was working on. Grover sued the general contractor for negligently failing to maintain a safe workplace. The District Court granted the contractor's motion in limine to prohibit the introduction of federal safety standards as evidence of the contractor's negligence. The jury found for the contractor, and on appeal, Grover asserted that the District Court abused its discretion in not allowing the evidence. However, the Supreme Court affirmed. The homeowner, not the general contractor, exercised actual oversight responsibilities on the project, including project design, permitting, provision of tools, hiring and firing of employees, and safety concerns. The contract under which Grover was hired did not address a project safety program, safety devices, safeguards, or protective equipment, and the contractor neither assumed nor exercised the authority to create safe working conditions. Thus, the District Court did not abuse its discretion in refusing to allow admission of job safety standards as evidence of the contractor's negligence. Grover v. Cornerstone Constr. N.W., Inc., 2004 MT 148, 321 M 477, 91 P3d 1278 (2004), following Shannon v. Howard S. Wright Constr. Co., 181 M 269, 593 P2d 438 (1979), and Gibby v. Noranda Minerals Corp., 273 M 420, 905 P2d 126 (1995).

Fraudulently Obtained Independent Contractor Exemption First Raised in Opposition to Affirmative Defense and Motion for Summary Judgment: A worker fell from a carport roof that she was painting and sued the contractor who hired her and the people who hired the contractor to paint the house, claiming failure to provide a safe workplace and workers' compensation insurance. The defendants who hired the contractor pleaded the affirmative defense that the worker was an independent contractor, and the worker responded that the approved application for an independent contractor exemption was fraudulently obtained. Although former Rule 9(b), M.R.Civ.P. (now superseded), requires a claim of fraud to be pleaded with particularity, in this case, evidence of fraud raised by the worker in her brief in opposition to summary judgment was properly before the court and should have been considered in the summary judgment proceeding. Gonzales v. Walchuk, 2002 MT 262, 312 M 240, 59 P3d 377 (2002).

Inherent Danger of Trenching Activity — Vicarious Liability of Employer for Injuries Caused by Subcontractor's Failure to Reduce Risks: Beckman was working to replace a waterline in a trench in Butte when the trench collapsed. At the time, Beckman was an employee of an independent contractor who had been hired by a developer to replace the city waterline as part of the upgrade to another project that the developer was constructing, as required by Butte-Silver Bow. Beckman filed a complaint against Butte-Silver Bow, seeking damages for personal injuries sustained in the collapse. Under Umbs v. Sherrodd, Inc., 246 M 373, 805 P2d 519 (1991), employers are generally not liable for the torts of their independent contractors, except when: (1) there is a nondelegable duty based on a contract; (2) the activity is inherently or intrinsically dangerous; and (3) the general contractor negligently exercises control reserved over a subcontractor's work. The District Court found that trenching activity was not inherently or intrinsically dangerous and granted Butte-Silver Bow's motion for summary judgment. The court, citing Kemp v. Bechtel Constr. Co., 221 M 519, 720 P2d 270 (1986), ruled as a matter of law that trenching activities did not fall under the inherently dangerous exception because Beckman's injury could have been avoided through standard precautions. On appeal, the Supreme Court decided that the analysis of the inherently dangerous activity exception in Kemp was manifestly wrong, and overruled that case and its progeny. Instead, the court reaffirmed the holding in Ulmen v. Schwieger, 92 M 331, 12 P2d 856 (1932), in which it was determined that the vicarious liability of an employer of a subcontractor was contingent on the nature of the work performed and not on the existence of standard precautions. An employer is therefore vicariously liable for injuries to others caused by a subcontractor's failure to take precautions to reduce unreasonable risks associated with engaging in an inherently dangerous activity. Risks associated with people working in trenches where a cave-in can cause death or serious bodily injury are well recognized in the construction industry as intrinsically or inherently dangerous and are recognized as such as a matter of law. Beckman v. Butte-Silver Bow County, 2000 MT 112, 299 M 389, 1 P3d 348, 57 St. Rep. 466 (2000), overruling Micheletto v. St., 244 M 483, 798 P2d 989 (1990), and Kemp v. Big Horn County Elec. Co-op, Inc., 244 M 437, 798 P2d 999 (1990). Beckman was followed in Cunnington v. Gaub, 2007 MT 12, 335 M 296, 153 P3d 1 (2007).

Material Question Whether County Negligently Exercised Control Over Subcontractor as Precluding Summary Judgment: Beckman was working to replace a waterline in a trench in Butte when the trench collapsed. At the time, Beckman was an employee of an independent contractor who had been hired by a developer to replace the city waterline as part of the upgrade to another project that the developer was constructing, as required by Butte-Silver Bow. Beckman filed a complaint against Butte-Silver Bow, seeking damages for personal injuries sustained in the collapse. Under Umbs v. Sherrodd, Inc., 246 M 373, 805 P2d 519 (1991), employers are generally not liable for the torts of their independent contractors, except when: (1) there is a nondelegable duty based on a contract; (2) the activity is inherently or intrinsically dangerous; and (3) the general contractor negligently exercises control reserved over a subcontractor's work. The District Court cited Micheletto v. St., 244 M 483, 798 P2d 989 (1990), and Kemp v. Big Horn County Elec. Co-op, Inc., 244 M 437, 798 P2d 999 (1990), in holding that the county did not assume a nondelegable duty of safety by contract, finding that Butte-Silver Bow never agreed to supervise the safety of the trenching operations and therefore did not assume a nondelegable duty based on contract that extended to Beckman. Thus, summary judgment was granted to Butte-Silver Bow. On appeal, the Supreme Court noted that the District Court correctly recognized the distinction between a nondelegable contractual duty and a duty based on the negligent exercise of retained control. However, Micheletto and Kemp provide an incorrect statement of the doctrine of retained control. Here, despite the lack of a written contract, the county retained the means with which to both discover and cure any unreasonably dangerous conditions. The terms of the water mains extension document, which provided that the county may supervise the water extension project, required the county to furnish a qualified construction inspector to monitor work performed during the installation of the water supply system and required that the materials and methods of construction conform to county requirements. The terms, combined with the fact that county employees were present during the trenching operation, constituted sufficient facts to preclude summary judgment for the county. The case was reversed and remanded. Beckman v. Butte-Silver Bow County, 2000 MT 112, 299 M 389, 1 P3d 348, 57 St. Rep. 466 (2000). See also Stepanek v. Kober Constr., 191 M 430, 625 P2d 51 (1981).

Admissibility of Codes or Standards — Private, Noncommercial Owner-Homebuilder Excluded From Industry Safety Standards: As set out in Runkle v. Burlington N., Inc., 188 M 286, 613 P2d 982 (1980), the rule for admissibility of industry standards and codes is that unless the codes or standards are adopted by a governmental agency so as to have the force of law, they are not to be admitted as conclusively determining the standard of care imposed upon the defendant nor as substantive evidence of negligence unless coupled with a showing of general acceptance in the industry concerned. The rule provides two separate tests for the admissibility of codes or standards: (1) a code or standard sought to be admitted for the purpose of conclusively determining the standard of care imposed upon the defendant must have been adopted by a governmental agency so as to have the force of law; and (2) when a code or standard does not have the force of law, it may nevertheless be admitted as substantive evidence of negligence if it is coupled with a showing of general acceptance in the industry concerned. In the present case, Lynch was injured while helping construct Reed's cabin home. The District Court ruled that Occupational Safety and Health Administration (OSHA) regulations and American National Standards Institute (ANSI) requirements were inadmissible because the standards did not have the force of law. On appeal, Lynch argued that the standards should apply because they were generally acceptable in the construction industry. The Supreme Court held that construction of an individual's private residence undertaken by a noncommercial owner-builder is not part of the construction industry as a whole, and thus evidence of the OSHA and ANSI standards was not admissible to prove negligence under those circumstances. Lynch v. Reed, 284 M 321, 944 P2d 218, 54 St. Rep. 902 (1997), overruling Hackley v. Waldorf-Hoerner Paper Prod. Co., 149 M 286, 425 P2d 712 (1967).

Safety Act Applicable to Mental Injuries: Lincoln County Deputy Sheriff Stratemeyer filed a tort action against Lincoln County for failing to properly train, debrief, and counsel him to cure his posttraumatic stress disorder incurred from observing a suicide victim. Stratemeyer alleged that Lincoln County violated the Montana Safety Act, but the District Court held that the Act was inapplicable to mental injuries. The Supreme Court held that there was nothing in the text of the Act that precluded its application to mental injuries. Stratemeyer v. Lincoln County, 276 M 67, 915 P2d 175, 53 St. Rep. 245 (1996).

Employer's Duty to Provide Safe Work Place for Employee-Painter Who Fell Off Ladder: Porter and his wife owned a business named Personal Touch Services. Galarneau hired them to do miscellaneous work at his house, including cleaning, grounds maintenance, repairs, and painting. While preparing to paint a 22-foot-high inside wall, Porter fell off a ladder that he had borrowed. He died later in the day. Galarneau was in his business office in Minnesota at the time of the fall. Galarneau had a common-law duty to provide Porter with a safe place to work.

Whether Galarneau had a duty under this section is a question of fact for the jury. Porter v. Galarneau, 275 M 174, 911 P2d 1143, 53 St. Rep. 99 (1996).

Landowner's Duty Toward Employee-Painter Who Fell Off Ladder: Porter and his wife owned a business named Personal Touch Services. Galarneau hired them to do miscellaneous work at his house, including cleaning, grounds maintenance, repairs, and painting. While preparing to paint a 22-foot-high inside wall, Porter fell off a ladder that he had borrowed. He died later in the day. Galarneau was in his business office in Minnesota at the time of the fall. Galarneau had no common-law landowner duty toward Porter beyond maintaining his premises in a reasonably safe condition and warning of hidden or lurking dangers, and there was no evidence that he breached that duty. Porter v. Galarneau, 275 M 174, 911 P2d 1143, 53 St. Rep. 99 (1996).

Failure to Install or Maintain Safety Device — No Allegation of Intentional or Malicious Acts — Exclusivity Provision of Workers' Compensation Act Prevails: Plaintiff sued, alleging that her son's death, which was covered by workers' compensation insurance, was caused by the negligence of defendant in not installing or maintaining a safety device. The District Court granted defendant's motion to dismiss on the grounds that the Workers' Compensation Act provided the exclusive remedy. Plaintiff urged the court to carve out judicial exception to the Act to provide tort liability when a worker is killed because of failure to install or maintain a required safety device. The Supreme Court declined to make a judicial exception and relied on the legislative determination that absent intentional and malicious conduct, employees cannot sue their employers for injuries sustained during the course of their employment that are covered by the Workers' Compensation Act. Kortes v. Pool Co., 270 M 474, 893 P2d 322, 52 St. Rep. 291 (1995). See also Maney v. La. Pac. Corp., 2000 MT 366, 303 M 398, 15 P3d 962, 57 St. Rep. 1561 (2000).

Theory of Nondelegable Duty Inapplicable to Provision of Nonemergency Hospital Services: Plaintiffs contended that they were entitled to partial summary judgment on the issue of a hospital's vicarious liability under the theory that the hospital had a nondelegable duty to provide safe radiology services to the public, relying on Jackson v. Power, 743 P2d 1376 (Alaska 1987). The Supreme Court distinguished Jackson as limited to emergency room treatment by a doctor provided by a hospital and not extending to the situation where a patient is treated by his own doctor in an emergency room provided by the hospital as a convenience to doctors. The court affirmed the general rule that a hospital is not liable for the negligence of a physician functioning as an independent contractor and that the doctor rather than the hospital has the primary duty to provide for the treatment of his patients. Estates of Milliron v. Francke, 243 M 200, 793 P2d 824, 47 St. Rep. 1134 (1990).

Duty to Provide Safe Workplace — Liability of Immediate Corporate Employer: The statutory duty to provide a safe workplace is generally owed only by the immediate corporate employer. A complaint against a parent/grandparent corporation was properly dismissed when claimant failed to show: (1) that the subsidiary was a mere agent or alter ego of the parent company; (2) a sharing of day-to-day business activities between the corporations; (3) that the parent corporation had an independent duty to provide a safe workplace through a direct relationship of physical operations; or (4) that the corporate cloak was used to defeat public convenience, justify wrong, perpetrate fraud, or defend crime. Hando v. PPG Indus., Inc., 236 M 493, 771 P2d 956, 46 St. Rep. 532 (1989).

Duty of Care Owed by General Contractor to Subcontractor's Employees: Unless required otherwise by contract or law, a general contractor has a duty under this section to require a subcontractor to use safe procedures and to take reasonable steps to ensure those procedures are followed. Such a duty does not require a general contractor to constantly oversee the subcontractor's operation and was fulfilled when the general contractor by contract required the subcontractor to use safety precautions and comply with regulations, and when it performed daily safety spot-checks and monitored injury reports. Kemp v. Bechtel Constr. Co., 221 M 519, 720 P2d 270, 43 St. Rep. 1022 (1986), followed in Micheletto v. St., 244 M 483, 798 P2d 989, 47 St. Rep. 1740 (1990), and in Kemp v. Big Horn County Elec. Co-op, Inc., 244 M 437, 798 P2d 999, 47 St. Rep. 1768 (1990), which were distinguished in Umbs v. Sherrodd, Inc., 246 M 373, 805 P2d 519, 48 St Rep. 59 (1991), and overruled in Beckman v. Butte-Silver Bow County, 2000 MT 112, 299 M 389, 1 P3d 348, 57 St. Rep. 466 (2000).

Contractor's Duty to Subcontractor: Section 50-71-202 and this section require a contractor to furnish a subcontractor with a safe place to work. A subcontractor is an employee of the contractor for purposes of this section. Cain v. Stevenson, 218 M 101, 706 P2d 128, 42 St. Rep. 1428 (1985).

Sufficient Proof of Existence, Cause, and Permanency of Physical Injury: In a tort suit for damages for a back injury, plaintiff was competent to testify as to his past and present condition and his testimony was sufficient for the jury to determine whether there was an injury. However, the testimony was not sufficient to prove permanency or cause of the injury when his testimony was disputed and permanency and cause were not apparent from the injury itself. Since the trial court gave the issue of permanency to the jury with insufficient proof, error occurred and a new trial on the issue of damages was ordered. Cain v. Stevenson, 218 M 101, 706 P2d 128, 42 St. Rep. 1428 (1985), followed in Moralli v. Lake County, 255 M 23, 839 P2d 1287, 49 St. Rep. 872 (1992).

Nondelegable Duty of General Contractor Imposed by Contract: The duties mandated by this section are owed by a general contractor to employees of a subcontractor if the primary contract creates a nondelegable duty in the general contractor to be responsible for safety. Stepanek v. Kober Constr., 191 M 430, 625 P2d 51, 38 St. Rep. 385 (1981), followed in Nave v. Harlan Jones Drilling, 252 M 199, 827 P2d 1239, 49 St. Rep. 147 (1992), Steiner v. Dept. of Highways, 269 M 270, 887 P2d 1228, 51 St. Rep. 1496 (1994), Gibby v. Noranda Minerals Corp., 273 M 420, 905 P2d 126, 52 St. Rep. 1042 (1995), and United Nat'l Ins. Co. v. St. Paul Fire & Marine Ins. Co., 2009 MT 269, 352 M 105, 214 P3d 1260 (2009), and distinguished in Micheletto v. St., 244 M 483, 798 P2d 989, 47 St. Rep. 1740 (1990), and Kemp v. Big Horn County Elec. Co-op, Inc., 244 M 437, 798 P2d 999, 47 St. Rep. 1768 (1990). See also Beckman v. Butte-Silver Bow County, 2000 MT 112, 299 M 389, 1 P3d 348, 57 St. Rep. 466 (2000).

Duty of Parent Company — Railroads: The plaintiff was injured while employed at a lumber mill's woodchip loading facility. The lumber mill was a wholly owned subsidiary of a larger lumber company, which in turn was a wholly owned subsidiary of a railroad company. The railroad company was named as defendant in a negligence action brought by the plaintiff. Because the plaintiff was performing work more directly connected to the operations of the railroad than the lumber company, the railroad owed the plaintiff a duty to provide a safe place to work. Reynolds v. Burlington N., 190 M 383, 621 P2d 1028, 37 St. Rep. 1883 (1980), distinguished in Thornock v. Pack River Management Co., 227 M 524, 740 P2d 1119, 44 St. Rep. 1284 (1987).

Contributory Negligence of Employee Not a Bar to Recovery: Generally, an employee has a duty to avoid harm from obvious dangers on a construction site. However, if the employee is to continue to work, he may have no alternative but to continue facing a risk. Under those circumstances, an employee is not absolutely barred from recovery because of his contributory negligence. Shannon v. Howard S. Wright Constr. Co., 181 M 269, 593 P2d 438, 36 St. Rep. 632 (1979).

Duty of General Contractor — Actual Control of Subcontractors: The general contractor and owner-contractee have a duty to provide employees of subcontractors with a safe place to work if they retain actual control over the construction property and working conditions. Hackley v. Waldorf-Hoerner Paper Prod. Co., 149 M 286, 425 P2d 712 (1967), is no longer applicable because the Legislature has since repealed and replaced the safety statute and the definition of "employer" under which the case was decided. Shannon v. Howard S. Wright Constr. Co., 181 M 269, 593 P2d 438, 36 St. Rep. 632 (1979), followed in Gibby v. Noranda Minerals Corp., 273 M 420, 905 P2d 126, 52 St. Rep. 1042 (1995), and Cunnington v. Gaub, 2007 MT 12, 335 M 296, 153 P3d 1 (2007).

No Duty in Contracting Company to Ensure Safety in Contractor's Work: An employee of a general contractor expanding a paper company's facilities was properly denied the right to introduce testimony, in a suit against the paper company, respecting minimum safety standards for the construction industry. The paper company's right to oversee and coordinate the work of independent contractors did not impose a duty on the company to ensure that the contractor's work would be done in compliance with various safety codes. Hackley v. Waldorf-Hoerner Paper Prod. Co., 149 M 286, 425 P2d 712 (1967), overruled, insofar as it holds that evidence of codes or standards of safety issued by governmental bodies as advisory material but without the force of law are never admissible on the issue of negligence. When a code or standard does not have the force of law, it may nevertheless be admitted as substantive evidence of negligence if it is coupled with a showing of general acceptance in the industry concerned. Lynch v. Reed, 284 M 321, 944 P2d 218, 54 St. Rep. 902 (1997).

50-71-202. Employer to provide and maintain safe place of employment.

Case Notes

Exclusivity Provision Properly Applied: One of the plaintiffs was employed by Carpets Plus, a corporation whose sole shareholder/president and secretary/treasurer were the defendants. This plaintiff was injured while assembling carpet racks at the Carpets Plus warehouse, which was owned by the defendants individually, and he claimed and received workers' compensation benefits for his injuries through Carpets Plus's compensation insurance. Later, the plaintiffs sued the defendants, alleging that they were negligent and failed to provide a safe workplace under the Montana Occupational Safety and Health Act. The District Court granted the defendants summary judgment, concluding that the defendants were acting at all relevant times in their capacities as corporate officers of Carpets Plus and were immune from suit under the exclusivity provision of the Workers' Compensation Act. The plaintiffs appealed, arguing that the exclusivity provision applies only to an employer and its employees and that because the defendants were the property owners of the warehouse, they were separate legal entities from Carpets Plus and the exclusivity provision should not apply. The Supreme Court affirmed, concluding that the defendants were protected from suit by the exclusivity provision because undisputed evidence demonstrated that the defendants were acting within the course and scope of their employment for Carpets Plus when they allegedly failed to provide the employee plaintiff with a safe work environment. George v. Bowler, 2015 MT 209, 380 Mont. 155, 354 P.3d 585.

Nondelegable Duty to Provide Safe Workplace — Availability of Contributory Negligence Defense: The District Court held that defendant employer owed plaintiff employee a nondelegable duty of care to maintain a safe workplace and that employer's breach of that duty caused plaintiff's injuries as a matter of law. The District Court then allowed defendant to argue contributory negligence, which plaintiff asserted was an improper delegation of defendant's safe workplace duty. While recognizing the nondelegable duty under 50-71-201, the Supreme Court also noted that 27-1-702 imposes on a plaintiff the duty to conform to a standard of conduct for plaintiff's own protection so that plaintiff's conduct does not constitute a legally contributing cause that operates along with defendant's negligence in bringing about plaintiff's harm. Citing Edie v. Gray, 2005 MT 224, 328 M 354, 121 P3d 516 (2005), and Giambra v. Kelsey, 2007 MT 158, 338 M 19, 162 P3d 134 (2007), the court harmonized the two concepts by holding that establishing the existence of negligence per se settles only the questions of duty and breach, but a plaintiff must still prove causation before recovering damages, and a jury may weigh or compare evidence of negligence from a statutory violation that constitutes a proximate cause of the injury along with other evidence of negligence on the part of both parties. As provided in Shannon v. Howard S. Wright Constr. Co., 181 M 269, 593 P2d 438 (1979), and Stepanek v. Kober Constr., 191 M 430, 625 P2d 51, 38 St. Rep. 385 (1981), contributory negligence remains available as a defense to a defendant who has breached its nondelegable duty to provide a safe workplace if evidence demonstrates that: (1) the employee has some reasonable means or opportunity to avoid the hazard without endangering employment; or (2) the harm in question was not a reasonably foreseeable consequence of the employer's breach of the safety duty. In this case, the evidence created a genuine issue of material fact as to whether plaintiff had been contributorily negligent, so it was proper for the trial court to submit the issue to the jury and for the jury to apportion negligence between the parties in reaching a verdict. Olson v. Shumaker Trucking & Excavating Contractors, Inc., 2008 MT 378, 347 M 1, 196 P3d 1265 (2008).

No Exception Shown to Rule on Nonliability of Owner to Employee of Subcontractor — Summary Judgment Proper: Fabich filed for damages from an injury received after a fall from scaffolding while working as an employee of a subcontractor at defendant's power plant. The District Court found that defendant was not liable and granted summary judgment for defendant. Fabich appealed on grounds that the court incorrectly rejected Fabich's theories of liability. Generally, an owner, employer, or general contractor does not have a duty to prevent injuries to an independent contractor's employees, but Fabich asserted that defendant nevertheless had a duty under three recognized exceptions to the general rule, claiming that defendant negligently exercised retained control, that the activity was inherently dangerous, and that defendant had a nondelegable duty (see Umbs v. Sherrodd, Inc., 246 M 373, 805 P2d 519 (1991), and Beckman v. Butte-Silver Bow County, 2000 MT 112, 299 M 389, 1 P3d 348 (2000)). The Supreme Court examined each exception and affirmed summary judgment. First, Fabich's theory of negligence in exercising retained control failed because defendant did not retain control over the working circumstances. Second, the theory of inherently dangerous activity failed because the hazards associated with the job were normally encountered in the workplace and did not call for particular precautions. Third, there was nothing in the contract establishing that defendant assumed responsibility for initiating, maintaining, and supervising safety precautions, so defendant had no nondelegable duty. Absent a genuine issue of material fact regarding defendant's liability, summary judgment was proper. Fabich v. PPL Mont., LLC, 2007 MT 258, 339 M 289, 170 P3d 943 (2007).

Preclusion of Evidence of Federal Safety Standards Not Error Absent Contract Guaranteeing Safety by Contractor on Jobsite: Grover was a carpenter who was injured after falling from the roof of a home that he was working on. Grover sued the general contractor for negligently failing to maintain a safe workplace. The District Court granted the contractor's motion in limine to prohibit the introduction of federal safety standards as evidence of the contractor's negligence. The jury found for the contractor, and on appeal, Grover asserted that the District Court abused its discretion in not allowing the evidence. However, the Supreme Court affirmed. The homeowner, not the general contractor, exercised actual oversight responsibilities on the project, including project design, permitting, provision of tools, hiring and firing of employees, and safety concerns. The contract under which Grover was hired did not address a project safety program, safety devices, safeguards, or protective equipment, and the contractor neither assumed nor exercised the authority to create safe working conditions. Thus, the District Court did not abuse its discretion in refusing to allow admission of job safety standards as evidence of the contractor's negligence. Grover v. Cornerstone Constr. N.W., Inc., 2004 MT 148, 321 M 477, 91 P3d 1278 (2004), following Shannon v. Howard S. Wright Constr. Co., 181 M 269, 593 P2d 438 (1979), and Gibby v. Noranda Minerals Corp., 273 M 420, 905 P2d 126 (1995).

Inherent Danger of Trenching Activity — Vicarious Liability of Employer for Injuries Caused by Subcontractor's Failure to Reduce Risks: Beckman was working to replace a waterline in a trench in Butte when the trench collapsed. At the time, Beckman was an employee of an independent contractor who had been hired by a developer to replace the city waterline as part of the upgrade to another project that the developer was constructing, as required by Butte-Silver Bow. Beckman filed a complaint against Butte-Silver Bow, seeking damages for personal injuries sustained in the collapse. Under Umbs v. Sherrodd, Inc., 246 M 373, 805 P2d 519 (1991), employers are generally not liable for the torts of their independent contractors, except when: (1) there is a nondelegable duty based on a contract; (2) the activity is inherently or intrinsically dangerous; and (3) the general contractor negligently exercises control reserved over a subcontractor's work. The District Court found that trenching activity was not inherently or intrinsically dangerous and granted Butte-Silver Bow's motion for summary judgment. The court, citing Kemp v. Bechtel Constr. Co., 221 M 519, 720 P2d 270 (1986), ruled as a matter of law that trenching activities did not fall under the inherently dangerous exception because Beckman's injury could have been avoided through standard precautions. On appeal, the Supreme Court decided that the analysis of the inherently dangerous activity exception in Kemp was manifestly wrong, and overruled that case and its progeny. Instead, the court reaffirmed the holding in Ulmen v. Schwieger, 92 M 331, 12 P2d 856 (1932), in which it was determined that the vicarious liability of an employer of a subcontractor was contingent on the nature of the work performed and not on the existence of standard precautions. An employer is therefore vicariously liable for injuries to others caused by a subcontractor's failure to take precautions to reduce unreasonable risks associated with engaging in an inherently dangerous activity. Risks associated with people working in trenches where a cave-in can cause death or serious bodily injury are well recognized in the construction industry as intrinsically or inherently dangerous and are recognized as such as a matter of law. Beckman v. Butte-Silver Bow County, 2000 MT 112, 299 M 389, 1 P3d 348, 57 St. Rep. 466 (2000), overruling Micheletto v. St., 244 M 483, 798 P2d 989 (1990), and Kemp v. Big Horn County Elec. Co-op, Inc., 244 M 437, 798 P2d 999 (1990). Beckman was followed in Cunnington v. Gaub, 2007 MT 12, 335 M 296, 153 P3d 1 (2007).

Material Question Whether County Negligently Exercised Control Over Subcontractor as Precluding Summary Judgment: Beckman was working to replace a waterline in a trench in Butte when the trench collapsed. At the time, Beckman was an employee of an independent contractor who had been hired by a developer to replace the city waterline as part of the upgrade to another project that the developer was constructing, as required by Butte-Silver Bow. Beckman filed a complaint against Butte-Silver Bow, seeking damages for personal injuries sustained in the collapse. Under Umbs v. Sherrodd, Inc., 246 M 373, 805 P2d 519 (1991), employers are generally not liable for the torts of their independent contractors, except when: (1) there is a nondelegable duty based on a contract; (2) the activity is inherently or intrinsically dangerous; and (3) the general contractor negligently exercises control reserved over a subcontractor's work. The District Court cited Micheletto v. St., 244 M 483, 798 P2d 989 (1990), and Kemp v. Big Horn County Elec. Co-op, Inc., 244 M 437, 798 P2d 999 (1990), in holding that the county did not assume a nondelegable duty of safety by contract, finding that Butte-Silver Bow never agreed to supervise the safety of the trenching operations and therefore did not assume a nondelegable duty based on contract that extended to Beckman. Thus, summary judgment was granted to Butte-Silver Bow. On appeal, the Supreme Court noted that the District Court correctly recognized the distinction between a nondelegable contractual duty and a duty based on the negligent exercise of retained control. However, Micheletto and Kemp provide an incorrect statement of the doctrine of retained control. Here, despite the lack of a written contract, the county retained the means with which to both discover and cure any unreasonably dangerous conditions. The terms of the water mains extension document, which provided that the county may supervise the water extension project, required the county to furnish a qualified construction inspector to monitor work performed during the installation of the water supply system and required that the materials and methods of construction conform to county requirements. The terms, combined with the fact that county employees were present during the trenching operation, constituted sufficient facts to preclude summary judgment for the county. The case was reversed and remanded. Beckman v. Butte-Silver Bow County, 2000 MT 112, 299 M 389, 1 P3d 348, 57 St. Rep. 466 (2000). See also Stepanek v. Kober Constr., 191 M 430, 625 P2d 51 (1981).

Admissibility of Codes or Standards — Private, Noncommercial Owner-Homebuilder Excluded From Industry Safety Standards: As set out in Runkle v. Burlington N., Inc., 188 M 286, 613 P2d 982 (1980), the rule for admissibility of industry standards and codes is that unless the codes or standards are adopted by a governmental agency so as to have the force of law, they are not to be admitted as conclusively determining the standard of care imposed upon the defendant nor as substantive evidence of negligence unless coupled with a showing of general acceptance in the industry concerned. The rule provides two separate tests for the admissibility of codes or standards: (1) a code or standard sought to be admitted for the purpose of conclusively determining the standard of care imposed upon the defendant must have been adopted by a governmental agency so as to have the force of law; and (2) when a code or standard does not have the force of law, it may nevertheless be admitted as substantive evidence of negligence if it is coupled with a showing of general acceptance in the industry concerned. In the present case, Lynch was injured while helping construct Reed's cabin home. The District Court ruled that Occupational Safety and Health Administration (OSHA) regulations and American National Standards Institute (ANSI) requirements were inadmissible because the standards did not have the force of law. On appeal, Lynch argued that the standards should apply because they were generally acceptable in the construction industry. The Supreme Court held that construction of an individual's private residence undertaken by a noncommercial owner-builder is not part of the construction industry as a whole, and thus evidence of the OSHA and ANSI standards was not admissible to prove negligence under those circumstances. Lynch v. Reed, 284 M 321, 944 P2d 218, 54 St. Rep. 902 (1997), overruling Hackley v. Waldorf-Hoerner Paper Prod. Co., 149 M 286, 425 P2d 712 (1967).

Duty to Provide Safe Workplace — Liability of Immediate Corporate Employer: The statutory duty to provide a safe workplace is generally owed only by the immediate corporate employer. A complaint against a parent/grandparent corporation was properly dismissed when claimant failed to show: (1) that the subsidiary was a mere agent or alter ego of the parent company; (2) a sharing of day-to-day business activities between the corporations; (3) that the parent corporation had an independent duty to provide a safe workplace through a direct relationship of physical operations; or (4) that the corporate cloak was used to defeat public convenience, justify wrong, perpetrate fraud, or defend crime. Hando v. PPG Indus., Inc., 236 M 493, 771 P2d 956, 46 St. Rep. 532 (1989).

Failure of Alter Ego and Principal/Agency Theories in Proving Duty of Parent Company to Provide Safe Workplace — No Separate Liability for Injury Covered by Subsidiary's Workers' Compensation: Plaintiff was an employee of a subsidiary company and argued that the subsidiary was so controlled by the parent company that the corporate cloak should be cast aside allowing suit against the parent company. The Supreme Court found no suggestion that the parent company was engaged directly in the business of the subsidiary or that the parent company was an operating entity engaged in operating its business at the place of injury. There was no indication that the subsidiary was used as a subterfuge to defeat public convenience, justify wrong, or perpetuate fraud; therefore, summary judgment was not precluded by the alter ego or principal/agency theory. Further, the subsidiary had discharged its responsibility for plaintiff by securing workers' compensation insurance, with the result that neither the parent company nor its subsidiary would be separately subject to liability for the injury which was covered by workers' compensation. Thornock v. Pack River Management Co., 227 M 524, 740 P2d 1119, 44 St. Rep. 1284 (1987).

Contractor's Duty to Subcontractor: Section 50-71-201 and this section require a contractor to furnish a subcontractor with a safe place to work. A subcontractor is an employee of the contractor for purposes of 50-71-201. Cain v. Stevenson, 218 M 101, 706 P2d 128, 42 St. Rep. 1428 (1985).

Sufficient Proof of Existence, Cause, and Permanency of Physical Injury: In a tort suit for damages for a back injury, plaintiff was competent to testify as to his past and present condition and his testimony was sufficient for the jury to determine whether there was an injury. However, the testimony was not sufficient to prove permanency or cause of the injury when his testimony was disputed and permanency and cause were not apparent from the injury itself. Since the trial court gave the issue of permanency to the jury with insufficient proof, error occurred and a new trial on the issue of damages was ordered. Cain v. Stevenson, 218 M 101, 706 P2d 128, 42 St. Rep. 1428 (1985), followed in Moralli v. Lake County, 255 M 23, 839 P2d 1287, 49 St. Rep. 872 (1992).

Nondelegable Duty of General Contractor Imposed by Contract: The duties mandated by this section are owed by a general contractor to employees of a subcontractor if the primary contract creates a nondelegable duty in the general contractor to be responsible for safety. Stepanek v. Kober Constr., 191 M 430, 625 P2d 51, 38 St. Rep. 385 (1981), followed in Nave v. Harlan Jones Drilling, 252 M 199, 827 P2d 1239, 49 St. Rep. 147 (1992), Steiner v. Dept. of Highways, 269 M 270, 887 P2d 1228, 51 St. Rep. 1496 (1994), Gibby v. Noranda Minerals Corp., 273 M 420, 905 P2d 126, 52 St. Rep. 1042 (1995), and United Nat'l Ins. Co. v. St. Paul Fire & Marine Ins. Co., 2009 MT 269, 352 M 105, 214 P3d 1260 (2009), and distinguished in Micheletto v. St., 244 M 483, 798 P2d 989, 47 St. Rep. 1740 (1990), and Kemp v. Big Horn County Elec. Co-op, Inc., 244 M 437, 798 P2d 999, 47 St. Rep. 1768 (1990), which were distinguished in Umbs v. Sherrodd, Inc., 246 M 373, 805 P2d 519, 48 St Rep. 59 (1991). See also Beckman v. Butte-Silver Bow County, 2000 MT 112, 299 M 389, 1 P3d 348, 57 St. Rep. 466 (2000).

Duty of Parent Company — Railroads: The plaintiff was injured while employed at a lumber mill's woodchip loading facility. The lumber mill was a wholly owned subsidiary of a larger lumber company, which in turn was a wholly owned subsidiary of a railroad company. The railroad company was named as defendant in a negligence action brought by the plaintiff. Because the plaintiff was performing work more directly connected to the operations of the railroad than the lumber company, the railroad owed the plaintiff a duty to provide a safe place to work. Reynolds v. Burlington N., 190 M 383, 621 P2d 1028, 37 St. Rep. 1883 (1980), distinguished in Thornock v. Pack River Management Co., 227 M 524, 740 P2d 1119, 44 St. Rep. 1284 (1987).

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Duty of General Contractor — Actual Control of Subcontractors: The general contractor and owner-contractee have a duty to provide employees of subcontractors with a safe place to work if they retain actual control over the construction property and working conditions. Hackley v. Waldorf-Hoerner Paper Prod. Co., 149 M 286, 425 P2d 712 (1967), is no longer applicable because the Legislature has since repealed and replaced the safety statute and the definition of "employer" under which the case was decided. Shannon v. Howard S. Wright Constr. Co., 181 M 269, 593 P2d 438, 36 St. Rep. 632 (1979), followed in Gibby v. Noranda Minerals Corp., 273 M 420, 905 P2d 126, 52 St. Rep. 1042 (1995), and Cunnington v. Gaub, 2007 MT 12, 335 M 296, 153 P3d 1 (2007).

No Duty in Contracting Company to Ensure Safety in Contractor's Work: An employee of a general contractor expanding a paper company's facilities was properly denied the right to introduce testimony, in a suit against the paper company, respecting minimum safety standards for the construction industry. The paper company's right to oversee and coordinate the work of independent contractors did not impose a duty on the company to ensure that the contractor's work would be done in compliance with various safety codes. Hackley v. Waldorf-Hoerner Paper Prod. Co., 149 M 286, 425 P2d 712 (1967), overruled, insofar as it holds that evidence of codes or standards of safety issued by governmental bodies as advisory material but without the force of law are never admissible on the issue of negligence. When a code or standard does not have the force of law, it may nevertheless be admitted as substantive evidence of negligence if it is coupled with a showing of general acceptance in the industry concerned. Lynch v. Reed, 284 M 321, 944 P2d 218, 54 St. Rep. 902 (1997).

50-71-203. Removal of or refusal to use health and safety items prohibited.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1991 Amendment: In (1), after "any", inserted "health and", after "safeguard" inserted "protective clothing, or other health and safety item", and after "use" substituted "by his employer" for "in any employment or place of employment"; in (2), after "use", inserted "of any required health and safety device, safeguard, protective clothing, or other health and safety item"; in (4), after "life", inserted "health"; and made minor changes in style.

Case Notes

Safety Act Applicable to Mental Injuries: Lincoln County Deputy Sheriff Stratemeyer filed a tort action against Lincoln County for failing to properly train, debrief, and counsel him to cure his posttraumatic stress disorder incurred from observing a suicide victim. Stratemeyer alleged that Lincoln County violated the Montana Safety Act, but the District Court held that the Act was inapplicable to mental injuries. The Supreme Court held that there was nothing in the text of the Act that precluded its application to mental injuries. Stratemeyer v. Lincoln County, 276 M 67, 915 P2d 175, 53 St. Rep. 245 (1996).

Failure to Install or Maintain Safety Device — No Allegation of Intentional or Malicious Acts — Exclusivity Provision of Workers' Compensation Act Prevails: Plaintiff sued, alleging that her son's death, which was covered by workers' compensation insurance, was caused by the negligence of defendant in not installing or maintaining a safety device. The District Court granted defendant's motion to dismiss on the grounds that the Workers' Compensation Act provided the exclusive remedy. Plaintiff urged the court to carve out judicial exception to the Act to provide tort liability when a worker is killed because of failure to install or maintain a required safety device. The Supreme Court declined to make a judicial exception and relied on the legislative determination that absent intentional and malicious conduct, employees cannot sue their employers for injuries sustained during the course of their employment that are covered by the Workers' Compensation Act. Kortes v. Pool Co., 270 M 474, 893 P2d 322, 52 St. Rep. 291 (1995). See also Maney v. La. Pac. Corp., 2000 MT 366, 303 M 398, 15 P3d 962, 57 St. Rep. 1561 (2000).

Proximate Cause a Required Showing: Mydlarz contended that defendant was guilty as a matter of law for removing scaffolding. The court, however, held that negligence as a matter of law requires a showing that the statutory violation is the proximate cause of the injuries sustained. Mydlarz v. Palmer/Duncan Constr. Co., 209 M 325, 682 P2d 695, 41 St. Rep. 738 (1984).

50-71-204. Definitions.

Compiler's Comments

2009 Amendment: Chapter 27 deleted definition of amendment that read: ""Amendment" means such modification or change in a code as shall be intended to be of universal or general application"; deleted definition of code that read: ""Code" means a standard body of rules for safety formulated, adopted, and issued by the department under the provisions of this chapter"; deleted definition of department that read: ""Department" means the department of labor and industry"; deleted definition of variation that read: ""Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change"; and made minor changes in style. Amendment effective July 1, 2009.

Preamble: The preamble attached to Ch. 27, L. 2009, provided: "WHEREAS, Montana's general occupational safety act, the Montana Safety Act, was enacted in 1969, prior to the adoption of the federal Occupational Safety and Health Act of 1970; and

WHEREAS, as a result of the enactment of the federal Occupational Safety and Health Act of 1970, federal law has become the basis for occupational safety and health regulation in the private sector; and

WHEREAS, states have responsibility for nonfederal public sector compliance with occupational safety and health regulations; and

WHEREAS, since the creation of the federal Occupational Safety and Health Administration, the Montana Safety Act and the Occupational Health Act of Montana do not reflect the reality of federal occupational safety and health regulation and enforcement in Montana's private sector; and

WHEREAS, the Montana Safety Act contains various archaic rulemaking and hearings provisions because it was enacted prior to the adoption of the Montana Administrative Procedure Act; and

WHEREAS, the Occupational Health Act of Montana, enacted in 1971, suffers from many of the same jurisdictional and procedural flaws as does the Montana Safety Act; and

WHEREAS, it is appropriate to modernize Montana's occupational safety and health laws for occupations other than those in mining and consolidate them into a unified body of law that reflects the scope of state regulation of general occupational safety and health matters as limited to public sector employment."

Saving Clause: Section 25, Ch. 27, L. 2009, was a saving clause.

1989 Amendment: In definition of code changed “division” to “department”; inserted definition of Department; and deleted definition of Division. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

Case Notes

Injured Independent Contractor — No Duty of Safety Imposed on Employer — Loaned Servant Doctrine Argument Rejected: The plaintiff, an independent contractor, was injured on a worksite while helping another contractor move a wall. On a summary judgment motion, the District Court determined that the Montana Occupational Safety and Health Act does not create a duty of safety running from an employer to an independent contractor. The Supreme Court affirmed, reasoning that the plain language of the statute excludes an independent contractor from the definition of “employee”. Additionally, the plaintiff's claim that he was an employee under the loaned servant doctrine was rejected because he was responsible for his own work and hours. McDonald v. Ponderosa Enterprises, Inc., 2015 MT 160, 379 Mont. 379, 352 P.3d 14.

CHAPTER 72
SAFETY IN MINES OTHER THAN COAL MINES

Chapter Administrative Rules

Title 24, chapter 30, subchapter 13, ARM Mine safety and health.

Part 1
General Provisions

50-72-101. Applicability of chapter.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms “division of workers' compensation”, “division”, and “workers' compensation division” are changed to “department of labor and industry” or “department”, meaning the “department of labor and industry”. The change was made in this section.

50-72-102. Definitions.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms “division of workers' compensation”, “division”, and “workers' compensation division” are changed to “department of labor and industry” or “department”, meaning the “department of labor and industry”. The change was made in this section.

50-72-103. Injunctions and other civil relief authorized.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms “division of workers' compensation”, “division”, and “workers' compensation division” are changed to “department of labor and industry” or “department”, meaning the “department of labor and industry”. The change was made in this section.

50-72-104. Violations a misdemeanor.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms “division of workers' compensation”, “division”, and “workers' compensation division” are changed to “department of labor and industry” or “department”, meaning the “department of labor and industry”. The change was made in this section.

50-72-105. Mine safety training — recovery of expenses.

Compiler's Comments

Effective Date: Section 5, Ch. 60, L. 2013, provided: “[This act] is effective July 1, 2013.”

50-72-106. Safety and industrial health consultation services authorized — recovery of expenses.

Compiler's Comments

2015 Amendment: Chapter 365 inserted (3) regarding deposit of recovered expenses. Amendment effective July 1, 2015.

Effective Date: Section 5, Ch. 60, L. 2013, provided: "[This act] is effective July 1, 2013."

Part 2
Inspections and Investigations

50-72-201. Inspectors.

Compiler's Comments

1997 Amendment: Chapter 307 in (1) inserted first sentence prohibiting Department from inspecting certain mines as long as they are regularly inspected by federal inspectors and at beginning of second sentence inserted clause relating to cessation of regular federal inspections and near middle substituted "is authorized to" for "shall" and "metallic" for "metal"; and inserted (2) authorizing employment of adequate numbers of inspectors for sand and gravel mines and prescribing their powers and duties. Amendment effective July 1, 1998.

Preamble: The preamble attached to Ch. 307, L. 1997, provided: "WHEREAS, since 1977, the United States has established a comprehensive program pursuant to the Federal Mine Safety and Health Act of 1977 (MSHA) to ensure the safety of mine workers in every state, including Montana; and

WHEREAS, with the maturation and full implementation of MSHA, the State of Montana mine safety program is now substantially duplicated by the federal program, which provides Montana mine workers with protection at least as comprehensive as protection afforded by current provisions of state law; and

WHEREAS, the Legislature desires to avoid needless duplication of public effort and the unnecessary expenditure of public funds; and

WHEREAS, the Legislature finds it appropriate to bring the state mine inspection program to an honorable conclusion for metallic and nonmetallic noncoal mines (other than sand and gravel operations), provided that duplication of effort with the federal mine inspection program continues to exist, recognizing that enforcement of MSHA by federal mine inspectors is comprehensive and sufficient enough to fully protect the health and safety of Montana mine workers; and

WHEREAS, recognizing that mine safety training is presently conducted at public expense with state and federal funds, it is the Legislature's desire and intent that mine safety training programs sufficient to meet the requirements of MSHA be made available by privately funded associations, such as the Montana Mining Association's training program."

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-72-202. Inspections and investigations — when authorized.

Compiler's Comments

1997 Amendment: Chapter 307 in (1) inserted first sentence prohibiting Department from inspecting certain mines as long as they are regularly inspected by federal inspectors and at beginning of second sentence inserted clause relating to cessation of regular federal inspections; inserted (2) authorizing inspections and investigations of sand and gravel mines for purposes of subsection (1); and made minor changes in style. Amendment effective July 1, 1998.

Preamble: The preamble attached to Ch. 307, L. 1997, provided: "WHEREAS, since 1977, the United States has established a comprehensive program pursuant to the Federal Mine Safety and Health Act of 1977 (MSHA) to ensure the safety of mine workers in every state, including Montana; and

WHEREAS, with the maturation and full implementation of MSHA, the State of Montana mine safety program is now substantially duplicated by the federal program, which provides Montana mine workers with protection at least as comprehensive as protection afforded by current provisions of state law; and

WHEREAS, the Legislature desires to avoid needless duplication of public effort and the unnecessary expenditure of public funds; and

WHEREAS, the Legislature finds it appropriate to bring the state mine inspection program to an honorable conclusion for metallic and nonmetallic noncoal mines (other than sand and gravel operations), provided that duplication of effort with the federal mine inspection program continues to exist, recognizing that enforcement of MSHA by federal mine inspectors is comprehensive and sufficient enough to fully protect the health and safety of Montana mine workers; and

WHEREAS, recognizing that mine safety training is presently conducted at public expense with state and federal funds, it is the Legislature's desire and intent that mine safety training programs sufficient to meet the requirements of MSHA be made available by privately funded associations, such as the Montana Mining Association's training program."

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-72-203. Inspectors and investigators to have free access to mines.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-72-204. Debarment of persons from mine when death or serious injury likely.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-72-205. Procedure when noncompliance not likely to cause death or serious injury.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-72-207. Notice or order subject to annulment, cancellation, or revision.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-72-208. Order subject to review.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-72-209. Right to hearing.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-72-210. Actions or decisions under part to be taken as rapidly as possible.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

CHAPTER 73
SAFETY IN COAL MINES

Chapter Administrative Rules

ARM 24.30.1302 Coal Mining Code.

Chapter Case Notes

Changing Place of Work: The common-law rule that the master must exercise ordinary care and diligence to provide his employees with a reasonably safe place in which to work, though not applying when they and their fellow servants are creating the place to work, when it is constantly being changed in character by their work, or when it only becomes dangerous by their carelessness or negligence, does obtain where the place is a completed one, such as that part of a mine tunnel behind the miner driving it, and is applicable to coal mines as well as to any other place of employment. Kallio v. NW. Improvement Co., 47 M 314, 132 P 419 (1913).

Employment Contract Not to Nullify Statute: The provisions of this chapter, the purpose of which is to reduce as far as possible the hazards incident to coal mining, cannot be nullified by any agreement between employer and employee or any rule or custom in derogation of the duties imposed. Kallio v. NW. Improvement Co., 47 M 314, 132 P 419 (1913).

Part 1
General Provisions

50-73-102. Definitions.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 27 deleted definition of gassy mine that read: ""Gassy mine" means a mine is considered to be potentially gassy. The department may further define this term in its rules"; in definition of operator near beginning substituted "entity" for "party" and near middle after "lessee of the" substituted "mine" for "plant"; inserted definition of written inspection report; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Preamble: The preamble attached to Ch. 27, L. 2009, provided: "WHEREAS, Montana's general occupational safety act, the Montana Safety Act, was enacted in 1969, prior to the adoption of the federal Occupational Safety and Health Act of 1970; and

WHEREAS, as a result of the enactment of the federal Occupational Safety and Health Act of 1970, federal law has become the basis for occupational safety and health regulation in the private sector; and

WHEREAS, states have responsibility for nonfederal public sector compliance with occupational safety and health regulations; and

WHEREAS, since the creation of the federal Occupational Safety and Health Administration, the Montana Safety Act and the Occupational Health Act of Montana do not reflect the reality of federal occupational safety and health regulation and enforcement in Montana's private sector; and

WHEREAS, the Montana Safety Act contains various archaic rulemaking and hearings provisions because it was enacted prior to the adoption of the Montana Administrative Procedure Act; and

WHEREAS, the Occupational Health Act of Montana, enacted in 1971, suffers from many of the same jurisdictional and procedural flaws as does the Montana Safety Act; and

WHEREAS, it is appropriate to modernize Montana's occupational safety and health laws for occupations other than those in mining and consolidate them into a unified body of law that reflects the scope of state regulation of general occupational safety and health matters as limited to public sector employment."

Saving Clause: Section 25, Ch. 27, L. 2009, was a saving clause.

1989 Amendment: Inserted definition of Department; deleted definition of Division; and in definition of gassy mine changed "division" to "department". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund (now state compensation insurance fund) or January 1, 1990.

1987 Amendment: Deleted former (3) that read: "(3) "Following shot" means a shot which is dependent in its action on the result of another shot."

50-73-103. Department authorized to adopt rules.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

Administrative Rules

ARM 24.29.205 Issuing orders.
ARM 24.30.1302 Coal Mining Code.

50-73-104. Injunction and other civil relief authorized.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-105. Violations a misdemeanor.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-106. Mine safety training — recovery of expenses.

Compiler's Comments

Effective Date: Section 5, Ch. 60, L. 2013, provided: "[This act] is effective July 1, 2013."

50-73-107. Safety and industrial health consultation services authorized — recovery of expenses.

Compiler's Comments

2015 Amendment: Chapter 365 inserted (3) regarding deposit of recovered expenses. Amendment effective July 1, 2015.

Effective Date: Section 5, Ch. 60, L. 2013, provided: "[This act] is effective July 1, 2013."

Part 2
Maps, Surveys, and Boundary Lines

50-73-205. Copies of maps for department.

Compiler's Comments

2019 Amendment: Chapter 51 in first sentence at end substituted "upon request" for "within 30 days after their completion"; and made minor changes in style. Amendment effective March 7, 2019.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-206. Maps to be updated on basis of semiannual surveys.

Compiler's Comments

2019 Amendment: Chapter 51 deleted last sentence that read: "The changes and extensions shall be entered on the copies of the maps of the department or new copies furnished it within 30 days after the last survey is made"; and made minor changes in style. Amendment effective March 7, 2019.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-207. Annual surveys in mines having only five people on shift.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-208. Final survey and map update when mine abandoned or worked out.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-209. Procedure when operator fails to furnish or update map.

Compiler's Comments

2019 Amendment: Chapter 51 near beginning inserted provision for failure to respond to the department's request for a map and near middle after "unsatisfactory by the department" deleted "fails for a period of 3 months to furnish the department the map or plan of the mine or of the extension or a copy"; and made minor changes in style. Amendment effective March 7, 2019.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-210. Restrictions as to boundary lines.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation",

"division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

Part 3
Duties of Operator and Employees in Mine Operation

50-73-301. Operator to report amount of coal produced.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-302. Hoisting — licensing of hoisting engineers.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

Administrative Rules

ARM 24.135.530 Mine hoisting operators license requirements.

50-73-305. Specific prohibitions and safety precautions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-306. Operator to give notice of happening of certain occurrences.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-307. Operator to make and preserve record of all injuries.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

Part 4
Inspections, Investigations, and Compliance

Part Administrative Rules

ARM 24.30.1302 Coal Mining Code.

Part Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-73-401. Coal mine inspector.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

1983 Amendment: In (1), after "shall" substituted "employ an adequate number of qualified" for "appoint state"; after "this chapter" inserted "and shall prescribe their duties"; at end of (2) after "appointment" deleted "and holds a mine foreman's certificate and a mine inspector's certificate from this state"; and made minor changes in phraseology.

50-73-402. Department authorized to enter and inspect coal mines.

Compiler's Comments

2009 Amendment: Chapter 27 inserted (4) requiring the department to prepare a written inspection report; and made minor changes in style. Amendment effective July 1, 2009.

Preamble: The preamble attached to Ch. 27, L. 2009, provided: "WHEREAS, Montana's general occupational safety act, the Montana Safety Act, was enacted in 1969, prior to the adoption of the federal Occupational Safety and Health Act of 1970; and

WHEREAS, as a result of the enactment of the federal Occupational Safety and Health Act of 1970, federal law has become the basis for occupational safety and health regulation in the private sector; and

WHEREAS, states have responsibility for nonfederal public sector compliance with occupational safety and health regulations; and

WHEREAS, since the creation of the federal Occupational Safety and Health Administration, the Montana Safety Act and the Occupational Health Act of Montana do not reflect the reality of federal occupational safety and health regulation and enforcement in Montana's private sector; and

WHEREAS, the Montana Safety Act contains various archaic rulemaking and hearings provisions because it was enacted prior to the adoption of the Montana Administrative Procedure Act; and

WHEREAS, the Occupational Health Act of Montana, enacted in 1971, suffers from many of the same jurisdictional and procedural flaws as does the Montana Safety Act; and

WHEREAS, it is appropriate to modernize Montana's occupational safety and health laws for occupations other than those in mining and consolidate them into a unified body of law that reflects the scope of state regulation of general occupational safety and health matters as limited to public sector employment."

Saving Clause: Section 25, Ch. 27, L. 2009, was a saving clause.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-403. Department to give notice of inspection to be made on complaint.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-404. Right of employees' representative and mine owner to accompany department during inspection.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation",

"division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-406. Minimum inspection intervals.

Compiler's Comments

2013 Amendment: Chapter 60 near middle after "at least" substituted "semiannually" for "quarterly". Amendment effective July 1, 2013.

2009 Amendment: Chapter 27 deleted former second sentence that read: "The department shall make a record of the visit, noting the time and the material circumstances of the inspection"; and made minor changes in style. Amendment effective July 1, 2009.

Preamble: The preamble attached to Ch. 27, L. 2009, provided: "WHEREAS, Montana's general occupational safety act, the Montana Safety Act, was enacted in 1969, prior to the adoption of the federal Occupational Safety and Health Act of 1970; and

WHEREAS, as a result of the enactment of the federal Occupational Safety and Health Act of 1970, federal law has become the basis for occupational safety and health regulation in the private sector; and

WHEREAS, states have responsibility for nonfederal public sector compliance with occupational safety and health regulations; and

WHEREAS, since the creation of the federal Occupational Safety and Health Administration, the Montana Safety Act and the Occupational Health Act of Montana do not reflect the reality of federal occupational safety and health regulation and enforcement in Montana's private sector; and

WHEREAS, the Montana Safety Act contains various archaic rulemaking and hearings provisions because it was enacted prior to the adoption of the Montana Administrative Procedure Act; and

WHEREAS, the Occupational Health Act of Montana, enacted in 1971, suffers from many of the same jurisdictional and procedural flaws as does the Montana Safety Act; and

WHEREAS, it is appropriate to modernize Montana's occupational safety and health laws for occupations other than those in mining and consolidate them into a unified body of law that reflects the scope of state regulation of general occupational safety and health matters as limited to public sector employment."

Saving Clause: Section 25, Ch. 27, L. 2009, was a saving clause.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-407. Department to give notice of violations and penalties therefor.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-408. Procedure when notice of violations disregarded.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-409. Operator to post statement of conditions.

Compiler's Comments

2009 Amendment: Chapter 27 in (1) at beginning substituted "operator" for "department", substituted "post the department's written inspection report" for "post in some conspicuous location" and at end substituted "the department" for "it a plain statement of the conditions of the mine showing what in its judgment is necessary for the better protection of the lives and health of persons employed in the mine"; in (2) at beginning of first sentence substituted "written inspection report" for "statement", at end after "inspection" inserted "and be posted in one or more conspicuous locations and remain posted until replaced by a subsequent inspection report"; inserted second sentence and (2)(a) and (2)(b) describing conspicuous location, and deleted former second sentence that read: "Where a local union has jurisdiction over the mine inspected, the department shall post three copies of the statement of conditions within 1 week after making the inspection"; inserted (3) requiring the operator to provide copies of the written inspection report; in (4) near beginning substituted "post a notice" for "post a copy"; and made minor changes in style. Amendment effective July 1, 2009.

Preamble: The preamble attached to Ch. 27, L. 2009, provided: "WHEREAS, Montana's general occupational safety act, the Montana Safety Act, was enacted in 1969, prior to the adoption of the federal Occupational Safety and Health Act of 1970; and

WHEREAS, as a result of the enactment of the federal Occupational Safety and Health Act of 1970, federal law has become the basis for occupational safety and health regulation in the private sector; and

WHEREAS, states have responsibility for nonfederal public sector compliance with occupational safety and health regulations; and

WHEREAS, since the creation of the federal Occupational Safety and Health Administration, the Montana Safety Act and the Occupational Health Act of Montana do not reflect the reality of federal occupational safety and health regulation and enforcement in Montana's private sector; and

WHEREAS, the Montana Safety Act contains various archaic rulemaking and hearings provisions because it was enacted prior to the adoption of the Montana Administrative Procedure Act; and

WHEREAS, the Occupational Health Act of Montana, enacted in 1971, suffers from many of the same jurisdictional and procedural flaws as does the Montana Safety Act; and

WHEREAS, it is appropriate to modernize Montana's occupational safety and health laws for occupations other than those in mining and consolidate them into a unified body of law that reflects the scope of state regulation of general occupational safety and health matters as limited to public sector employment."

Saving Clause: Section 25, Ch. 27, L. 2009, was a saving clause.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-410. Department inspection upon advisement of accident, injury, or fatality.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-411. Miners' organization authorized to investigate fatal accident.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

50-73-412. Debarment of persons from mine when death or serious injury likely.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-413. Procedure when noncompliance not likely to cause death or serious injury.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-414. Requirements as to findings, notices, and orders.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-415. Notice or order subject to amendment, cancellation, or revision.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-416. Order subject to review.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-417. Right to hearing.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-73-418. Actions or decisions under chapter to be taken as rapidly as possible.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

CHAPTER 74
BOILERS AND STEAM ENGINES

Chapter Administrative Rules

ARM 24.301.172 Incorporation by reference of International Mechanical Code.
Title 24, chapter 122, ARM Boiler operating engineers.
Title 24, chapter 301, subchapter 7, ARM Boiler safety.

Part 1
General Provisions

50-74-101. Definition — department to formulate rules.

Compiler's Comments

2001 Amendment: Chapter 483 in (1) after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 514 inserted (1) defining Department as Department of Commerce; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-102. Boilers to conform to rules.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-74-103. Boilers exempted.

Compiler's Comments

2019 Amendment: Chapter 322 inserted (2)(b) concerning boilers constructed or maintained only as a hobby for exhibition, educational, or historical purposes; and made minor changes in style. Amendment effective May 7, 2019.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-105. Purchaser to notify department of purchase.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

Part 2
Inspections

Part Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

50-74-201. State boiler inspectors.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-202. Special boiler inspectors.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation",

"division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-206. Boiler to be inspected prior to use — duty of notification.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-207. Boiler opened for repair subject to inspection — duty of notification.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-208. Penalty for operation without certificate or failure to give notice.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-209. Required inspection intervals — failure to comply with safety standards — inspections through other states.

Compiler's Comments

2019 Amendment: Chapter 322 inserted (4) concerning acceptance of traction engine inspections performed by other states. Amendment effective May 7, 2019.

2001 Amendment: Chapter 499 inserted (1)(a) requiring a manually fired boiler or a boiler with a total input of 400,000 Btu's an hour or more to be inspected at least once a year; in (1)(b) near beginning before "boilers" inserted "automatically fired", inserted "rated with an input of less than 400,000 Btu's an hour", substituted "once every 2 years" for "once in every year", and substituted exception for boilers in certain institutions for "except boilers exempt under provisions of 50-74-103"; inserted (1)(c) exempting boilers exempt under 50-74-103 from inspections; in (2) substituted "inspection required by subsection (1)" for "annual inspection"; inserted (3) requiring the owner of a noncompliant boiler to comply with safety standards and providing a penalty for failure to follow a compliance order; and made minor changes in style. Amendment effective October 1, 2001.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-211. Inspector to notify department of refused access.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-212. Payment of costs resulting from refused access.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation",

"division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-213. Failure to comply with department directed access a misdemeanor.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-214. Engineer to assist in inspection.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-74-215. Interior and exterior examination of boiler.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-74-217. Other inspection requirements.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-74-218. Safe working pressure.

Compiler's Comments

2011 Amendment: Chapter 160 inserted (3) regarding safe working pressure of historical boiler; and made minor changes in style. Amendment effective October 1, 2011.

Part 3
Licenses

50-74-302. General requirements for licensure.

Case Notes

Police Regulation: The trade of engineering is a proper subject for police regulation. Johnson v. Great Falls, 38 M 369, 99 P 1059 (1909).

50-74-303. Engineer's license classifications.

Compiler's Comments

2021 Amendment: Chapter 440 in (1) increased classifications from five to six and at end inserted "and limited low-pressure engineers"; in (2) increased classifications from five to six; in (2)(c) near middle after "saturated steam pressure" substituted "or " for "and"; inserted (2)(f) regarding operating restrictions for limited low-pressure engineers; and made minor changes in style. Amendment effective October 1, 2021.

2003 Amendment: Chapter 392 in (2)(c) near beginning after "excess of" substituted "150" for "100" and after "steam pressure" inserted "and not in excess of 150 horsepower per hour"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 514 in (1) substituted "five classes" for "four classes" and inserted "agricultural-class engineers"; in (2) substituted "five classifications" for "four classifications"; inserted (2)(d) concerning steam boilers that may be operated by agricultural-class engineers; and made minor changes in style. Amendment effective July 1, 1995.

50-74-304. Requirements for engineer's license.

Compiler's Comments

2021 Amendment: Chapter 440 inserted (1) concerning an applicant for a limited low-pressure engineer's license; inserted (8) providing an alternative to the requirements for an applicant for a limited low-pressure license; and made minor changes in style. Amendment effective October 1, 2021.

2003 Amendment: Chapter 392 in (1) at beginning inserted exception clause; in (2) at beginning inserted exception clause and at end after "classification" inserted "by the department"; in (3) at beginning inserted exception clause; inserted (6) allowing an applicant who is 18 years of age or older to get a license if certain alternative requirements are met; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendment: Chapter 514 throughout section, after "classification", inserted "by the department"; in (1), after "classification", inserted "under an engineer who holds a valid low-pressure or higher license"; inserted (2) concerning requirements for applicants for agricultural-class engineer's license; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-305. Exceptions to requirements for engineer's license.

Compiler's Comments

1995 Amendments: Chapter 308 in (3), before "department-approved", deleted "recognized vocational-technical training school or center or other"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 514 in (1), near end after "classification", inserted "by the department"; in (3), near end after "may", substituted "pursuant to department rule" for "at the discretion of the department", before "experience" deleted "a maximum of 6 months'", and before "engineer's" inserted "or low-pressure"; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-306. Traction licenses — application without examination from other states.

Compiler's Comments

2019 Amendment: Chapter 322 inserted (4) concerning issuing licenses to individuals holding licenses from another state without examination; and made minor changes in style. Amendment effective May 7, 2019.

2001 Amendment: Chapter 65 inserted (3) requiring person working with a steam locomotive not covered by federal regulations to pass an exam on competency to operate that class of machinery and to procure a traction license; and made minor changes in style. Amendment effective October 1, 2001.

50-74-307. Requirements for traction licenses.

Compiler's Comments

2019 Amendment: Chapter 322 inserted (2) concerning issuance of licenses to individuals holding licenses from other states; and made minor changes in style. Amendment effective May 7, 2019.

2011 Amendment: Chapter 160 inserted (2) regarding steam school; in (3) substituted "50 hours" for "480 hours"; deleted former (4) that read: "(4) must be found competent to operate a traction engine by the department"; and made minor changes in style. Amendment effective October 1, 2011.

2001 Amendment: Chapter 65 in (2) substituted "480 hours total experience" for "6 months' full-time experience"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 514 at end inserted "by the department"; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-308. Waiver of experience requirement for traction licenses.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-311. Waiting period before reexamination permitted.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-74-312. Review of license rejection — waiting period.

Compiler's Comments

2005 Amendment: Chapter 467 in (3) near middle of second sentence and in (4) near beginning of first sentence after "department" deleted "of labor and industry"; and in (4) near middle of second sentence after "applicant" substituted "may" for "is required to" and after "provided in" deleted "50-74-309 and". Amendment effective July 1, 2005.

2003 Amendment: Chapter 196 in (4) near middle of second sentence deleted reference to 50-74-310; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in second sentence in (3) and in first sentence in (4) after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 514 in (1), in first sentence after "may", deleted "at any time after the lapse of 10 days and"; in (2), after "application", inserted "and any arguments opposing the rejection of the license application"; in (3), after "department", inserted "of commerce"; in (4), near beginning after "department", inserted "of commerce" and after "department shall" deleted "without delay"; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-315. Unlawful to operate boiler or steam engine without license.

Case Notes

Police Regulation: The trade of engineering is a proper subject for police regulation. Johnson v. Great Falls, 38 M 369, 99 P 1059 (1909).

50-74-317. When unlicensed person may operate.

Compiler's Comments

1995 Amendment: Chapter 514 in (1), after "boiler", inserted "from performing required duties"; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-74-318. Qualifications of boiler inspectors — fees for inspections.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

50-74-320. Examinations — fees — third parties.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

CHAPTER 76
HOISTING ENGINES

Chapter Administrative Rules

Title 24, chapter 135, ARM Crane and hoisting operating engineers.

Chapter Law Review Articles

The Constitutionality of Civil Inspections, 21 Mont. L. Rev. 195 (Spring 1960).

Part 1
General Provisions

50-76-101. When chapter not to apply.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: In (2) deleted former fourth sentence that read: "The telescoping boom does not extend more than 36 feet in length when fully extended, as measured from pivot pin to the center of the furthest pulley or sheave."

1983 Amendment: In (2), inserted "or line trucks and bucket trucks" at end of first sentence, and inserted remainder of subsection (see 1983 Session Law).

50-76-102. Hoisting engine license required.

Compiler's Comments

2001 Amendment: Chapter 483 in (1)(a) at end after "department" deleted "of commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 514 in (1)(a), at end after "department", inserted "of commerce"; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-76-103. Crane and hoist license required.

Compiler's Comments

2005 Amendment: Chapter 93 in (1)(a) near middle of first sentence after "manufacturer's" inserted "load chart" and after "or more" substituted "or to operate a tower crane of any capacity" for "and a boom length of more than 25 feet"; in (2)(a) at beginning inserted "Licensed"; in (2)(b)(i) at end inserted "except as provided in 50-76-113"; in (2)(b)(i)(A) decreased amount of operating experience required of a first-class license applicant from 3 years to 1 year; in (2)(b)(ii) near end inserted "first-class"; in (2)(c) at beginning inserted "Licensed", near middle after "manufacturer's" inserted "load chart", and after "rating of" substituted "between 6 tons and 17.5 tons or a tower crane of any capacity" for "6 tons and a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet"; in (2)(d)(i) at end inserted "except as provided in 50-76-113"; in (2)(d)(i)(A) decreased amount of operating experience required of a second-class license applicant from 2 years to 1 year; in (2)(d)(ii) near end inserted "second-class"; in (2)(e) at beginning of first sentence inserted "Licensed" and in second sentence after "requirement" inserted "also"; in (3) near beginning after "each" substituted "licensee" for "licensed engineer or operator"; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendments — Composite Section: Chapter 65 throughout section deleted references to department of commerce; and in (1)(a) in first sentence substituted "6 tons or more" for "more than 6 tons". Amendment effective October 1, 2001.

Chapter 483 throughout section after "department" deleted "of commerce". Amendment effective July 1, 2001.

1997 Amendment: Chapter 481 throughout section substituted "crane and hoist" for "hoisting"; in first sentence in (1) and in (2)(c), after "6 tons", substituted "and a boom length" for "or a boom length" and in second sentence, after "trolley", inserted "and gantry"; and in (2)(b)(ii) and in (2)(d)(ii) substituted "A biennial" for "An annual".

1997 Statement of Intent: The statement of intent attached to Ch. 481, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician; the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41] [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendment: Chapter 514 throughout section, after "department", inserted "of commerce"; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-76-104. Application, examination, and fee for license.

Compiler's Comments

2003 Amendment: Chapter 196 inserted (2) concerning adoption of rules establishing fees; inserted (3) concerning third-party examination and grading services; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 near beginning after "department" deleted "of commerce". Amendment effective July 1, 2001.

1997 Amendment: Chapter 481 deleted second sentence that read: "The same fee must be charged as required by law for obtaining a license to operate steam engines, boilers, and steam-driven machinery under chapter 74 of this title."

1997 Statement of Intent: The statement of intent attached to Ch. 481, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician; the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41] [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

1995 Amendment: Chapter 514 after "department" substituted "of commerce and submitted with the appropriate fee that is set commensurate with the cost of administering this program, to be deposited in the state special revenue fund for use by the department" for "in the same manner"; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-76-108. Renewal of application by rejected candidate.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

50-76-109. Violation of chapter — misdemeanor.

Compiler's Comments

2005 Amendment: Chapter 93 in (1) near beginning after "operates" substituted "a crane, hoist, or other equipment described" for "any of the engines and machinery named", near middle after "which a" inserted "crane and hoist engineer's", after "manager of" substituted "the crane, hoist, or other equipment" for "any such engines or machinery", and near end after "operate" substituted "the crane, hoist, or other equipment" for "such engines or machinery or any person who violates any of the provisions of this chapter"; inserted (2) creating a misdemeanor violation for a person who operates or allows operation of a crane, hoist, or other equipment in violation of department rules; and made minor changes in style. Amendment effective October 1, 2005.

50-76-110. Crane inspector — qualifications — inspections.

Compiler's Comments

2015 Amendment: Chapter 45 in (1) at end substituted "as a licensed third-class crane and hoist engineer" for "operating cranes and must have been licensed for at least 1 year as a first-class crane and hoist engineer". Amendment effective July 1, 2015.

2005 Amendment: Chapter 93 in (1) near beginning of second sentence after "inspector" deleted "shall hold a first-class hoisting engineer's license under this chapter for a minimum of 1 year and" and at end after "cranes" inserted "and must have been licensed for at least 1 year as a first-class crane and hoist engineer"; inserted (2) allowing adoption of national operating standards; inserted (3) allowing an inspector to declare a noncompliant crane, hoist, or other equipment to be out of service; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 483 near beginning of first sentence after "department" deleted "of commerce". Amendment effective July 1, 2001.

1995 Amendment: Chapter 514 near beginning, after "department", inserted "of commerce" and before "1" and "3" inserted "a minimum of"; and made minor changes in style. Amendment effective July 1, 1995.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". The change was made in this section.

50-76-111. Definitions.

Compiler's Comments

2001 Amendment: Chapter 483 in definition of department substituted reference to department of labor and industry for reference to department of commerce and substituted "2-15-1701" for "2-15-1801". Amendment effective July 1, 2001.

1997 Statement of Intent: The statement of intent attached to Ch. 481, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician; the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41] [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

50-76-112. Rulemaking authority.

Compiler's Comments

2005 Amendment: Chapter 93 inserted (1)(i) regarding air tugger winches; inserted (2) allowing the department to consult with engineering authorities and organizations concerned with safety codes, rules, and regulations governing the operation, testing, maintenance, and inspection of cranes, hoists, and other equipment; and made minor changes in style. Amendment effective October 1, 2005.

1997 Statement of Intent: The statement of intent attached to Ch. 481, L. 1997, provided: "A statement of intent is required for this bill because it delegates rulemaking to the identified licensing boards of the department of commerce [now department of labor and industry] to adopt rules to implement the provisions of 37-11-201 and 37-11-303, which allow on-demand computerized testing for physical therapist and physical therapist assistant applicants; 37-26-201 and 37-26-301, which allow the creation of a formulary by an alternative health care formulary committee to identify the substances that may be prescribed by a licensed naturopathic physician; the provisions that reconcile Title 37, chapter 54, with the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and the related requirements of financial institution regulatory agencies; and [sections 40 and 41] [50-76-111 and 50-76-112], 50-76-103, and 50-76-104, which govern the licensure of crane and hoist operators.

A statement of intent is also required for this bill because it directs the board of barbers to adopt rules pertaining to instructor and license applicants' qualifications, examination, and registration, to adopt rules pertaining to barber schools' curriculum and qualifications, to adopt rules pertaining to supervision of barber students, and to adopt rules pertaining to the inspection and conduct of persons and barbershops subject to the provisions of Title 37, chapter 30.

Severability: Section 49, Ch. 481, L. 1997, was a severability clause.

50-76-113. Recognition of national certification.

Compiler's Comments

2011 Amendment: Chapter 100 in (1) inserted "or any other similar certifying organization that has been approved by the department". Amendment effective October 1, 2011.

Effective Date: This section is effective October 1, 2005.

50-76-114. Failure of licensee to have possession of license or proof of license while operating equipment.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

CHAPTER 77
CONSTRUCTION SITE HEALTH AND SAFETY

Part 1
General Provisions

Part Case Notes

Pipe Rack as Scaffold: Because this part requires only that a scaffold be safely supported and properly secured, the question of whether a pipe rack was a scaffold was subject to summary judgment. A lack of safe egress to the pipe rack would not constitute a violation of this part even if the pipe rack were considered a scaffold. Crane v. Conoco, 41 F3d 547 (9th Cir. 1994).

50-77-101. Scaffolds — definition — safety practices — liability.

Compiler's Comments

1995 Amendment: Chapter 404 substituted current text defining scaffold or scaffolding, requiring employers and employees to follow safety practices commonly recognized in the construction industry and applicable state and federal occupational safety laws, stating the liability of a contractor, subcontractor, or builder, and passing a decedent's right of action on to the heirs and personal representatives for former text providing that scaffolds be well and safely supported, of sufficient width, and properly secured to ensure safety. Amendment effective April 13, 1995.

Case Notes

Violation of Scaffolding Law Imposing Absolute Liability — Insurance From Liability as Long as Duty Not Delegated to Another: A violation of the duties imposed under Montana scaffolding law imposes absolute liability and creates a nondelegable duty to ensure workplace safety. However, the party with the duty can still insure itself from liability arising out of violations of that duty as long as the duty itself is not delegated to another, and carrying insurance for liability under the scaffolding law is not the same as delegating one's duty to comply with the law. United Nat'l Ins. Co. v. St. Paul Fire & Marine Ins. Co., 2009 MT 269, 352 M 105, 214 P3d 1260 (2009).

Scaffolding Law Inapplicable to Defendant Who Neither Used nor Constructed Scaffolding: Fabich filed for damages from an injury received after a fall from scaffolding while working as an employee of a subcontractor at defendant's power plant. The District Court held that Montana scaffolding law did not apply to defendant and granted summary judgment for defendant. Fabich appealed, but the Supreme Court affirmed. Defendant neither used nor constructed the scaffolding at issue and was not a contractor, subcontractor, or builder, so the scaffolding law did not apply. Fabich v. PPL Mont., LLC, 2007 MT 258, 339 M 289, 170 P3d 943 (2007).

City Not Liable Under Scaffolding Law: Plaintiff's husband was killed in the collapse of a scaffold, and plaintiff sued the city of Missoula, asserting that the city violated its duty to inspect the scaffold. The District Court found that the city owed no duty and summarily dismissed the claim. On appeal, the Supreme Court affirmed. Under this section, the Legislature imposed liability only on certain entities for violations of scaffolding law, not including cities. Additionally, under State ex rel. Great Falls Nat'l Bank v. District Court, 154 M 336, 463 P2d 326 (1969), only those having direct and immediate control of the work involving the scaffold are required to make an injured worker whole. Because the city was not liable for scaffolding violations, plaintiff failed to raise a justiciable issue for which relief could be granted and the claim was dismissed as moot. Dukes v. Missoula, 2005 MT 196, 328 M 155, 119 P3d 61 (2005), following Dennis v. Brown, 2005 MT 85, 326 M 422, 110 P3d 17 (2005).

Montana Scaffolding Law Not Preempted by Federal Occupational Safety and Health Act: Dukes died after being injured while performing scaffolding work. His estate sued the city of Missoula, claiming that the city failed to enforce state scaffolding laws by performing inspections required under former 50-77-106 (repealed 1999) and that the failure to inspect was a breach of a legal duty and negligence per se under state law. The District Court held that state law was preempted by the federal Occupational Safety and Health Act of 1970 (OSHA), that the state therefore could not impose a legal duty on the city, and that without a legal duty, the city could not be held negligent under state law. The estate appealed. The Supreme Court noted that there are three ways that federal law may preempt state law: (1) by express preemption through a preemption clause in the federal law stating that state law will not apply; (2) through implied field preemption, wherein federal regulation is so pervasive or comprehensive that it is reasonable to infer that Congress intended to occupy the field and leave no room for supplementary state regulation; and (3) through implied conflict preemption, which manifests itself as an inability of state law to comply with federal law or when state law stands as an obstacle to the objectives of Congress. Express preemption must be clearly manifested, and because no provision of OSHA expressly preempts state health and safety standards or statutory duties, express preemption did not apply. Field preemption also was inapplicable. States can promulgate occupational safety and health standards and enforce them in the absence of OSHA standards; OSHA does not affect state workers' compensation laws or enlarge or diminish state common law or tort law available to injured workers; and OSHA does not create a right of action for injured workers, but allows injured workers to pursue rights of action under state law. Finally, the building inspector's duty to inspect and enforce compliance with OSHA scaffolding standards also survived conflict preemption because nothing in OSHA contemplates that inspection and enforcement are the sole responsibility of the federal government and inspection and enforcement by a state official are preempted only if in conflict with OSHA. Thus, the District Court erred in holding that OSHA preempted state law, so the case was reversed and remanded for further proceedings. Dukes v. Sirius Constr., Inc., 2003 MT 152, 316 M 226, 73 P3d 781 (2003). See also Traudt v. Potomac Elec. Power Co., 692 A2d 1326 (D.C. 1997).

Insurance Adjuster's Fall From Ladder While Assessing Damage: Under this section as it read before the 1995 amendment, which was not retroactive, when an insurance adjuster used a ladder to access a damaged garage roof, the ladder constituted a scaffold and the adjuster was using the ladder as a working place to assess the damage and thus facilitate the roof's repair. Failure to comply with this section is negligence per se, and the defense of contributory negligence is not available. The District Court erred in determining that the ladder was not a scaffold and that this section thus did not apply and in applying the contributory negligence law. Wilson v. Vukasin, 277 M 423, 922 P2d 531, 53 St. Rep. 819 (1996).

Fall From Ladder After Scaffolding Law Amended to Delete Ladders From Definition of Scaffold: In 1992, the employee fell off a ladder while preparing to paint a wall. He died later the same day. The 1995 amendment of this section, which excluded ladders from the definition of a scaffold, would, if retroactively applied to this case, result in a different legal effect than the prior law. This is forbidden by 1-2-109, which provides that a statute is not retroactive unless expressly so declared. Porter v. Galarneau, 275 M 174, 911 P2d 1143, 53 St. Rep. 99 (1996).

Absence of Scaffolding Guardrail — Omission as Proximate Cause and Breach of Duty: The absence of a guardrail on the outer edge of a deck overhang constituting scaffolding on a bridge construction project that did not meet the requirements of a Certification Acceptance Agreement, which incorporated by reference the construction manual and state and federal laws, including the Montana scaffolding laws, was considered a breach of a contractual duty to ensure that a subcontractor has provided appropriate scaffolding. The breach of duty was negligence per se and the proximate cause of plaintiff's injuries; thus, remand for a determination of damages was appropriate. Steiner v. Dept. of Highways, 269 M 270, 887 P2d 1228, 51 St. Rep. 1496 (1994).

"Scaffold" Construed: The purpose of the scaffolding law is to supplement the protection of the common law by providing criminal sanctions and imposing an absolute statutory duty upon the owners of real estate to protect workmen and others from the extraordinary hazards associated with scaffolds. When a scaffold was not available, Mydlarz used a ladder to remove the covering from ceiling sprinkler nozzles. He fell from the ladder and was injured. The court found "scaffolding" includes not only a device commonly considered a scaffold but additionally any device utilized by workmen to allow them to work where a fall might result in serious injury. The scaffolding law therefore applies to the ladder being used by Mydlarz at the time of his injury. Mydlarz v. Palmer/Duncan Constr. Co., 209 M 325, 682 P2d 695, 41 St. Rep. 738 (1984).

Nondelegable Duty of General Contractor: An employee of a subcontractor was injured in a fall from the subcontractor's scaffolding. Because a provision in the primary contract created a nondelegable duty in the general contractor to provide for job safety, the provisions of this section apply as between the employee of the subcontractor and the general contractor. Stepanek v. Kober Constr., 191 M 430, 625 P2d 51, 38 St. Rep. 385 (1981), followed in Steiner v. Dept. of Highways, 269 M 270, 887 P2d 1228, 51 St. Rep. 1496 (1994), and United Nat'l Ins. Co. v. St. Paul Fire & Marine Ins. Co., 2009 MT 269, 352 M 105, 214 P3d 1260 (2009).

Against Whom Injured Worker Entitled to Recover: The firm, person, or corporation having direct and immediate control of the work involving the use of scaffolding is the one upon whom the duty is imposed by the scaffold law. Bonawitz v. Bourke, 173 M 179, 567 P2d 32 (1977).

Intended Use of Scaffold: Owner was not liable to worker hired to construct addition to building for injury sustained by worker using structurally sound scaffold as means of access from one scaffold to another. Statute requires that scaffold be structurally sound in relation to purpose for which it is erected and is not violated when worker is injured while using scaffold for purpose for which it was not intended. Joki v. McBride, 150 M 378, 436 P2d 78 (1967).

Common-Law Defenses Foreclosed:

In action against employers for personal injuries alleged to have resulted from a fall from a scaffold, trial court was not in error in refusing defendants' instruction on assumption of the risk where the court gave defendants more than they were entitled to by granting them an instruction on contributory negligence over plaintiff's objection that this section had removed that defense. Pollard v. Todd, 148 M 171, 418 P2d 869 (1966), followed in Steiner v. Dept. of Highways, 269 M 270, 887 P2d 1228, 51 St. Rep. 1496 (1994).

The mandatory nature of the scaffold law (50-77-101 through 50-77-107) forecloses the common-law defenses of assumption of the risk, contributory negligence, and negligence of a fellow servant, but a defendant may escape liability upon proof that there was no violation of the statute or that the violation was not the proximate cause of the injury. Pollard v. Todd, 148 M 171, 418 P2d 869 (1966), followed in Steiner v. Dept. of Highways, 269 M 270, 887 P2d 1228, 51 St. Rep. 1496 (1994).

Negligence: Although this section imposes an absolute duty upon employers of person working on scaffold and breach of that statutory duty is negligence per se, whether negligence was proximate cause of injury sustained in fall from scaffold is question for jury in resultant personal injury action. Pollard v. Todd, 148 M 171, 418 P2d 869 (1966), followed in Steiner v. Dept. of Highways, 269 M 270, 887 P2d 1228, 51 St. Rep. 1496 (1994).

Purpose: The purpose of this section is to supplement the protection of the common law by providing criminal sanctions and imposing an absolute statutory duty upon the owners of real estate to protect workers and others from extraordinary hazards associated with scaffolds. Pollard v. Todd, 148 M 171, 418 P2d 869 (1966), followed in Steiner v. Dept. of Highways, 269 M 270, 887 P2d 1228, 51 St. Rep. 1496 (1994).

50-77-102. Temporary floors for protection of workers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Supervision or Control of Person Home Owner Hired to Paint Wall While Home Owner in Another State: Porter and his wife owned a business named Personal Touch Services. Galarneau hired them to do miscellaneous work at his house, including cleaning, grounds maintenance, repairs, and painting. While preparing to paint a 22-foot-high inside wall, Porter fell off a ladder that he had borrowed. He died later in the day. Galarneau was in his business office in Minnesota at the time of the fall. Galarneau was Porter's employer and had direct and immediate supervision or control (the basic element of the employer-employee relationship) of the work for purposes of the scaffolding law. Porter v. Galarneau, 275 M 174, 911 P2d 1143, 53 St. Rep. 99 (1996).

"Direct and Immediate Supervision" — Liability of Foreman: A contractor's foreman having control of the work which involved the use of scaffolding cannot be held liable since he acted simply as an employee and not an owner, person, or corporation having direct and immediate supervision and control of the masonry construction. Boyer v. Kloepfer, 170 M 472, 554 P2d 1116 (1976).

Owner's Direct and Immediate Control of Work: Injured worker who fell from scaffolding was not entitled to summary judgment against owner of building where owner was not in direct and immediate control of work involving use of such scaffolding. State ex rel. Great Falls Nat'l Bank v. District Court, 154 M 336, 463 P2d 326 (1969).

50-77-103. Planking above scaffolds.

Case Notes

Nondelegable Duty of General Contractor: An employee of a subcontractor was injured in a fall from the subcontractor's scaffolding. Because a provision in the primary contract created a nondelegable duty in the general contractor to provide for job safety, the provisions of this section apply as between the employee of the subcontractor and the general contractor. Stepanek v. Kober Constr., 191 M 430, 625 P2d 51, 38 St. Rep. 385 (1981), followed in Steiner v. Dept. of Highways, 269 M 270, 887 P2d 1228, 51 St. Rep. 1496 (1994), and United Nat'l Ins. Co. v. St. Paul Fire & Marine Ins. Co., 2009 MT 269, 352 M 105, 214 P3d 1260 (2009).

50-77-104. Guarding of stairways and other openings.

Case Notes

Indemnification Provisions — "Clear and Unequivocal" Standard: A contract provision that required the subcontractor to indemnify the general contractor for damages arising out of the subcontractor's negligence did not require the subcontractor to indemnify the general contractor for the general contractor's own negligence. Contractual provisions that indemnify a party for its own negligence must be "clear and unequivocal" to be enforceable. The general contractor was found negligent per se under this part, commonly known as the Montana Scaffolding Act. The general contractor could not use the indemnification clause of the contract in order to recover against the subcontractor. Slater v. Cent. Plumbing & Heating Co., 275 M 266, 912 P2d 780, 53 St. Rep. 132 (1996). Following the 1996 decision (Slater I), the general contractor sought contribution from the subcontractor for that portion of liability attributable to the subcontractor. The District Court held that Slater I closed all the general contractor's doors of recovery from the subcontractor under any theory. However, the motion for partial summary judgment that gave rise to Slater I was based on the first claim of the general contractor's amended cross-claim and only precluded indemnification for the general contractor's own negligence under a breach of contract claim, but the general contractor was not precluded by the prohibition against splitting a cause of action or by the doctrine of res judicata from pursuing a separate claim for contribution under the second claim of its amended cross-claim. The issue of indemnity based on the subcontractor's negligence was not the same as the previously decided issues regarding whether there was an indemnity claim based on the general contractor's negligence or a breach of contract in relation to the safety provisions. Thus, the case was remanded for further proceedings on the remaining claims. Slater v. Cent. Plumbing & Heating Co., 1999 MT 257, 297 M 7, 993 P2d 654, 56 St. Rep. 1023 (1999).

"Direct and Immediate Supervision" — Liability of Foreman: A contractor's foreman having control of the work which involved the use of scaffolding cannot be held liable since he acted simply as an employee and not an owner, person, or corporation having direct and immediate supervision and control of the masonry construction. Boyer v. Kloepfer, 170 M 472, 554 P2d 1116 (1976).

Direct and Immediate Control of Premises: Construction company was not liable to building owner's employee for injuries incurred in fall through hole in floor as result of construction company's removing equipment, where construction company had completed work over 2 months prior to fall and was therefore not in immediate or direct control or supervision of building. Hannifin v. Cahill-Mooney Constr. Co., 159 M 413, 498 P2d 1214 (1972).

CHAPTER 78
EMPLOYEE AND COMMUNITY HAZARDOUS CHEMICAL INFORMATION ACT

Chapter Compiler's Comments

Effective Date: Section 17, Ch. 641, L. 1985, provided that this chapter is effective November 25, 1985.

Severability: Section 16, Ch. 641, L. 1985, was a severability section.

Chapter Case Notes

Liability of State to Suit — Active Duty U.S. Army Worker Injured While Assigned to National Guard — Tort Claim Not Barred: While in full-time service to the U.S. Army, Trankel was assigned to a Montana Army National Guard unit rebuilding armored vehicles and was injured by toxic chemicals during the rebuilding project. Trankel sued the state, asserting violations of the Occupational Health Act of Montana, the Montana Safety Act, and the Employee and Community Hazardous Chemical Information Act. The state contended that Feres v. U.S., 340 US 135, 95 L Ed 152, 71 S Ct 153 (1950), and Evans v. Mont. Nat'l Guard, 223 M 482, 726 P2d 1160 (1986), barred a claim that was incident to military service regardless of the substantive law upon which the claim was based, the status of the plaintiff at the time of injury, or the status of the party against whom the claim was made and that the alleged violations of the state Acts did not provide a private cause of action and could be enforced only through the administrative remedies provided for in the Acts. The District Court agreed with the state and dismissed Trankel's complaint with prejudice. On appeal, the Supreme Court distinguished Feres and related federal cases because they were based on federal rather than state tort claims, with little bearing on rights under state law and the Montana Constitution. The Supreme Court overruled the holding in Evans that the National Guard was not a political subdivision subject to suit, finding instead that the National Guard and the Department of Military Affairs were clearly governmental entities within the meaning of 2-9-101 and that the constitutional premise on which Evans was based did not apply. Consistent with other applications of Art. II, sec. 16, Mont. Const., any statute or court decision that deprives an employee of the right to full legal redress, as defined by general Montana tort law against third parties, is absolutely prohibited. Because Trankel was not employed by the Montana Army National Guard or the Department of Military Affairs at the time of injury, Trankel's claim against the state pursuant to the tort claims statutes was not barred. Further, applying the rationale in Pollard v. Todd, 148 M 171, 418 P2d 869 (1966), the Supreme Court held that the statutory state Acts did not give rise to causes of action independent from a claim of negligence subject only to the administrative remedies contained in the Acts, but rather established duties, the violation of which is negligence per se. Trankel v. St., 282 M 348, 938 P2d 614, 54 St. Rep. 380 (1997), distinguishing Feres v. U.S., 340 US 135, 95 L Ed 152, 71 S Ct 153 (1950), U.S. v. Johnson, 481 US 681, 95 L Ed 2d 648, 107 S Ct 2063 (1987), and Stauber v. Cline, 837 F2d 395 (9th Cir. 1988); following Webb v. Mont. Masonry Constr. Co., 233 M 198, 761 P2d 343 (1988), Meech v. Hillhaven W., Inc., 238 M 21, 776 P2d 488 (1989), and Francetich v. St. Comp. Mut. Ins. Fund, 252 M 215, 827 P2d 1279 (1992); overruling Evans v. Mont. Nat'l Guard, 223 M 482, 726 P2d 1160 (1986); and followed in Lake v. St., 282 M 484, 938 P2d 698, 54 St. Rep. 442 (1997), and Oberson v. Federated Mut. Ins. Co., 2005 MT 329, 330 M 1, 126 P3d 459 (2005).

Part 1
General

50-78-102. Definitions.

Compiler's Comments

2007 Amendment: Chapter 449 in definition of local fire chief after "means" substituted "the chief of a governmental fire agency organized under Title 7, chapter 33, or the chief's designee" for "(a) the chief of the municipal fire department or the chief's agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or the chief's agent, for any workplace not located within a city or town"; in definition of OSHA standard at end deleted "as that statute reads on January 1, 1985"; and made minor changes in style. Amendment effective June 1, 2007.

1999 Amendment: Chapter 51 in definition of chemical manufacturer near beginning substituted "codes 31 through 33, as defined in the North American Industry Classification System Manual" for "standard industrial classification codes 20 through 39, as defined in the federal Standard Industrial Classification Manual"; in definition of manufacturing employer after "classified in" substituted "codes 31 through 33 of the North American Industry Classification System" for "any standard industrial classification code 20 through 39"; in definition of nonmanufacturing employer near middle substituted "a North American Industry Classification System" for "any standard industrial classification" and at end after "other than" substituted "31 through 33" for "20 through 39"; and made minor changes in style. Amendment effective March 15, 1999.

1995 Amendments — Composite Section: Chapter 418 in definition of Department substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of health and environmental sciences provided for in Title 2, chapter 15, part 21"; and made minor changes in style. Amendment effective July 1, 1995.

Because the changes in Ch. 418 reflect the reassignment of duties and because the changes in Ch. 546 are name changes, pursuant to sec. 569, Ch. 546, the Code Commissioner has codified the changes in Ch. 418.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

50-78-103. Applicability — exemptions.

Compiler's Comments

1997 Amendment: Chapter 93 inserted (2)(d) including reference to a public health center defined in 7-34-2102; and made minor changes in style. Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1987 Amendment: Inserted (1)(f)(ii) exempting sealed containers at a distributor's facility under certain conditions; and in (2) substituted "50-78-301(2) through (4)" for "50-78-301(6) through (8)".

Compiler Clarification: A committee of the whole amendment to SB 452 (Ch. 641, L. 1985) inserted subsection (2) of 50-78-301. Because this amendment renumbered subsequent subsections, the compiler has substituted a reference to subsections (6) through (8) of 50-78-301 for a reference to 50-78-301(5) through (7) in subsection (2) of this section to reflect the intent of the bill as introduced.

50-78-104. Relationship to OSHA standard.

Compiler's Comments

1987 Amendment: Substituted present language (see 1987 Session Law for text) for former language that read: "(1) Manufacturing employers and distributors that are regulated by and complying with the provisions of the OSHA standard are exempt from the provisions of this chapter, except for 50-78-202 through 50-78-204 and 50-78-301.

(2) Nonmanufacturing employers that adopt and comply with the provisions of the OSHA standard are exempt from the provisions of this chapter, except for 50-78-202 through 50-78-204 and 50-78-301."

Part 2
Notice Required

50-78-202. Workplace chemical list.

Compiler's Comments

1986 Amendment: Substituted "Each employer shall compile and maintain a workplace chemical list. Except as provided in 50-78-205, the workplace chemical list must contain the chemical name of each hazardous chemical in the workplace, cross-referenced to any generally used common name. For chemical mixtures, the chemical name of each hazardous constituent indicated on the material safety data sheet must be provided in parentheses along with the chemical name. The chemical abstracts service registry number, if available from the material safety data sheet, must accompany all chemical names on the workplace chemical list" for former (1) that read: "Each employer shall compile and maintain a workplace chemical list that must contain the following information for each hazardous chemical present in the workplace:

(a) except as provided in 50-78-205, all generally used common names of any hazardous chemical present in the workplace, cross-referenced to the chemical name; and

(b) the work area in which the hazardous chemical is normally stored or used"; and inserted (2) requiring the workplace chemical list to indicate the work area in which each hazardous chemical is normally stored or used.

50-78-204. Employee rights.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Information and Education

50-78-301. Emergency and community information.

Compiler's Comments

1991 Amendment: In second sentence of (4) substituted "50-62-102" for "50-62-108". Amendment effective April 29, 1991.

1987 Amendment: In contingent version, deleted former (1) through (5) that related to recording workplace hazardous chemicals with the County Clerk and Recorder and allowing inspection of the recorded documents by the public and the local fire chief; and inserted (1) requiring employer compliance with federal Emergency Planning and Community Right-to-Know Act of 1986.

Contingent Effective Date: Section 4, Ch. 536, L. 1987, provided: "Effective date. (1) This act, except for section 3 [amending 50-78-301], is effective on passage and approval.

(2) Section 3 [amending 50-78-301] is effective on completion of the following sequence of events in Montana under the provisions of the federal Emergency Planning and Community Right-to-know Act of 1986:

(a) the appointment of an emergency planning commission by the governor;

(b) the designation by the commission of emergency planning districts that together encompass the entire state; and

(c) the appointment of members to local planning committees in each district." The contingency has occurred.

1986 Amendment: In (1) at beginning deleted "Except as provided in subsection (2)", and in middle of introduction substituted "record" for "submit"; deleted former (1)(a) that read: "(a) a copy of the most current material safety data sheet certified by the employer for each hazardous chemical in the workplace"; and substituted "An employer may record a copy of a material safety data sheet for any hazardous chemical in the workplace" for former (2) that read: "The county clerk and recorder shall record and update as necessary an index listing each hazardous chemical for which a material safety data sheet has been recorded in the county. The index must include the name of the employer who recorded the material safety data sheet. No employer shall be required to record a material safety data sheet for any hazardous chemical for which a material safety data sheet has already been recorded by any employer in the county."

50-78-305. Employee education program.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Part 4
Enforcement and Penalties

50-78-402. Complaints, investigation, and penalties.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

CHAPTER 79
NUCLEAR REGULATION

Part 1
General Provisions

Part Law Review Articles

Federal Limitations on State Power to Regulate Radioactive Waste, Smith, 43 Mont. L. Rev. 271 (1982).

50-79-103. Definitions.

Compiler's Comments

1997 Amendments: Chapter 42 in introduction substituted "10 CFR 1-171 and 49 CFR 173.401 through 173.478, subpart I" for "10 CFR 1-199 and 49 CFR 173.389-173.399"; and in definition of large quantity radioactive material substituted "means highway route controlled quantity as defined in 49 CFR 173.403" for "is that quantity of radioactive material defined in 49 CFR 173.389(b)". Amendment effective March 12, 1997.

Chapter 73 in definition of Department substituted "department of public health and human services" for "department of environmental quality". Amendment effective July 1, 1997.

1995 Amendment: Chapter 418 in definition of Department substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

1980 Amendment by Initiative 84: In subsection (1), substituted "(1) any" for "a" before "radioactive material", added "and (2) . . . content", and made minor changes in punctuation.

50-79-107. Inspections.

Law Review Articles

The Constitutionality of Civil Inspections, Angel & Corontzos, 21 Mont. L. Rev. 195 (1960).

Part 2
Control of Radioactive Substances

Part Law Review Articles

Federal Limitations on State Power to Regulate Radioactive Waste, Smith, 43 Mont. L. Rev. 271 (1982).

50-79-201. State radiation control agency.

Compiler's Comments

1995 Amendment: Chapter 471 in (3) inserted "subject to the provisions of 75-3-410 [renumbered 50-79-410]"; and made minor changes in style. Amendment effective April 14, 1995.

Applicability: Section 22(3), Ch. 471, L. 1995, provided: "(3) [This act] does not apply to the establishment of fees or public participation requirements."

50-79-202. Licensing and registration.

Compiler's Comments

1983 Amendment: In (1), in first sentence changed "department shall" to "department may".

Statement of Intent: The statement of intent attached to HB 862 (Ch. 574, L. 1983) provided: "A statement of intent is required for HB-862 because it affects the rulemaking and licensing authority of the Department of Health and Environmental Sciences [now Department of Environmental Quality] relating to possession and use of radioactive materials and devices utilizing such materials. Under current law, 75-3-202 [renumbered 50-79-202], MCA, mandates the department to adopt rules for general or specific licensing of persons to receive, possess or transfer radioactive materials and devices utilizing such materials. However, because of budgetary constraints, the department has been unable to implement the licensing program. HB-862 would give the department the discretion to adopt and enforce such rules when legislative appropriations make program implementation possible."

Part 3
Disposal of Large Quantities of Radioactive Material

50-79-302. Disposal of large quantities of radioactive material prohibited — exceptions and exclusion.

Compiler's Comments

1980 Amendment by Initiative 84: In subsection (1), deleted "in Montana" after "dispose of", and substituted "byproduct material, or special nuclear material within the state of Montana" for "produced in other states"; in subsection (2), inserted "(except large quantity radioactive material)", substituted "similar uses" for "other purposes" before "licensed by", and substituted "provided that . . . of this Act" for "during the period of possession use, and transportation prior to disposal"; and in subsection (3), added "or the mining . . . with this part".

Severability: Section 5 of Initiative No. 84, approved by the electors of Montana on November 4, 1980, was a severability clause.

Law Review Articles

Federal Limitations on State Power to Regulate Radioactive Waste, Smith, 43 Mont. L. Rev. 271 (1982).

50-79-303. Penalty.

Compiler's Comments

1980 Amendment by Initiative 84: Substituted the first two sentences concerning penalty for a person who knowingly or purposely disposes of large quantity radioactive material, byproduct material, or special nuclear material for "A person convicted of violating this part is guilty of a misdemeanor and shall be fined an amount not less than $250 for each offense."

Severability: Section 5 of Initiative No. 84, approved by the electors of Montana on November 4, 1980, was a severability clause.

Part 4
Enforcement, Appeal, and Penalties

50-79-401. Administrative hearings.

Compiler's Comments

1995 Amendment: Chapter 418 substituted "board of environmental review" for "board of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

50-79-406. Injunctions.

Compiler's Comments

Saving Clause: Section 5, Ch. 323, L. 1989, was a saving clause.

50-79-407. Civil penalties — deposit in general fund — injunctions not barred.

Compiler's Comments

Saving Clause: Section 5, Ch. 323, L. 1989, was a saving clause.

50-79-410. State regulations no more stringent than federal regulations or guidelines.

Compiler's Comments

Preamble: The preamble attached to Ch. 471, L. 1995, provided: "WHEREAS, the federal government frequently regulates areas that are also subject to state regulation; and

WHEREAS, differing state and federal policy goals and unique state prerogatives frequently result in different levels of regulation, different standards, and different requirements being imposed by state and federal programs covering the same subject matter; and

WHEREAS, Montana must simultaneously move toward reducing redundant and unnecessary regulation that dulls the state's competitive advantage while being ever vigilant in the protection of the public's health, safety, and welfare; and

WHEREAS, Montana's administrative agencies should consider applicable federal standards when adopting, readopting, or amending rules with analogous federal counterparts; and

WHEREAS, Montana's administrative agencies should analyze whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana's citizens; and

WHEREAS, as part of the formal rulemaking process, the public should be advised of the agencies' conclusions about whether analogous federal standards sufficiently protect the health, safety, and welfare of Montana citizens."

1995 Statement of Intent: The statement of intent attached to Ch. 471, L. 1995, provided: "A statement of intent is required for this bill in order to provide guidance to the board of health and environmental sciences [now board of environmental review], the department of health and environmental sciences [now department of environmental quality], and local units of government in complying with [this act].

The legislature intends that in addition to all requirements imposed by existing law and rules, the board or the department include as part of the initial publication and all subsequent publications of a rule a written finding if the rule in question contains any standards or requirements that exceed the standards or requirements imposed by comparable federal law.

If the rules are more stringent than comparable federal law, the written finding must include but is not limited to a discussion of the policy reasons and an analysis that supports the board's or department's decision that the proposed state standards or requirements protect public health or the environment of the state and that the state standards or requirements to be imposed can mitigate harm to the public health or the environment and are achievable under current technology. The department is not required to show that the federal regulation is inadequate to protect public health. The written finding must also include information from the hearing record regarding the costs to the regulated community directly attributable to the proposed state standard or requirement."

Effective Date: Section 23, Ch. 471, L. 1995, provided that this section is effective on passage and approval. Approved April 14, 1995.

Applicability: Section 22(1) and (3), Ch. 471, L. 1995, provided: "(1) [Sections 1 through 3] are intended to apply to any rule that is in effect, adopted, or amended, and that regulates those resources or activities for which the state has been given primary authority to regulate by federal authority pursuant to Title 75, chapter 2; Title 75, chapter 3 [renumbered Title 50, chapter 79]; Title 75, chapter 5; Title 75, chapter 6; or Title 75, chapter 10, as of [the effective date of this act] [April 14, 1995].

(3) [This act] does not apply to the establishment of fees or public participation requirements."

Part 5
Northwest Interstate Compact on Low-Level Radioactive Waste Management

Part Compiler's Comments

Negotiation for Regional Disposal Facilities: HJR 42 (1981) directed the governor to negotiate an interstate compact with the state of Washington and other interested western states to provide for regional disposal facilities for low-level radioactive waste. The 1983 Legislature ratified the compact which is the subject of this part.

50-79-501. Northwest Interstate Compact on Low-Level Radioactive Waste Management.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

50-79-502. Administration of compact — fees.

Compiler's Comments

1997 Amendment: Chapter 73 in (1) substituted "department of public health and human services" for "department of environmental quality". Amendment effective July 1, 1997.

1995 Amendment: Chapter 418 in (1) substituted "department of environmental quality" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

1983 Amendment: In (2), substituted "state special revenue fund" for "earmarked revenue fund".

Statement of Intent: The statement of intent attached to HB 203 (Ch. 242, L. 1983) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Health and Environmental Sciences [now Department of Environmental Quality]. The purpose of this bill is to authorize the State of Montana to participate in the Northwest Interstate Compact on Low-Level Radioactive Waste Management. Member states agree to adopt practices (primarily on-site inspections) to assure that low-level waste shipments conform to the packaging and transportation requirements of the state where the waste is to be disposed. As a member, Montana will be able to send its low-level wastes to a disposal site in Washington.

The Department of Health already has rulemaking authority (75-3-201(3)(b) [renumbered 50-79-201(3)(b)], MCA) for the regulation of low-level radioactive wastes. This bill makes that existing authority applicable to the implementation of the terms of the Compact. The Department is also authorized to assess fees for the recovery of the costs of on-site inspections. Fees are to be assessed for that purpose only."

TITLE 51

RESERVED

TITLE 52
FAMILY SERVICES

Title Compiler's Comments

Contingent Effective Date: Section 118, Ch. 609, L. 1987, provided in part: "Sections 1 through 116 and this section are effective upon signing of the executive order under section 117(1) or on October 1, 1987, whichever occurs first."

Executive Orders: The Governor by Executive Order No. 13-87, issued July 22, 1987, and by Executive Order No. 19-87, issued October 22, 1987, implemented provisions governing creation of the Department of Family Services (now Department of Public Health and Human Services) according to sec. 117, Ch. 609, L. 1987.

Title Administrative Rules

Title 20, chapter 9, ARM Department of Corrections — youth services.

Title 37, ARM Department of Public Health and Human Services rules.

CHAPTER 1
ADMINISTRATION

Part 1
General

Part Attorney General's Opinions

Payment of Proportionate Share of Administrative Costs by Nonassumed Counties — Action to Recover Disputed Claims: Under 53-2-322 (now repealed), a nonassumed county is required to pay its proportionate share of administrative costs for protective services, including rent, adequate equipment, and supplies. The responsibility to pay a proportionate share, other than salaries, travel expenses, and indirect employee costs, is not capped at the amount paid in fiscal year 1987. An action to recover a disputed claim filed more than 6 months after denial of the claim is barred by the statute of limitations in 27-2-209. 45 A.G. Op. 23 (1994).

52-1-101. Purpose.

Compiler's Comments

1995 Amendment: Chapter 546 in introductory clause, after "services", inserted "except youth correctional services"; deleted former (2) that read: "(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need of supervision or delinquent youth who are referred or committed to the department"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

52-1-102. Definitions.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services provided for in 2-15-2401"; and in definition of Director substituted "director of public health and human services provided for in 2-15-2201" for "director of family services provided for in 2-15-2401". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

52-1-103. Powers and duties of department.

Compiler's Comments

2023 Amendments — Composite Section: Section 10, Ch. 12, L. 2023, in (8)(b) substituted "vulnerable adult abuse" for "elder abuse". Amendment effective October 1, 2023.

Section 1, Ch. 17, L. 2023, in (10) substituted "older adults" for "the aged". Amendment effective February 23, 2023.

2003 Amendment: Chapter 114 in (7) substituted "Interstate Compact for the Placement of Children" for "interstate compact for children". Amendment effective October 1, 2003.

2001 Amendment: Chapter 571 in (13) near beginning after "contract, as necessary" deleted "with the county board of welfare"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendments: Chapter 171 inserted (3) requiring establishment of a system of councils; deleted former (8)(a) that read: "(a) make a written evaluation of each plan developed by the local family services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those portions that will not be implemented, and the reasons for not implementing those portions"; in (9), at end, deleted "as reflected in plans developed by the local family services advisory councils"; and made minor changes in style.

Chapter 472 in (11)(a) substituted reference to adults who have disabilities for reference to handicapped adults; and made minor changes in style.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (4), the Code Commissioner has made the change.

Chapter 458 in (4), at beginning, inserted "register or". Amendment effective April 14, 1995.

Chapter 546 deleted former (3) that read: "(3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who are referred or committed to the department"; deleted former (5) and (6) that read: "(5) administer youth correctional facilities;

(6) provide supervision, care, and control of youth released from a state youth correctional facility"; at end of (6) substituted "compact for children" for "compacts for children and delinquent youth"; deleted (14) and (15) that read: "(14) utilize at maximum efficiency the resources of state government in a coordinated effort to:

(a) provide for children in need of temporary protection or correctional services; and

(b) coordinate and apply the principles of modern institutional administration to the institutions in the department;

(15) subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:

(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and

(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions in the department"; deleted (17) that read: "(17) propose programs with specific goals and objectives to the legislature to meet the projected long-range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department"; in (13), after "41-3-1126", deleted "41-5-527 through 41-5-529"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 91 in (11)(a) and (11)(b) substituted reference to local family services advisory councils for reference to local youth services advisory councils. Amendment effective July 1, 1993.

1991 Amendment: Inserted (2) relating to services to children with multiagency service needs. Amendment effective July 1, 1991.

1989 Amendments: Chapter 83 in (6) substituted "severely disabled persons" for "physically disabled persons".

Chapter 692 inserted (7) relating to Montana Child Care Act.

1987 Statement of Intent: The statement of intent attached to Ch. 609, L. 1987, provided: "A statement of intent is required for this bill because section 5 [52-1-103] grants rulemaking authority to the department of family services [now department of public health and human services] to adopt rules necessary to carry out the purposes of sections 3 through 10 and 15 through 19 [41-3-1126, 52-1-101 through 52-1-103, 52-1-105 (now repealed), 52-1-201 through

52-1-203, (52-1-202 and 52-1-203 now repealed), and 41-5-525 through 41-5-529] (renumbered 41-5-121 through 41-5-125).

Rules are primarily necessary to implement sections 7 and 8 [52-1-202 and 52-1-203, both now repealed] of the bill. These sections require that a state youth services council [now state family services council] and local youth services advisory councils [now local family services advisory councils] be established to advise the director of the department on policies related to children and youth, to make an annual written review and evaluation of local needs and services, and to develop a local plan for a system of community-based services for children and youth.

The rules to be adopted would address:

(1) the composition, membership requirements, and operating procedures for the state and local advisory councils;

(2) procedures for the development and format of the annual written review and evaluation of services;

(3) procedures for the preparation and format of the state plan; and

(4) other guidelines necessary for the administration and operation of the state and local advisory councils.

It is also intended that the department adopt rules necessary to carry out its duties and responsibilities set forth in section 5 [52-1-103]. These rules will be adopted in a manner consistent with the expressed purposes of the legislation and the existing rulemaking authority of the department of social and rehabilitation services that are transferred to the department of family services [functions now consolidated in department of public health and human services].

In addition, the department will adopt rules governing the establishment and administration of youth placement committees as provided in sections 15 through 19 [41-5-525 through 41-5-529, renumbered 41-5-121 through 41-5-125]."

Sections Not Codified: Section 14, Ch. 609, L. 1987, dealt with county contribution for salaries and travel of protective services employees for fiscal year 1987.

Section 20, Ch. 609, L. 1987, dealt with retention of employment status of state employees transferred to the Department of Family Services (now Department of Public Health and Human Services).

Administrative Rules

Title 20, chapter 9, ARM Youth services.
Title 37, chapter 41, ARM Aging services.
Title 37, chapter 47, ARM Protective services.
Title 37, chapter 50, ARM Foster care services and guardianship services.
Title 37, chapter 93, ARM Licensure of child placing agencies.
Title 37, chapter 95, ARM Licensure of day-care facilities.
Title 37, chapter 97, ARM Licensure of youth care facilities.

Case Notes

Lack of District Court Jurisdiction in Claim for Damages — Failure to Exhaust Administrative Remedies: Gilpins initiated suit for damages resulting from temporary suspension of their day-care license by the Department of Family Services (now Department of Public Health and Human Services), contending that, under 3-5-302, jurisdiction was in the District Court because the action involved a civil claim against the state for payment of money. However, the Supreme Court held that the District Court properly dismissed the claim for lack of jurisdiction because Gilpins failed to exhaust all administrative remedies available within the agency, as required by 2-4-702, and because there was no showing made pursuant to 2-4-701 that a review of the agency decision by a hearings examiner would not provide an adequate remedy. Gilpin v. St., 249 M 37, 812 P2d 1265, 48 St. Rep. 567 (1991).

52-1-104. Department authorized to provide and set standards for supplementary payments.

Compiler's Comments

2003 Amendment: Chapter 54 in (3) after "category B" substituted "assisted living" for "personal-care"; and made minor changes in style. Amendment effective October 1, 2003.

1993 Amendment: Chapter 590 at beginning of (1) inserted exception clause; and inserted (3) concerning prohibition of supplementary payments. Amendment effective July 1, 1994.

Administrative Rules

Title 37, chapter 43, ARM Supplemental security income payments.

CHAPTER 2
CHILDREN'S SERVICES

Chapter Compiler's Comments

Strategic Plan for Developing and Expanding Prevention Services — Report to Legislature: Section 1, Ch. 203, L. 2019, provided: "(1) By August 15, 2020, the department shall develop a strategic plan to apply for and utilize funding available under the Family First Prevention Services Act, Title VII of Public Law 115-123. The plan must review factors and propose strategies specific to Montana's urban and rural areas, as well as the state's Indian communities and reservations.

(2) The plan must:

(a) adopt definitions for integral Family First Prevention Services Act terms, including but not limited to:

(i) adverse childhood experiences;

(ii) prevention services;

(iii) trauma; and

(iv) trauma-informed care;

(b) inventory existing programs to determine whether existing programs or components of existing programs would qualify for Family First Prevention Services Act funding or could be adapted to qualify for funding;

(c) review research and programs from other states related to prevention services and trauma-informed care;

(d) evaluate need and capacity for new prevention-focused services in Montana; and

(e) draft an evidence-based, trauma-informed plan for providing prevention services in Montana to be used in applying for Family First Prevention Services Act funding in 2021.

(3) The department shall involve a variety of stakeholders in the development of the strategic plan.

(4) The department shall provide a copy of the strategic plan to the children, families, health, and human services interim committee and the legislative finance committee by September 15, 2020." Effective October 1, 2019.

Although there was a codification instruction for this section, because sec. 1, Ch. 203, L. 2019, requires the Department of Public Health and Human Services to prepare a plan and deliver a report no later than September 15, 2020, the section is not being codified due to its short duration.

Preamble: The preamble attached to Ch. 301, L. 1993, provided: "WHEREAS, the Joint Interim Subcommittee on Children and Families, established by House Joint Resolution No. 54 of the 1991 Regular Session, studied the following issues: the existing and the ideal continuum of services for children and families, especially programs for those families that are at risk of out-of-home placement of their children; the feasibility of instituting early identification and intervention programs for at-risk families; interagency coordination of programs and services for at-risk children and families in Montana; and the feasibility of establishing a statutory legislative oversight committee to review and monitor public and private programs and services for children and families;

WHEREAS, the Joint Interim Subcommittee on Children and Families concluded its study assignments by recommending numerous policy and programmatic changes related to the above issues, including the establishment of an oversight committee that could monitor the implementation of legislative recommendations or coordinate further study of emerging issues related to programs for children and families in Montana.

THEREFORE, the Legislature of the State of Montana finds it is appropriate to establish a joint oversight committee on children and families [now Children, Families, Health, and Human Services Interim Committee]."

Chapter Administrative Rules

Title 37, chapter 47, ARM Protective services.

Title 37, chapter 50, ARM Foster care services and guardianship services.

Title 37, chapter 52, ARM Adoptive services.

Part 1
Child Welfare Services

Part Administrative Rules

Title 37, chapter 47, ARM Protective services.

Part Attorney General's Opinions

Retroactive Foster Care Payments: In the absence of a determination that foster care assistance was improperly denied, neither a County Department of Public Welfare nor the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) is required to retroactively pay foster care costs on behalf of a relinquished child. Where there is a determination made that foster care assistance was improperly denied, only the foster home involved is entitled to foster care payments. 38 A.G. Op. 11 (1979).

Public and Private Placement Agencies: County Departments of Public Welfare may not deny foster care payments solely because the child receiving foster care has been relinquished to a private rather than public placement agency. If eligibility is established, County Departments of Public Welfare are required to approve foster care payments to a foster home on behalf of a child who has been relinquished to a private placement agency. 38 A.G. Op. 11 (1979).

County Power — "Big Brothers and Big Sisters": Counties may contract with Big Brothers and Big Sisters organizations to furnish adult companionship, guidance, and counseling to needy and troubled children. 37 A.G. Op. 105 (1978).

County Power — "4-C's": Counties, jointly with the state Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), may contract with local "4-C's" projects to provide coordination and support of child abuse prevention and treatment services. 37 A.G. Op. 105 (1978).

Part Collateral References

Grants to States for Aid and Services to Needy Families With Children and for Child Welfare Services, Title 42, ch. 7, subchapter 4, U.S.C.

52-2-101. Definitions.

Compiler's Comments

1995 Amendments: Chapter 18 deleted former definition of emotionally disturbed child that read: ""Emotionally disturbed child" means a child determined by a psychologist, psychiatrist, licensed social worker, or special education child study team (established under rules adopted by the superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:

(i) an identifiable mental health problem as identified in a nationally recognized classification system or as defined in 20-7-401(8); and

(ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a dysfunction in any of the following areas:

(A) relationships;
(B) behavior;
(C) cognition; or
(D) education.

(b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one recognized by rules established by the department"; and deleted former definition of public assistance that read: ""Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Chapter 458 in definition of child welfare services, after "abused", deleted "dependent"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services provided for in 2-15-2401"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 356 in definition of emotionally disturbed child, in (a)(i), substituted "20-7-401(8)" for "20-7-401(5)". Amendment effective July 1, 1993.

1991 Amendment: In (3)(a)(i) changed subsection reference. Amendment effective July 1, 1991.

1987 Amendments: Chapter 447 inserted definition of emotionally disturbed child.

Chapter 609 at end of definition of child welfare services substituted "abused, dependent, or neglected children" for "homeless, dependent, and neglected children and children in danger of becoming delinquent"; deleted former (2) that read: "(2) "Child welfare worker" means staff personnel who have had education and training in the field of child welfare and who are qualified and accepted as such in conformity with the standards established by the department"; and substituted definition of Department of Family Services for definition of Department of Social and Rehabilitation Services and corrected internal reference.

1987 Statement of Intent: The statement of intent attached to Ch. 447, L. 1987, provided: "A statement of intent is required for this bill because the purpose of this bill is to allow the department of social and rehabilitation services [now department of public health and human services] to develop rules for identifying youth who are emotionally disturbed. The department shall use a nationally recognized classification system such as the Diagnostic and Statistical Manual of Mental Disorders, 3rd Edition (DSM-III) to identify mental health problems used to define "emotionally disturbed child"."

Attorney General's Opinions

County Power — "Big Brothers and Big Sisters": Counties may contract with Big Brothers and Big Sisters organizations to furnish adult companionship, guidance, and counseling to needy and troubled children. 37 A.G. Op. 105 (1978).

52-2-102. Recognition of parental control of children — placement with extended family.

Compiler's Comments

1995 Amendment: Chapter 494 inserted second sentence requiring placement of a child with the child's extended family prior to placement in an alternative protective or residential facility; and made minor changes in style.

52-2-110. Department to oversee federal funds supporting legal services for children.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

52-2-111. Administrative duties of department.

Compiler's Comments

2021 Amendment: Chapter 356 inserted (2) concerning requiring annual child welfare supervisory training for employees hired as district supervisors or supervisors of field staff; inserted (3) concerning making the annual child welfare supervisory training available to qualifying child protection specialists; and made minor changes in style. Amendment effective July 1, 2021.

Transition: Section 2, Ch. 356, L. 2021, provided: "To implement the provisions of [this act]:

(1) all division employees who are in supervisory positions on [the effective date of this act] [July 1, 2021] shall complete an initial annual child welfare supervisory training within 1 year of [the effective date of this act] [July 1, 2021]; and

(2) all department employees who are hired after [the effective date of this act] [July 1, 2021] to fill a supervisory position shall complete an initial annual child welfare supervisory training within 1 year of the date of hiring.

(3) The department shall update the children, families, health, and human services interim committee during the 2021-2022 interim on its progress in complying with the provisions of [this act]."

Applicability: Section 4, Ch. 356, L. 2021, provided: "[Section 1] applies to individuals hired for supervisory positions on or after July 1, 2021."

1995 Amendments — Composite Section: Chapter 418 in (2) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995. The amendment in Ch. 546 rendered amendments in Ch. 418 void.

Chapter 546 at end of (2), after "state", deleted "except the child welfare services which are administered by the department of health and environmental sciences and the department of social and rehabilitation services". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: In (2), in two places, substituted "welfare services" for "welfare activities" and at end inserted reference to Department of Social and Rehabilitation Services.

Administrative Rules

Title 37, chapter 50, ARM Foster care services and guardianship services.

Title 37, chapter 51, ARM Youth foster homes.

Title 37, chapter 97, ARM Licensure of youth care facilities.

52-2-112. Duty to strengthen child welfare services.

Compiler's Comments

1995 Amendment: Chapter 458 in first sentence, after "children in", inserted "registered or". Amendment effective April 14, 1995.

1983 Amendment: Changed 41-3-104 to 41-3-1122 and 41-5-807 to 41-3-1115.

1981 Amendment: Substituted "licensed family foster homes, child care agencies, group homes, or treatment facilities" for "family foster homes" in the first sentence; substituted the last sentence providing for payment according to statute for "When funds are available for that purpose, the department may make agreements for the payment of compensation for keeping children in family foster homes."

Attorney General's Opinions

Retroactive Foster Care Payments: In the absence of a determination that foster care assistance was improperly denied, neither a County Department of Public Welfare nor the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) is required to retroactively pay foster care costs on behalf of a relinquished child. Where there is a determination made that foster care assistance was improperly denied, only the foster home involved is entitled to foster care payments. 38 A.G. Op. 11 (1979).

Public and Private Placement Agencies: County Departments of Public Welfare may not deny foster care payments solely because the child receiving foster care has been relinquished to a private rather than public placement agency. If eligibility is established, County Departments of Public Welfare are required to approve foster care payments to a foster home on behalf of a child who has been relinquished to a private placement agency. 38 A.G. Op. 11 (1979).

County Power — "4-C's": Counties, jointly with the state Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), may contract with local "4-C's" projects to provide coordination and support of child abuse prevention and treatment services. 37 A.G. Op. 105 (1978).

52-2-113. Child rehabilitation — duties of department.

Compiler's Comments

1997 Amendment: Chapter 472 in (2) substituted "children with physical disabilities" for "physically handicapped children".

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (2), the Code Commissioner has made the change.

Chapter 458 in (1), after "abused", deleted "dependent, and"; in (4), near beginning, inserted "register or"; and made minor changes in style. Amendment effective April 14, 1995.

1987 Amendments: Chapter 398 in (1), after "interest of", substituted "abused" for "illegitimate", after "neglected" deleted "and delinquent", and after "children" deleted "where adequate provision therefor has not been made by law"; in (2), after "funds", substituted language requiring the Department to use appropriated or allocated funds to provide for special medical or material needs of eligible children for "available for cases where special medical or material assistance is necessary to rehabilitate subnormal or physically handicapped children and where it is not otherwise provided for by law"; in (4), after "license", deleted "and supervise" and substituted "youth care facilities" for "infants' homes and child-caring and", after "child-placing" deleted "institutions and", and after "agencies" inserted "and adoption agencies"; and made minor changes in phraseology.

Chapter 609 in (2) substituted "developmentally disabled" for "subnormal"; and in (4) substituted "youth care facilities" for "public and private infants' homes and child-caring" and after "child-placing" deleted "institutions and".

Attorney General's Opinions

Licensure of Foster Care Homes on Indian Reservations: The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) has the authority to license foster care homes maintained by nontribal members on Indian reservations. The Department has authority to license foster care homes operated by tribal members located on Indian reservations only if the tribe does not engage in such licensing activity. 41 A.G. Op. 76 (1986).

52-2-114. Department to supervise importation and exportation of children.

Administrative Rules

ARM 37.50.901 Interstate Compact on the Placement of Children.

52-2-115. Department to accept custody of children.

Compiler's Comments

2003 Amendment: Chapter 504 after "accept the" substituted "physical custody of children transferred to the physical or legal custody of the department by the district court pursuant to the provisions of Title 41, chapter 3" for "guardianship or custody of children committed by the courts to the department". Amendment effective October 1, 2003.

1987 Amendment: At end, after "care", deleted "in family foster homes or otherwise in cooperation with county departments of public welfare".

Administrative Rules

Title 37, chapter 47, ARM Protective services.

Title 37, chapter 50, ARM Foster care services and guardianship services.

Title 37, chapter 52, ARM Adoptive services.

Case Notes

When Adoption Requires Consent of Department: Where State Department of Public Welfare (now Department of Public Health and Human Services), to which court awarded minor children on ground that the children were dependent and neglected, refused to give its consent to adoption of children, court could not make an adoption order since the Department was in loco parentis to the children. State ex rel. Frederick v. District Court, 119 M 143, 173 P2d 626 (1946).

52-2-117. Indian child welfare specialist.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 50, Ch. 716, L. 2023. Amendment effective July 1, 2023, and terminates June 30, 2025.

Preamble: The preamble attached to Ch. 716, L. 2023, provided: "WHEREAS, there is, at the present time, a court case before the United States Supreme Court known as Haaland v. Brackeen, No. 21-376, that has the potential to overturn or modify the Indian Child Welfare Act in its current form, and the Legislature seeks to provide guidance for Indian child protection cases in the interim as this case is decided. The Legislature does not expect this to be the final word on how we deal with Indian child welfare issues or how we seek to provide for all of Montana's children within the child protection system."

1995 Amendment: Chapter 144 in (1) substituted "qualified person" for "qualified employee of the department"; and made minor changes in style. Amendment effective March 15, 1995.

Law Review Articles

The Indian Child Welfare Act of 1978: A Montana Analysis, DuMontier-Pierre, 56 Mont. L. Rev. 505 (1995).

52-2-121. Development of state permanent placement policy and plan.

Compiler's Comments

Preamble: The preamble attached to Ch. 326, L. 1995, provided: "WHEREAS, the best interests and future well-being of Montana's children and families continue to be paramount considerations in maintaining the health and prosperity of this state; and

WHEREAS, according to data supplied by the Department of Family Services' [now Department of Public Health and Human Services] foster care payment system, over 500 identified children have been in continuous out-of-home placement for 2 years or longer; and

WHEREAS, it is in the interests of the Legislature and the people of the state of Montana that all children in custody of the Department of Family Services [now Department of Public Health and Human Services] have a lifelong family connection, either by a safe and productive return to their birth family or, if that is not possible, by finding those children a permanent home; and

WHEREAS, the Joint Oversight Committee on Children and Families has recommended development of a state policy and plan for permanent placement for children in the state's child welfare system; and

WHEREAS, Montana's Uniform Adoption Act, as enacted in 1957 and revised periodically, may again be in need of amendment or further revision to address the problem of permanent placement of Montana's children."

Interim Review of Adoption Law: Section 2, Ch. 326, L. 1995, provided: "(1) As part of the implementation of a state permanent placement policy and plan for children as required under [section 1] [52-2-121], the department shall conduct a study of Montana adoption laws and policy. The study must include but is not limited to a review of Montana's current adoption laws and the Uniform Adoption Act of 1994 adopted by the national conference of commissioners on uniform state laws. The department shall facilitate the study through appointment of a volunteer advisory committee composed of persons representing groups or associations interested in the various aspects of policies pertaining to permanent placement of children and to adoption. The department may provide staff, facilities, and related expertise in conducting the study. The advisory committee shall:

(a) review the provisions of Montana's current adoption laws and the Uniform Adoption Act of 1994;

(b) identify areas of Montana adoption law that may need amendment, revision, or restructuring in order to implement the policy and plan for permanent placement of children developed under [section 1] [52-2-121];

(c) identify any other aspects of Montana adoption law in which revision, amendment, or replacement would facilitate or improve the adoption process;

(d) coordinate with the Montana supreme court regarding the permanent placement study and the court's federal court improvement grant; and

(e) report any recommendations or suggestions to the department for subsequent report to the legislature.

(2) Upon receipt of any committee recommendations or suggestions, the department shall submit the findings, along with any related department suggestions and recommendations, as part of the permanent placement report required under [section 3] [not codified]."

Part 2
Multiagency Children's Services

52-2-202. Definitions.

Compiler's Comments

1995 Amendments — Composite Section: Chapter 418 in definition of state agency, in (b), substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995. The deletion of subsection (3)(b) by Ch. 546 and the assignment of duties to the Department of Public Health and Human Services contained in sec. 570, Ch. 546, rendered the amendment in Ch. 418 void.

Chapter 546 in definition of state agency deleted former (a) and (b) that read: "(a) the department of family services provided for in 2-15-2401;

(b) the department of health and environmental sciences provided for in 2-15-2101", in (a) substituted "department of corrections" for "department of corrections and human services", and in (c) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Name Change: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

52-2-203. Cooperative agreement regarding children's services.

Compiler's Comments

1995 Amendment: Chapter 546 in (3), in two places, substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

52-2-211. County or regional interdisciplinary child information and school safety team.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 348, L. 2023. Amendment effective July 1, 2023.

2021 Amendment: See 2021 Session Law for amendment made by sec. 82, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2019 Amendment: Chapter 248 in (1) at beginning substituted current introductory text for former text that read: "The following persons and agencies operating within a county shall by written agreement form a county interdisciplinary child information and school safety team"; in (1)(g) substituted "any board of trustees of a public school district operating within the boundaries of the county" for "the superintendents of public school districts"; inserted (2) concerning regional interdisciplinary child information and school safety teams formed by officials from two or more counties; in (3) near beginning after "persons and agencies" substituted "listed in subsection (1) or (2)" for "signing a written agreement under subsection (1)" and after "following persons to" deleted "sign the written agreement and"; in (4)(a) deleted former last sentence that read: "Auxiliary teams are subject to the written agreement"; in (5) near beginning substituted "is to ensure the timely exchange" for "and written agreement is to facilitate the exchange", after "41-5-215(2)" deleted "and (3)", and at end substituted "this section" for "subsection (1) or (2)"; in (6) at beginning substituted "A written agreement may be created to" for "The terms of the written agreement must" and at end inserted "Any agreement created may not limit access of any team member to information under 41-5-215(2)"; in (7) at beginning substituted "An interdisciplinary child information and school safety team shall" for "The terms of the written agreement must state how the team will"; in (8) substituted "county or regional interdisciplinary child information and school safety team" for "county interdisciplinary child information and school safety team" and substituted third sentence concerning conditions of disclosure by officials and authorities for former sentence that read: "The terms of the written agreement described in subsection (5) must include a requirement that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student"; inserted (9) providing deadlines for the county superintendent of schools and the office of public instruction concerning written agreements; and made minor changes in style. Amendment effective May 2, 2019.

2013 Amendment: Chapter 364 in (1) after "county" substituted "shall" for "may" and after "information" inserted "and school safety"; in (4) at end of first sentence inserted "and of information relating to issues of school safety" and at end substituted "organizations or departments that have an authorized member on the team under subsection (1) or (2)" for "team"; in (7) in first sentence after "information" inserted "and school safety"; and made minor changes in style. Amendment effective July 1, 2013.

1999 Amendment: Chapter 564 in (4) inserted reference to 41-5-215(3). Amendment effective October 1, 1999.

1997 Amendment: Chapter 550 in (2), at end, in (2)(d), and near beginning of (3)(a), before "team", deleted "information"; inserted (3)(b) requiring auxiliary team member to be familiar with the child or children in member's field; in (4), at end of first sentence, substituted "but not limited to abused or neglected children, delinquent youth, and youth in need of intervention" for "but not limited to abused, neglected, and delinquent children and youth in need of supervision"; inserted (6) requiring team to put in writing its coordination plans with interdisciplinary child protective teams and youth placement committees; inserted (7) regarding release of education records to team; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendments: Chapter 458 in (4), in first sentence after "neglected", deleted "dependent". Amendment effective April 14, 1995.

Chapter 466 in (4), after reference to 41-3-205, deleted "41-5-602" and after "41-5-603" (renumbered 41-5-215) inserted "(2)". Amendment effective April 14, 1995.

Chapter 546 in (1)(c) substituted "department of public health and human services" for "department of family services"; inserted (1)(h) authorizing Department of Corrections to be included on team; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 6, Ch. 510, L. 1991, provided that this section is effective July 1, 1991.

Part 3

Multiagency Service Placement Plan

Part Compiler's Comments

Multiagency Children's Services Initiative: Sections 1 through 4, Ch. 416, L. 2001, provided: "Section 1. Purpose. The legislature finds that it is necessary to immediately direct coordinated efforts to provide services to children with serious emotional disturbances who are in need of integrated services from multiple agencies. The legislature directs that the respective agencies engage in unified planning to further develop a continuum of services to reduce the use of high-cost, highly restrictive, out-of-home residential placements. The legislature directs that concentrated efforts be made to bring together the respective agencies that provide multiagency services to children with serious emotional disturbances for the purpose of containing costs and increasing the capacity of communities to serve these children in the least restrictive environment. These efforts are intended to parallel and supplement efforts to develop long-term structural changes in the public mental health system.

Section 2. Coordination of integrated multiagency services for children with serious emotional disturbances. (1) The department of public health and human services shall work with the office of public instruction, the department of corrections, the department of justice, and youth courts to coordinate responsibility for integrated multiagency services for children with serious emotional disturbances. The collaboration may include:

(a) pooling funding from federal, state, and local sources, to the extent possible, to maximize the most cost-effective use of funds to provide the appropriate services to children with serious emotional disturbances and multiagency needs in the least restrictive environment;

(b) applying for any federal waivers necessary to provide necessary services or to pool funds to achieve the purpose of this section;

(c) providing for multiagency data collection and analysis of data that is relevant to the use of services based on client needs and outcomes and using the analysis in the decisionmaking process;

(d) developing mechanisms for the pooling of human and fiscal resources; and

(e) providing training and technical assistance, as funds permit, at the local level regarding governance and the development and delivery of integrated multiagency children's services to children with serious emotional disturbances.

(2) The department of public health and human services shall identify the children with serious emotional disturbances:

(a) who are using the highest proportion of fiscal resources in the public mental health system; and

(b) who are receiving services out of state; or

(c) who, in order to be served in state or in the child's home community, may require services or who have required services in the past:

(i) from the child protective services system;

(ii) from the developmental disabilities system;

(iii) for mental health services as a youth adjudicated in need of intervention or delinquent from the juvenile correctional system;

(iv) in day treatment or special education in school;

(v) from public assistance; or

(vi) from the chemical dependency system.

(3) The department of public health and human services shall identify the children by community to facilitate organization or identification of local children's service agencies and providers to develop care and treatment plans for these children at a cost less than the current funding required for the children. Care and treatment plans must identify the least restrictive placements, as close to home as possible, the services required, and the responsible lead agency.

(4) The department of public health and human services shall report on its progress and any findings and recommendations to the governor's budget office and the children, families, health, and human services interim committee at least every 6 months.

Section 3. Provider networks. (1) Any licensed mental health provider willing to participate in this initiative, subject to the limitations in law or rule pursuant to each program, must be allowed initially to participate in a provider network.

(2) (a) All providers who choose to participate in the provider network shall work in alignment with the department of public health and human services, the mental health oversight advisory council, and any existing local interagency children's service groups to determine the core services that must be available in a provider network.

(b) The provider network is responsible to coordinate efforts with the department of public health and human services in developing performance-based outcomes and standards of care and developing mechanisms for ensuring that standards are met by all providers in the network.

(3) Providers may provide services within areas that are defined in any contract for services. A provider must be part of a provider network, with the exception of a provider who has been

granted an out-of-network waiver by the department of public health and human services, to provide services pursuant to [section 2] [not codified].

(4) The department of public health and human services shall maintain listings of local, regional, and statewide provider networks.

Section 4. Long-term transition to regional mental health system. The department of public health and human services shall work with the mental health oversight advisory council to respond to technical assistance recommendations received by the department to define and design new mental health structures in order to develop a continuum of core services for children with serious emotional disturbances that is integrated with other children's services and to coordinate any development of future programs for mental health services for children and adults." These sections were effective April 28, 2001, and terminate June 30, 2003.

1993 Statement of Intent: The statement of intent attached to Ch. 324, L. 1993, provided: "A statement of intent is necessary for this bill because [section 8] [52-2-308] requires the department of family services [now department of public health and human services] to adopt rules. The legislature intends that the department particularly adopt rules implementing [sections 6 and 7] [52-2-306, now repealed, and 52-2-307, now repealed]. Rules implementing [section 6] [52-2-306, now repealed] should combine the review and approval process required by this bill into the current processes used by the department and the youth placement committees. The rules adopted to implement [section 7] [52-2-307, now repealed] should provide a process similar to the request for proposal (RFP) process used previously by the department in placing groups of children with providers. The legislature intends that implementation of this bill not duplicate similar initiatives by other state agencies."

Severability: Section 10, Ch. 324, L. 1993, was a severability clause.

Part Administrative Rules

Title 37, chapter 50, subchapter 8, ARM Children with multiagency service needs.

Title 37, chapter 87, subchapter 16, ARM Alternatives to out-of-state placement.

52-2-301. State policy.

Compiler's Comments

2007 Amendment: Chapter 123 inserted (8) concerning out-of-home and out-of-community placements; and made minor changes in style. Amendment effective July 1, 2007.

2003 Amendment: Chapter 118 near middle of (1) and near beginning of (2) and (3) before "children" inserted "high-risk"; at beginning of (1) deleted "to the extent that funds are available and using a managed care system", near middle substituted "a stable system of care, including" for "a continuum of", and at end inserted "to the extent that funds are available"; at end of (2) substituted "in order to preserve the unity and welfare of the family, whenever possible, and to provide for their care and protection and mental, social, and physical development" for "as provided in 52-2-306 and 52-2-307"; in (3) after "needs within" substituted "their home, community, region, and state, whenever possible" for "the state"; inserted (4) declaring state policy to provide integrated services to high-risk children with multiagency service needs; inserted (5) declaring state policy to contain costs and reduce use of high-cost, highly restrictive, out-of-home placements; inserted (6) declaring state policy to increase capacity of communities to serve children in least restrictive setting by collaboration among agencies; inserted (7) declaring state policy to prioritize available resources; and made minor changes in style. Amendment effective July 1, 2003.

52-2-302. Definitions.

Compiler's Comments

2021 Amendment: Chapter 339 in definition of high-risk child with multiagency service needs in (b) substituted "correctional facility as defined in 41-5-103" for "state youth correctional facility". Amendment effective October 1, 2021.

2009 Amendment: Chapter 430 inserted definition of wraparound philosophy of care. Amendment effective October 1, 2009.

Preamble: The preamble attached to Ch. 430, L. 2009, provided: "WHEREAS, the 1993 Montana Legislature recognized that some Montana children have mental health and other needs that require services from multiple agencies; and

WHEREAS, the 1993 Legislature expressed a desire to provide services to these children in their homes or communities whenever possible and to use out-of-state providers as a last resort; and

WHEREAS, subsequent legislatures have strengthened the policy first established in 1993 by encouraging development of an array of in-state services so that children placed out of state may return home and children in the state can remain in their homes, community, or state; and

WHEREAS, the state of Montana has sought and obtained federal funds to help plan for local services that can keep children with multiagency service needs in their homes and communities; and

WHEREAS, information from the Department of Public Health and Human Services indicates that out-of-state placement of children continues and has increased in recent years."

2003 Amendment: Chapter 118 substituted high-risk child with multiagency service needs for child with multiagency service needs as defined term, after "age" inserted "who is seriously emotionally disturbed, who is placed or who imminently may be placed in an out-of-home setting", substituted "collaboration" for "services that are available", and after "agency" inserted "in order to address the child's needs" and inserted (b) providing that high-risk child with multiagency services needs does not include child incarcerated in state youth facility; substituted least restrictive and most appropriate setting for least restrictive setting as defined term and before "child" inserted "high-risk" and at end of (b)(v) after "treatment" deleted "or does not adversely affect the child's treatment"; deleted former definitions of local agency and managed care that read: "(3) "Local agency" means a local interagency staffing group formed pursuant to 52-2-203 or parents who are seeking placement of a child with multiagency service needs and who is suffering from mental, behavioral, or emotional disorders.

(4) "Managed care" means control of the provision of services to a defined population through a planned delivery system"; in definition of provider before "child" inserted "high-risk"; deleted former definition of request for proposals that read: "(6) "Request for proposals" has the meaning as defined in 18-4-301"; inserted definition of system of care; and made minor changes in style. Amendment effective July 1, 2003.

52-2-303. Children's system of care planning committee — membership — administration.

Compiler's Comments

Preamble: The preamble attached to Ch. 190, L. 2009, provided: "WHEREAS, the 2003 Legislature directed state agencies to develop a statewide system of care for children with multiagency service needs; and

WHEREAS, the state has worked to implement that directive by developing Kids Management Authorities in a number of communities around the state; and

WHEREAS, Kids Management Authorities have been developed through a combination of grant funds from the federal Substance Abuse and Mental Health Services Administration and state and local funds; and

WHEREAS, federal grant funds are rapidly diminishing and will run out in the next biennium, while the state and local matching requirements for those funds must be significantly increased this biennium in order to sustain Kids Management Authorities at the community level; and

WHEREAS, the Legislature has provided clear direction to state agencies that treatment for children with multiagency service needs should be family centered, should attempt to provide treatment for children in their homes and communities, and should avoid out-of-home and out-of-state placements when possible; and

WHEREAS, the Legislature wants treatment for children to provide positive outcomes and value for the funds spent on treatment; and

WHEREAS, the Legislature created a children's system of care planning committee in section 52-2-303, MCA, to oversee the development of the statewide system of care effort; and

WHEREAS, the Legislature would benefit from more information on the progress made toward a statewide system of care and from recommendations on whether this effort should be sustained, modified, or abandoned."

Report to Legislature — Purpose — Requirements: Section 1, Ch. 190, L. 2009, provided: "(1) (a) The children's system of care planning committee established in 52-2-303 shall study progress achieved to date in developing a statewide system of care for high-risk children with multiagency service needs. The committee shall prepare a report and recommendations for the legislature and provide the information to the appropriate interim committee no later than July 1, 2010.

(b) In preparing the report, the system of care planning committee shall take special note of input from communities and from families and children involved in the system of care.

(2) The report must:

(a) detail the progress made in developing the system of care, including the communities and areas currently being served, the agencies involved in each effort, and the organizational approaches being used in the communities;

(b) provide a summary of the number of total clients served, by community, and detail the types of services being provided;

(c) provide a summary of the federal, state, and local funds spent in operating the system of care and of the cost of services provided by the system of care; and

(d) include an analysis of the effectiveness of the children's system of care, along with a summary of the barriers that exist in further developing the system of care.

(3) The recommendations must:

(a) state whether and how kids management authorities or their equivalent should be structured, staffed, and funded, including but not limited to identifying the agencies that should be involved, how their involvement could be encouraged or required, and how they could most effectively participate in the process;

(b) define a clear role for kids management authorities, including whether or how the authorities should be involved in:

(i) coordinating services to individual children at the local level;

(ii) encouraging and ensuring that state agency practices are family centered;

(iii) providing assistance and advocacy for families in navigating the array of state services for children;

(c) identify how agency funding may be better blended to provide services to multiagency children, including but not limited to an analysis of whether the state should seek waivers for use of medicaid funds or funds provided through Title IV-E of the Social Security Act;

(d) provide a clear statement of which children and family populations should be served by the system of care;

(e) define how local governments may or should be involved in the system of care; and

(f) define how and state whether the wraparound process of providing a unique set of services that are based on a child's and family's needs and strengths will be connected to the system of care, including recommendations on how the wraparound process will be provided, to whom it will be provided, who should provide it, and how it will be funded.

(4) The study and report must be completed within the budget approved for the department of public health and human services for the biennium beginning July 1, 2009."

2003 Amendment: Chapter 118 in (1) at end substituted "children's system of care planning committee" for "multiagency service placement plan committee"; at end of (2)(a) inserted "representing the mental health program"; inserted (2)(b) through (2)(e) requiring appointees representing child protective services, the developmental disability program, the chemical dependency treatment program, and representatives of families with high-risk children with multiagency service needs, service providers, or other interested persons or agencies; in (2)(f) after "public instruction" inserted "representing education"; inserted (2)(h) requiring appointee of youth justice council; inserted (2)(i) requiring appointee of supreme court representing youth courts; and made minor changes in style. Amendment effective July 1, 2003.

1995 Amendments — Composite Section: Chapter 418 in (2)(d) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995. The amendment by Ch. 546 rendered the amendment by Ch. 418 void.

Chapter 546 in (2)(a) substituted "department of public health and human services" for "department"; in (2)(c) substituted "department of corrections" for "department of corrections and human services"; deleted (2)(d) and (2)(e) that read: "(d) an appointee of the director of the department of health and environmental sciences; and

(e) an appointee of the director of the department of social and rehabilitation services"; in (3) substituted "department of public health and human services" for "department"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

52-2-304. Committee duties.

Compiler's Comments

2019 Amendment: Chapter 248 in (3)(a)(iii) substituted "county or regional interdisciplinary child information and school safety team" for "county interdisciplinary child information and school safety team". Amendment effective May 2, 2019.

2013 Amendment: Chapter 364 in (3)(a)(iii) after "information" inserted "and school safety". Amendment effective July 1, 2013.

2005 Amendments — Composite Section: Chapter 130 in (1)(f) at end after "care" deleted "in the initiative". Amendment effective October 1, 2005.

Chapter 200 inserted (1)(g) requiring the committee to take into consideration the policies, plans, and budget developed by a service area authority; inserted (3)(a)(vi) to include a local advisory council as an entity to facilitate the local interagency team; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 118 in (1) at end inserted "to the extent possible within existing resources"; substituted language in (1)(a) and (1)(b) requiring committee to develop policies to eliminate barriers to implementation of care system and to promote development of in-state array of core services for high-risk children with multiagency service needs for former (1) and (2) that read: "(1) assist the department in the development of the plan required by 52-2-305;

(2) develop policies aimed at allowing local agencies, through a managed care system, to access funding for services for children with multiagency service needs:

(a) that are currently provided by out-of-state providers; and

(b) who may have a future need to obtain services provided by out-of-state providers unless in-state services are developed"; near middle of (1)(c) inserted "committing funds and resources for the implementation of unified plans of care for high-risk children with multiagency service needs and in" and before "child" inserted "high-risk"; inserted (1)(d) through (1)(f) requiring committee to encourage development of local interagency teams, specify outcome indicators and measures to evaluate care system effectiveness, and develop mechanisms to elicit participation by parents, family, and youth being served; inserted (2) requiring committee to coordinate responsibility for stable care system development for high-risk children by pooling funding, applying for federal waivers and grants, providing for multiagency data collection and analysis, developing mechanisms for pooling human and fiscal resources, and providing training and technical assistance; inserted (3) authorizing local interagency team to be facilitated with statutory team to provide youth services to maximize integration and minimize duplication and requiring local interagency team to ensure compliance with all state and federal laws and regulations; and made minor changes in style. Amendment effective July 1, 2003.

52-2-308. Rulemaking.

Compiler's Comments

2011 Amendment: Chapter 377 substituted "this part" for "52-2-301 through 52-2-304 and 52-2-309". Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 377, L. 2011, provided: "WHEREAS, the 1993 Montana Legislature recognized that some Montana children have mental health and other needs that require services from multiple agencies; and

WHEREAS, the 1993 Legislature expressed a desire to provide services to these children in their homes or communities whenever possible and to use out-of-state providers as a last resort; and

WHEREAS, subsequent legislatures have strengthened the policy first established in 1993 by encouraging development of an array of in-state services so that children placed out of state may return home and children in the state are able to remain in their homes, community, or the state; and

WHEREAS, the 2009 Legislature required the Department of Public Health and Human Services to establish an in-state pool of providers and protocol to give these children opportunities for services in their homes or communities from this pool of providers as a last resort before out-of-state placements; and

WHEREAS, the 2009 Legislature required the Department of Public Health and Human Services to report to the Legislature on the number of out-of-state placements and the attempts to continue to provide services in Montana; and

WHEREAS, information from the Department of Public Health and Human Services indicates that out-of-state placements of children have decreased by 40% in the last 4 years but still continue."

2007 Amendment: Chapter 123 at end of first sentence inserted "and 52-2-309". Amendment effective July 1, 2007.

2003 Amendment: Chapter 118 at end of first sentence deleted references to 52-2-305 through 52-2-307. Amendment effective July 1, 2003.

Administrative Rules

Title 37, chapter 50, subchapter 8, ARM Children with multiagency service needs.

Title 37, chapter 87, subchapter 16, ARM Alternatives to out-of-state placement.

52-2-309. Children's system of care account.

Compiler's Comments

Effective Date: Section 6, Ch. 123, L. 2007, provided that this section is effective July 1, 2007.

52-2-310. Development and use of qualified provider pools — circumstances requiring participation in the pool — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 159, L. 2023. Amendment effective October 1, 2023.

2011 Amendment: Chapter 377 in (1) at beginning of second sentence inserted "Using existing staff resources" and after "design" inserted "and implement"; inserted (1)(b) relating to least restrictive setting; in (1)(c) at end inserted "and planning process"; inserted (1)(d) relating to criteria for needs of high-risk children; inserted (2) relating to qualified in-state providers; and made minor changes in style. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 377, L. 2011, provided: "WHEREAS, the 1993 Montana Legislature recognized that some Montana children have mental health and other needs that require services from multiple agencies; and

WHEREAS, the 1993 Legislature expressed a desire to provide services to these children in their homes or communities whenever possible and to use out-of-state providers as a last resort; and

WHEREAS, subsequent legislatures have strengthened the policy first established in 1993 by encouraging development of an array of in-state services so that children placed out of state may return home and children in the state are able to remain in their homes, community, or the state; and

WHEREAS, the 2009 Legislature required the Department of Public Health and Human Services to establish an in-state pool of providers and protocol to give these children opportunities for services in their homes or communities from this pool of providers as a last resort before out-of-state placements; and

WHEREAS, the 2009 Legislature required the Department of Public Health and Human Services to report to the Legislature on the number of out-of-state placements and the attempts to continue to provide services in Montana; and

WHEREAS, information from the Department of Public Health and Human Services indicates that out-of-state placements of children have decreased by 40% in the last 4 years but still continue."

Preamble: The preamble attached to Ch. 430, L. 2009, provided: "WHEREAS, the 1993 Montana Legislature recognized that some Montana children have mental health and other needs that require services from multiple agencies; and

WHEREAS, the 1993 Legislature expressed a desire to provide services to these children in their homes or communities whenever possible and to use out-of-state providers as a last resort; and

WHEREAS, subsequent legislatures have strengthened the policy first established in 1993 by encouraging development of an array of in-state services so that children placed out of state may return home and children in the state can remain in their homes, community, or state; and

WHEREAS, the state of Montana has sought and obtained federal funds to help plan for local services that can keep children with multiagency service needs in their homes and communities; and

WHEREAS, information from the Department of Public Health and Human Services indicates that out-of-state placement of children continues and has increased in recent years."

Effective Date: This section is effective October 1, 2009.

52-2-311. Out-of-state placement monitoring and reporting.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 261 in (4) in first sentence after "report" deleted "biannually" and after "committee" inserted "in accordance with 5-11-210". Amendment effective April 20, 2021.

Chapter 347 inserted (1)(f) concerning the location of the facilities in which the children were placed; in (4) near beginning substituted "in accordance with 5-11-210" for "biannually", near middle inserted "no later than August 30 each year", and inserted last sentence concerning placements made during the most recently completed fiscal year; and made minor changes in style. Amendment effective July 1, 2021.

Style changes were slightly different in the chapters. In each case, the codifier chose the appropriate text.

2011 Amendment: Chapter 377 in (1)(d) near beginning substituted "process used" for "efforts the department made" and at end deleted "including"; deleted former (1)(d)(i) through (1)(d)(iii) that read: "(i) the number of in-state providers the department contacted about developing service alternatives for a child in or at risk of being placed in an out-of-state facility;

(ii) whether any in-state providers submitted a plan for service alternatives for the child to the department; and

(iii) if a plan for service alternatives was submitted, the reasons the plan was not implemented and the out-of-state placement was determined to be necessary"; deleted former (1)(e) and (1)(f) that read: "(e) the number of children for whom plans for service alternatives were developed, implemented, and resulted in the return of a child from an out-of-state placement or prevented a child from being placed out of state; and

(f) other planning efforts to prepare for a child's return to the state"; inserted (1)(e) relating to number of in-state providers; inserted (2) relating to placement funded by medicaid; and made minor changes in style. Amendment effective October 1, 2011.

Preamble: The preamble attached to Ch. 377, L. 2011, provided: "WHEREAS, the 1993 Montana Legislature recognized that some Montana children have mental health and other needs that require services from multiple agencies; and

WHEREAS, the 1993 Legislature expressed a desire to provide services to these children in their homes or communities whenever possible and to use out-of-state providers as a last resort; and

WHEREAS, subsequent legislatures have strengthened the policy first established in 1993 by encouraging development of an array of in-state services so that children placed out of state may return home and children in the state are able to remain in their homes, community, or the state; and

WHEREAS, the 2009 Legislature required the Department of Public Health and Human Services to establish an in-state pool of providers and protocol to give these children opportunities for services in their homes or communities from this pool of providers as a last resort before out-of-state placements; and

WHEREAS, the 2009 Legislature required the Department of Public Health and Human Services to report to the Legislature on the number of out-of-state placements and the attempts to continue to provide services in Montana; and

WHEREAS, information from the Department of Public Health and Human Services indicates that out-of-state placements of children have decreased by 40% in the last 4 years but still continue."

Preamble: The preamble attached to Ch. 430, L. 2009, provided: "WHEREAS, the 1993 Montana Legislature recognized that some Montana children have mental health and other needs that require services from multiple agencies; and

WHEREAS, the 1993 Legislature expressed a desire to provide services to these children in their homes or communities whenever possible and to use out-of-state providers as a last resort; and

WHEREAS, subsequent legislatures have strengthened the policy first established in 1993 by encouraging development of an array of in-state services so that children placed out of state may return home and children in the state can remain in their homes, community, or state; and

WHEREAS, the state of Montana has sought and obtained federal funds to help plan for local services that can keep children with multiagency service needs in their homes and communities; and

WHEREAS, information from the Department of Public Health and Human Services indicates that out-of-state placement of children continues and has increased in recent years."

Effective Date: This section is effective October 1, 2009.

Part 6
Youth Residential Services

Part Case Notes

Reclaiming Child: Father had not lost right to reclaim child from foster home operated by the state where placement had been under a parental agreement that placing would be temporary only for a prescribed period and then permanent and father had failed to stipulate what he would do with child after that time, since father's financial condition had improved after time of placing the child in the home and he evinced a desire to care for the child. In re Vikse, 147 M 417, 413 P2d 876 (1966).

Part Attorney General's Opinions

Licensure of Foster Care Homes on Indian Reservations: The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) has the authority to license foster care homes maintained by nontribal members on Indian reservations. The Department has authority to license foster care homes operated by tribal members located on Indian reservations only if the tribe does not engage in such licensing activity. 41 A.G. Op. 76 (1986).

Part Law Review Articles

Fixing Foster Care or Reducing Child Poverty: The Pew Commission Recommendations and the Transracial Adoption Debate, Ramsey, 66 Mont. L. Rev. 21 (2005).

52-2-601. Establishment of substitute care for youth.

Compiler's Comments

1997 Amendment: Chapter 550 near beginning substituted "youth in need of intervention" for "youth in need of supervision". Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Near end, after "local nonprofit corporations", inserted "counties".

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

Interim Study Committee Bill: Chapter 465, L. 1983, was introduced at the request of the Interim Joint Subcommittee on Human Services. See committee report, Legislative Council, 1982.

Administrative Rules

ARM 37.50.901 Interstate Compact on the Placement of Children.

Title 37, chapter 51, ARM Youth foster homes.

52-2-602. Definitions.

Compiler's Comments

2003 Amendment: Chapter 504 inserted definitions of kinship foster home and youth shelter care facility; in definition of youth care facility in second sentence inserted references to kinship foster homes and youth shelter care facilities; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 311 inserted definition of transitional living program; in definition of youth care facility inserted "transitional living programs"; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendments: Chapter 514 at end of definition of foster child substituted "youth care facility" for "licensed youth foster home"; deleted definition of operator of a youth care facility (see 1997 Session Law for former text); in definition of substitute care substituted provisions that the youth is placed by the Department, another state agency, or a licensed child-placing agency, that persons providing care to youth receiving Department services regarding developmental disabilities, mental health, or Medicaid home- and community-based services waiver program are providing substitute care, and that this part does not apply if a person accepts the care and custody of a child on a temporary basis as an accommodation to a parent, guardian, or relative for "for the purpose of providing food, shelter, security and safety, guidance, direction, and if necessary, treatment to youth who are removed from or without the care and supervision of their parents or guardian"; and made minor changes in style. Amendment effective May 2, 1997.

Chapter 550 inserted definition of youth assessment center; included youth assessment centers in definition of youth care facility; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services provided for in 2-15-2401"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Inserted definitions of foster child, respite care, and respite care provider. Amendment effective July 1, 1991.

1987 Amendment: In (2) changed definition of department from Department of Social and Rehabilitation Services to Department of Family Services and inserted reference to 2-15-2401; and in (6), after "licensed", substituted "by the department or by the appropriate licensing authority in another state and" for "in accordance with 41-3-1141 through 41-3-1143", substituted "facility substitute care" for "substitute care", and made minor changes in phraseology.

1985 Amendment: In (4) made minor changes in phraseology; deleted former (6) that defined "Treatment facility"; in (6) after "provided to youth", deleted "in need of care, youth in need of supervision, or delinquent youth"; and in (7) substituted "youth other than the foster parents' own children, stepchildren, or wards" for "youth to whom the foster parents are not related by blood, marriage, or adoption, or wardship".

1983 Amendment: In (3), changed "operator of a foster home or boarding home" to "operator of a youth care facility" and rearranged the definition; and after "operating" changed "home or institution" to "youth care facility".

1981 Amendment: Deleted "nor related to him by blood" after "nor ward" near the middle of (1); made minor changes in phraseology.

Administrative Rules

Title 37, chapter 97, ARM Licensure of youth care facilities.

Attorney General's Opinions

Retroactive Foster Care Payments: In the absence of a determination that foster care assistance was improperly denied, neither a county department of public welfare nor the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) is required to retroactively pay foster care costs on behalf of a relinquished child. Where there is a determination made that foster care assistance was improperly denied, only the foster home involved is entitled to foster care payments. 38 A.G. Op. 11 (1979).

Public and Private Placement Agencies: County departments of public welfare may not deny foster care payments solely because the child receiving foster care has been relinquished to a private rather than public placement agency. If eligibility is established, county departments of public welfare are required to approve foster care payments to a foster home on behalf of a child who has been relinquished to a private placement agency. 38 A.G. Op. 11 (1979).

52-2-603. Powers and duties of department.

Compiler's Comments

2003 Amendment: Chapter 504 in (1)(a) and (1)(b) inserted references to kinship foster homes and youth shelter care facilities. Amendment effective October 1, 2003.

2001 Amendment: Chapter 311 in (1)(a) substituted "transitional living programs" for "youth assessment centers"; in (1)(b) inserted "transitional living programs"; in (3) in first sentence substituted "personal needs, and transportation, in youth foster care homes and youth group homes for youth who are in the physical or legal custody of the department and who need to be placed in the facilities" for "personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities", in second sentence in two places substituted "youth" for "child", and inserted third sentence allowing payments to continue for a youth up to 21 years of age; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendments — Composite Section: Chapter 127 inserted (1)(h) requiring reimbursement for mental health outpatient counseling services for foster parents who experience death of foster child; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 428 inserted (4) relating to subsidy for guardianship approved pursuant to 41-3-421 and criteria established by department rule; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 566 inserted (4) authorizing department subsidy for guardianship approved pursuant to criteria established by department rule. Amendment effective October 1, 1999.

1997 Amendment: Chapter 550 in (1)(a) and (1)(b) inserted "and youth assessment centers"; in (1)(g) substituted "youths in need of intervention" for "youths in need of supervision"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 in (1)(a), (1)(c), and (2)(a), after "youth in need of care", deleted "youth in need of supervision, and delinquent youth"; and in (1)(f)(i) substituted "number of youth in need of care" for "breakdown of youth in need of care, youth in need of supervision, and delinquent youth by category". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Special Session Amendment: Chapter 19 in (3), in last sentence, substituted "Payments under this subsection" for "However, payments for clothing" and after "exceed" substituted "appropriations for the purposes of this subsection" for "$300 a year per child"; and made minor changes in style. Amendment effective December 23, 1993.

1991 Amendments: Chapter 629 in (3) inserted last two sentences concerning clothing payments for child placed in a youth foster home. Amendment effective July 1, 1991.

Chapter 799 in (1)(a), after "agencies", deleted "and detention facilities and services"; in (1)(b), after "all", deleted "detention facilities as defined in 41-5-103"; and in (2)(a) substituted "substitute care" for "facilities and services" and after "delinquent youth" inserted "in youth care facilities". Amendment effective July 1, 1991.

Preamble: The preamble attached to Ch. 629, L. 1991, provided: "WHEREAS, a clothing allowance is not included in the basic payment for foster care; and

WHEREAS, children who are removed from their home and placed in foster care typically have only the clothing they are wearing and have few other personal effects; and

WHEREAS, children placed in foster care eventually have the need for additional clothing because of their growth or the change in seasons or weather."

1989 Amendment: In (1)(a), after "child-care agencies", inserted "and detention facilities and services" and at end inserted reference to 41-5-103; and in (1)(b) inserted "detention facilities as defined in 41-5-103".

1987 Amendment: In (1)(e), after "cooperation with", deleted "the department of institutions and"; deleted former (1)(f) that read: "(f) apportion and allocate placement budgets to all judicial districts"; in (1)(g) inserted "indigent" in reference to youths in need of supervision and delinquent youths; and in (3), after "group homes", deleted "other than aftercare homes", deleted reference to Department of Institutions, and deleted former second sentence that read: "Youths committed to the department of institutions and placed in residential facilities other than those described above shall not be the financial responsibility of the department of social and rehabilitation services unless such placements have been approved in advance by the department of social and rehabilitation services."

1985 Amendments: Chapter 15 deleted former (1)(g) that read: "seek public input on the plan prior to its adoption and implementation".

Chapter 177 inserted (1)(h) requiring Department to administer funds allocated for youth alcohol and drug treatment; and in (2)(a) inserted "or private organizations".

Chapter 531 in first sentence of (3) substituted "treatment in youth foster care homes and youth group homes other than aftercare homes" for "treatment in district youth guidance homes, shelter care programs, and foster care homes".

1985 Statement of Intent: The statement of intent attached to Ch. 177, L. 1985, provided: "A statement of intent is desirable for this bill to clarify the existing rulemaking authority granted to the department of social and rehabilitation services [now department of public health and human services] under section 41-3-1103(2)(c), MCA, as it applies to the proposed amendment to section 41-3-1103(1), MCA.

The department of social and rehabilitation services [now department of public health and human services] may adopt rules to carry out the administration of all funds appropriated and allocated to the department to pay for residential alcohol and drug treatment for indigent youths in need of care, youths in need of supervision [now youth in need of intervention], and delinquent youths who require such treatment.

It is contemplated that the rules shall address the following:

(1) criteria for determining whether residential treatment for alcohol and drug abuse is necessary and appropriate in each case;

(2) criteria for determining whether the youth's family is indigent; and

(3) procedures for administering the funds."

1983 Statement of Intent: The statement of intent attached to HB 24 (Ch. 465, L. 1983) provided: "House Bill 24 requires a statement of intent because it authorizes the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] to adopt rules to implement statutory changes in the delivery of services to youths.

The Legislature contemplates that the rules should address the following, among other things:

1. Consideration of aftercare programs for youth under the department's supervision.
2. Consideration of standards for facilities housing youth in need of care, youth in need of supervision [now youth in need of intervention], and delinquent youth. Such standards should be considered in licensing and delivery of service.
3. Consideration of measures associated with the allocation of placement budgets to judicial districts, with such measures including data on placement history and placement trends.
4. Consideration of the proper allocation of annual budgets for the out-of-home care of youth in need of supervision [now youth in need of intervention] and delinquent youth. The funding formula used in budget allocations should include:
   a. the total population of the judicial district;
   b. the total youth population of the judicial district;
   c. the total number and costs of placements in public facilities and out-of-home care facilities;
   d. trends in population, placements, and local economics.
5. Consideration of measures to investigate parental contributions.
6. Consideration of specific measures for licensing the various youth facilities, including: facility acquisition, facility design, group home staffing, staff training, service goals and design, quality of services, client placement procedure, client rights and privileges, client grievance procedure, provider grievance procedure, accounting procedures including accounting of client financial resources, health and safety standards including water and waste disposal, food service, and laundry.

The department should also develop plans that inform youth courts about budgeted amounts available for placements during the fiscal year within the limits of appropriations. The department will on a regular basis advise the youth courts on the status of such budgeted amounts. Payment for placements will be in accordance with 41-3-104 [renumbered 41-3-1122]."

Administrative Rules

Title 37, chapter 25, ARM Residential alcohol and drug treatment for indigent juveniles.

Title 37, chapter 50, ARM Foster care services and guardianship services.

Title 37, chapter 51, ARM Youth foster homes.

Title 37, chapter 97, ARM Licensure of youth care facilities.

52-2-604. Transfer of custody to private agency — reports.

Administrative Rules

ARM 37.50.301 Foster care maintenance payments.

52-2-611. Payment for support of youth in need of care, youth in need of intervention, or delinquent youth.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 5, L. 2023. Amendment effective July 1, 2023.

2001 Amendment — Coordination Void: Chapter 571 in (2) substituted text regarding administrative fee paid to department for former (2) that read: "(2) On or before the 20th of each month, the department of public health and human services or the department of corrections shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments made during the month. The county shall make reimbursement to the department within 20 days after the claim is presented"; deleted former (3) through (5) that read: "(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.

(4) If a county's level of expenditure for foster care in fiscal year 1987 was $10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in

subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.

(5) A county that was state-assumed prior to 1987 but that at a later date reassumes responsibility pursuant to 53-2-811 is responsible for reimbursement of foster care expenditures up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed"; and made minor changes in style. Amendment effective July 1, 2001.

The amendment to this section made by Ch. 571, L. 2001, was purportedly voided by sec. 46, Ch. 571, L. 2001, a coordination section, which was itself rendered void by sec. 255, Ch. 574, L. 2001, also a coordination section.

1997 Amendment: Chapter 550 near beginning of (1) substituted "youth in need of intervention" for "youth in need of supervision"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services or the department of corrections" for "department of family services", after third "department" inserted "making the placement", and after "rate established by the department" inserted "of public health and human services"; in (2), in first sentence after "department" inserted "of public health and human services or the department of corrections"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments: Chapter 561 inserted (5) clarifying responsibility for foster care expenditures of a county that reassumes responsibility pursuant to 53-2-811. Amendment effective July 1, 1993.

Chapter 610 in (6), after "41-3-1115", inserted "or when applicable, 41-3-1010". Amendment effective July 1, 1993.

1987 Amendment: In (1) substituted provision that placement be made by Department of Family Services that was formerly made by the Youth Court or Department of Social and Rehabilitation Services; in first sentence of (2), after "one-half", inserted "of the nonfederal share of"; inserted (3) and (4) relating to county reimbursement for foster care expenditures; and in (5), after "the youth is placed", deleted "under the supervision of the department or placed" and at end, after "department", deleted "or the department pays for the care of the youth as set forth in this section".

1985 Amendment: In (1) substituted present language for "Whenever agreements are entered into by the department or the court for placing a youth in need of care, a youth in need of supervision, or a delinquent youth in a youth care facility, the department shall pay by its check or draft each month from any funds appropriated for that purpose the entire amount agreed upon for board, clothing, personal needs, treatment, and room of the youth".

1983 Amendment: In (1), after "department" inserted "or the court", substituted "a youth in need of supervision, or a delinquent youth in a youth care facility" for "in a licensed family foster home, child care agency, group home, or treatment facility", and inserted "treatment" near end of subsection; in (3), substituted "youth care facility" for "licensed family foster home, child care agency, group home, or treatment facility".

1981 Amendment: Deleted "private" before "treatment facility" in (1); inserted "no more than" before "one-half the payments" in (2); added subsection (3) requiring Department to review foster care placements; made minor changes in grammar.

Statement of Intent: The statement of intent attached to SB 228 (Ch. 297, L. 1981) provided: "A statement of intent is required for this bill because in addition to amending sections 41-3-104, 41-3-501, 41-5-801 [renumbered 41-3-1122; 41-3-1102; and 41-3-1121, now repealed], and 53-4-112 [renumbered 52-2-112], the bill creates rulemaking authority for the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] to administer a review of children in foster care under the department's supervision or for whom the department is making payment under section 41-3-104(2) or 41-5-801(2) [renumbered 41-3-1122(2); and 41-3-1121(2), now repealed].

It is the intent of this bill to indicate the legislature's support of permanency planning for children in foster care and to direct the department to continue its efforts in this area. This bill is intended to encourage reduction of the numbers of children in foster care; to expediently return children to their natural homes when possible, or to free the children for alternate permanent placements; thereby assuring the appropriate utilization of public funds and that the best interest of children in placement in Montana are being met by the department's program.

Rulemaking is primarily necessary to implement Section 2 [41-5-807] and subsection (3) of Section 1 of the bill [41-3-104] [renumbered 41-3-1122]. These sections require that a foster care review committee be established by the court to conduct reviews of children in foster care and provide written reports to the youth court and the department. Rules would identify which children are to be reviewed, and would list precisely what information is to be shared with the review committee, when the committees are to conduct business, the general guidelines for the committees' operation, the time limitations for conducting the reviews, and who may participate in the review. As for the information to be reported, the rules will ask for:

(1) summary reports of the review to include the recommendations of the committee regarding the continuation or discontinuation of foster care and reasons; treatment needs of the child; and court action;

(2) sufficient information to allow the tracking of the reviews; to facilitate: follow-up services, compliance with court orders, agency decisions, and response to committee recommendations; and to provide necessary reports on the department's foster care program."

Administrative Rules

Title 37, chapter 50, subchapter 3, ARM Foster care maintenance payments.

Title 37, chapter 50, subchapter 5, ARM Foster care support services.

Case Notes

Incomplete Form Contract When Signed — Unenforceable Contract: Pearson was responsible for placement of youths in need of supervision for Youth Court services and sought to place a youth with Findleys in their foster home. Findley told Pearson that they would need $41 a day to care for the youth and asked Pearson to sign a written contract so that Youth Court services would ensure their $41-a-day payment. Findley produced a form contract with blank spaces for the child's name, name of the contracting party, and rate of compensation for the placement. The extent to which the blanks were filled in was disputed, but Pearson testified that he told the Findleys that he was responsible only for placement, that reimbursement was administered through the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), and that he could not guarantee a daily payment rate. The Department informed Findleys that the standard daily rate was $11.63. Findleys later brought a claim for contract damages against Youth Court services. The District Court properly held that the form contract was not enforceable because it was substantially incomplete when the parties signed it, with neither the date nor the rate amount having been filled in. There was no evidence that Youth Court services ratified the contract. Equitable estoppel did not apply because Findleys knew within 1 month that they would not be paid $41 a day, but instead of terminating the foster care relationship, they continued for nearly 5 years with no assurance that they would ever receive more than the standard rate for foster care. Findley v. District Court, 277 M 242, 921 P2d 870, 53 St. Rep. 627 (1996).

Placement of Children With Christian Foster Parents Not Violative of First Amendment Establishment Clause: Appellant claimed that by placing children with Christian foster parents who maintained their own ministry, the state violated the establishment clause of the first amendment to the U.S. Constitution (similar to Art. II, sec. 5, Mont. Const.) prohibiting government support of religion. According to Lemon v. Kurtzman, 403 US 602, 29 L Ed 2d 745, 91 S Ct 2105 (1971), state aid is constitutional if: (1) it has a secular purpose; (2) its primary effect neither advances nor inhibits religion; and (3) it does not foster government entanglement in religion. In this case, aid provided for foster parental care was clearly secular; the primary effect of the placement and attendant payments was that the children were provided with a safe, loving, and secure home and parents, which did not advance or inhibit religion; and placement and payments did not excessively entangle the state in religion because foster parents, whether ministers or not, may do as they please with foster care reimbursements and do not have to account for the money. Thus, no constitutional violation occurred. In re S.P., 241 M 190, 786 P2d 642, 47 St. Rep. 190 (1990).

Attorney General's Opinions

County Power — "Big Brothers and Big Sisters": Counties may contract with Big Brothers and Big Sisters organizations to furnish adult companionship, guidance, and counseling to needy and troubled children. 37 A.G. Op. 105 (1978).

County Power — "4-C's": Counties, jointly with the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), may contract with local "4-C's" projects to provide coordination and support of child abuse prevention and treatment services. 37 A.G. Op. 105 (1978).

52-2-617. Governmental contracts with nonprofit organizations.

Compiler's Comments

1997 Amendment: Chapter 550 in (1), in first sentence, substituted "youth in need of intervention" for "youth in need of supervision"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 near beginning of (1), after "department", inserted "of public health and human services and the department of corrections"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

52-2-621. License required.

Compiler's Comments

1997 Amendment: Chapter 514 in (1) deleted requirement that the license be "in writing"; inserted (2) requiring written Department approval of a kinship care provider of unlicensed care for a child placed pursuant to the Department's legal authority; inserted (3) requiring written Department approval of an extended family member providing unlicensed care for a youth receiving services through the Department's developmental disabilities, mental health, or Medicaid home- and community-based services waiver program; at end of (4) inserted "or approval granted under this section"; and made minor changes in style. Amendment effective May 2, 1997.

1983 Amendment: Changed "foster or boarding home" to "youth care facility".

Administrative Rules

Title 37, chapter 51, ARM Youth foster homes.
ARM 37.97.105 Youth care facility — license required.

52-2-622. Issuance of license — authority of issuing agency — rules.

Compiler's Comments

2001 Amendment: Chapter 311 inserted (4) relating to licensing investigations and background checks. Amendment effective October 1, 2001.

1997 Amendment: Chapter 514 in (1), in first sentence, inserted "or grant approval of kinship or extended family care providers" and near end inserted "and approvals" and in second sentence inserted "licensure or approval"; in (2) inserted "or approved homes" and at end inserted "and approvals"; in (3), near beginning, substituted "person providing care in the facilities or homes" for "operating such homes" and near end inserted "facilities or"; and made minor changes in style. Amendment effective May 2, 1997.

Statement of Intent: The statement of intent attached to Ch. 531, L. 1985, provided: "The department of social and rehabilitation services [now department of public health and human services] has adopted rules regarding the licensing of youth care facilities, including youth foster homes, youth group homes, and child care agencies. It is contemplated that the existing licensing standards promulgated in the Administrative Rules of Montana and any future standards which may be promulgated under this act apply to all youth care facilities licensed under section 41-3-1142, MCA, as amended."

1983 Amendment: In first sentence, changed "persons conducting boarding or foster homes" to "persons operating youth care facilities" and changed "regulation of foster and boarding homes" to "regulation of such facilities"; in second sentence, changed "licensed foster and boarding homes" to "licensed facilities"; and in last sentence, substituted "opportunity" for "facility".

Administrative Rules

Title 37, chapter 50, ARM Foster care services and guardianship services.
Title 37, chapter 51, ARM Youth foster homes.
Title 37, chapter 97, ARM Licensure of youth care facilities.

Case Notes

Valid Memorandum of Agreement Allowing State to Investigate Child Abuse Allegations on Reservation and Pursue Substantiation Proceedings Against Tribal Member: The Assiniboine and Sioux Tribes of the Fort Peck Reservation entered a memorandum of agreement with the Bureau of Indian Affairs and the Montana Department of Public Health and Human Services (DPHHS), allowing DPHHS to place Indian children with enrolled tribal members living on the reservation. DPHHS subsequently placed a Minnesota Indian child with the child's great-aunt Hanna on the Fort Peck Reservation, but the placement was terminated after DPHHS received reports that the child was being abused or neglected. DPHHS subsequently initiated an investigation into the cause of the abuse and issued a substantiated report that Hanna had abused or neglected the child. Hanna moved for a fair hearing, and because no criminal charges had been filed, DPHHS began the fair hearing process. Hanna then moved to dismiss the substantiation proceeding on jurisdictional grounds. The hearings officer held that the tribe maintained exclusive jurisdiction over Indian youth and that DPHHS's substantiation proceedings interfered with tribal sovereignty. DPHHS appealed the decision in District Court, arguing that pursuant to the memorandum of agreement, DPHHS had jurisdiction to issue the substantiated report under state law and policy because DPHHS had licensed Hanna as a kinship foster care provider in the first place. The District Court agreed and reversed the hearings officer's decision. On appeal, the Supreme Court affirmed. The purpose of the agreement was to allow eligible Indian children on the Fort Peck Reservation to receive services and foster care maintenance payments, and the agreement was a valid, federally authorized agreement. Under the agreement, DPHHS was assigned the responsibility of investigating allegations of abuse and neglect, documenting conclusions of the investigation in a final report, and making the final decision about an individual's licensing status, and the agreement did not contemplate tribal jurisdiction regarding these issues. Therefore, DPHHS had jurisdiction to pursue substantiation proceedings against Hanna. In re Fair Hearing of Hanna, 2010 MT 38, 355 Mont. 236, 227 P.3d 596.

52-2-623. Penalty for failure to obtain license.

Compiler's Comments

1983 Amendment: Changed "conducts a foster or boarding home" to "operates a youth care facility"; changed "conducting . . . such home" to "operating . . . such facility"; and deleted final clause, which read: "and upon conviction be punished by a fine not to exceed $100".

Administrative Rules

ARM 37.97.105 Youth care facility — license required.

52-2-627. Respite care.

Compiler's Comments

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (1)(a), the Code Commissioner has made the change.

Effective Date: Section 6, Ch. 559, L. 1991, provided: "[This act] is effective July 1, 1991."

Administrative Rules

ARM 37.50.512 Foster care support services — respite care selection and training.

52-2-628. Respite care providers — recruitment, training, and employment — qualifications.

Compiler's Comments

Effective Date: Section 6, Ch. 559, L. 1991, provided: "[This act] is effective July 1, 1991."

Administrative Rules

ARM 37.50.512 Foster care support services — respite care selection and training.

Part 7
Child Care

Part Compiler's Comments

Severability: Section 16, Ch. 692, L. 1989, was a severability clause.

Statement of Intent: The statement of intent attached to HB 646 (Ch. 606, L. 1981) provided: "House Bill 646 generally clarifies the state laws relating to child day-care facilities. (Title 53, chapter 4, part 5) [renumbered to Title 52, chapter 2, part 7]

Levels of care are specifically defined:

(1) Day-care center provides care for 13 or more children. (53-4-501, MCA) [renumbered 52-2-702(1) and 52-2-703]

(2) Group day-care home provides care for 7 to 12 children. (53-4-501, MCA) [renumbered 52-2-702(1) and 52-2-703]

(3) Family day-care home provides care for three to six children from separate families. (53-4-501, MCA) [renumbered 52-2-702(1) and 52-2-703]

The term "day-care facility" has been expanded to include all levels of care. (53-4-501, MCA) [renumbered 52-2-702(1) and 52-2-703]

House Bill 646 in sections 53-4-501 [renumbered 52-2-702(1) and 52-2-703] and 53-4-502 [renumbered 52-2-721], MCA, eliminates the requirement for family day-care homes and group day-care homes to be licensed, and requires a provider to simply register with the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] [and certify] that they comply with minimal state regulations for quality care.

Rulemaking authority. Although House Bill 646 amends 53-4-501 through 53-4-516 [renumbered to Title 52, chapter 2, part 7, except 53-4-516, now repealed], MCA, the present law does give the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] the authority for the purposes of Title 53, chapter 4, part 5 [renumbered to Title 52, chapter 2, part 7], to license child day-care facilities and for rulemaking authority in relation to licensing. However, because of the new provisions in this act and the fact rules have not been revised since 1965, it is anticipated new rules will be promulgated.

Rules relating to licensing or registration will address the following areas:

(1) Family day-care homes and group day-care homes — character, suitability, qualifications of applicants to care for children; programs and practices for health, safety, transportation, development; ages and numbers of children that may be cared for in a day-care facility.

(2) Day-care centers — including the above — numbers of staff required for adequate supervision; physical facilities and equipment; admission procedures; health supervision of staff, essential records, general financial ability and competence of an applicant to provide necessary care and maintain prescribed standards. Availability of public liability insurance and fire insurance is applicable to all levels of care. (53-4-508, MCA) [renumbered 52-2-723]

(3) Rules dealing with health and safety will be developed with the assistance of the Department of Health and Environmental Sciences [now Department of Public Health and Human Services]. (53-4-506, MCA) [renumbered 52-2-725]

(4) Physical well-being and safety of the children in day-care facilities is provided by the state Fire Marshal [now state fire prevention and investigation program of the Department of Justice] who shall adopt standards for fire and life safety. (53-4-505, MCA) [renumbered 52-2-734]

It is the intention of the Legislature that the rates payable to a day-care facility under section 15 [see 52-2-713] be set after the appropriation level has been determined by the Legislature."

Part Administrative Rules

Title 37, chapter 80, ARM Child care assistance.

Title 37, chapter 95, ARM Licensure of day-care facilities.

52-2-701. Short title.

Compiler's Comments

Effective Date: Section 17, Ch. 692, L. 1989, provided that this section is effective May 19, 1989.

52-2-702. Purpose — findings.

Compiler's Comments

1989 Amendment: In (1) substituted "day care" for "supplemental parental care".

Effective Date: Section 17, Ch. 692, L. 1989, provided that subsection (2) is effective May 19, 1989.

1981 Amendment: Inserted (1) explaining the purpose of part 5; in definition of day-care facility substituted "provides supplemental parental care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home" for "receives for care during the day or part of the day three or more children of separate families and continues this type of care for 5 or more consecutive weeks"; substituted definition of day-care center for ""Day-care center" means a day-care facility that receives seven or more children for care for 5 or more hours of the day for 5 or more consecutive weeks. It may include facilities known as child-care centers, nursery schools, day nurseries, and centers for the mentally retarded"; and inserted definitions of day care, supplemental parental child care, regular basis, family day-care home, group day-care home, registration, registrant, registration certificate, license, and licensee.

Administrative Rules

Title 37, chapter 75, ARM Child and adult care food program.

Title 37, chapter 80, ARM Child care assistance.

52-2-703. Definitions.

Compiler's Comments

2021 Amendment: Chapter 421 in definition of day-care center in (a) substituted "16 or more children" for "13 or more children"; in definition of family day-care home near end substituted "three to eight children" for "three to six children"; in definition of group day-care home near end substituted "9 to 15 children" for "7 to 12 children". Amendment effective October 1, 2021.

2001 Amendment: Chapter 505 in definition of day care near middle substituted "on a regular or irregular basis, as applicable" for "on a regular basis"; in definition of day-care center at end of (a) substituted "on a regular or irregular basis" for "on a regular basis" and inserted (b) excluding day-care center where a parent of a child remains on premises; in definition of day-care facility near end of first sentence inserted reference to subsection (3)(a); and made minor changes in style. Amendment effective July 1, 2002.

Applicability: Section 5, Ch. 505, L. 2001, provided: "[This act] applies to day-care centers, as defined in 52-2-703(3)(a)(ii), operated on or after July 1, 2002." The reference to 52-2-703(3)(a)(ii) originally referred to care provided to children on an irregular basis.

1997 Amendment: Chapter 318 in definition of child, at end, inserted "or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full-time student expected to complete an educational program by 19 years of age"; inserted definitions of professional training, school age, and school-age care; and made minor changes in style. Amendment effective April 21, 1997.

Preamble: The preamble attached to Ch. 318, L. 1997, provided: "WHEREAS, the "traditional" American family with the father working and the mother at home to care for the children now constitutes only 25% of all American families; and

WHEREAS, an estimated 40,000 of 70,000 Montana children under 6 years of age need child care, while only about 25,000 licensed or registered child-care slots are available; and

WHEREAS, a shortage of before- and after-school programs for school-age children places children at risk for delinquency and teen pregnancy; and

WHEREAS, the availability of day care is critical to the success of welfare-to-work programs; and

WHEREAS, high-quality care is essential to the healthy development of Montana's children, and professional training for child-care providers is the single most effective way to ensure quality care; and

WHEREAS, funding limitations prevent many child-care providers from starting day-care or school-age care businesses and from obtaining professional training."

1997 Statement of Intent: The statement of intent attached to Ch. 318, L. 1997, provided: "A statement of intent is required for this bill because 52-2-711, as amended, directs the department of public health and human services to adopt rules to administer the grant program. It is the intent of the legislature that grant awards be consistent with the legislative priorities set forth in this bill and that additional grants be consistent with the state child-care plan as developed by the child-care advisory council. The department is encouraged to also adopt rules that will formally provide for an advisory task force as previously used to advise the department on grant awards."

Saving Clause: Section 3, Ch. 318, L. 1997, was a saving clause.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services provided for in 2-15-2401". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 304 in definition of day care, after "means", deleted "less than 24-hour out-of-home" and after "care for children" inserted "provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours"; in definition of day-care center, after "means", inserted "out-of-home"; in first sentence of definition of day-care facility, after "regular basis", inserted "or a place licensed or registered to provide day care on an irregular basis for children suffering from illness", at end of second sentence inserted "or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713", and at end of (a) inserted "unless registration or licensure as a day-care facility is required to receive payments as provided in 52-2-713"; in definition of family day-care home, after "children", deleted "from separate families"; in definition of group day-care home, after "residence", inserted "or other structure"; and made minor changes in style.

1991 Amendment: In definition of child increased age from 12 years to 13 years; at end of definition of day-care facility, at end of (b), inserted "that limits its services to children who are 3 years of age or older"; and inserted definition of related by blood or marriage. Amendment effective July 1, 1991.

1989 Amendment: In definitions of day-care facility, day-care center, regular basis, family day-care home, and group day-care home substituted "day care" for "supplemental parental care"; in definition of day care inserted child-care as a defined term and substituted "less-than-24-hour out-of-home care for children, whether that care is for daytime or nighttime hours" for "supplemental parental child care"; deleted definition of supplemental parental child care; and made minor changes in grammar and form.

1987 Amendment: In (2)(d) substituted definition of Department of Family Services for definition of Department of Social and Rehabilitation Services and corrected internal reference.

1981 Amendment: Inserted (1) explaining the purpose of part 5; in definition of day-care facility substituted "provides supplemental parental care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home" for "receives for care during the day or part of the day three or more children of separate families and continues this type of care for 5 or more consecutive weeks"; substituted definition of day-care center for ""Day-care center" means a day-care facility that receives seven or more children for care for 5 or more hours of the day for 5 or more consecutive weeks. It may include facilities known as child-care centers, nursery schools, day nurseries, and centers for the mentally retarded"; and inserted definitions of day care, supplemental parental child care, regular basis, family day-care home, group day-care home, registration, registrant, registration certificate, license, and licensee.

52-2-704. Duties of department.

Compiler's Comments

2023 Amendment of Administrative Rule: Section 1, Ch. 379, L. 2023, directed the Department of Public Health and Human Services to amend Rule 37.95.623, Administrative Rules of Montana. See 2023 Session Law for text of preamble and amendments made by sec. 1, Ch. 379, L. 2023. Effective October 1, 2023.

2001 Amendment: Chapter 505 inserted (2)(g) requiring adoption of rules for day-care centers providing care on irregular basis, including exceptions for immunization records and staffing ratios; inserted (3)(d) allowing issuance of license to receive children on an irregular basis if license applied for; and made minor changes in style. Amendment effective July 1, 2002.

Applicability: Section 5, Ch. 505, L. 2001, provided: "[This act] applies to day-care centers, as defined in 52-2-703(3)(a)(ii), operated on or after July 1, 2002." The reference to 52-2-703(3)(a)(ii) originally referred to care provided to children on an irregular basis.

1997 Amendment: Chapter 171 in (2)(b), at end, deleted "after consultation with the local family services advisory councils established under 52-1-203 and the child-care advisory council established in 52-2-705".

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

1995 Amendments — Composite Section: Chapter 418 in (2)(c) substituted "public health" for "health and environmental sciences". Amendment effective July 1, 1995. The amendment by Ch. 546 rendered the amendment by Ch. 418 void.

Chapter 546 in (1), near beginning, substituted "department is responsible for planning" for "department is designated as the lead agency for the purposes of planning"; and in (2)(c), at end, substituted "administered by all state agencies" for "administered by the department and the departments of social and rehabilitation services, health and environmental sciences, and labor and industry". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 91 in (2)(b), after "local", substituted "family" for "youth". Amendment effective July 1, 1993.

Effective Date: Section 17, Ch. 692, L. 1989, provided that subsections (1), (2)(a) through (2)(c), and (3) are effective May 19, 1989.

1981 Amendment: Substituted (1) requiring license issuance to persons to receive children in a day-care center on a regular basis for "issue licenses to persons to receive into a day-care facility children for care during the day or part of a day"; in (2) inserted "and publish minimum standards" and "and registration certificates"; substituted (3) providing rulemaking authority for "adopt rules for the conduct of the facilities which are consistent with the welfare of the children received"; inserted (4) requiring registration certificate issuance to persons to receive children into a family or group day-care home on a regular basis; and made a minor change in phraseology.

Statement of Intent: See Part Compiler's Comments, this part.

Administrative Rules

Title 37, chapter 75, ARM Child and adult care food program.
Title 37, chapter 80, ARM Child care assistance.
Title 37, chapter 95, ARM Licensure of day-care facilities.

52-2-710. At-home infant care program — definition.

Compiler's Comments

2019 Amendment: Chapter 41 in (1)(a) substituted "cash assistance" for "financial assistance". Amendment effective July 1, 2019.

Effective Date: Section 3, Ch. 394, L. 2003, provided: "[This act] is effective July 1, 2003."

52-2-711. Resource and referral and day-care improvement grant program.

Compiler's Comments

1997 Amendment: Chapter 318 in (1)(a), at end, inserted "and for improving the availability of quality child care and school-age day care"; inserted (1)(b) stating that program funds may be from legislative appropriations; private gifts, grants, and donations; federal or foundation grants; and any other source; inserted (3) allowing Department grants to increase availability of quality child care and school-age day care and for consumer education and establishing a priority for grant awards; inserted (4) requiring Department rules; and made minor changes in style. Amendment effective April 21, 1997.

Preamble: The preamble attached to Ch. 318, L. 1997, provided: "WHEREAS, the "traditional" American family with the father working and the mother at home to care for the children now constitutes only 25% of all American families; and

WHEREAS, an estimated 40,000 of 70,000 Montana children under 6 years of age need child care, while only about 25,000 licensed or registered child-care slots are available; and

WHEREAS, a shortage of before- and after-school programs for school-age children places children at risk for delinquency and teen pregnancy; and

WHEREAS, the availability of day care is critical to the success of welfare-to-work programs; and

WHEREAS, high-quality care is essential to the healthy development of Montana's children, and professional training for child-care providers is the single most effective way to ensure quality care; and

WHEREAS, funding limitations prevent many child-care providers from starting day-care or school-age care businesses and from obtaining professional training."

1997 Statement of Intent: The statement of intent attached to Ch. 318, L. 1997, provided: "A statement of intent is required for this bill because 52-2-711, as amended, directs the department of public health and human services to adopt rules to administer the grant program. It is the intent of the legislature that grant awards be consistent with the legislative priorities set forth in this bill and that additional grants be consistent with the state child-care plan as developed by the child-care advisory council. The department is encouraged to also adopt rules that will formally provide for an advisory task force as previously used to advise the department on grant awards."

Saving Clause: Section 3, Ch. 318, L. 1997, was a saving clause.

Repeal of Termination: Section 18, Ch. 692, L. 1989, which terminated this section June 30, 1991, was repealed by sec. 1, Ch. 618, L. 1991.

Effective Date: Section 17, Ch. 692, L. 1989, provided that this section is effective May 19, 1989.

52-2-713. Payments for eligible children.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 773, L. 2023. Amendment effective July 1, 2023.

2007 Amendment: Chapter 126 near beginning after "pay a" deleted "daily". Amendment effective April 5, 2007.

1981 Amendment: Substituted language establishing a daily payment rate for eligible children as provided by legislative appropriation for "The department shall pay to a licensed day-care facility for each child eligible to receive public financial support not less than $4.50 until December 31, 1980, and $5 thereafter for each day the child attends the facility. For those day-care facilities which meet federal requirements, the department shall pay an additional $1 per day for each eligible child."

52-2-714. Best beginnings child care scholarship program.

Compiler's Comments

Effective Date: Section 7, Ch. 773, L. 2023, provided: "[This act] is effective July 1, 2023."

52-2-715. Family income eligibility requirements.

Compiler's Comments

Effective Date: Section 7, Ch. 773, L. 2023, provided: "[This act] is effective July 1, 2023."

52-2-716. Copayment requirements.

Compiler's Comments

Effective Date: Section 7, Ch. 773, L. 2023, provided: "[This act] is effective July 1, 2023."

52-2-721. License required — registration required — term of license or registration certificate — no fee charged.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 189, L. 2023, inserted (8) concerning a facility licensed by a branch of the Unites States armed forces. Amendment effective October 1, 2023.

Section 1, Ch. 511, L. 2023, in (1) at beginning inserted exception clause; inserted (7) concerning a person who provides day care in a private residence; and made minor changes in style. Amendment effective October 1, 2023.

2001 Amendment: Chapter 505 near middle of (1)(a) inserted reference to day care provided on regular basis; inserted (6) allowing issuance of license to day-care center providing care on an irregular basis if license applied for; and made minor changes in style. Amendment effective July 1, 2002.

Applicability: Section 5, Ch. 505, L. 2001, provided: "[This act] applies to day-care centers, as defined in 52-2-703(3)(a)(ii), operated on or after July 1, 2002." The reference to 52-2-703(3)(a)(ii) originally referred to care provided to children on an irregular basis.

1999 Amendment: Chapter 135 in (4) deleted first sentence that read: "Licenses or registration certificates shall be issued for periods not to exceed 1 year"; inserted (4)(a) allowing issuance of licenses for up to 3 years; inserted (5) limiting 3-year licenses to providers without deficiencies; and made minor changes in style. Amendment effective October 1, 1999.

1989 Amendment: In (1) substituted "day care" for "supplemental parental care"; and made minor change in grammar.

1981 Amendment: Substituted language requiring licensure and registration and limiting certificate issuance to 1 year for "No person, group of persons, or corporation shall establish and maintain a day-care facility for children unless licensed to do so by the department. The license shall be valid for 1 year. There shall be no fee for the license."

Case Notes

Previous Admission of Abuse and Neglect Allegations — No Evidentiary Hearing on Denial of Day-Care License Required: Dowell's license to work as a day-care provider was denied after it was learned that Dowell's parental rights had previously been terminated based on a substantiated record of child abuse and neglect. Dowell contended that her due process rights were violated through the state's failure to provide notice and an opportunity for a hearing before substantiating the child abuse and by failing to notify Dowell that substantiation of abuse would result in employment restrictions. The Supreme Court disagreed. Due process does not require development of facts through an evidentiary hearing when there are no material facts in dispute. Because Dowell had previously admitted to the facts underlying the substantiation determination in the previous child abuse case, no further evidentiary hearing was necessary on the day care issue, so no due process violation occurred. Dowell v. Dept. of Public Health and Human Services, 2006 MT 55, 331 M 305, 132 P3d 520 (2006).

52-2-722. Application for a license or registration certificate.

Compiler's Comments

1989 Amendment: In (3), after "the department shall", deleted "investigate to".

1981 Amendment: In (1) inserted "or registration certificate" after "license", deleted "of social and rehabilitation services through the county department of public welfare" before "in the county", and deleted "of social and rehabilitation services. Upon receipt of the application, the county welfare department shall within a reasonable time investigate to determine whether a license should be granted" at the end; in (2) inserted "for a license or registration certificate" after "Applications", deleted "of social and rehabilitation services" after "department" in the first sentence, deleted "county welfare" before "department" and "in the county in which the applicant resides" after "department" in the second sentence, inserted "or registration certificate" after "license", and deleted "This investigation shall be made within a reasonable time" as the last sentence; and inserted (3) requiring Department investigation within 30 days of receipt of application.

52-2-723. Requirements for licensure.

Compiler's Comments

2023 Amendment of Administrative Rule: Section 1, Ch. 379, L. 2023, directed the Department of Public Health and Human Services to amend Rule 37.95.623, Administrative Rules of Montana. See 2023 Session Law for text of preamble and amendments made by sec. 1, Ch. 379, L. 2023. Effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: In (1) substituted "shall include in the minimum standards for day-care centers the following" for "must issue licenses to agencies meeting the following minimum"; in (1)(a) deleted "moral" before "character"; in (1)(b) inserted "day-care" before "facility", inserted "as provided by rule" after "number", and substituted "in the facility" for "admitted"; deleted former (1)(e) that read: "Physical facilities are of a kind that can meet the minimum state standards to provide for the protection of the children from fire and health hazards"; inserted (1)(i) requiring that ages and number of children be specified for licensure; and in (2) substituted "is" for "shall be".

Administrative Rules

Title 37, chapter 95, ARM Licensure of day-care facilities.

52-2-724. Provisional license — provisional registration certificate.

Compiler's Comments

1981 Amendment: In (1) deleted "of social and rehabilitation services" after "department", deleted "in its discretion" before "issue", inserted "or provisional registration certificate", substituted "which may not exceed" for "of not more than", deleted "substandard" before "day-care facility", and inserted "or applicant does not meet all standards established by the department, as long as the facility or applicant"; substituted (2) disallowing waiver of certification requirement of fire safety and health protection for "The requirement that a day-care center shall be certified by the state fire marshal of the department of justice and the department of health and environmental sciences may not be waived"; and inserted (3) disallowing waiver of requirement of public liability insurance and fire insurance.

52-2-725. Renewal license — registration certificate.

Compiler's Comments

1981 Amendment: Inserted "or registered" after "licensed"; substituted "renew a license or registration certificate, the" for "apply for a renewal of its license, a"; substituted "on forms prescribed by the department, in the county in which the applicant lives, 30 days" for "to the department 10 days"; and inserted "or registration certificate" at the end.

52-2-726. Denial, cancellation, reduction, revocation, and nonrenewal of licenses and registration certificates — fair hearing.

Compiler's Comments

1981 Amendment: In (1) inserted "written" before "notice", deleted "and opportunity for hearing" after "notice", inserted "or registrant" after "licensee", inserted "cancel, reduce, modify", after "revoke a license" substituted language outlining findings under which the Department may deny, suspend, cancel, reduce, modify, or revoke a license or registration certificate for "in any case in which it finds that there has been a substantial failure to comply with the requirements established under this law"; inserted (2) allowing the opportunity for hearing upon written request; and made minor changes in phraseology.

52-2-731. Standards for day care.

Compiler's Comments

2023 Amendment of Administrative Rule: Section 1, Ch. 379, L. 2023, directed the Department of Public Health and Human Services to amend Rule 37.95.623, Administrative Rules of Montana. See 2023 Session Law for text of preamble and amendments made by sec. 1, Ch. 379, L. 2023. Effective October 1, 2023.

1995 Amendments — Composite Section: Chapter 418 in introductory clause substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 near beginning substituted "superintendent of public instruction" for "department of health and environmental sciences and superintendent of public instruction". Amendment effective July 1, 1995.

Because the amendment in Ch. 418 was a name change and Ch. 546 deleted the function, the Code Commissioner has codified the substantive change in Ch. 546.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Preamble: The preamble attached to Ch. 95, L. 1991, provided: "WHEREAS, Rule 16.24.410, Administrative Rules of Montana, requires day-care centers to use only disposable diapers for children unless the parents present medical documentation that nondisposable diapers should be used; and

WHEREAS, Rule 11.14.502, Administrative Rules of Montana, permits the use of nondisposable diapers but requires a child's parent to document the need for nondisposable diapers; and

WHEREAS, the disposal of solid waste is a major problem as landfills reach capacity while the volume of solid waste continues to grow in our present "throw-away" society; and

WHEREAS, 18 billion disposable diapers are thrown away each year in America, accounting by weight for approximately 2% of all municipal solid waste and between 3.5% and 4.5% of all household solid waste; and

WHEREAS, disposable diapers are the third, single-largest manufactured product to be found in landfills and other solid waste disposal sites; and

WHEREAS, disposable diapers in landfills present a threat to the public health and environment because of untreated urine and fecal matter released into the soil and ground water; and

WHEREAS, nondisposable diapers, such as cloth diapers, can be reused many times and their use would reduce the threat to the public health and environment posed by single-use disposable diapers; and

WHEREAS, the use of nondisposable diapers would help alleviate current solid waste problems by reducing the amount of disposable diapers thrown away each year; and

WHEREAS, there is no medical evidence that nondisposable diapers are less sanitary or present a greater threat to the spread of germs than disposable diapers.

THEREFORE, the Legislature finds it appropriate to amend Rules 11.14.502 and 16.24.410, Administrative Rules of Montana, to eliminate current restrictions on the use of nondisposable diapers in day-care facilities in order to allow their use as an alternative to disposable diapers."

1981 Amendment: Deleted first sentence that read: "The department of social and rehabilitation services shall prescribe and publish minimum standards for a license"; in (2) substituted "facilities" for "centers"; in (3) substituted "necessary to ensure the health, safety, safety in transportation" for "essential to the protection of health, safety"; and inserted (7) setting out the standard of ages and numbers of children that may be cared for in a day-care facility.

Administrative Rules

Title 37, chapter 95, ARM Licensure of day-care facilities.

52-2-732. Licensees or registrants to maintain records, furnish reports, and permit inspections.

Compiler's Comments

1981 Amendment: Inserted "for a license or for registration" after "applicant", inserted "or registrant" after "licensee", substituted "forms" for "blanks" near the end, and made minor changes in grammar.

52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 126 in (4)(a) at beginning inserted "Subject to subsection (4)(b)" and at end inserted "that are licensed on an annual basis"; inserted (4)(b) concerning visits to day-care centers that have 2-year or 3-year licenses or have successfully passed inspections for 10 consecutive years; and made minor changes in style. Amendment effective April 5, 2007.

Chapter 449 in (5) near beginning after "investigation" substituted "section" for "program". Amendment effective June 1, 2007.

1995 Amendments — Composite Section: Chapter 418 in (5) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (5), after "Upon request of the department", deleted "the department of health and environmental sciences or"; and made minor changes in style. Amendment effective July 1, 1995.

Because the amendment in Ch. 418 was a name change and Ch. 546 deleted the function, the Code Commissioner has codified the substantive change in Ch. 546.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In (5), near middle, substituted "prevention and investigation program of the department of justice" for "marshal or his designee". Amendment effective April 29, 1991.

1989 Amendment: In (3) increased percentage to 20% from 15%; inserted (4) relating to unannounced visits to day-care centers; and inserted (7) relating to inspections of each day-care facility applying for a registration certificate.

1981 Amendment: In (1) deleted "It shall be the duty of" at the beginning, substituted "shall" for "to" before "make", and substituted "centers" for "facilities"; inserted (2) allowing departmental investigation and inspection of licensees and registrants; inserted (3) requiring annual Department inspection of 15% of registrants in each planning region; inserted (4) requiring inspection by the Department of Health and Environmental Sciences or the State Fire Marshal (now the fire prevention and investigation program of the Department of Justice) upon request; in (5) inserted "Upon request, the department shall", deleted "upon request" after "consultation", inserted "and registrant" after "licensee", and substituted "program" for "facility"; and made minor changes in phraseology.

52-2-734. Fire safety — certification required.

Compiler's Comments

2007 Amendment: Chapter 449 in (1) near beginning and in (2) near middle after "investigation" substituted "section" for "program"; and made minor changes in style. Amendment effective June 1, 2007.

1991 Amendment: In (1), near beginning after "fire", substituted "prevention and investigation program" for "marshal"; and in (2), near middle, substituted "state fire prevention and investigation program" for "marshal" and after "justice" deleted "or his designee". Amendment effective April 29, 1991.

1985 Amendment: In (2) deleted "bureau" after "fire marshal".

1981 Amendment: In (1) substituted "day-care centers" for "care facilities"; in (2) substituted "Before a license can be issued" for "Each applicant for a license", inserted "each applicant" before "shall submit", deleted "of social and rehabilitation services" after "department", inserted "from the fire marshal bureau of the department of justice or its designee", and deleted "before a license can be issued" at the end; and deleted (3) relating to automatic sprinkler systems required in certain homes.

52-2-735. Health protection — certification required.

Compiler's Comments

1995 Amendments: Chapter 418 near beginning of (1) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 at beginning of (1), after "department", deleted "of health and environmental sciences". Amendment effective July 1, 1995.

Pursuant to sec. 569, Ch. 546, the Code Commissioner has codified the amendment in Ch. 546.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In (1) inserted second sentence regarding rules to be adopted requiring immunization against Haemophilus influenza type "b". Amendment effective March 26, 1991.

Preamble: The preamble attached to Ch. 95, L. 1991, provided: "WHEREAS, Rule 16.24.410, Administrative Rules of Montana, requires day-care centers to use only disposable diapers for children unless the parents present medical documentation that nondisposable diapers should be used; and

WHEREAS, Rule 11.14.502, Administrative Rules of Montana, permits the use of nondisposable diapers but requires a child's parent to document the need for nondisposable diapers; and

WHEREAS, the disposal of solid waste is a major problem as landfills reach capacity while the volume of solid waste continues to grow in our present "throw-away" society; and

WHEREAS, 18 billion disposable diapers are thrown away each year in America, accounting by weight for approximately 2% of all municipal solid waste and between 3.5% and 4.5% of all household solid waste; and

WHEREAS, disposable diapers are the third, single-largest manufactured product to be found in landfills and other solid waste disposal sites; and

WHEREAS, disposable diapers in landfills present a threat to the public health and environment because of untreated urine and fecal matter released into the soil and ground water; and

WHEREAS, nondisposable diapers, such as cloth diapers, can be reused many times and their use would reduce the threat to the public health and environment posed by single-use disposable diapers; and

WHEREAS, the use of nondisposable diapers would help alleviate current solid waste problems by reducing the amount of disposable diapers thrown away each year; and

WHEREAS, there is no medical evidence that nondisposable diapers are less sanitary or present a greater threat to the spread of germs than disposable diapers.

THEREFORE, the Legislature finds it appropriate to amend Rules 11.14.502 and 16.24.410, Administrative Rules of Montana, to eliminate current restrictions on the use of nondisposable diapers in day-care facilities in order to allow their use as an alternative to disposable diapers."

1991 Statement of Intent: The statement of intent attached to Ch. 165, L. 1991, provided: "A statement of intent is required for this bill because it amends 52-2-735 to require the department of health and environmental sciences [now department of public health and human services] to adopt rules to require children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted to a day-care center unless an exemption has been claimed as provided in 20-5-405.

It is the intent of the legislature that the department adopt rules similar to rules established for administration of the school immunization laws, Title 20, chapter 5, part 4.

Furthermore, it is intended that rules allow persons to claim a religious or medical exemption from the immunization requirements contained in 52-2-735 in the same manner as provided in 20-5-405."

Effective Date: Section 4(2), Ch. 165, L. 1991, provided: "[Section 3 [52-3-735] and this section] are effective on passage and approval [approved March 26, 1991], except that rules adopted by the department of health and environmental sciences [now department of public health and human services] may not be implemented prior to July 1, 1991."

1981 Amendment: In (1) deleted "overcrowding" after "hazards of", inserted "inadequate" before "food preparation", inserted "poor nutrition", and deleted "and arrange for any inspections and investigations it considers necessary" at the end; inserted (2) providing for training by local public health authorities and certification upon completion; inserted (3) allowing inspection in lieu of training; in (4), deleted "of social and rehabilitation services" after "department" and substituted "issued pursuant to subsections (2) and (3) before the department will issue a license" for "of approval that the department of health and environmental sciences rules have been met before a license can be issued"; and inserted (5) providing an inspection fee.

Administrative Rules

Title 37, chapter 95, ARM Licensure of day-care facilities.

52-2-736. Prohibition against administering medicine without authorization — provision for emergency — definitions — penalty.

Compiler's Comments

Preamble: The preamble attached to Ch. 270, L. 2005, provided: "WHEREAS, too often the victim is forgotten by the judicial system and society; and

WHEREAS, the motivation for this bill is the tragic death of Dane Jordan Heggem; and

WHEREAS, this bill will be known as "Dane's Law" to remind the judicial system and society of the victims of the crime."

Effective Date: This section is effective October 1, 2005.

52-2-737. Group day-care home — staffing requirement.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

52-2-741. Penalty — remedies.

Compiler's Comments

1997 Amendment: Chapter 222 in (1)(c), after "action in the", inserted "justice's court, city court, municipal court, or", after "appropriate" substituted "jurisdiction" for "county", after "appeal to the" inserted "district court, and" and at end inserted "as applicable"; and made minor changes in style.

1989 Amendment: In two places in (1) substituted "day-care facility" for "day-care center" and after "obtaining a license" inserted "or registration certificate".

1981 Amendment: In (2)(a) changed "child-care" to "day-care" in three places, inserted "or registration certificate" after "license" in two places, substituted "the department" for "it" before "finds", inserted "or certificate" before "is issued" at the end; substituted (2)(c) allowing departmental institution of legal actions for "The department may institute action by its own attorney or counsel or may call upon any county attorney to represent it in the district court of the county in which the action is taken or the attorney general to represent it on appeal to the supreme court of Montana or it may associate its own counsel with either in any court"; and made minor changes in grammar and punctuation.

Part 8

Private Alternative Adolescent Residential or Outdoor Programs

Part Compiler's Comments

Effective Date: Section 15, Ch. 293, L. 2019, provided that this part is effective July 1, 2019.

Transition: Section 12, Ch. 293, L. 2019, provided: "(1) Existing licenses granted by the board of private alternative adolescent residential and outdoor programs shall be accepted and administered by the department of public health and human services until those licenses expire or are canceled, reduced, modified, or revoked by the department.

(2) The department shall apply and administer the existing rules of the board of private alternative adolescent residential and outdoor programs to the extent those rules do not conflict with [sections 1 through 11] [Title 52, chapter 2, part 8] until it adopts its own rules to implement [sections 1 through 11]."

Part Administrative Rules

Title 37, chapter 99, ARM Private alternative adolescent residential programs or private outdoor programs.

52-2-803. Duties of department.

Administrative Rules

Title 37, chapter 99, ARM Private alternative adolescent residential programs or private outdoor programs.

52-2-804. License required — term of license — fees.

Administrative Rules

Title 37, chapter 99, ARM Private alternative adolescent residential programs or private outdoor programs.

52-2-805. Requirements for licensure — restrictions — rulemaking.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 498, L. 2023. Amendment effective October 1, 2023.

Administrative Rules

Title 37, chapter 99, ARM Private alternative adolescent residential programs or private outdoor programs.

52-2-806. Provisional license.

Administrative Rules

Title 37, chapter 99, ARM Private alternative adolescent residential programs or private outdoor programs.

52-2-807. Renewal license.

Administrative Rules

Title 37, chapter 99, ARM Private alternative adolescent residential programs or private outdoor programs.

52-2-808. Denial, cancellation, reduction, revocation, and nonrenewal of licenses — fair hearing.

Administrative Rules

Title 37, chapter 99, ARM Private alternative adolescent residential programs or private outdoor programs.

52-2-809. Licensees and applicants to maintain records, furnish reports, and permit inspections.

Administrative Rules

Title 37, chapter 99, ARM Private alternative adolescent residential programs or private outdoor programs.

52-2-810. Periodic visits to facilities by department — investigations — consultation with licensees and registrants.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 498, L. 2023. Amendment effective October 1, 2023.

Part 9
Early Intervention Services

52-2-901. Evaluation and assessment of language development in deaf and hard-of-hearing children — exception — report.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 521, L. 2023. Amendment effective July 1, 2023.

Effective Date: This section is effective October 1, 2021.

52-2-902. Definitions.

Compiler's Comments

Effective Date: Section 7, Ch. 521, L. 2023, provided: "[This act] is effective July 1, 2023."

52-2-903. Parent resource on language developmental milestones — criteria — distribution — timeline for development.

Compiler's Comments

Effective Date: Section 7, Ch. 521, L. 2023, provided: "[This act] is effective July 1, 2023."

52-2-904. Language development advisory committee.

Compiler's Comments

Effective Date: Section 7, Ch. 521, L. 2023, provided: "[This act] is effective July 1, 2023."

Termination: Section 8, Ch. 521, L. 2023, provided: "[Section 2] [52-2-904] terminates June 30, 2025."

CHAPTER 3
ADULT SERVICES

Chapter Administrative Rules

Title 37, chapter 41, ARM Aging services.

Title 37, chapter 47, subchapter 1, ARM Adult protective services.

Part 1
Problems of Aging

52-3-101. Functions of department of public health and human services.

Compiler's Comments

1999 Amendment: Chapter 435 in (5) substituted "area agencies on aging and county councils" for "area councils on aging"; inserted (6) concerning biennial report and providing for content of report; and made minor changes in style. Amendment effective October 1, 1999, and terminates June 30, 2001.

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

52-3-102. Grants and gifts to department.

Compiler's Comments

1995 Amendment: Chapter 546 at beginning substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

52-3-103. Designation of area agencies.

Compiler's Comments

Code Commissioner Instruction: Pursuant to sec. 45, Ch. 571, L. 2001, in (2)(b) the code commissioner changed "county welfare office or department" to "local office of public assistance".

1999 Amendment: Chapter 435 inserted (1)(c) concerning involving stakeholders in identifying needs and goals; and made minor changes in style. Amendment effective October 1, 1999, and terminates June 30, 2001.

1995 Amendment: Chapter 546 in (1), at beginning, substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

Statement of Intent: The statement of intent attached to SB 404 (Ch. 337, L. 1983) read: "A statement of intent is necessary because [53-5-103, renumbered 52-3-103] gives the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] the authority to designate area Councils on Aging for senior citizen services. It is intended that the Department establish criteria for use by area agencies or entities who apply to be area agencies that set forth the administrative and services capabilities necessary for area agencies. The rules must be in conformance with applicable federal law but recognize community needs for community services."

Administrative Rules

Title 37, chapter 41, subchapter 1, ARM Area agencies on aging.

52-3-115. Older Montanans trust fund.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 141, L. 2023. Amendment effective April 18, 2023.

2019 Amendment: Chapter 393 in (1) in substituted "legislative transfer and appropriation" for "legislative appropriation"; in (4) after "retained within the fund" deleted "except as provided in this section. Until the year 2015, if assets in the fund reach the following amounts, money may be appropriated by the legislature and used in the following amounts for the programs specified in subsection (2):

(a) When the fund balance reaches $20 million, 50% of the interest earned may be appropriated.

(b) When the fund balance reaches $50 million, 60% of the interest earned may be appropriated.

(c) When the fund balance reaches $100 million, 80% of the interest earned may be appropriated"; in (5) at beginning deleted "On and after January 1, 2015"; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 375 in (2) near beginning of first sentence after "fund may be used to" substituted "fund" for "create new, innovative services or to expand"; in (4) at beginning of second sentence deleted "Until the year 2015, if assets in the fund reach the following amounts", near middle of second sentence after "by the legislature and used" deleted "in the following amounts", at end of second sentence after "for the programs specified in" substituted "section 2, Chapter 375, Laws of 2017" for "subsection (2)", and deleted former (4)(a) through (4)(c) that read: "(a) When the fund balance reaches $20 million, 50% of the interest earned may be appropriated.

(b) When the fund balance reaches $50 million, 60% of the interest earned may be appropriated.

(c) When the fund balance reaches $100 million, 80% of the interest earned may be appropriated"; deleted former (5) that read: "(5) On and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for the programs specified in subsection (2)"; and made minor changes in style. Amendment effective on occurrence of contingency and terminates June 30, 2019.

Contingent Effective Date: Section 31, Ch. 429, L. 2017, amended sec. 9, Ch. 375, L. 2017, to provide that the amendments to this section "are effective only if on:

(a) August 15, 2017, the state treasurer certifies that unaudited general fund revenue and transfers into the general fund received at the end of fiscal year 2017 are equal to or greater than $2,220,000,000; or

(b) August 15, 2018, the state treasurer certifies that unaudited general fund revenue and transfers into the general fund received at the end of fiscal year 2018 are equal to or greater than $2,375,000,000." On August 1, 2017, the state treasurer reported that the amount of the unaudited and unadjusted general fund revenue and transfers-in for the fiscal year ended June 30, 2017, was $2,139,414,715.40.

2011 Amendment: Chapter 312 in (2) near beginning substituted "fund" for "create", after "innovative services or" deleted "to expand", and at end deleted former last sentence that read: "The interest and income produced by the trust fund and appropriated to the department by the legislature is intended to increase services referred to in this subsection and not to supplant other sources of revenue for those programs in the trended traditional level, as used in 53-6-1201, of appropriations for those services"; in (4) in second sentence at beginning deleted "Until the year 2015, if assets in the fund reach the following amounts", near end of sentence after "used" deleted "in the following amounts", and deleted former subsections (4)(a), (4)(b), (4)(c), and (5) that read: "(a) When the fund balance reaches $20 million, 50% of the interest earned may be appropriated.

(b) When the fund balance reaches $50 million, 60% of the interest earned may be appropriated.

(c) When the fund balance reaches $100 million, 80% of the interest earned may be appropriated.

(5) On and after January 1, 2015, 90% of the interest earned on the trust fund may be appropriated for the programs specified in subsection (2)"; and made minor changes in style. Amendment effective May 4, 2011, and terminates June 30, 2013.

Severability: Section 18, Ch. 312, L. 2011, was a severability clause.

2009 Amendment: Chapter 489 in (2)(a) in second sentence near end after "level" deleted "as used in 53-6-1201"; inserted (2)(b) defining trended traditional level of appropriations; and made minor changes in style. Amendment effective May 14, 2009, and terminates June 30, 2011.

Effective Date: Section 6, Ch. 482, L. 2007, provided: "[This act] is effective on passage and approval." Approved May 11, 2007.

Part 2
Protective Services

Part Administrative Rules

Title 37, chapter 47, subchapter 1, ARM Adult protective services.

Part Attorney General's Opinions

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

52-3-201. Short title.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 12, L. 2023. Amendment effective October 1, 2023.

52-3-202. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In (3), the Code Commissioner has made the change.

Chapter 465 in definition of disabled adult substituted "or who is" for "but not" and at end inserted "as defined in 53-20-102"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

52-3-203. Purpose.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 12, L. 2023. Amendment effective October 1, 2023.

52-3-204. Duties of department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 12, L. 2023. Amendment effective October 1, 2023.

52-3-205. Departmental authority.

Administrative Rules

ARM 37.47.602 Definitions.

52-3-206. Annual reports.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 15, Ch. 12, L. 2023. Amendment effective October 1, 2023.

52-3-207. Protective services not creating guardianship or conservatorship.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 16, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1995 Amendment: Chapter 465 in (1), after "person", inserted "or disabled adult"; inserted (2) regarding protective services that impose limitations or restrictions; and made minor changes in style. Amendment effective April 14, 1995.

Part 4
State Plan on Aging

Part Administrative Rules

Title 37, chapter 41, subchapter 1, ARM Area agencies on aging.

52-3-401. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 17, L. 2023. Amendment effective February 23, 2023.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

52-3-402. Purpose.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 17, L. 2023. Amendment effective February 23, 2023.

52-3-405. Designation of planning and service areas.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 17, L. 2023. Amendment effective February 23, 2023.

52-3-406. Departmental rules.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 663 (Ch. 645, L. 1983) provided: "A statement of intent is required for this bill because it grants rulemaking authority to the Department of Social and Rehabilitation Services (SRS) [now Department of Public Health and Human Services] to administer the state plan on aging.

Section 2 [53-5-602, renumbered 52-3-402] states that the purpose of the bill is to grant the Department authority to develop and administer the state plan on aging, to coordinate services to the aged pursuant to the federal Older Americans Act and to establish or redesignate planning and service areas to facilitate the implementation of the Older Americans Act.

Section 2 [53-5-602, renumbered 52-3-402] further states that it is the intent of the legislature that the number of planning and service areas be limited so that unnecessary administrative costs are eliminated.

It is the legislature's intent that the Department's rulemaking authority be limited to the following areas:

(1) Designation and method of designation every 4 years of not less than 7 and not more than 12 planning and service areas.

(2) Designation of area agencies to administer the planning and service areas.

(3) Statement of purposes of an area agency.

(4) Standards for contents of an area plan, for review and approval of the plan and for changing an area plan.

(5) Standards for establishment of an area agency advisory council."

Administrative Rules

Title 37, chapter 41, subchapter 1, ARM Area agencies on aging.

52-3-410. Achieving accountability.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 17, L. 2023. Amendment effective February 23, 2023.

Effective Date: This section is effective October 1, 2009.

Part 5
Montana Older Americans Act

Part Compiler's Comments

Severability: Chapter 67, L. 1987, which enacted this part, contained a severability clause in sec. 8.

Part Administrative Rules

Title 37, chapter 41, subchapter 2, ARM Senior farmers' market nutrition program.

52-3-502. Definitions.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

52-3-503. Purpose and policy.

Compiler's Comments

2009 Amendment: Chapter 320 inserted (5) concerning policy of accountability; and made minor changes in style. Amendment effective October 1, 2009.

1999 Amendment: Chapter 435 inserted (5) concerning legislative intent to have local involvement in planning. Amendment effective October 1, 1999, and terminates June 30, 2001.

52-3-504. Services to be provided.

Compiler's Comments

1999 Amendment: Chapter 435 inserted (10) concerning technical assistance to communities; and made minor changes in style. Amendment effective October 1, 1999, and terminates June 30, 2001.

52-3-506. Coordination with federal legislation.

Compiler's Comments

Federal Law: The Older Americans Act of 1965, Pub. L. No. 89-73, may be found at 42 U.S.C. 3001, et seq.

Part 6
Ombudsman Services

52-3-602. Definitions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

52-3-603. Office of legal and long-term care ombudsman services.

Compiler's Comments

1995 Amendment: Chapter 546 at end of first sentence substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: In introductory clause substituted "department of family services" for "department of social and rehabilitation services".

52-3-604. Access to long-term care facilities.

Compiler's Comments

2007 Amendment: Chapter 60 in (1) at beginning inserted "Subject to subsection (2)"; in (2) at beginning of second sentence inserted "A local ombudsman may have access after normal visiting hours with approval, directions, and oversight of the long-term care ombudsman when"; and made minor changes in style. Amendment effective October 1, 2007.

52-3-605. Enforcement of access.

Compiler's Comments

1995 Amendments: Chapter 418 in (1) and (2) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in (1) and (2) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Part 8
Montana Vulnerable Adult Prevention of Abuse Act

Part Compiler's Comments

Source: The Montana Elder and Developmentally Disabled Abuse Prevention Act is partially based upon Nevada law (Chapter 200 N.R.S.).

Part Administrative Rules

Title 37, chapter 34, ARM Developmental disabilities program.

Title 37, chapter 47, subchapter 1, ARM Adult protective services.

52-3-801. Short title.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 17, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change.

1989 Amendment: Inserted "and Developmentally Disabled". Amendment effective March 21, 1989.

52-3-802. Legislative findings and purpose.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 18, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1999 Amendment: Chapter 196 near end after "reporting" inserted "and prosecution"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change and made minor changes in style.

1993 Amendment: Chapter 167 in two places, after "abuse", inserted "sexual abuse"; and made minor changes in style. Amendment effective March 24, 1993.

1989 Amendment: Near end, after "elderly", inserted "and developmentally disabled persons". Amendment effective March 21, 1989.

52-3-803. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 19, Ch. 12, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 329 in definition of abuse inserted (c) concerning causing personal degradation of an older person or a person with a developmental disability; inserted definition of personal degradation; and made minor changes in style. Amendment effective May 7, 2019.

2013 Amendments — Composite Section: Chapter 158 in definition of older person deleted last sentence that read: "For purposes of prosecution under 52-3-825(2) or (3), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age." Amendment effective April 5, 2013.

Chapter 225 in definition of sexual abuse after "incest" inserted "or sexual abuse of children" and at end inserted "and Title 45, chapter 8, part 2"; and made minor changes in style. Amendment effective October 1, 2013.

Applicability: Section 4, Ch. 158, L. 2013, provided: "[This act] applies to offenses committed on or after [the effective date of this act]." Effective April 5, 2013.

2003 Amendments — Composite Section: Chapter 350 in definition of exploitation in (a) in two places after "possession of" inserted "or interest in" and in (b) near middle after "possession of" inserted "or interest in" and near end after "benefit" inserted "or possession of or interest in"; in definition of older person near middle after "52-3-825(2)" inserted "or (3)"; and made minor changes in style. Amendment effective April 16, 2003.

Chapter 493 in definition of exploitation inserted (c) concerning an offer or sale of insurance or securities to obtain control of the person's money, assets, or property by deception, duress, menace, fraud, undue influence, or intimidation; and made minor changes in style. Amendment effective April 24, 2003.

Applicability: Section 14, Ch. 493, L. 2003, provided: "[This act] applies to viatical settlement contracts entered into on or after [the effective date of this act]." Effective April 24, 2003.

1999 Amendment: Chapter 196 inserted definition of department; in definition of exploitation in (a) near beginning after "use of" inserted "an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to", after second "developmental disability" inserted language regarding obtaining control of or diverting ownership, use, benefit, or possession, after "person's money" inserted "assets", after "by means of" inserted "deception", and after "undue influence" inserted language concerning use of intimidation with intent or result to deprive older person or person with developmental disability of ownership, use, benefit, or possession of person's money, assets, or property and inserted (b) regarding acts taken by person who has trust and confidence of older person; in definition of neglect substituted "a person who has assumed legal responsibility or contractual obligation for caring for" for "a guardian; an employee of a public or private residential institution, facility, home, or agency; or any person legally responsible in a residential setting for the welfare of", after "developmental disability" inserted language concerning person who has voluntarily assumed responsibility for care, including employee of public or private institution, facility, home, or agency, and after "to provide" deleted "to the extent of legal responsibility"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment: Chapter 465 throughout section substituted "person with a developmental disability" for "developmentally disabled person"; deleted definition of developmentally disabled person that read: ""Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102"; inserted definition of person with a developmental disability; and made minor changes in style. Amendment effective April 14, 1995.

1993 Amendments — Composite Section: Chapter 167 in definition of older person, after "abuse", inserted "sexual abuse"; inserted definition of sexual abuse; and made minor changes in style. Amendment effective March 24, 1993.

Chapter 426 in definition of neglect, near middle after "to provide", inserted "to the extent of legal responsibility"; and made minor changes in style.

A style change in the definition of older person was slightly different in the two chapters. The codifier chose the more appropriate of the two.

1991 Amendment: Inserted definition of incapacitated person.

1989 Amendment: In first sentence of definition of abuse inserted "or a developmentally disabled person"; inserted definition of developmentally disabled person; in definition of exploitation inserted "or a developmentally disabled person"; in definition of neglect, after "older person's", inserted "or a developmentally disabled person's", after "welfare" deleted "to care for an older person by failing", and at end inserted "or the developmentally disabled person"; and made minor changes in form. Amendment effective March 21, 1989.

1987 Amendments: Chapters 370 and 450 at end of (3) deleted reference to subsection (20) of 50-5-101.

1985 Amendment: In (1) inserted "without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority"; in (2) substituted "unreasonable" for "unethical" and inserted "by means of duress, menace, fraud, or undue influence"; and in (6) inserted second sentence outlining advanced age requirements necessary for purposes of prosecution.

52-3-804. Duties of department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 20, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1999 Amendment: Chapter 196 in (5) in introduction in two places after reference to sexual abuse or neglect inserted reference to exploitation; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendments: Chapter 465 in (3), after citation to Title 52, chapter 3, part 2, deleted "or under Title 52, chapter 4, part 1", before "person" inserted "an older", and inserted "or a person with a developmental disability"; in (5) substituted "older person or person with a developmental disability" for "older or developmentally disabled person"; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 at beginning of (2) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 167 throughout section inserted reference to sexual abuse; and made minor changes in style. Amendment effective March 24, 1993.

1991 Amendment: Inserted (5) concerning actions Department may take.

1989 Amendment: Inserted (1) requiring Department investigation of certain reports; in (3) inserted reference to Title 53, chapter 20, part 4 (renumbered in part to Title 52, chapter 4, part 1), and before "person alleged" substituted "a" for "an older"; and inserted (4) allowing a District Court to order law enforcement or Department personnel to enter premises to investigate possible abuse, neglect, or exploitation. Amendment effective March 21, 1989.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

52-3-805. Adult protective service teams.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 21, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (1) and (2) and made minor changes in style to conform to the change.

Chapter 546 in (1), in two places, substituted "department of public health and human services" for "department of family services"; and in (2), at end of first sentence after "review", deleted "and a representative of the developmental disabilities division of the department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments — Composite Section: Chapter 167 in second sentence of (1), after "abuse", inserted "sexual abuse"; and made minor changes in style. Amendment effective March 24, 1993.

Chapter 421 in second sentence of (1), after "older persons", inserted "and developmentally disabled persons" and inserted last sentence concerning other members of an adult protective service team.

Chapter 426 in first and second sentences of (1) substituted "shall" for "may"; inserted (2) specifying the composition of the adult protective service team in certain instances and requiring a report; and made minor changes in style.

A style change in (1) was slightly different in the three chapters. The codifier chose the most appropriate change.

1987 Amendment: Substituted "department of family services" for "county welfare department".

52-3-811. Reports.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 22, Ch. 12, L. 2023. Amendment effective October 1, 2023.

2003 Amendment: Chapter 54 in (3)(e) near middle after "day-care center, or" substituted "assisted living" for "personal-care". Amendment effective October 1, 2003.

1999 Amendment: Chapter 196 in (3)(e) after "retirement home" inserted "or complex" and after "adult foster care home" inserted language regarding entity or individual who provides home health services or personal care in the home; inserted (3)(i) regarding employee of department; in (4) inserted "entities"; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendments — Instructions to Code Commissioner: Chapter 418 in (1)(b), at end of first sentence, substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

In (1), (2), (3)(d), and (3)(h) the Code Commissioner changed "developmentally disabled person" to "person with a developmental disability" pursuant to sec. 7, Ch. 465, L. 1995, directing the Code Commissioner to make the change in Title 52, ch. 3, part 8. Amendment effective April 14, 1995.

Chapter 546 in (1)(a)(i) and (2) substituted "department of public health and human services" for "department of family services"; in (1)(b), at end of first sentence after "department", deleted "of health and environmental sciences" and near end of second sentence, after "report", deleted "to the department of family services and"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments: Chapter 167 in (1), in introductory clause, in (1)(b), in second sentence, and in (2), after "abuse", inserted "sexual abuse"; and made minor changes in style. Amendment effective March 24, 1993.

Chapter 421 inserted (3)(h) concerning persons providing services to older persons under a contract; and made minor changes in style.

1989 Amendment: Near beginning of (1) inserted "or a developmentally disabled person"; near beginning of (1)(a), (1)(a)(ii), and (1)(b), before "person", deleted "older"; near end of (2), after "older person", inserted "or the developmentally disabled person"; and in middle of (3)(d) inserted "or a developmentally disabled person". Amendment effective March 21, 1989.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

1985 Amendment: In (3)(b) after "dentist", inserted "denturist".

52-3-812. Content of report.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 23, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1999 Amendment: Chapter 196 in (2)(c) after "previous injuries" inserted "abuse, sexual abuse, neglect, or exploitation" and after "developmental disability" inserted language regarding evidence of prior abuse, sexual abuse, neglect, or exploitation committed by the person alleged to have committed abuse, sexual abuse, neglect, or exploitation; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment — Instructions to Code Commissioner: In (2)(a), (2)(b), and (2)(c) the Code Commissioner changed "developmentally disabled person" to "person with a developmental disability" pursuant to sec. 7, Ch. 465, L. 1995, directing the Code Commissioner to make the change in Title 52, ch. 3, part 8. Amendment effective April 14, 1995.

1993 Amendment: Chapter 167 in (2)(b), after "abused", inserted "sexually abused"; in (2)(c), after "abuse", inserted "sexual abuse"; and made minor changes in style. Amendment effective March 24, 1993.

1989 Amendment: In (2)(a), (2)(b), and (2)(c) inserted "or the developmentally disabled person". Amendment effective March 21, 1989.

52-3-813. Confidentiality.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 24, Ch. 12, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 2 in (2)(i) near end after "29 U.S.C. 794e" deleted "42 U.S.C. 6042" and at end inserted "42 U.S.C. 15043"; and made minor changes in style. Amendment effective October 1, 2009.

2001 Amendment: Chapter 483 in (4) near middle after "department of" substituted "labor and industry" for "commerce". Amendment effective July 1, 2001.

1999 Amendment: Chapter 196 in (1) inserted second sentence defining case records; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendments: Chapter 18 in (2)(f), (2)(f)(ii), (2)(g), and (2)(h), after "abused", inserted "sexually abused"; and made minor changes in style.

Chapter 465 throughout section substituted "person with a developmental disability" for "developmentally disabled person"; in (2)(f), (2)(f)(ii), (2)(g), and (2)(h) inserted "sexually abused"; inserted (2)(f)(iii) relating to screening of employees or volunteers; inserted (2)(i) through (2)(n) specifying persons or entities to whom records or reports may be disclosed; and made minor changes in style. Amendment effective April 14, 1995.

Chapter 546 at beginning of (1) substituted "department of public health and human services, its local affiliate" for "departments of social and rehabilitation services and family services, their local affiliate"; and in (2)(g), near beginning after "department", deleted "or the department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments — Composite Section: Chapter 167 in (2)(a), (2)(b), (2)(c), (2)(d), in two places, and (4) inserted reference to sexual abuse; and made minor changes in style. Amendment effective March 24, 1993.

Chapter 421 inserted (2)(f), (2)(g), and (2)(h) stating conditions for disclosure of records to representative of provider of services to abused, neglected, exploited, and developmentally disabled persons, to employees of Department of Social and Rehabilitation Services, and to authorized representative of guardianship program; and made minor changes in style.

A style change in (2)(a) was slightly different in the two chapters. The codifier chose the more appropriate of the two.

1989 Amendments: Chapter 83 in (1) substituted "departments of social and rehabilitation services and family services, their local affiliate" for "department of social and rehabilitation services and its local affiliate".

Chapter 198 in (1) inserted reference to Department of Family Services and deleted reference to county welfare department; in (2)(a), (2)(b), (2)(d), and (4) inserted reference to developmentally disabled person; and made minor changes in phraseology. Amendment effective March 21, 1989.

1985 Amendment: Inserted (2)(e) allowing disclosure of records and reports to an adult protective service team.

52-3-814. Immunity from civil and criminal liability.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 25, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1995 Amendment: Chapter 465 inserted (2) regarding immunity from civil liability; and made minor changes in style. Amendment effective April 14, 1995.

52-3-815. Evidence of abuse, sexual abuse, neglect, or exploitation to be gathered and submitted.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 26, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1999 Amendment: Chapter 196 throughout (1) and (2) after reference to sexual abuse or neglect inserted reference to exploitation; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment — Instructions to Code Commissioner: In (1) and (2), the Code Commissioner changed "developmentally disabled person" to "person with a developmental disability" pursuant to sec. 7, Ch. 465, L. 1995, directing the Code Commissioner to make the change in Title 52, ch. 3, part 8. Amendment effective April 14, 1995.

1993 Amendment: Chapter 167 in (1), in five places, and in (2), in two places, inserted reference to sexual abuse. Amendment effective March 24, 1993.

Codification Not Followed: Section 4, Ch. 717, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 5, part 5. The Code Commissioner has codified this section as part of Title 52, ch. 3, part 8, to reflect the renumbering of former Title 53, ch. 5, part 5, as Title 52, ch. 3, part 8.

52-3-821. Admissibility of evidence.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 27, Ch. 12, L. 2023. Amendment effective October 1, 2023.

1989 Amendment: Near middle, before "person", deleted "older". Amendment effective March 21, 1989.

52-3-825. Penalties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 28, Ch. 12, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 329 in (2)(a) and (2)(b)(i) at beginning inserted exception clause; inserted (2)(c) concerning punishment for a person who causes personal degradation to an older person or a person with a developmental disability; in (2)(d) inserted reference to subsection (2)(c); and made minor changes in style. Amendment effective May 7, 2019.

2015 Amendment: Chapter 180 deleted former (3) that read: "(3) (a) A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of $1,000 or less in value shall be fined an amount not more than $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of more than $1,000 but less than $25,000 in value shall be fined an amount not more than $50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. A person convicted of purposely or knowingly exploiting an older person or a person with a developmental disability in a case involving money, assets, or property in an amount of $25,000 or more in value shall be fined an amount not more than $50,000 or be imprisoned in a state prison for a term of not less than 1 year and not more than 10 years, or both.

(b) For purposes of prosecution under subsection (3)(a) in a case involving the same transaction or in a case prosecuted pursuant to a common scheme, the amounts may be aggregated in determining the value involved." Amendment effective October 1, 2015.

2013 Amendment: Chapter 158 in (3)(a) in second sentence inserted "but less than $25,000" and inserted last sentence concerning cases involving money, assets, or property of $25,000 or more. Amendment effective April 5, 2013.

Applicability: Section 4, Ch. 158, L. 2013, provided: "[This act] applies to offenses committed on or after [the effective date of this act]." Effective April 5, 2013.

2005 Amendment: Chapter 429 in (2)(a) at end after "guilty of a" inserted "felony and shall be imprisoned for a term not to exceed 10 years and be fined an amount not to exceed $10,000, or both"; in (2)(b)(i) at beginning inserted "A person who negligently abuses an older person or a person with a developmental disability is guilty of a" and after "conviction" substituted "shall" for "may"; in (2)(b)(ii) near beginning after "conviction" substituted "of the conduct described in subsection (2)(b)(i), the person is guilty of a felony and shall" for "the individual may"; inserted (2)(c) providing that a person with a developmental disability may not be charged under subsection (2)(a) or (2)(b); and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 350 in (2) near beginning of first sentence after "neglects" deleted "or exploits"; inserted (3) establishing a penalty for an individual who exploits an older person or person with a developmental disability; and made minor changes in style. Amendment effective April 16, 2003.

The amendment to this section made by Ch. 493, L. 2003, was rendered void by sec. 3, Ch. 350, L. 2003, a coordination section, and by sec. 12, Ch. 493, L. 2003, a coordination section.

1999 Amendment: Chapter 196 in (2) substituted "misdemeanor" for "offense", increased maximum fine from $500 to $1,000, and increased jail time from 6 months to 1 year; and made minor changes in style. Amendment effective October 1, 1999.

1995 Amendment — Instructions to Code Commissioner: In (2) the Code Commissioner changed "developmentally disabled person" to "person with a developmental disability" pursuant to sec. 7, Ch. 465, L. 1995, directing the Code Commissioner to make the change in Title 52, ch. 3, part 8. Amendment effective April 14, 1995.

1993 Amendment: Chapter 167 in (2), near beginning after "abuses", inserted "sexually abuses". Amendment effective March 24, 1993.

1989 Amendment: In (2), after "older person", inserted "or a developmentally disabled person". Amendment effective March 21, 1989.

1987 Amendment: In (1) substituted "an offense" for "a misdemeanor offense"; in (2), after "guilty of", substituted "an offense" for "a misdemeanor", before "conviction" inserted "a first", and added last provision relating to a second or succeeding conviction.

1985 Amendment: In (1) after "misdemeanor" inserted "offense"; and inserted (2) establishing penalties of fines or imprisonment.

Case Notes

Other Charges Not Included Within or Specific Instances of Fraudulent Practices Charge — No Violation of Prohibition on Multiple Charges: In District Court, the defendant was convicted of six felonies related to his operation of a Ponzi scheme. On appeal to the Supreme Court, he argued that fraudulent practices (common scheme), as set forth in 30-10-301(1), subsumed the remaining five counts as lesser included offenses. The Supreme Court found that exploitation of an older person as set forth in 52-3-825 requires proof that the victim is a person 65 years or older, which is not an element of the offense of fraudulent practices. The Supreme Court affirmed the defendant's conviction on this count. St. v. Brandt, 2020 MT 79, 399 Mont. 415, 460 P.3d 427. (Annotator's note: Section 28, Ch. 12, L. 2023, replaced the term "older person" in 52-3-825 with the newly defined term "vulnerable adult".)

Elder Abuse Not Specific Instance of Aggravated Burglary — No Double Jeopardy — No Ineffective Assistance of Counsel: The defendant was charged with elder abuse and aggravated burglary for entering an elderly woman's home and kicking her. On appeal, the defendant claimed that she had received ineffective assistance of counsel because, she argued, elder abuse is a specific instance of the conduct of aggravated burglary. The Supreme Court rejected her claim of ineffective assistance of counsel. It ruled that although the counts share some of the same elements, each count requires one element that the other does not and therefore elder abuse is not a specific instance of the conduct of aggravated burglary. St. v. Hooper, 2016 MT 237, 385 Mont. 14, 386 P.3d 548.

No Judicial Notice of Prior Testimony When Witness Unavailable to Testify at Criminal Trial — Prior Testimony Not Pertinent to Charges: The defendant was convicted of exploiting her elderly mother by convincing her to take out a reverse mortgage and using the proceeds to pay off the defendant's own debts. Prior to trial, at a hearing regarding the mother's competency, the District Court determined she was competent to testify at trial; however, the mother's health deteriorated by the time of trial, and she was no longer able to testify. The defendant asked the trial court to take judicial notice of the transcript of her mother's testimony at the competency hearing. The court refused to take notice and the defendant was convicted. On appeal, the Supreme Court affirmed, agreeing that the mother's testimony about her own competency was not pertinent to the charges against her daughter. St. v. Homer, 2014 MT 57, 374 Mont. 157, 321 P.3d 77.

CHAPTER 4
SERVICES TO THE DISABLED

Part 2
Physically Disabled — Community Home Licensing

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 330, L. 1989, provided: "This bill requires a statement of intent because [section 12] [53-19-205, renumbered 52-4-205] requires the department of family services [now department of public health and human services] to adopt administrative rules for the licensing of community homes for persons with severe disabilities. Licensed community homes are family-oriented residences for persons with severe disabilities who are eligible for services designed to assist persons with severe disabilities in living and functioning independently.

It is the intent of the legislature that, in adopting rules, the department develop licensing requirements to govern the administration, operation, and health and safety of standards of community homes for persons with severe disabilities. The department of health and environmental sciences [now department of public health and human services] and the state fire marshal [now the fire prevention and investigation program of the Department of Justice] shall provide advice and recommendations to the department of family services [now department of public health and human services] in the adoption of licensing requirements for the health and safety of community homes.

The rules for licensing of community homes for persons with severe disabilities may address the following: facility acquisition, facility design, group home staffing, staff training, service goals and design, quality of services, client placement procedure, provider grievance procedure, accounting procedures, including a procedure for the accounting of client personal property and belongings, water and waste disposal, food service, laundry, and fire and life safety standards that are compatible with the residential character of the facility."

Coordination Instruction: Section 15, Ch. 330, L. 1989, authorized the Governor to transfer employees, appropriations, and spending authority to prevent duplication of state services by consolidating and coordinating services provided under Title 53, chapter 19, part 1, with programs and services in Title 53, chapter 7, parts 1 through 3, that are administered by the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) with funds provided by the federal Rehabilitation Act of 1973.

Part Administrative Rules

Title 37, chapter 100, subchapter 4, ARM Community homes for persons with physical disabilities.

52-4-201. Purpose.

Compiler's Comments

Effective Date: Section 19, Ch. 330, L. 1989, provided that this section is effective July 1, 1989.

52-4-202. Definitions.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of family services established in 2-15-2401". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 19, Ch. 330, L. 1989, provided that this section is effective July 1, 1989.

52-4-203. Licensing.

Compiler's Comments

Effective Date: Section 19, Ch. 330, L. 1989, provided that this section is effective July 1, 1989.

52-4-204. Health and safety standards.

Compiler's Comments

1995 Amendments: Chapter 418 in (2)(a) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in (2)(a), in second sentence, substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Effective Date: Section 19, Ch. 330, L. 1989, provided that this section is effective July 1, 1989.

52-4-205. Rulemaking.

Compiler's Comments

2007 Amendment: Chapter 449 in (2) near beginning after "investigation" substituted "section" for "program". Amendment effective June 1, 2007.

1995 Amendments: Chapter 418 in (2) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 at beginning of (2), after "The", deleted "department of health and environmental sciences and the". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, was a saving clause.

Section 571, Ch. 546, L. 1995, was a saving clause.

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Effective Date: Section 19, Ch. 330, L. 1989, provided that this section is effective July 1, 1989.

Administrative Rules

Title 37, chapter 100, subchapter 4, ARM Community homes for persons with physical disabilities.

CHAPTER 5
CORRECTIONS

Chapter Administrative Rules

Title 20, chapter 9, ARM Department of Corrections — youth services.

Part 1
Youthful Offenders

52-5-101. Establishment of correctional facilities — prohibitions — definition.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) in first sentence after "operate" substituted "correctional facilities to provide custody" for "facilities to properly provide custody" and deleted former last sentence that read: "The facilities include but are not limited to the Pine Hills youth correctional facility in Miles City"; in (2) at end substituted "correctional facility" for "state youth correctional facility as defined in 41-5-103" inserted (3) concerning prioritizing the needs of youth populations when a correctional facility previously used as a secure residential facility for youth is repurposed by the department and the youth population subsequently increases sufficiently to justify the department reverting to the previous use of the facility; and made minor changes in style. Amendment effective October 1, 2021.

1997 Amendments: Chapter 42 in (1), in third sentence, deleted reference to Mountain View School in Helena; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 189 in (1), in third sentence after "limited to the", substituted "Pine Hills youth correctional facility" for "state youth correctional facilities at the Mountain View school in Helena and the Pine Hills school".

Chapter 550 in (1), near end of first sentence, substituted "to properly provide custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development for youth" for "to properly diagnose, care for, train, educate, and rehabilitate youth", in second sentence substituted "under 18 years of age" for "under 19 years of age", and in third sentence, after "state youth correctional facilities at", deleted "the Mountain View school in

Helena and"; in (2) substituted "youth in need of intervention" for "youth in need of supervision"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 at beginning of (1) substituted "department of corrections" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In (1), in two places, substituted "youth" for "children" and in last sentence, after "limited to", inserted "the state youth correctional facilities at", after "Mountain View school" inserted "in Helena", and after "Pine Hills school" inserted "in Miles City"; and inserted (2) prohibiting placement in a state youth correctional facility. Amendment effective April 23, 1991.

1989 Amendment: At end of second sentence reduced maximum age for Departmental jurisdiction from age 21 to 19. Amendment effective March 21, 1989.

Applicability: Section 5, Ch. 212, L. 1989, provided: "[This act] applies to proceedings begun on or after June 1, 1989."

1987 Amendment: At beginning substituted reference to Department of Family Services for reference to Department of Institutions and at end, after "Pine Hills school", deleted "but do not include the youth forest camp".

1986 Amendment: Deleted former (2) that read: "Mountain View school may be used at any one time for the detention of no more than five male and three female youths under the age of 18 who are alleged to be delinquent youths. The superintendent shall establish a procedure to assure that this capacity for detention is not exceeded. Youths detained at the school are entitled to the educational and ancillary services normally provided to students at the school, subject to security provisions."

1985 Amendments: Chapter 381 in last sentence, after "Pine Hills school", substituted "but do not include" for "and".

Chapter 737 inserted (2) allowing detention of certain delinquent youths at Mountain View School.

Case Notes

Requirement for Arrangement of Transportation for Delinquent Youth by District Court Held Constitutional — Counties Required to Pay Transportation Costs Only Within State — Unfunded Mandate Unaddressed: After the District Youth Court found that J.A. was a delinquent youth, the court committed J.A. to the custody of the Department of Corrections (DOC) for placement at a treatment center in Texas and ordered the DOC to pay the costs of transporting J.A. to that center. When the DOC refused to pay those costs, Lake County paid the costs but later challenged the constitutionality of 52-5-109 as being a violation of the doctrine of the separation of powers and, in addition, argued that 52-5-109 is an unfunded mandate in violation of 1-2-116 and that 52-5-109 and this section require Lake County to pay for transportation costs only within Montana. The Supreme Court held that the requirement of 52-5-109 that the District Court "arrange the transportation" of a committed youth does not encroach on judicial authority, require the judiciary to exercise executive power, or interfere with internal judicial operations, but, in the context of the statutes, is only an administrative detail. The Supreme Court also held that it was logical to assume that the DOC, being a Montana state agency, would receive custody only within Montana and not in some other state. The Supreme Court pointed out that this section names only in-state institutions for the commitment of youth and that neither that statute nor 52-5-109 makes any mention of out-of-state facilities and, for those reasons, ruled that the DOC must pay for transportation costs of a committed youth outside of the State of Montana. Because the Supreme Court considered its holding "dispositive", it declined to address the issue of whether 52-5-109 is an unfunded mandate in violation of 1-2-116. In re J.A., 1999 MT 148, 295 M 46, 983 P2d 327, 56 St. Rep. 585 (1999).

52-5-102. Control and management of youth correctional facilities.

Compiler's Comments

2019 Amendment: Chapter 344 in second sentence substituted "conditional release" for "parole supervision". Amendment effective July 1, 2019.

Applicability: Section 39, Ch. 344, L. 2019, provided: "[This act] applies to youth residing in a state youth correctional facility, in a residential placement approved by the department, or on parole and under community supervision on or after July 1, 2019."

1997 Amendment: Chapter 550 in second sentence, near middle, substituted "parole supervision" for "aftercare supervision"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 at end of first sentence substituted "department of corrections" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Inserted third sentence allowing inclusion of criteria for medical examination as part of admission policy; and made minor change in style. Amendment effective March 29, 1991.

1987 Amendment: At end of first sentence substituted reference to Department of Family Services for reference to Department of Institutions.

Administrative Rules

Title 20, chapter 9, subchapter 3, ARM Parole.

52-5-103. Cooperative agreements for services with governing body of Indian tribe.

Compiler's Comments

2019 Amendment: Chapter 344 in (1) before "services" deleted "and parole"; and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 39, Ch. 344, L. 2019, provided: "[This act] applies to youth residing in a state youth correctional facility, in a residential placement approved by the department, or on parole and under community supervision on or after July 1, 2019."

1997 Amendment: Chapter 550 in (1), near middle, substituted "parole services" for "aftercare services"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 at beginning of (1) substituted "department of corrections" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: At beginning of (1) substituted reference to Department of Family Services for reference to Department of Institutions, near middle, after "educational", inserted "evaluation, and aftercare", and after "services" deleted "at Mountain View school, Pine Hills school, aftercare division, or other juvenile facility".

1981 Amendments: Chapter 309 substituted "enter into agreements" for "contract" in (1); substituted "tribe" for "reservation" after "Indian" in (1); and inserted (2) to provide that agreements must satisfy the requirements of the State-Tribal Cooperative Agreements Act.

Chapter 575 deleted former (2) referring to the Montana children's center.

Preamble: The preamble to HB 25 (Ch. 309, L. 1981) provided: "WHEREAS, it is in the best interest of the State of Montana to establish a legal framework that will enable this state, its political subdivisions, and Indian tribes to achieve maximum harmony and facilitate cooperative efforts in the orderly administration of their respective governments; and

WHEREAS, it is in the best interest of the state of Montana to establish a legal framework for viable agreements between itself and tribal governments located in Montana that are based on mutual consent and mutual benefit; and

WHEREAS, it is in the best interest of the state of Montana to permit public agencies to make the most efficient use of their powers by enabling them to cooperate with tribal governments on a basis of mutual benefit and thereby provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of public agencies and local communities."

52-5-105. Superintendents to manage facilities.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1991 Amendment: In first sentence, after "provided for", substituted "in 52-5-101 is" for "herein shall be" and in second sentence, before "medical treatment", substituted "necessary" for "emergency". Amendment effective March 20, 1991.

1989 Amendment: Inserted second sentence relating to consent by superintendent to emergency medical treatment for resident. Amendment effective April 13, 1989.

52-5-106. Curricula at facilities.

Compiler's Comments

1993 Amendment: Chapter 68 near middle, after "subjects", deleted "as are taught in the public schools of the state" and near end, before "standards", inserted "Montana school accreditation"; and made minor changes in style.

52-5-107. Maximum age of commitment.

Compiler's Comments

1997 Amendment: Chapter 550 at beginning substituted "A youth who has attained 18 years of age" for "A child who has attained the age of 18 years" and at end, after "department of corrections", deleted "except, however, that any person under 19 years who prior to attaining the age of 18 years came under the jurisdiction of the youth court by reason of delinquent conduct and whose adjudication of delinquency is not made until after the child reaches the age of 18 years may be committed to the department of corrections". Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 in two places substituted "department of corrections" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: In middle of first sentence reduced maximum age for Departmental jurisdiction from age 21 to 19, after "delinquency" deleted language requiring finding that commitment was necessary, and after "18 years" changed "shall" to "may"; and deleted second sentence requiring Department to test and evaluate person prior to placement in detention. Amendment effective March 21, 1989.

Applicability: Section 5, Ch. 212, L. 1989, provided: "[This act] applies to proceedings begun on or after June 1, 1989."

1987 Amendment: In two places substituted "youth court" for "juvenile court", near beginning substituted "department of family services" for "Mountain View school, Pine Hills school, or other juvenile facility", and at end of first sentence substituted reference to Department of Family Services for reference to Department of Institutions.

52-5-108. Medical examination before admission — records required to accompany youth committed.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) in two places before "correctional facility" deleted "youth". Amendment effective October 1, 2021.

2005 Amendment: Chapter 519 in (1) near end of first sentence substituted "physician assistant" for "physician assistant-certified". Amendment effective October 1, 2005.

2001 Amendment: Chapter 24 in (1) near end of first sentence after "examined by" inserted "a licensed physician assistant-certified, by an advanced practice registered nurse, or by". Amendment effective October 1, 2001.

1997 Amendments — Composite Section: Chapter 42 in (1), in first sentence, deleted reference to Mountain View School and in second sentence substituted "the Pine Hills school" for "one of the schools"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 189 throughout section substituted "youth" for "child"; and in (1), in first sentence after "time to", substituted "Pine Hills youth correctional facility" for "the Mountain View school, the Pine Hills school" and in second sentence, after "one of the", substituted "state youth correctional facilities" for "schools".

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

1995 Amendment: Chapter 546 in (1) substituted "department of corrections" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In (1), near beginning, substituted "admitted for any purpose or for any length of time" for "committed" and after "Pine Hills school, or" inserted "other facility under an order of commitment to"; inserted (2) requiring that the medical examination be a current and complete physical examination; and made minor changes in style. Amendment effective March 29, 1991.

1987 Amendment: Substituted "department of family services" for "department of institutions".

52-5-109. Transportation costs — arrangement for transportation.

Compiler's Comments

2021 Amendment: Chapter 339 in (1)(a) before "correctional facility" deleted "state youth"; and in (2)(b) before "correctional facility" deleted "youth". Amendment effective October 1, 2021.

2019 Amendment: Chapter 344 in (2)(b), (2)(c), and (3) after "department" inserted "of corrections"; in (2)(b) inserted "or returned to the department for violation of the terms and conditions of the youth's conditional release agreement"; and in (3) after "except when" deleted "the youth is under the parole supervision of the department or when". Amendment effective July 1, 2019.

Applicability: Section 39, Ch. 344, L. 2019, provided: "[This act] applies to youth residing in a state youth correctional facility, in a residential placement approved by the department, or on parole and under community supervision on or after July 1, 2019."

2007 Amendment: Chapter 398 deleted former (1) that read: "(1) The expenses of committing a youth to the department or to the youth court must be borne by the committing youth court"; inserted (1) concerning costs prior to adjudication; substituted (2) concerning costs after adjudication for former text that read: "(2) (a) After adjudication, the costs of transporting a youth to and from an out-of-home placement within the state must be paid as follows:

(i) in a jurisdiction that does not participate in the juvenile delinquency intervention program, the county shall pay the costs;

(ii) in a jurisdiction that participates in the juvenile delinquency intervention program, the youth court shall pay the costs from the account established under 41-5-130 or out of county funds of the committing county.

(b) After adjudication, the costs of transporting a youth to and from an out-of-home placement in another state must be paid by the youth court and must be paid for out of the account established under 41-5-130, except that the department shall pay transportation costs in a case in which a youth is placed in an out-of-state correctional facility pursuant to 41-5-355"; in (3) at end inserted "or when the department is responsible for transportation costs as provided for in subsections (2)(b) and (2)(c)"; and made minor changes in style. Amendment effective June 30, 2007.

2001 Amendment — Coordination: Chapter 587 substituted (1) through (3) regarding requirement that expenses of committing youth to department or youth court be borne by the committing youth court, outlining payment for costs of transporting youth from out-of-home placement within state and in another state, and requiring youth court probation office to arrange for transportation to and from out-of-home placement except when youth is under parole supervision of department for former section that read: "The expenses of committing a youth to the Pine Hills youth correctional facility or the department of corrections and transporting the youth to the Pine Hills youth correctional facility or the place designated by the department for it to receive custody, as well as the expense of returning the youth to the county of residence, must be borne by the county of residence. The district judge shall arrange for transportation of the youth to the place where the department has directed that it will receive custody of the youth"; and made minor changes in style. Amendment effective July 1, 2001.

Pursuant to sec. 54(5), Ch. 585, L. 2001, a coordination instruction, in (1) at end substituted "by the committing youth court" for "by the committing county".

The amendment to this section made by sec. 1, Ch. 221, L. 2001, was rendered void by sec. 23, Ch. 587, L. 2001, a coordination section.

1997 Amendments: Chapter 42 in first sentence, in two places, deleted reference to Mountain View School; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 189 throughout section substituted "youth" for "child"; and in first sentence, near beginning and near middle, substituted "Pine Hills youth correctional facility" for "the Mountain View school, the Pine Hills school".

1995 Amendment: Chapter 546 in first sentence substituted "department of corrections" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of institutions".

Case Notes

Requirement for Arrangement of Transportation for Delinquent Youth by District Court Held Constitutional — Counties Required to Pay Transportation Costs Only Within State — Unfunded Mandate Unaddressed: After the District Youth Court found that J.A. was a delinquent youth, the court committed J.A. to the custody of the Department of Corrections (DOC) for placement at a treatment center in Texas and ordered the DOC to pay the costs of transporting J.A. to that center. When the DOC refused to pay those costs, Lake County paid the costs but later challenged the constitutionality of this section as being a violation of the doctrine of the separation of powers and, in addition, argued that this section is an unfunded mandate in violation of 1-2-116 and that 52-5-101 and this section require Lake County to pay for transportation costs only within Montana. The Supreme Court held that the requirement of this section that the District Court "arrange the transportation" of a committed youth does not encroach on judicial authority, require the judiciary to exercise executive power, or interfere with internal judicial operations, but, in the context of the statutes, is only an administrative detail. The Supreme Court also held that it was logical to assume that the DOC, being a Montana state agency, would receive custody only within Montana and not in some other state. The Supreme Court pointed out that 52-5-101 names only in-state institutions for the commitment of youth and that neither that statute nor this section makes any mention of out-of-state facilities and, for those reasons, ruled that the DOC must pay for transportation costs of a committed youth outside of the State of Montana. Because the Supreme Court considered its holding "dispositive", it declined to address the issue of whether this section is an unfunded mandate in violation of 1-2-116. (See 2001 amendment.) In re J.A., 1999 MT 148, 295 M 46, 983 P2d 327, 56 St. Rep. 585 (1999).

52-5-110. Transfer of child to other facility or institution.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) before "correctional facilities" deleted "youth" and at end inserted "or under contract to the department". Amendment effective October 1, 2021.

1995 Amendment: Chapter 546 at beginning substituted "department of corrections" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: At beginning substituted reference to Department of Family Services for reference to Department of Institutions and near middle substituted "youth correctional facilities" for "juvenile facilities".

1986 Amendment: Deleted in second version last sentence of the temporary version allowing transfer of a youth only upon following the commitment procedures of 53-21-505.

1985 Amendment: In (2) changed "Boulder River school and hospital" to "Montana developmental center".

1983 Amendments: Chapter 361, in former (2) substituted "Montana state hospital" for "Warm Springs state hospital".

Chapter 363 inserted last sentence allowing transfer of a youth only upon following the commitment procedures of 53-21-505; and deleted former (2) that read: "In the case of transfers of children in juvenile facilities to Warm Springs state hospital or Boulder River school and hospital and unless medical or psychiatric emergency exists, 15 days prior to the transfer the department shall send notice of the proposed transfer to the parents or legal guardian of the child and to the district court who committed the child. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer."

52-5-111. Commutation of sentence to state prison facility and transfer of prisoner to correctional facility.

Compiler's Comments

2021 Amendment: Chapter 339 throughout section before "correctional facility" or "correctional facilities" deleted "youth"; in (1) after "sentence by committing the person" substituted "to the department of corrections for placement in a correctional facility if the person may benefit from programs offered at a correctional facility. Except as provided in subsection (2), the commutation continues in effect until the youth" for "who may benefit from the programs offered at a youth correctional facility to the department of corrections until the youth"; in (2) near beginning after "committed to the department of corrections" inserted "as provided in subsection (1)" and in last sentence substituted "may not be credited against" for "is not considered as a part of"; and in (3) at beginning substituted "Independent of the commutation of sentence procedures provided for in subsections (1) and (2), on" for "Upon". Amendment effective October 1, 2021.

1997 Amendment: Chapter 550 in (1), near beginning, substituted "application of a person who has not attained 18 years of age who has been sentenced to a state prison facility" for "application of a person under 19 years of age who has been sentenced to the state prison" and near end substituted "the youth is 18 years of age" for "the youth is 19 years of age"; in (2), near beginning, substituted "the youth's behavior" for "the person's behavior" and near middle substituted "to a state prison facility" for "to the state prison"; in (3) substituted "a person under 18 years of age" for "a person under 19 years of age" and substituted "to a state prison facility" for "to the state prison"; in (4), near beginning, substituted "the youth's behavior" for "the person's behavior"; and in (5), near beginning, substituted "the youth's behavior" for "the person's behavior" and near end substituted "to a state prison facility" for "to the state prison". Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 in (1), after "consulting with the", substituted "department of corrections" for "department of corrections and human services and the department of family services", substituted "board of pardons and parole" for "board of pardons", and near end substituted "department of corrections" for "department of family services"; in (2), near beginning, substituted "department of corrections" for "department of family services", after "consulting with the" substituted "department of corrections" for "department of corrections and human services and the department of family services", and substituted "board of pardons and parole" for "board of pardons"; in (3), near beginning, substituted "department of corrections" for "department of corrections and human services and the department of family services" and at end substituted "department of corrections" for "department of family services"; in (4), near middle, substituted "department of corrections" for "department of corrections and human services and the department of family services" and substituted "board of pardons and parole" for "board of pardons"; in (5) substituted "department of corrections" for "department of corrections and human services and the department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 579 in (1) and (3), near end, inserted "who may benefit from programs offered at a youth correctional facility"; deleted former (4) that provided that a state prison inmate under 26 years of age, the warden, and the Department could agree to the inmate's transfer to Swan River and that provided for an evaluation of the suitability of the transfer; in (4) and (5), near beginning after "youth correctional facility", deleted "or the Swan River forest camp" and near middle, after "department of family services", deleted "in the case of a youth correctional facility or with the approval of the department of corrections and human services in the case of the Swan River forest camp"; and made minor changes in style. Amendment effective April 28, 1993.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1989 Amendment: In two places in (1) reduced maximum age for Departmental jurisdiction from age 21 to 19. Amendment effective March 21, 1989.

Applicability: Section 5, Ch. 212, L. 1989, provided: "[This act] applies to proceedings begun on or after June 1, 1989."

1987 Amendment: In (1), in two places, in (2), and at end of (3) inserted reference to Department of Family Services; in (2), in three places, and in (3) substituted reference to youth correctional facilities for reference to Department's juvenile facilities; in (2), near middle, and in (3), near beginning after "department", inserted "of institutions and the department of family services"; in first sentence of (4), after "department", inserted "of institutions" and after "Swan River" deleted "youth"; near beginning of (5) and (6) substituted "youth correctional facility or the Swan River forest camp" for "juvenile facility" and near middle, after "department", inserted "of institutions and the department of family services in the case of a youth correctional facility or with the approval of the department of institutions in the case of the Swan River forest camp"; near end of (5), after "recommendation to the", deleted "state"; and made minor changes in phraseology.

1983 Amendment: In (4) substituted last three sentences regarding evaluation to determine suitability for transfer for "Upon such transfer such person shall be under the supervision and control of the facility to which he is transferred."

52-5-112. University aid to residents of schools.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) in two places before "correctional facility" deleted "state youth". Amendment effective October 1, 2021.

1997 Amendments: Chapter 42 in first sentence, after "resident of", substituted "a state youth correctional facility" for "the Mountain View school or Pine Hills school" and in fourth sentence substituted "state youth correctional facility" for "school". Amendment effective March 12, 1997.

Chapter 189 in first sentence, after "resident of", substituted "a state youth correctional facility" for "the Mountain View school or Pine Hills school" and in fourth sentence substituted "state youth correctional facility" for "school".

1995 Amendment: Chapter 546 at beginning substituted "department of corrections" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Substituted third sentence relating to waiver of fees by the Board of Regents for former third sentence that read: "The Montana university system shall not charge any fees or tuition for these residents." Amendment effective March 20, 1989.

1987 Amendment: Substituted "department of family services" for "department of institutions".

52-5-113. Publication of information to facilitate return of youth leaving correctional facility or program without permission.

Compiler's Comments

2021 Amendment: Chapter 339 before "correctional facility" deleted "state youth". Amendment effective October 1, 2021.

1997 Amendments: Chapter 42 at end of second sentence, after "Pine Hills school", deleted "for boys and the Mountain View school for girls" (voided by Ch. 550 amendment). Amendment effective March 12, 1997.

Chapter 189 at end, after "Pine Hills", substituted "youth correctional facility" for "school for boys and the Mountain View school for girls" (voided by Ch. 550 amendment).

Chapter 550 substituted present language regarding publication of certain information to facilitate return of youth for former language that read: "A youth who has left a youth correctional facility of the department of corrections without permission may be apprehended and returned by any citizen. The term "youth correctional facility of the department" means any facility under the supervision and control of the department of corrections that has as its primary function the care, training, custody, and control of youth and specifically includes the Pine Hills school for boys and the Mountain View school for girls." Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 in two places substituted "department of corrections" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: At beginning substituted "youth" for "child", in two places substituted "youth correctional facility" for "juvenile facility", in two places substituted reference to Department of Family Services for reference to Department of Institutions, and near end substituted "youth" for "children".

1985 Amendment: At end of section, after "girls", deleted "and the Swan River youth forest camp".

52-5-114. Penalty for aiding resident in leaving or not returning to correctional facility.

Compiler's Comments

2021 Amendment: Chapter 339 in (1)(a) and (1)(b) before "correctional facility" deleted "youth". Amendment effective October 1, 2021.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: At beginning of (1), after "person", substituted "is guilty of an offense if he purposely or knowingly" for "who"; inserted (1)(b) regarding failure to return to a youth correctional facility; at end of (1)(c) inserted "or to not return"; and made minor changes in phraseology and form.

1987 Amendment: Near beginning substituted "youth correctional facility" for "juvenile facility".

52-5-120. Youth industries programs.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) after "establish" inserted "youth" and before "correctional facilities" deleted "youth"; in (1)(a) substituted "residents who are youth at correctional facilities" for "residents at state youth correctional facilities"; and in (2) before "correctional facilities" deleted "state youth". Amendment effective October 1, 2021.

1995 Amendment: Chapter 546 at beginning substituted "department of corrections" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Codification Not Followed: Section 3, Ch. 434, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 30, part 2. The Code Commissioner has codified this section as part of Title 52, ch. 5, part 1, to reflect the renumbering of former Title 53, ch. 30, part 2, as Title 52, ch. 5, part 1.

Effective Date: Section 4, Ch. 434, L. 1991, provided: "[This act] is effective July 1, 1991."

52-5-121. Rulemaking authority.

Compiler's Comments

2021 Amendment: Chapter 339 in (4) before "correctional facilities" deleted "state youth". Amendment effective October 1, 2021.

1995 Amendment: Chapter 546 at beginning substituted "department of corrections" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Statement of Intent: The statement of intent attached to Ch. 434, L. 1991, provided: "A statement of intent is required for this bill because [section 2] [52-5-121] grants the department of family services [now department of corrections] authority to adopt rules necessary for administration of the youth industries programs authorized in [section 1] [52-5-120].

It is the intent of the legislature that the department adopt rules that may include but are not limited to rules on the subjects specified in [section 2] [52-5-121].

In addition, it is intended that in adopting rules, the department examine the policies governing administration of state prison industries programs, and that the department design youth industries programs to provide training and rehabilitation of youth committed to state youth correctional facilities."

Codification Not Followed: Section 3, Ch. 434, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 30, part 2. The Code Commissioner has codified this section as part of Title 52, ch. 5, part 1, to reflect the renumbering of former Title 53, ch. 30, part 2, as Title 52, ch. 5, part 1.

Effective Date: Section 4, Ch. 434, L. 1991, provided: "[This act] is effective July 1, 1991."

52-5-126. Conditional release agreement.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) and (3) before "correctional facility" deleted "state youth". Amendment effective October 1, 2021.

2019 Amendment: Chapter 344 substituted current section text concerning conditional release agreement for former text (see 2019 Session Law for former text). Amendment effective July 1, 2019.

Applicability: Section 39, Ch. 344, L. 2019, provided: "[This act] applies to youth residing in a state youth correctional facility, in a residential placement approved by the department, or on parole and under community supervision on or after July 1, 2019."

1997 Amendment: Chapter 550 in (1), near end of introductory clause, and in (2) substituted "a parole agreement" for "an aftercare agreement". Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 at beginning of (1) substituted "department of corrections" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 358 in (2), near end after "until", inserted "the department no longer has custody of" and after "youth" deleted "is returned to the court for further disposition as provided in 41-5-523(1)(j). If the youth is not returned to a state youth correctional facility following the hearing for further disposition, the aftercare agreement becomes void unless amended or extended by the department or the court"; and made minor changes in style. Amendment effective April 16, 1993.

1991 Amendment: Near beginning of (1), before "youth correctional facilities", inserted "state"; and inserted (2) regarding aftercare agreement. Amendment effective July 1, 1991.

1987 Amendment: Substituted reference to Department of Family Services for reference to Department of Institutions and substituted "youth correctional facilities" for "state juvenile facilities".

Administrative Rules

Title 20, chapter 9, subchapter 3, ARM Parole.

Title 20, chapter 9, subchapter 7, ARM Parole and release of youth.

Attorney General's Opinions

Age of Majority — Effect Upon Aftercare Authority: Article II, sec. 14, Mont. Const., does not prohibit the Aftercare Office of the Department of Institutions (now Department of Corrections) from exercising supervisory authority over persons aged 18 through 20 who have been released from youth correctional facilities after executing aftercare agreements (now parole agreements). 37 A.G. Op. 72 (1977).

52-5-127. Control over youth placed on conditional release.

Compiler's Comments

2019 Amendment: Chapter 344 in two places substituted references to youth court for references to department of corrections; substituted "by the department of corrections pursuant to a conditional release agreement" for "pursuant to a parole agreement"; at end after "youth" deleted "while under the control of the department"; and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 39, Ch. 344, L. 2019, provided: "[This act] applies to youth residing in a state youth correctional facility, in a residential placement approved by the department, or on parole and under community supervision on or after July 1, 2019."

1997 Amendment: Chapter 550 in first sentence inserted "pursuant to a parole agreement", substituted "attains 18 years of age" for "attains the age of 19 years", and at end substituted "before age 18" for "before age 19". Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 at beginning substituted "department of corrections" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 358 in second sentence, before "jurisdiction", substituted "continuing" for "general", before "courts" substituted "youth" for "various", and after "Montana" inserted "pursuant to 41-5-205"; and made minor changes in style. Amendment effective April 16, 1993.

1989 Amendment: In two places substituted "youth" for "child", in first sentence reduced maximum age for Departmental jurisdiction from age 21 to 19, after "years" deleted "subject, however," and inserted "unless the youth is discharged by the department before age 19. However, the youth is subject". Amendment effective March 21, 1989.

Applicability: Section 5, Ch. 212, L. 1989, provided: "[This act] applies to proceedings begun on or after June 1, 1989."

1987 Amendment: Substituted "department of family services" for "department of institutions".

Administrative Rules

Title 20, chapter 9, subchapter 3, ARM Parole.

Attorney General's Opinions

Age of Majority — Effect Upon Aftercare Authority: Article II, sec. 14, Mont. Const., does not prohibit the Aftercare Office of the Department of Institutions (now Department Corrections) from exercising supervisory authority over persons aged 18 through 20 who have been released from youth correctional facilities after executing aftercare agreements (now parole agreements). 37 A.G. Op. 72 (1977).

52-5-128. Detention of youth who violates conditional release or escapes from facility or program.

Compiler's Comments

2021 Amendment: Chapter 339 in (2) in two places before "correctional facility" deleted "state youth". Amendment effective October 1, 2021.

2019 Amendment: Chapter 344 substituted current section text concerning violation of conditional release or escape for former text (see 2019 Session Law for former text). Amendment effective July 1, 2019.

Applicability: Section 39, Ch. 344, L. 2019, provided: "[This act] applies to youth residing in a state youth correctional facility, in a residential placement approved by the department, or on parole and under community supervision on or after July 1, 2019."

1997 Amendment: Chapter 550 in two places substituted "parole agreement" for "aftercare agreement", after first "agreement" inserted "or who escapes from a state youth correctional facility or program operated by the department", substituted "upon notice in writing" for "upon certificates in writing", and at end inserted "or has escaped from a state youth correctional facility or program operated by the department". Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 substituted "department of corrections" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of institutions".

Administrative Rules

Title 20, chapter 9, subchapter 3, ARM Parole.

CHAPTER 6
BATTERED SPOUSES

Chapter Law Review Articles

Attorney Fees as Necessaries of Life: Expanding a Domestic Violence Victim's Access to Safety and Justice, Zielinski, 60 Mont. L. Rev. 201 (1999).

Montana's New Domestic Abuse Statutes: A New Response to an Old Problem, Women's Law Caucus, Univ. of Mont., 47 Mont. L. Rev. 403 (1986).

Ninth Circuit Expands 'Extreme Cruelty' Under Domestic Abuse Law, Jurand, 40 Trial 76 (2004).

Part 1
Battered Spouses Grant Programs

52-6-101. Battered spouses and domestic violence grant program created.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

52-6-102. Duties of department.

Compiler's Comments

1995 Amendment: Chapter 546 in introductory clause substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

Statement of Intent: The statement of intent adopted with HB 868 (Ch. 677, L. 1979) provided: "The rules necessary to effectuate this act include those:

(1) establishing criteria for a project's eligibility to receive grants according to section 3;
(2) establishing criteria for services to be included in the program under section 4;
(3) providing procedures for application for grants;
(4) providing for distribution of grant funds."

Administrative Rules

Title 37, chapter 47, subchapter 10, ARM Battered spouses and domestic violence program.

52-6-103. Authorized grantees — criteria for grants.

Compiler's Comments

1995 Amendments: Chapter 350 in (1) substituted "partner or family member assault" for "domestic abuse".

Chapter 546 substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

52-6-104. Authorized services of programs.

Compiler's Comments

1995 Amendment: Chapter 546 in (2) substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

1981 Amendment: Added (2) allowing for provision of regional services.

52-6-105. Funding.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 574 deleted former (1) that read: "(1) Revenue from the marriage license fee and the fee collected for filing a declaration of marriage without solemnization is the primary source of funding for the battered spouses and domestic violence program. The disposition of the marriage license fee is as established in 25-1-201"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 585 in (1) deleted former second sentence that read: "The disposition of the marriage license fee is as established in 25-1-201." Amendment effective July 1, 2002. The amendment by Ch. 574 rendered the amendment by Ch. 585 void.

1995 Amendment: Chapter 509 in (1), after "solemnization", deleted "and the portion of fines allocated to this program by 46-18-235"; and made minor changes in style. Amendment effective July 1, 1995.

1987 Amendment: In middle of (1), after "solemnization", inserted "and the portion of fines allocated to this program by 46-18-235".

1983 Amendment: In (1), inserted "and the fee collected for filing a declaration of marriage without solemnization".

1981 Amendment: Changed language relating to disposition of the marriage license fee from $16/$9 county/general fund disposition to disposition based on 25-1-201.

CHAPTER 7
MONTANA CHILDREN'S TRUST FUND

Part 1
General

52-7-101. Child abuse and neglect prevention program.

Compiler's Comments

1997 Amendment: Chapter 405 in (1), near middle, inserted "and the interest from the endowment established by 41-3-705", after "activities" inserted "related to a broad range of child abuse and neglect prevention activities and family resource programs", and at end deleted "which services and activities relate solely to the prevention of child abuse and neglect"; and made minor changes in style. Amendment effective July 1, 1997.

Termination Provision Repealed: Section 2, Ch. 645, L. 1987, repealed sec. 13, Ch. 610, L. 1985, which terminated this section January 1, 1990.

Statement of Intent: The statement of intent attached to Ch. 610, L. 1985, provided: "Section 3 [41-3-701] requires the Montana children's trust fund board to adopt rules implementing the child abuse and neglect prevention program.

The rules should:
(1) provide for an overall state plan for the program;
(2) develop criteria for the receipt of program funds;
(3) establish priorities among funded services and activities;
(4) provide a method of monitoring the effectiveness of funded services and activities and the expenditure of funds from the children's trust fund account; and
(5) address other matters necessary to implementation of the child abuse and neglect prevention program."

52-7-102. Children's trust fund account — nonsupplantation of funds.

Compiler's Comments

1995 Amendment: Chapter 546 in (2) substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

Termination Provision Repealed: Section 2, Ch. 645, L. 1987, repealed sec. 13, Ch. 610, L. 1985, which terminated this section January 1, 1990.

52-7-103. Gifts and grants to program.

Compiler's Comments

1997 Amendment: Chapter 405 in second sentence substituted "earmarked for the endowment for children must be paid into the endowment established by 41-3-705" for "must, upon receipt, be paid into the children's trust fund account established by 41-3-702". Amendment effective July 1, 1997.

Termination Provision Repealed: Section 2, Ch. 645, L. 1987, repealed sec. 13, Ch. 610, L. 1985, which terminated this section January 1, 1990.

52-7-104. Program costs.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

Termination Provision Repealed: Section 2, Ch. 645, L. 1987, repealed sec. 13, Ch. 610, L. 1985, which terminated this section January 1, 1990.

52-7-105. Endowment for children.

Compiler's Comments

Preamble: The preamble attached to Ch. 386, L. 2007, provided: "WHEREAS, pursuant to section 2-15-2214, MCA, there is a Montana Children's Trust Fund Board, established in 1985, consisting of seven members appointed by the Governor for 3-year terms; and

WHEREAS, pursuant to section 52-7-105, MCA, there is within the permanent fund type an endowment for children, the endowment is not subject to appropriation, and the purpose of the endowment is to provide a permanent source of funding to support the programs and services related to a broad range of child abuse and neglect primary prevention activities and family resource programs operated by nonprofit or public, community-based educational and service organizations; and

WHEREAS, pursuant to section 52-7-105, MCA, the endowment may receive funds from appropriations; gifts, grants, and donations, from public or private sources; and other money credited or transferred to the endowment from any other fund or source; and

WHEREAS, pursuant to section 52-7-105, MCA, the State Treasurer must receive and shall deposit money in the endowment, the Board of Investments shall invest the money in the endowment, and only interest generated by the endowment is available for expenditure by the Board; and

WHEREAS, the Montana Legislature has not transferred funds to the endowment for children to support child abuse and neglect prevention efforts statewide; and

WHEREAS, the Montana children's trust fund program receives a federal community-based child abuse and neglect prevention grant in the amount of approximately $179,000 annually; and

WHEREAS, the Montana children's trust fund program receives approximately $50,000 annually in state special revenue generated by the income tax checkoff and $5 for every divorce filing in Montana; and

WHEREAS, the Montana children's trust fund program has served at-risk children and families statewide by providing a broad range of child abuse and neglect primary prevention programming, the main focus being parent education; and

WHEREAS, additional resources are needed to help at-risk families remain intact and out of the state child protective services system; and

WHEREAS, the child protective services system is overburdened by increasing caseloads and has limited financial and human resources to serve the critical cases coming into the system."

2001 Amendment: Chapter 34 in (1) in first sentence substituted "permanent fund" for "nonexpendable trust fund". Amendment effective July 1, 2001.

1999 Amendment: Chapter 356 in (3) deleted former third sentence that read: "When the endowment reaches $5 million, further deposits may not be made to the endowment." Amendment effective October 1, 1999.

Effective Date: Section 5, Ch. 405, L. 1997, provided: "[This act] is effective July 1, 1997."

CHAPTER 8
LICENSING OF CHILD PLACEMENT AGENCY

Chapter Compiler's Comments

1997 Statement of Intent: The statement of intent attached to Ch. 480, L. 1997, provided: "A statement of intent is required for this bill because the bill gives the department of public health and human services authority to adopt administrative rules. The rules must provide procedures for the putative father registry, including methods of notification, filing, and accessing information. The department shall adopt rules for licensing child-placing agencies. To the extent feasible, the rules should incorporate existing procedures. The needs of the child in the adoption proceeding must be the primary focus of the rules."

Severability: Section 172, Ch. 480, L. 1997, was a severability clause.

Applicability: Section 173, Ch. 480, L. 1997 provided: "(1) [Sections 1 through 156] [Title 42, chapters 1 through 8] apply to proceedings commenced on or after October 1, 1997.

(2) A petition for adoption filed prior to October 1, 1997, is governed by the law in effect at the time the petition was filed.

(3) The putative father registry requirements apply to children born on or after October 1, 1997."

Effective Date: Section 177, Ch. 480, L. 1997, provided: "(1) Except as provided in subsection (2), [this act] is effective October 1, 1997.

(2) [Sections 19 through 26, 28 through 38, 60, 65, 67, 68, and 75] [42-2-202 through 42-2-209, 42-2-214 through 42-2-218, 42-2-222 through 42-2-226, 42-2-230, 42-2-503, 42-2-604, 42-2-605, 42-2-606, and 42-2-611] are effective October 1, 1998."

Chapter Administrative Rules

Title 37, chapter 93, ARM Licensure of child placing agencies.

Part 1
Licensing

52-8-101. Definitions.

Compiler's Comments

2001 Amendment: Chapter 311 in (2)(a) inserted "or foster care"; in (2)(c) after "prospective adoptive" inserted "or foster"; in (3) after "refer" deleted "or entice" and after "potential adoptive" inserted "or foster"; and made minor changes in style. Amendment effective October 1, 2001.

52-8-102. General duties of department.

Administrative Rules

Title 37, chapter 93, ARM Licensure of child placing agencies.

52-8-103. License required — exception — term of license — no fee charged.

Compiler's Comments

2021 Amendment: Chapter 528 in (1) at beginning inserted exception clause; and inserted (2) concerning the conditions under which an attorney or health care provider may assist a parent in identifying or locating a person interested in adopting the parent's child or in identifying or locating a child to be adopted; and made minor changes in style. Amendment effective May 14, 2021.

2001 Amendment: Chapter 311 after all references to adopt or adoptive inserted references to foster. Amendment effective October 1, 2001.

Case Notes

DECISIONS PRIOR TO 1997 GENERAL REVISION

Adoption Agencies Exclusive: The legislative intent is obvious from the plain meaning of the words used in 53-4-401 (renumbered 52-2-401, now repealed), et seq., to give licensed adoption agencies the exclusive function of placing children for adoption. If a medical doctor is going to place children for adoption, he is acting as an adoption agency and must have a license. Dept. of Social & Rehabilitation Services v. Angel, 176 M 293, 577 P2d 1223 (1978).

Attorney General's Opinions

DECISIONS PRIOR TO 1997 GENERAL REVISION

Assistance by Physicians and Attorneys in Procuring Adoptions Prohibited: While physicians and attorneys may perform traditional functions relevant to an adoption proceeding, no person, including a physician or an attorney, may assist in procuring or selecting an adoptive home for a minor child, even if requested by the child's natural parents, unless licensed as a child-placing agency under 52-2-402 (now repealed). 42 A.G. Op. 9 (1987).

Attorneys as "Adoption Agencies": A private attorney, not licensed as an adoption agency, may not accept a relinquishment of custody for a child and then place or attempt to place a child for adoption. 36 A.G. Op. 96 (1976).

52-8-104. Requirements for licensure.

Compiler's Comments

2021 Amendment: Chapter 175 in (8) near middle substituted "adoptive decision support services" for "counseling". Amendment effective October 1, 2021.

2001 Amendment: Chapter 311 in (5) at beginning substituted "The agency shall maintain complete records" for "Complete records must be kept" and substituted "adoptive or foster parents" for "adopting parents"; in (6) after "study of the child" deleted "and proposed adoptive parent before placement of the child"; deleted former (6)(a) that read: "(a) the physical and mental health, emotional stability, and personal integrity of the adoptive parent and the parent's ability to promote the child's welfare"; inserted (7) relating to agency use of an in-state facility for certain purposes; in (8) after "adoptive" inserted "or foster"; in (9) after "adoptive" inserted "or foster care"; and made minor changes in style. Amendment effective October 1, 2001.

Case Notes

Payment to Private Institutions:

Payment of public funds to persons providing medical, hospitalization, and foster home care to indigent mothers who have sought or received assistance from private rather than public adoptive agencies is not unconstitutional. St. Welfare Bd. v. Lutheran Social Serv. of Mont., 156 M 381, 480 P2d 181 (1971).

Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) is not empowered under 52-2-404 (now repealed) to deprive indigent expectant mothers of public assistance for medical, hospital, and foster home expenses merely because they apply to private rather than public adoption agencies for counseling and adoptive services. St. Welfare Bd. v. Lutheran Social Serv. of Mont., 156 M 381, 480 P2d 181 (1971).

52-8-107. Investigation of agencies — cancellation of licenses.

Compiler's Comments

2001 Amendment: Chapter 311 in (2) substituted "42-8-104(10)" (now 52-8-104(10)) for "42-8-104(9)". Amendment effective October 1, 2001.

TITLE 53
SOCIAL SERVICES AND INSTITUTIONS

CHAPTER 1
GENERAL ADMINISTRATION OF INSTITUTIONS

Chapter Compiler's Comments

Use of Personal Services Funds for Any Purpose: Section 17, Ch. 579, L. 1993, provided that during the 2 fiscal years beginning July 1, 1993, the Department of Corrections and Human Services (now Department of Corrections) may spend funds in any category that were appropriated for personal services or that were indicated in legislative intent as having been appropriated for personal services.

Part 1
General Provisions

53-1-102. Removal of patients from state custodial institutions or correctional facilities without permission a misdemeanor.

Compiler's Comments

1999 Amendment: Chapter 491 in (2) at end substituted "a state prison" for "a Montana prison". Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendment: Chapter 189 in (1), near middle after "custodial institution", inserted "or correctional facility" and after "institution" inserted "or facility"; in (2), at end, substituted "a Montana prison" for "the Montana state prison"; and made minor changes in style.

53-1-103. Distribution of alcoholic beverages or drugs to patients at state custodial institutions or correctional facilities a misdemeanor.

Compiler's Comments

1999 Amendment: Chapter 491 in (1) near end substituted "detention facility" for "jail"; and in (2) at end substituted "state prison" for "Montana prison". Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendment: Chapter 189 in (1), after "custodial institution", inserted "or correctional facility"; in (2), at end, substituted "a Montana prison" for "the Montana state prison"; and made minor changes in style.

53-1-104. Release of arsonist — notification of department of justice.

Compiler's Comments

2021 Amendment: Chapter 339 in (1)(c) substituted "correctional facility housing youth" for "youth correctional facility". Amendment effective October 1, 2021.

2015 Amendment: Chapter 161 in (1) in introductory clause substituted "mental disease or disorder" for "mental disease or defect". Amendment effective April 1, 2015.

1999 Amendment: Chapter 491 in (1)(b) substituted "a state prison" for "a Montana prison". Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendments: Chapter 42 in (1)(b), before "state", inserted "Montana" (voided by Ch. 189 amendment); and in (1)(c) substituted "women's correctional system" for "Mountain View school" (voided by Ch. 189 amendment). Amendment effective March 12, 1997.

Chapter 189 in (1), near beginning after "institutions", inserted "correctional facilities, or other"; in (1)(b) substituted "a Montana prison" for "state prison"; in (1)(c) substituted "a Montana youth correctional facility" for "Mountain View school"; deleted former (1)(d) that read: "Pine Hills school"; and made minor changes in style.

1993 Amendment: Chapter 579 in (1) deleted "Swan River forest camp" from list of institutions; and made minor changes in style. Amendment effective April 28, 1993.

1987 Amendment: In (1)(e), after "River", deleted "youth".

1986 Amendment: Deleted in second version (1)(g) of the temporary version citing the Montana Youth Treatment Center.

Code Commissioner Correction: Substituted department of justice for fire marshal bureau as entity to which notice is given because sections 3 and 4 of Ch. 503, L. 1985, deleted the language in 2-15-2005 creating the bureau.

1983 Amendments: Chapter 361 substituted "Montana state hospital" for "Warm Springs state hospital" in (1)(a).

Chapter 363 inserted (1)(g) citing the Montana Youth Treatment Center.

53-1-105. Disposition of contraband in correctional institution.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) substituted "a correctional institution" for "an adult or youth correctional institution"; and in (2) before "correctional institution" deleted "adult or youth". Amendment effective October 1, 2021.

1995 Amendment: Chapter 546 at beginning of (2) substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-1-106. Exchange of offenders under treaty.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-1-107. Inmate financial transactions and trust account system.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) substituted "53-30-101(1), (2), and (4)" for "53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v)". Amendment effective October 1, 2021.

Extension of Termination Date: Section 1, Ch. 139, L. 2021, amended sec. 14, Ch. 374, L. 2009, sec. 2, Ch. 139, L. 2021, amended sec. 27, Ch. 285, L. 2015, and sec. 3, Ch. 139, L. 2021, amended sec. 1, Ch. 292, L. 2015, by extending the termination date imposed by Ch. 374, L. 2009, to June 30, 2027. Effective April 1, 2021.

2019 Amendment: Chapter 129 inserted (4)(c) regarding department responsibility to adopt rules to exempt certain inmates. Amendment effective October 1, 2019.

2015 Amendment: Chapter 244 inserted (4) requiring adoption of rules regarding saving of inmate earnings and dispensing of the money after release; and made minor changes in style. Amendment effective October 1, 2015.

Extension of Termination Date: Section 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, amended sec. 14, Ch. 374, L. 2009, by extending the termination date imposed by Ch. 374 to June 30, 2021. Effective July 1, 2015.

2009 Amendment: Chapter 374 in (3)(a)(ii) near middle after "deposit in the" substituted "account provided for in 53-9-113" for "state general fund". Amendment effective July 1, 2009, and terminates June 30, 2015.

2003 Amendments — Composite Section — Coordination: Chapter 353 in (1) near beginning of first sentence after "inmate of" substituted "a state prison, as defined in 53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v)" for "the Montana state prison in Deer Lodge or the women's prison in Billings", deleted former second sentence that read: "If an inmate accumulates a balance in excess of $200 in the inmate's prison inmate trust account, the excess must, consistent with department rules, be forfeited for the payment of restitution or costs of incarceration", and in second sentence increased from $1.60 to $2 the minimum fee chargeable to administer an inmate's account; inserted (2) outlining allowable uses of an inmate's account; in (3)(a) at beginning after "Money" substituted "taken under subsection (2) for" for "forfeited under subsection (1) to"; in (3)(b) at beginning after "If" deleted "the inmate's sentence did not provide for the payment of restitution or if", after "money" substituted "in the inmate's account after payments" for "after restitution has been paid", and at end after "subsection" substituted "(2), the department may allow the balance to accumulate in a savings subaccount for the inmate" for "(2)(a), money forfeited under subsection (1) must be applied to the inmate's costs of incarceration"; in (4) in first sentence after "establishing" substituted "the prison inmate trust account system and criteria for the use of funds under this section" for "criteria for forfeiture of funds under subsection (1)" and in second sentence after "regarding" substituted "the use of funds that ensure payment" for "forfeiture that ensure restitution" and at end substituted "state prison" for "correctional facility"; deleted former (3)(a) that read: "(a) do not unreasonably inhibit an inmate's ability to save money for the purchase of tools or other items to further the education of the inmate for purposes of rehabilitation or seeking employment after release from the correctional facility"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 363 inserted (5) relating to medical and dental expenses. Amendment effective October 1, 2003.

Section 5, Ch. 353, L. 2003, a coordination section, rendered void amendments to subsections (1) and (2) made by Ch. 363, L. 2003.

2001 Amendment: Chapter 118 in (2)(a)(ii) substituted "crime victims compensation and assistance program in the department of justice for deposit in the state general fund" for "crime victims compensation and assistance account provided for in 53-9-109", substituted "state" for "account", and at end inserted "provided pursuant to Title 53, chapter 9, part 1"; and made minor changes in style. Amendment effective March 23, 2001.

Preamble: The preamble attached to Ch. 118, L. 2001, provided: "WHEREAS, the 1995 Legislature in Senate Bill No. 83 changed funding for the crime victims compensation and assistance program from an earmarked special revenue account to the general fund; and

WHEREAS, the crime victims compensation and assistance program has been supported entirely by general fund money since fiscal year 1996; and

WHEREAS, repealing section 53-9-109 is necessary in order to clarify the conflict that currently exists between actual appropriation practices and the law."

Code Commissioner Correction — Name Change: In (1), the Code Commissioner substituted "women's prison" for "women's correctional system" to correspond to the change in the defined term contained in 53-30-101, as amended by Ch. 189, L. 1997.

Administrative Rules

Title 20, chapter 13, ARM Offender financial transactions.

53-1-108. Inmate financial disclosure and account monitoring.

Compiler's Comments

1999 Amendment: Chapter 491 in (1) substituted "a state prison" for "the Montana state prison in Deer Lodge or the women's prison in Billings". Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

Code Commissioner Correction — Name Change: In (1), the Code Commissioner substituted "women's prison" for "women's correctional system" to correspond to the change in the defined term contained in 53-30-101, as amended by Ch. 189, L. 1997.

53-1-109. Facility resident and prison inmate welfare account.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) and in (2) in four places before "correctional facility" deleted "youth"; and in (3) at end substituted "53-30-101(1), (2), and (4)" for "53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v)". Amendment effective October 1, 2021.

2019 Amendment: Chapter 2 in (1) in second sentence near beginning inserted "Pine Hills youth correctional facility resident and" and in two places substituted references to residents or inmates for references to inmates; in (2) in first sentence near middle inserted "Pine Hills youth correctional facility and" and substituted "facility" for "state prison" and in last sentence substituted current text requiring consultation with residents and inmates about the use of money for former text that read: "The administrator of each state prison shall consult with the inmates about the use of the money allocated to the state prison and may use the money for the needs of the inmates and their families." Amendment effective July 1, 2019.

Effective Date: This section is effective October 1, 2003.

53-1-110. Disposition of inmate trust account funds and tangible personal property.

Compiler's Comments

Effective Date: Section 3, Ch. 431, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 4, 2023.

Part 2
Department of Corrections

Part Administrative Rules

Title 20, chapter 1, ARM Organizational rule of Department of Corrections.

Title 20, chapter 2, ARM Overall Department rules of Department of Corrections.

53-1-201. Purpose of department of corrections.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 213, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 339 in (2) near end substituted "formerly adjudicated" for "youth alleged to be youth in need of intervention or". Amendment effective October 1, 2021.

1997 Amendment: Chapter 550 in (2) substituted "the custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development of youth" for "the care, protection, and mental and physical development of youth" and substituted "youth in need of intervention" for "youth in need of supervision"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendment: Chapter 546 in introductory clause substituted "department of corrections" for "department"; in (1) substituted "adult and youth corrections" for "adult corrections"; deleted (1)(b), (1)(c), former (2), and (3) that read: "(b) mental health; and

(c) chemical dependency;

(2) provide inpatient institutional care for developmentally disabled persons who require that care according to the requirements of Title 53, chapter 20; and

(3) provide nursing home care for honorably discharged veterans as provided by law"; inserted (2) relating to youth in need of supervision and delinquent youth; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Deleted former (1) through (6) that read: "(1) restore the physically or mentally disabled;

(2) rehabilitate the violators of law;

(3) sustain the vigor and dignity of the aged;

(4) train children of limited mental capacity to their best potential;

(5) rededicate the resources of the state to the productive independence of its now dependent citizens; and

(6) coordinate and apply the principles of modern institutional administration to the institutions of the state"; inserted (1) relating to comprehensive services and programs for adult corrections, mental health, and chemical dependency; inserted (2) relating to inpatient institutional care for developmentally disabled person; and inserted (3) relating to nursing home care for honorably discharged veterans. Amendment effective July 1, 1991.

1987 Amendment: Deleted former (4) that read: "(4) provide for children in need of temporary protection or correctional counseling".

Case Notes

Prisoner Rehabilitation Not State Obligation: The plaintiffs sued the state for damages, alleging that the state was negligent in releasing a nonrehabilitated prisoner who killed their child. The Supreme Court held that the state is not a guarantor of its rehabilitation facilities and that the court would not impose that obligation on the state. VanLuchene v. St., 244 M 397, 797 P2d 932, 47 St. Rep. 1609 (1990), followed in King v. St., 259 M 393, 856 P2d 954, 50 St. Rep. 848 (1993).

53-1-202. Department of corrections.

Compiler's Comments

2021 Amendments — Composite Section — Code Commissioner Correction: Chapter 293 inserted (5) requiring admission of a legislator into certain correctional facilities or programs at any time, subjecting a legislator to routine security inspection procedures, and requiring certain contract elements and communications from the department of corrections; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 339 in (2)(a) at beginning substituted "a state prison as defined" for "the prisons listed"; and in (3)(a) substituted current text for former text that read: "Pine Hills youth correctional facility or other state youth correctional facility"; and in (3)(b) after "program" inserted "under contract with the department". Amendment effective October 1, 2021.

In (5)(a)(i) the Code Commissioner substituted "53-30-101" for "53-30-101(3)" to reflect amendments made by sec. 50, Ch. 339, L. 2021.

Authority to Discontinue Use: Section 8, Ch. 566, L. 2021, provided: "The legislature provides consent for the department of corrections to discontinue the use of the Great Falls regional prison in accordance with 53-1-202(4)."

Preamble: The preamble to Ch. 566, L. 2021, provided: "WHEREAS, the Legislature is concerned with the delays associated with transferring defendants to state custody after imposition of sentence. When the Department of Corrections does not timely assume custody of defendants after sentencing, local government facilities may lack capacity to hold other persons. It is the expectation of the Legislature that the Department of Corrections will ensure that defendants sentenced for one or more felonies will not remain in a county detention facility for more than 10 business days after sentencing unless unusual circumstances arise; and

WHEREAS, with respect to the Department of Corrections, the Legislature has been advised that the vocational opportunities at the Montana Women's Prison are inadequate, particularly when compared to the offerings at the Montana State Men's Prison. The Legislature is mindful that the campuses may face different limitations in what programming may be offered based on location, footprint, and facilities; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 that the Department of Corrections had drug treatment beds that were not fully utilized in fiscal year 2019, which resulted in a payment for failure to allow the contractor to operate at 75% capacity; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned that the Department of Corrections has yet to fully implement statutory directives to measure the effectiveness of its programs—both those provided by the Department of Corrections employees and those provided by contractors. In 2017, the Legislature directed the Department of Corrections to conduct evaluations of programs to determine their impact on reducing recidivism. This work, in addition to other requirements in Senate Bill No. 59 (2017), appears to be unaddressed or incomplete. Moreover, the Department of Corrections' definition of recidivism is an inadequate measure for the determination of effectiveness of its programming. The Legislature is interested in having data on crimes committed by those discharged from the Department of Corrections' custody, not merely "the rate at which adult offenders return to prison in Montana for any reason within three years of their release from prison", which fails to address reentry outcomes of many individuals committed to the Department of Corrections' custody and evaluates a truncated time period; and

WHEREAS, with respect to the Office of State Public Defender, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 regarding billing practices by contractors, including the failure to require the use of assistants for nonattorney tasks, and allowing contractors to work a number of hours each year that may induce attorneys to be contractors instead of the Office of State Public Defender employees; and

WHEREAS, with respect to the Office of State Public Defender, it is the sense of the Legislature that the Office of State Public Defender expends its appropriation, in part, to perform tasks that are not required by the state or federal constitution or by statutory directive, such as in section 47-1-104(4), MCA. Given limited resources and the demands on the Office of State Public Defender staff, the Legislature believes that it is incumbent on the Office of State Public Defender management to limit the scope of its work to what is required by statute and the constitution; and

WHEREAS, with respect to the Office of State Public Defender, neither through its employees nor its contractors should the Office of State Public Defender impair the Legislature's intent to have defendants share in the costs of counsel provided by the Office of State Public Defender. The Office of State Public Defender employees and contractors should not move the court to waive assessments under section 46-8-113, MCA, unless the defendant can show a compelling reason why they cannot pay this assessment over the course of the sentence; and

WHEREAS, in House Bill No. 640 (2019), the Legislature established a mechanism to ensure that sexual abuse reports generated by those with mandatory reporting responsibilities are provided to county attorneys and that county attorneys report to the Attorney General on the status of the investigations and prosecutions generated from these referrals. It is the sense of the Legislature that the Department of Justice has not undertaken a thorough review of the reports generated pursuant to section 41-3-210(3), MCA, and the Legislature urges the Department of Justice to do so; and

WHEREAS, the Legislature has taken a number of steps to strengthen the laws and investigative response to address human trafficking and sexual exploitation of minors. Given the collective commitment in the legislative and executive branches to combat these crimes, the Legislature needs greater clarity on whether its appropriations and statutory changes are having an impact; and

WHEREAS, the Legislature expresses its concern that the backlog of testing on sexual assault kits must be eliminated as soon as possible; and

WHEREAS, the definition of recidivism utilized by the judicial branch in evaluating the effectiveness of treatment courts is different than the definition used by the Department of Corrections for its programming, making it difficult to compare the effectiveness of treatment courts to in-patient treatment. It is the sense of the Legislature that a single definition of recidivism would make it possible to have a consistent evaluation of effectiveness; and

WHEREAS, the Legislature believes that expungement of a conviction for driving under the influence of drugs or alcohol will impair the correctional and public safety goals that the Legislature aims to achieve through the Section D appropriation.

2017 Amendment: Chapter 384 deleted former (2)(c) that read: "(c) the boot camp authorized by 53-30-403"; and made minor changes in style. Amendment effective July 1, 2017.

Severability: Section 38, Ch. 384, L. 2017, was a severability clause.

2009 Amendment: Chapter 312 inserted (2)(d) concerning the correctional enterprises prison industries training program; and made minor changes in style. Amendment effective October 1, 2009.

Retroactive Applicability: Section 8, Ch. 312, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any money that Montana correctional enterprises collected from inmates for room and board reimbursement before October 1, 2009."

2001 Amendment: Chapter 165 deleted former (2)(d) that read: "(d) the forensic unit at Warm Springs"; and made minor changes in style. Amendment effective March 29, 2001.

The amendment to this section made by sec. 1, Ch. 417, L. 2001, was rendered void by sec. 4, Ch. 417, L. 2001, a coordination section.

1999 Amendment: Chapter 491 in (2) after "or programs" deleted "to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18"; in (2)(a) substituted "prisons listed in 53-30-101" for "Montana state prison"; deleted former (2)(b) that read: "(b) the Montana women's prison"; inserted (2)(c) regarding boot camp; and made minor changes in style. Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendments: (Both versions) Chapter 42 deleted former (3)(a) that read: "(a) Mountain View school"; and made minor changes in style. Amendment effective March 12, 1997.

(Both versions) Chapter 189 in (2), in introductory clause after "following", substituted "correctional facilities or programs" for "institutional components"; in (2)(b), after "women's", substituted "prison" for "correctional system"; in (3), after "following", substituted "correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of supervision" for "institutional components to diagnose, care for, train, educate, and rehabilitate youth"; deleted former (3)(a) that read: "(a) Mountain View school"; in (3)(a), after "Pine Hills", substituted "youth correctional facility or other state youth correctional facility" for "school"; in (3)(b), after "other", substituted "facility or program that provides custody" for "institution that provides care"; in (4) of temporary version, after "institution", inserted "or facility"; in (4) of version effective on occurrence of contingency, after "institution", inserted "or correctional facility"; and made minor changes in style. Amendment effective April 1, 1997.

Code Commissioner Instruction — Name Change: Pursuant to sec. 76, Ch. 550, L. 1997, the Code Commissioner has substituted "youth in need of intervention" for "youth in need of supervision". Amendment effective July 1, 1997.

1995 Amendments — Composite Section: Chapter 94 in (1)(b)(ii) substituted "Montana mental health nursing care center" for "Montana center for the aged"; and made minor changes in style. Pursuant to sec. 569, Ch. 546, the Code Commissioner has moved this amendment to 53-1-602(1)(a)(ii).

Chapter 546 at beginning of (1) substituted "Adult and youth correctional services are in the department of corrections" for "The following components are in the department of corrections and human services"; in (2)(b) substituted "women's correctional system" for "women's correctional center"; deleted (1)(b) through (1)(e) that read: "(b) mental health services consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) Montana state hospital;

(ii) Montana center for the aged; and

(iii) a community services component consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 2;

(c) chemical dependency services consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(d) institutional and residential components of the developmental disabilities system for those developmentally disabled persons who require that care according to Title 53, chapter 20, consisting of:

(i) the Montana developmental center; and

(ii) Eastmont human services center; and

(e) veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

(i) Montana veterans' home; and

(ii) eastern Montana veterans' home at Glendive"; inserted (3) relating to youth correctional services; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 557 in version effective on contingency inserted (2)(d) regarding the forensic unit at Warm Springs; and made minor changes in style. Amendment effective on occurrence of contingency. Contingency occurred October 27, 2000. Amendment effective November 17, 2000.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Dates — Contingency: Section 11, Ch. 557, L. 1995, provided: "(1) [Sections 1, 2, 4 through 10, and this section] are effective on passage and approval. [Approved April 26, 1995.]

(2) [Section 3] [53-1-202] is effective 20 days after the governor, by executive order, declares that the construction of a new forensic unit at the Montana state hospital complex in Warm Springs, Montana, is complete." The executive order was issued October 27, 2000.

1993 Amendment: Chapter 579 in (1)(a) deleted "Swan River forest camp" from list of institutions. Amendment effective April 28, 1993.

1991 Amendments: Chapter 262 in (1) substituted present language outlining components of Department of Corrections and Human Services for former (1)(a) through (1)(h) that listed institutions in the Department of Institutions (see 1989 MCA for text). Amendment effective July 1, 1991.

Chapter 305 in (1)(e)(i), after "home", deleted "at Columbia Falls"; and at beginning of (1)(e)(ii) inserted "eastern" and after "home" deleted "in eastern Montana".

Chapter 651 inserted reference to Montana women's correctional center; and made minor change in style. Amendment effective April 26, 1991.

1989 Amendment: In (1)(b) inserted "at Columbia Falls"; and inserted (1)(c) that read: "(c) Montana veterans' home in eastern Montana". Amendment effective May 16, 1989.

1987 Amendment: Deleted former (1)(d) that read: "(d) Mountain View school"; deleted former (1)(e) that read: "(e) Pine Hills school"; in (1)(f), after "River", deleted "youth"; and deleted former (1)(j) that read: "(j) Any other institution which provides care and services for juvenile delinquents, including but not limited to youth forest camps and juvenile reception and evaluation centers."

1986 Amendment: Deleted in second version (1)(j) of the temporary version citing the Montana Youth Treatment Center.

1985 Amendment: In (1)(f) changed "Boulder River school and hospital" to "Montana developmental center".

1983 Amendments: Chapter 132 substituted "Eastmont human services center" for "Eastmont training center" in (1)(i).

Chapter 361, in (1)(a), substituted "Montana state hospital" for "Galen state hospital"; and deleted (1)(g), which read: "Warm Springs state hospital".

Chapter 363 inserted (1)(j) citing the Montana Youth Treatment Center.

1981 Amendment: Deleted reference to the Montana children's center.

Case Notes

Escape From Prerelease Center — Felony Escape: Chandler argued that he could not be charged with felony escape for leaving a prerelease center because he was not subject to official detention while at the center. The Supreme Court ruled that a prerelease center is a community corrections facility or program as listed in the felony escape statute and therefore escape from the center violated the plain language of the law and was punishable as a felony. St. v. Chandler, 277 M 476, 922 P2d 1164, 53 St. Rep. 774 (1996), distinguishing St. v. Nelson, 275 M 86, 910 P2d 247 (1996), and St. v. Roberts, 275 M 365, 912 P2d 812 (1996). See also St. v. Roundstone, 2011 MT 227, 362 Mont. 74, 261 P.3d 1009.

Attorney General's Opinions

Legislative Intent Disclosed by Legislative Records: The Legislature's action in 1975 HB 289 constituted its consent to discontinue Montana Children's Center at Twin Bridges. 36 A.G. Op. 54 (1976).

53-1-203. Powers and duties of department of corrections.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 200, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 339 in (1)(j) and (1)(l) substituted "correctional facility as defined in 41-5-103" for "state youth correctional facility"; in (1)(m) substituted "correctional facilities as defined in 41-5-103" for "youth correctional facilities"; and in (4) at end before "correctional facilities" deleted "state youth". Amendment effective October 1, 2021.

2019 Amendments — Composite Section: Chapter 7 deleted former (1)(a)(vi) that read: "(vi) to carry out the purposes of Article II, section 36, of the Montana constitution"; and made minor changes in style. Amendment effective October 1, 2019.

Chapter 344 deleted former (1)(a)(i) that read: "(i) to carry out the purposes of 41-5-125"; deleted former (1)(n) that read: "(n) provide supervision, care, and control of youth released from a state youth correctional facility"; in (4) at end after "facilities" deleted "or on juvenile parole supervision"; and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 39, Ch. 344, L. 2019, provided: "[This act] applies to youth residing in a state youth correctional facility, in a residential placement approved by the department, or on parole and under community supervision on or after July 1, 2019."

2017 Amendments — Composite Section: Chapter 179 inserted (1)(g) encouraging efforts to develop housing options and resource materials for individuals released from Montana state prison or community corrections programs; inserted (1)(h) requiring data on the number of individuals discharged from adult correction services into homeless shelters or homeless situations; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 199 inserted (7) concerning risk and needs assessments. Amendment effective October 1, 2017.

Chapter 321 in (1)(c)(ii) deleted 45-9-102 from list of statutory references. Amendment effective July 1, 2017.

Chapter 335 inserted (1)(a)(vi) concerning carrying out purposes of Article II, section 36, of Montana constitution; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 44, Ch. 321, L. 2017, provided: "[This act] applies to offenses committed after June 30, 2017."

Section 7, Ch. 335, L. 2017, provided: "[This act] applies to victimizations occurring on or after [the effective date of this act]." Effective July 1, 2017.

2015 Amendment: Chapter 143 in (1)(g) and (1)(i) before "delinquent youth" deleted "youth in need of intervention and"; and in (1)(g) at end deleted "except as provided in 41-5-2012". Amendment effective July 1, 2015.

2011 Amendment: Chapter 21 in (1)(a) inserted reference to subsection (6); in (1)(a)(i) at end deleted "rules necessary"; in (1)(a)(ii) at end deleted "rules"; inserted (1)(a)(iii) concerning treatment facilities or programs; in (1)(a)(v) at beginning deleted "rules" and at end after "provided by law" deleted former language that read: "However, rules adopted by the department may not amend or alter the statutory powers and duties of the state board of pardons and parole. The rules for the siting, establishment, and expansion of prerelease centers must state that the siting is subject to any existing conditions, covenants, restrictions of record, and zoning regulations. The rules must provide that a prerelease center may not be sited at any location without community support. The prerelease siting, establishment, and expansion must be subject to, and the rules must include, a reasonable mechanism for a determination of community support or objection to the siting of a prerelease center in the area determined to be impacted. The prerelease siting, establishment, and expansion rules must provide for a public hearing conducted pursuant to Title 2, chapter 3"; in (1)(c) inserted "or, pursuant to the Montana Community Corrections Act, with community corrections facilities or programs or local or tribal governments"; inserted (6) concerning rules adopted by the department of corrections; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendments — Composite Section: Chapter 398 in (1)(a) in first sentence near beginning after "purposes of" deleted "41-5-123 through"; in (1)(g) at end inserted exception clause; in (1)(h) at end substituted "who are committed to the department for placement in a state youth correctional facility" for "in need of intervention and delinquent youth"; in (1)(j) near beginning after "funding for" deleted "and place", after "youth" deleted "who are adjudicated to be delinquent or in need of intervention and", and at end inserted "for placement in a state youth correctional facility"; in (4) near end after "care for" deleted "youth in need of intervention and", after "youth in" inserted "state", and at end inserted "or on juvenile parole supervision"; and made minor changes in style. Amendment effective June 30, 2007.

Chapter 483 inserted (2) allowing the department to contract with private, nonprofit or for-profit Montana corporations to establish and maintain a residential sexual offender treatment program; in (3) near beginning of first sentence after "nonprofit" inserted "or for-profit" and in first and second sentences after "subsection (1)(c)" inserted "or (2)"; and made minor changes in style. Amendment effective May 11, 2007.

Severability: Section 29, Ch. 483, L. 2007, was a severability clause.

2005 Amendments — Composite Section: Chapter 87 in (2) at end of first sentence and in third sentence increased possible contract period from 10 years to 20 years; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 277 in (1)(a) near middle of first sentence inserted reference to rules for residential methamphetamine treatment programs; inserted (1)(c)(ii) relating to methamphetamine residential treatment programs and alternative sentencing; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 517 in (1)(c)(i) in first sentence after the second "parole" inserted "or probation"; and inserted (4) relating to the administration of a day reporting program. Amendment effective July 1, 2006.

1997 Amendments — Composite Section: Chapter 189 in (1)(b), in three places, substituted "correctional facilities" for "institutions"; in (1)(c), near middle of first sentence, substituted "a Montana prison" for "the Montana state prison"; in (1)(j), before "adjudicated", deleted "alleged or" and before "committed" deleted "referred or"; in (1)(m)(i), after "provide for", substituted "delinquent youth committed to the department" for "children in need of temporary protection or correctional services"; and in (3), at end, substituted "youth correctional facilities" for "youth care facilities".

Chapter 322 in (1)(a), in first sentence, inserted "rules necessary for the siting, establishment, and expansion of prerelease centers" and inserted third through sixth sentences requiring prerelease center rules to state that the siting is subject to existing conditions, covenants, restrictions of record, and zoning, to provide that a center may not be sited at a location without community support, and to include a reasonable mechanism for determining community support or objection and a provision for a public hearing; in (1)(b), in three places, substituted "correctional facilities" for "institutions"; in (1)(c), near beginning of first sentence before "prerelease centers", deleted "community-based" and at end inserted "providing an alternative placement for offenders who have violated parole, and providing a sentencing option for felony offenders pursuant to 46-18-201", at end of third sentence deleted "including the supervised release program provided for in Title 46, chapter 23, part 4", and in fourth sentence, before "prerelease centers", deleted "community-based"; in (1)(e) substituted "corrections" for "institutions", substituted "custody, supervision, treatment, and skill development" for "diagnosis, treatment, care, and aftercare", and substituted "correctional facilities or programs" for "institutions"; in (1)(f) substituted "state" for "institutional" and before "felony offenders" deleted "adult"; in (1)(m)(ii) substituted "correctional" for "institutional" and "facilities and programs administered by" for "institutions in"; in (2) inserted third through sixth sentences requiring the Department to submit a proposed 10-year contract to the Legislative Audit Committee for recommendations and comments, to which the Department shall respond, accepting or rejecting the recommendations and comments; and made minor changes in style.

Chapter 455 in (2), in second sentence after "provisions of", deleted "18-3-104 and". Amendment effective April 30, 1997.

Chapter 550 throughout section substituted "youth in need of intervention" for "youth in need of supervision"; and in (1)(e) substituted "parole of persons" for "aftercare of persons". Amendment effective July 1, 1997.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

1997 Statement of Intent: The statement of intent attached to Ch. 322, L. 1997, provided: "A statement of intent is required for this bill because 53-1-203 gives the department of corrections authority to adopt administrative rules relating to the future building or expanding of new prerelease centers. The legislature intends the rules to address, at a minimum:

(1) a procedure for notifying residents in an area in which a new prerelease center or expansion of an existing center is contemplated;

(2) a procedure and timetable for public notice, public comment, and a public hearing on a new prerelease center or expansion of an existing center; and

(3) siting criteria to be used to determine the suitability of a specific site for a new prerelease center or expansion of an existing center.

The rules are not intended to address plans that have been approved by a community for a new or expanded prerelease facility on [the effective date of this act]." Effective October 1, 1997.

Coordination: Section 16, Ch. 322, L. 1997, a coordination section, voided the amendments to 53-1-203(1)(e), (1)(f), and (1)(m)(ii) made by sec. 22, Ch. 189, L. 1997.

Saving Clause: Section 17, Ch. 322, L. 1997, was a saving clause.

Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1995 Amendments — Composite Section: Chapter 316 inserted (2) limiting contract between Department and private, nonprofit Montana corporation to 10 years or less and providing that contract term limits do not apply to community-based prerelease centers; and made minor changes in style. Amendment effective April 3, 1995. Because of the Ch. 546 amendment, in (2), in two places, the Code Commissioner has changed "this subsection (3)" to "subsection (1)(c)".

Chapter 546 at beginning of (1) substituted "department of corrections" for "department"; in (1)(a), at beginning after "adopt", inserted "rules necessary to carry out the purposes of 41-5-527 through 41-5-529 [renumbered 41-5-123 through 41-5-125] and" and at end substituted "board of pardons and parole" for "board of pardons"; at end of (1)(c), after "prerelease centers", deleted "in existence on July 14, 1982"; at beginning of (1)(f) deleted "encourage the establishment of programs at the local level for the prevention and rehabilitation of disabilities as they relate to mental illness and chemical dependency and"; inserted (1)(g) through (1)(m) relating to youth correctional services; inserted (3) relating to contracts for youth substitute care; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In (1) substituted "persons in department programs" for "residents of institutions"; and in (6) substituted "disabilities as they relate to mental illness and chemical dependency" for "physical and mental disability" and inserted phrase relating to establishment of programs for adult felony offenders. Amendment effective July 1, 1991.

Preamble: The preamble to Ch. 518, L. 1989, provided: "WHEREAS, the adult female inmate population in Montana has increased steadily since 1981; and

WHEREAS, the Women's Correctional Center [now Montana Women's Prison], the main facility in Montana for housing female inmates, is a converted nurses' dormitory located on the campus of Montana State Hospital; and

WHEREAS, on several occasions this fiscal year, the Women's Correctional Center [now Montana Women's Prison] has exceeded its maximum capacity of 45 inmates; and

WHEREAS, physical expansion of the Women's Correctional Center [now Montana Women's Prison] is not possible."

Effective Date: Section 2, Ch. 518, L. 1989, provided that this act is effective April 13, 1989.

Plan for Housing Female Inmates Required — Submission to 52nd Legislature: Chapter 518, L. 1989, requiring development of a plan for housing female inmates, provided: "(1) The department of institutions [now department of corrections], in cooperation with the criminal justice and corrections advisory council, shall develop a comprehensive plan for housing adult female inmates. The plan must:

(a) consider the need for building a new correctional facility, as well as other incarceration alternatives;

(b) provide for adequate educational, treatment, training, and employment opportunities for female inmates;

(c) comply with the standards published by the American correctional association's commission on accreditation for corrections, whenever feasible; and

(d) contain proposed legislation for implementing the plan, if appropriate.

(2) The department shall submit the plan to the 52nd legislature."

1982 Special Session Amendment: Inserted (3) requiring the establishment and maintenance of community based prerelease centers.

Transition Schedule — Institutions Rules: Section 29, Ch. 285, L. 1977, read: "Rules and policies of the department of institutions [now department of corrections] relating to patients or inmates in a mental, medical, or eleemosynary institution are subject to 2-4-305 on and after October 1, 1977. Any such rules in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 2-4-302."

Administrative Rules

Title 20, chapter 7, ARM Community Corrections Division of Department of Corrections.

Case Notes

Special Relationship of Custody or Control by Prerelease Center — Responsibility for Public Safety Within Zone of Risk — Foreseeability: A prerelease center entered into a contract with the Department of Corrections to supervise residents like Gardipee, who walked away from the center and subsequently injured Lopez. The District Court granted summary judgment for the center on grounds that the attack on Lopez was unforeseeable. Generally, there is no duty to protect others against harm by third persons, but in this case, the contract created a special relationship of custody or control, in turn creating a special responsibility upon the center to protect those members of the public who would be placed within the foreseeable zone of risk created by negligent supervision of a prerelease resident. As a matter of law, the center owed a duty of reasonable care to all persons present within the zone of danger created by the center's failure to exercise reasonable care in supervising Gardipee. Here, reasonable minds could differ as to whether it was reasonably foreseeable by the center that a failure to supervise Gardipee could pose an unreasonable risk of harm to Lopez in particular. There was a genuine issue of material fact as to whether the center knew or should have known that there was enmity between Gardipee and Lopez and a possibility of violence if Gardipee escaped, as well as whether Gardipee's attack was a superseding cause of the harm to Lopez. Both questions were suitable for resolution by a trier of fact, precluding summary judgment. The Supreme Court reversed and remanded for a trial on the merits. Lopez v. Great Falls Pre-Release Serv., Inc., 1999 MT 199, 295 M 416, 986 P2d 1081, 56 St. Rep. 771 (1999).

Prison's Custody Classification as Alleged Violation of Plea Bargaining Agreement — Withdrawal of Plea Denied: Under a plea bargain agreement, defendant was sentenced to 10 years as a nondangerous offender without parole. Upon entering prison, he was held in close custody for 24 months under prison rules calling for dangerous offenders and those sentenced without parole to serve 24 months in close custody prior to being considered for transfer to lower, more amenable custody levels. The prosecution, defense counsel, defendant, and judge were all unaware of those rules. Defendant was not entitled to withdraw his plea on the ground he was kept in close custody for 24 months in violation of his plea agreement. There was no violation of the agreement, nor was he entitled to the additional good time credits he would have received had he not been held so long in close custody. Prison officials take many factors into account in making custody reclassifications, and there was no guarantee he would have been held in close custody only for the time he claimed he should have been upon entry to the prison. St. v. Mesler, 210 M 92, 682 P2d 714, 41 St. Rep. 939 (1984).

Attorney General's Opinions

Establishment of Residential Methamphetamine Treatment Programs — Privatization Plan Process Compliance Not Required: When the Department of Corrections contracts with Montana private, nonprofit corporations to establish residential methamphetamine treatment programs pursuant to this section, the Department need not undergo the privatization plan process outlined in Title 2, ch. 8, part 3. 51 A.G. Op. 13 (2006).

State Financial Responsibility for Sentenced Inmate Upon Oral Pronouncement of Sentence: A sentencing hearing represents the only common date by which the criminal justice system can definitely measure when legal and financial responsibility for an inmate shifts from a county to the state. Oral pronouncement of sentence from the bench in the presence of a defendant constitutes final judgment (see St. v. Lane, 1998 MT 76, 288 M 286, 957 P2d 9 (1998)). Once sentenced, an inmate is considered to be in the legal custody of the Department of Corrections, even though a local or regional detention center may serve as a place of temporary detention until the inmate can be placed by the Department. Therefore, upon oral pronouncement of sentence that transfers legal custody of an inmate to the Department, the financial responsibility for the inmate transfers to the Department as well. 49 A.G. Op. 13 (2001).

53-1-204. Responsibility of warden and superintendents of institutions.

Compiler's Comments

1995 Amendment: Chapter 546 in two places substituted "department of corrections" for "department". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Case Notes

Medical Malpractice — Physicians Treating Inmates Not Department Employees — Not Immune From Suit: A doctor was an independent contractor and thus not entitled to immunity from suit as a state employee even though he: (1) was the only doctor employed by the state to care for state prison inmates; (2) treated inmates in facilities and with medical support services provided by the state; (3) was paid a salary; and (4) participated in the state retirement system. Therefore, his associate, who treated the inmate twice, was likewise not immune from suit. Kyriss v. St., 218 M 162, 707 P2d 5, 42 St. Rep. 1487 (1985).

Sovereign Immunity: State prison which participated in forest firefighting effort by lending a bulldozer, a guard, and two prisoners to operate the bulldozer, all of whom were under the direction of the U.S. Forest Service during the fighting of the fire, was immune under doctrine of sovereign immunity from suit for injuries to person who, several days after fire had been extinguished, was injured when wind caused an uprooted tree which had been leaning against another tree to fall on him; since prison was attempting to protect its own land adjacent to the fire area, it was engaged in a governmental rather than a proprietary function. Kish v. Mont. St. Prison, 161 M 297, 505 P2d 891 (1973), distinguished in Kyriss v. St., 218 M 162, 707 P2d 5, 42 St. Rep. 1487 (1985).

Discretionary Authority of Warden of State Prison: Actions of Warden of state prison in denying inmate access to money deposited in his spending account would not be interfered with in light of wide discretionary powers granted Warden and in absence of clear showing that Warden abused discretion. Petition of Spurlock, 151 M 380, 443 P2d 5 (1968).

53-1-206. Participation by institutions in research programs.

Compiler's Comments

1995 Amendment: Chapter 546 at beginning substituted "department of corrections" for "department"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-1-207. Authorization of inmate labor for designated construction projects — exemptions.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) substituted "at a state prison" for "at the Montana state prison". Amendment effective October 1, 2021.

Severability: Section 3, Ch. 513, L. 1997, was a severability clause.

Effective Date — Applicability: Section 6, Ch. 513, L. 1997, provided: "[This act] [enacting 53-1-207] is effective on passage and approval [approved May 2, 1997] and applies to contracts for construction projects entered into on or after [the effective date of this act]."

53-1-208. Payment to Powell County.

Compiler's Comments

2001 Purported Amendment: Although sec. 1, Ch. 372, L. 2001, purported to amend this section, the final version of the text remained unamended.

Termination Provision Repealed: Section 2, Ch. 372, L. 2001, repealed sec. 6, Ch. 550, L. 1999, which terminated this section June 30, 2001. Effective April 23, 2001.

Preamble: The preamble attached to Ch. 550, L. 1999, provided: "WHEREAS, the state makes payments in lieu of taxes for property from which the state derives grazing, agricultural, or forest income; and

WHEREAS, the state prison conducts a farming and ranching operation in Powell County that is not subject to payment in lieu of taxes.

THEREFORE, the Legislature finds that it is appropriate for the state prison ranch to make a payment to Powell County that is comparable to a payment in lieu of taxes."

Local Government Funding Study: Section 2, Ch. 550, L. 1999, provided: "Review of state payments in lieu of taxes. The interim local government funding and structure committee created under [section 1 of House Bill No. 622] [bill did not pass] shall include in its study of funding local government a review of state payments in lieu of taxes to local governments from grazing, agricultural, and forest activities that are self-supporting or that compete with private enterprise." This section was replaced by sec. 170(4), Ch. 584, L. 1999.

Coordination Instruction — Interim Revenue and Taxation Committee to Conduct Study: Section 4, Ch. 550, L. 1999, provided: "If House Bill No. 622 is not passed and approved, then the interim revenue and taxation committee shall conduct the review of state payments in lieu of taxes required by [section 2]." House Bill No. 622 died in the process because the House of Representatives did not complete action on the bill before adjournment of the 56th Legislature.

Effective Date: Section 5, Ch. 550, L. 1999, provided that this section is effective July 1, 1999.

Termination: Section 6, Ch. 550, L. 1999, provided: "[This act] terminates June 30, 2001."

53-1-209. Allowed purpose.

Compiler's Comments

Effective Date: Section 4, Ch. 165, L. 2001, provided that this section is effective on passage and approval. Approved March 29, 2001.

53-1-210. Transfer of property — allowed purpose.

Compiler's Comments

Preamble: The preamble attached to Ch. 575, L. 2003, provided: "WHEREAS, the Eastmont Human Services Center has provided consistent high-quality care to the residents of the Center; and

WHEREAS, the community of Glendive has continuously supported the staff and residents of the Eastmont Human Services Center; and

WHEREAS, the lack of a need to continue the use of the Eastmont Human Services Center as a residential facility for persons with developmental disabilities does not diminish the state's admiration of the dedication of the staff and the support of the community of Glendive for the Center; and

WHEREAS, section 53-1-602(2), MCA, provides that a state institution may not be moved, discontinued, or abandoned without the consent of the Legislature, this act constitutes consent for the discontinuance of the Eastmont Human Services Center."

Transition: Section 5, Ch. 575, L. 2003, provided: "The Eastmont human services center must be closed by December 31, 2003, and be transferred to the department of corrections by that date. When the department contracts for additional group homes for the developmentally disabled, the department shall give priority to providing those homes in a community in eastern Montana in which a residential facility has been closed. It is the intent of the legislature that the department of public health and human services have access to the personal services contingency funds in House Bill No. 13 [Ch. 552, L. 2003] in order to address any severance pay and costs for reduction in force associated with the closure of Eastmont human services center."

Effective Date: Section 8, Ch. 575, L. 2003, provided: "[This act] is effective July 1, 2003."

Administrative Rules

Title 20, chapter 7, subchapter 8, ARM Establishment of eastmont chemical dependency treatment program.

53-1-211. Quality assurance unit — program standards — evaluation — cooperation with department of public health and human services — report.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 84, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Effective Date: Section 15, Ch. 390, L. 2017, provided that this section is effective on passage and approval." Approved May 19, 2017.

53-1-214. Educational aid to wrongfully convicted persons exonerated by postconviction DNA testing.

Compiler's Comments

Effective Date: Section 4, Ch. 255, L. 2003, provided: "[This act] is effective July 1, 2003."

Retroactive Applicability: Section 5, Ch. 255, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to a person exonerated on or before [the effective date of this act]." Effective July 1, 2003.

Administrative Rules

Title 20, chapter 26, ARM Education of exonerated persons.

53-1-216. Montana criminal justice oversight council — duties — membership.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 641, L. 2023. Amendment effective May 19, 2023.

Preamble: The preamble attached to Ch. 641, L. 2023, provided: "WHEREAS, the lack of complete, consistent, and integrated criminal justice system data has stymied legislative efforts to allocate financial resources and to enact policy changes that would improve outcomes for offenders and crime victims; and

WHEREAS, the seemingly separate pieces of the state and local criminal justice system are intertwined, and the state cannot make effective changes without supporting its local partners; and

WHEREAS, the Law and Justice Interim Committee studied criminal justice data needs and gaps as part of an interim study; and

WHEREAS, as part of the study, state and local stakeholders and committee members spent hours identifying problems and discussing solutions; and

WHEREAS, improved state and local criminal justice system data collection, sharing, and integration will help change the current reactionary nature of the system; and

WHEREAS, improved state and local criminal justice system data collection, sharing, and integration can create efficiencies to save money in the future by reducing or eliminating time-consuming and sometimes redundant data entry; and

WHEREAS, any savings from efficiencies created from improved state and local criminal justice system data collection, sharing, and integration or from improved policy choices can benefit both state and local stakeholder and taxpayers, regardless of where in the system an improvement is made; and

WHEREAS, improved state and local criminal justice system data collection, sharing, and integration ultimately drives public safety by informing funding, policy, caseload, and staffing decisions, as well as how policy decisions can affect prison and supervision populations and recidivism.

WHEREAS, to ensure that data collection is a means to an end, the state must adopt a workable and meaningful definition of recidivism to which data may be applied."

2021 Amendments — Composite Section: Chapter 240 in (1)(e)(i) at beginning substituted "one member of a federally recognized Indian tribe" for "a member of a state-recognized or federally recognized Indian tribe". Amendment effective April 19, 2021.

Chapter 261 in (7) after "shall submit" substituted "a report" for "by September 1 of each even-numbered year a biennial report"; and in (13) after "council shall" substituted "provide updates" for "report". Amendment effective April 20, 2021.

Chapter 382 in (2) near beginning substituted "legislative services division" for "department of corrections". Amendment effective April 29, 2021.

Effective Date: Section 6, Ch. 404, L. 2019, provided: "[This act] is effective July 1, 2019."

53-1-217. Recidivism.

Compiler's Comments

Effective Date: Section 12, Ch. 641, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 19, 2023.

Codification Change: Section 3, Ch. 641, L. 2023, was not codified because of its short duration. The Code Commissioner has instead codified sec. 4, Ch. 641, as an integral part of Title 53, chapter 1, part 2.

Preamble: The preamble attached to Ch. 641, L. 2023, provided: "WHEREAS, the lack of complete, consistent, and integrated criminal justice system data has stymied legislative efforts to allocate financial resources and to enact policy changes that would improve outcomes for offenders and crime victims; and

WHEREAS, the seemingly separate pieces of the state and local criminal justice system are intertwined, and the state cannot make effective changes without supporting its local partners; and

WHEREAS, the Law and Justice Interim Committee studied criminal justice data needs and gaps as part of an interim study; and

WHEREAS, as part of the study, state and local stakeholders and committee members spent hours identifying problems and discussing solutions; and

WHEREAS, improved state and local criminal justice system data collection, sharing, and integration will help change the current reactionary nature of the system; and

WHEREAS, improved state and local criminal justice system data collection, sharing, and integration can create efficiencies to save money in the future by reducing or eliminating time-consuming and sometimes redundant data entry; and

WHEREAS, any savings from efficiencies created from improved state and local criminal justice system data collection, sharing, and integration or from improved policy choices can benefit both state and local stakeholder and taxpayers, regardless of where in the system an improvement is made; and

WHEREAS, improved state and local criminal justice system data collection, sharing, and integration ultimately drives public safety by informing funding, policy, caseload, and staffing decisions, as well as how policy decisions can affect prison and supervision populations and recidivism.

WHEREAS, to ensure that data collection is a means to an end, the state must adopt a workable and meaningful definition of recidivism to which data may be applied."

Part 4
Per Diem Payments for Institutional Care

Part Compiler's Comments

Section Not Codified: Section 80-1607, R.C.M. 1947, a temporary provision requiring review of determinations of payments, was not codified. That section is still valid law. Citation may be made to sec. 7, Ch. 450, L. 1977.

Part Administrative Rules

Title 37, chapter 2, subchapter 7, ARM State facility reimbursement.

Part Attorney General's Opinions

Returning Patients to Montana State Hospital — Financial Responsibility: A Sheriff who returns a patient to Warm Springs (now Montana State Hospital) pursuant to 7-32-2144 when the patient has been subjected to an involuntary civil or a criminal commitment is entitled to reimbursement for his costs from the applicable county for a person committed pursuant to 46-14-221 and 46-14-222 or the institution to which the person is committed when committed pursuant to 46-14-301, 53-21-121, 53-21-124, and 53-21-127. 37 A.G. Op. 129 (1978).

53-1-401. Definitions.

Compiler's Comments

2003 Amendment: Chapter 207 in definition of gross daily budgeted cost at end inserted "for a fiscal year"; and in definition of per diem charge near beginning after "institution" deleted "for the state fiscal year". Amendment effective April 2, 2003.

1997 Amendment: Chapter 190 inserted definitions of cost of care and gross daily budgeted cost; substituted per diem charge for per diem as defined term, near middle, after "institution", inserted "for the state fiscal year", in parenthetical clause, after "including", substituted "but not limited to" for "certain", after "educational programs" deleted "federal grants", and at end inserted "for the previous state fiscal year"; substituted definition of third party for former definition of third-party resource that read: ""Third-party resource" means but is not limited to applicable medicare, medicaid, and personal health care benefits"; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

1995 Amendments: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of corrections and human services provided for in Title 2, chapter 15, part 23". Amendment effective July 1, 1995.

Chapter 590 inserted definition of all-inclusive rate; and made minor changes in style.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1989 Amendment: Chapter 283 in definition of ancillary charge, near beginning, inserted "the expense of providing", after "resident" changed "service expenses as budgeted" to "services", subdivided remainder of definition into (a) through (h), deleted "operating room", "anesthesia", "blood bank", and "oxygen therapy", inserted "physicians' services", "dental services", "speech pathology and audiology services", and "occupational therapy", and substituted "prescribed drugs" for "drugs"; in definition of per diem, after "institution", inserted "or an individual unit of an institution", inserted "certain contracted medical services", and at end inserted "divided by the full-time equivalent resident load"; and made minor changes in phraseology and punctuation. Amendment effective July 1, 1989.

Chapter 413 in definition of ancillary charge substituted "speech-language pathology" for "speech pathology".

1983 Amendment: Substituted definition of per diem for former definition that read: "Per diem means the gross daily cost of operating an institution as budgeted, excluding the cost of educational programs and ancillary charges, divided by the full-time equivalent resident load. However, a schedule of differing per diem charges may be computed, including a schedule of charges for residents treated on an outpatient basis, for each program established or funded by the legislature and assigned to an institution listed in 53-1-402."; and inserted definition of third-party resource.

53-1-402. Residents and financially responsible persons liable for cost of care.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 3 in (3) substituted "Montana mental health nursing care center" for "Montana mental health nursing center". Amendment effective October 1, 2019.

Chapter 393 in (2) inserted "and the southwestern Montana veterans' home". Amendment effective July 1, 2019.

2009 Amendment: Chapter 461 inserted (1)(e) including southwestern Montana veterans' home; and made minor changes in style. Amendment effective May 6, 2009.

2003 Amendment: Chapter 575 deleted former (1)(f) that read: "(f) Eastmont human services center"; and made minor changes in style. Amendment effective July 1, 2003.

Preamble: The preamble attached to Ch. 575, L. 2003, provided: "WHEREAS, the Eastmont Human Services Center has provided consistent high-quality care to the residents of the Center; and

WHEREAS, the community of Glendive has continuously supported the staff and residents of the Eastmont Human Services Center; and

WHEREAS, the lack of a need to continue the use of the Eastmont Human Services Center as a residential facility for persons with developmental disabilities does not diminish the state's admiration of the dedication of the staff and the support of the community of Glendive for the Center; and

WHEREAS, section 53-1-602(2), MCA, provides that a state institution may not be moved, discontinued, or abandoned without the consent of the Legislature, this act constitutes consent for the discontinuance of the Eastmont Human Services Center."

Transition: Section 5, Ch. 575, L. 2003, provided: "The Eastmont human services center must be closed by December 31, 2003, and be transferred to the department of corrections by that date. When the department contracts for additional group homes for the developmentally disabled, the department shall give priority to providing those homes in a community in eastern Montana in which a residential facility has been closed. It is the intent of the legislature that the department of public health and human services have access to the personal services contingency funds in House Bill No. 13 [Ch. 552, L. 2003] in order to address any severance pay and costs for reduction in force associated with the closure of Eastmont human services center."

1997 Amendment: Chapter 190 in (1), in introductory clause, inserted first sentence regarding liability for cost of care and at beginning of second sentence substituted "The cost of care includes the applicable" for "The department shall assess and collect" and after "ancillary charges" inserted "or all-inclusive rate charges"; in (2), at beginning, deleted "This section does not apply to" and after "home" inserted "may assess charges on either a per diem and ancillary charge basis or an all-inclusive rate basis"; in (3), at beginning, deleted "This section does not apply to residents of", after "hospital" substituted "and" for "or to", and after "center" substituted "may determine the cost of care using an all-inclusive rate or per diem and ancillary charges if the department contracts with a private entity to operate a mental health managed care program" for "to the extent that either of these institutions assesses and collects charges through an all-inclusive rate rather than per diem and ancillary charges"; and made minor changes in style. Amendment effective April 1, 1997.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

Applicability: Section 17(3), Ch. 190, L. 1997, provided: "[Section 2] [amending 53-1-402] applies to care provided to a resident, as defined in 53-1-401, on or after [the effective date of section 2]." Effective April 1, 1997.

1995 Amendments: Chapter 35 inserted (1)(g) allowing collection of certain charges from residents of the Montana Chemical Dependency Treatment Center; and made minor changes in style.

Chapter 94 in (1)(e) substituted "Montana mental health nursing care center" for "Montana center for the aged"; and made minor changes in style.

Chapter 590 inserted (3) concerning nonapplicability to residents of certain state institutions.

1993 Amendment: Chapter 579 inserted (2) providing that the section does not apply to the Eastern Montana Veterans' Home if the Department contracts for private operation of the home. Amendment effective April 28, 1993.

1991 Amendment: In (3), after "home", deleted "at Columbia Falls"; and at beginning of (4) inserted "eastern" and after "home" deleted "in eastern Montana".

1989 Amendments: Chapter 283 in introductory clause inserted "assess and", after "collect" deleted "and process", and substituted "charges" for "payments". Amendment effective July 1, 1989.

Chapter 683 in (3) inserted "at Columbia Falls"; and inserted (4) that read: "(4) Montana veterans' home in eastern Montana". Amendment effective May 16, 1989.

1986 Amendment: Deleted in second version (6) of the temporary version referencing the Montana Youth Treatment Center.

1985 Amendment: In (2) changed "Boulder River school and hospital" to "Montana developmental center".

1983 Amendments: Chapter 132 substituted "Eastmont human services center" for "Eastmont training center" in (5).

Chapter 361, in (1), substituted "Montana state hospital" for "Warm Springs state hospital"; and deleted (3) that read: "Galen state hospital".

Chapter 363 inserted (6) referencing the Montana Youth Treatment Center.

53-1-403. Rules.

Compiler's Comments

1997 Amendment: Chapter 190 throughout section substituted reference to adopting rules for reference to making rules; near middle of first sentence, after "rules", substituted "to implement" for "for the administration of"; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

53-1-404. Department to review and establish per diem charge.

Compiler's Comments

2007 Amendment: Chapter 76 at end of first sentence inserted "and may be reviewed at additional times during the year as considered appropriate by the department" and near beginning of second sentence after "that the" deleted "budgeted". Amendment effective March 27, 2007.

2003 Amendment: Chapter 207 near middle of first sentence after "must be" substituted "reviewed on or before October 1" for "computed on July 1" and in second sentence at beginning after "If the" inserted "review indicates that the", after "substantially" substituted "since the last review" for "within the fiscal year", and after "charge" substituted "must" for "may"; and made minor changes in style. Amendment effective April 2, 2003.

1997 Amendment: Chapter 190 near beginning of first sentence, after "per diem", inserted "charge for the fiscal year" and in second sentence, after "per diem", inserted "charge"; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

1983 Amendment: Inserted last sentence allowing per diem adjustment.

53-1-405. Monthly payment amount.

Compiler's Comments

1997 Amendment: Chapter 190 substituted present text regarding monthly payment amount for former text that read: "(1) The department shall assess monthly against each resident, financially responsible person, or applicable third-party resource the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge based upon financial information given to the department during its investigation conducted according to the rules of the department.

(2) An assessment made by the department under this section shall be based on the resident's or financially responsible person's ability to pay. The department shall prescribe rules which establish criteria and a procedure for determining ability to pay. The department may not make an assessment which would place an undue financial burden on the resident or the financially responsible person." Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

1983 Amendment: In (1), after "responsible person", inserted "or applicable third-party resource".

53-1-406. Investigation of ability to pay.

Compiler's Comments

1997 Amendment: Chapter 190 inserted (1) regarding investigation of ability to pay; in (2), in first sentence after "all", inserted "requested", after "information" inserted "and documents", and before "financial" deleted "proper" and inserted second sentence precluding dissemination of tax return information without consent; in (3), in first sentence after "to the department", inserted "and shall cooperate with the department in obtaining" and after "information" inserted "and documentation" and inserted second sentence and (3)(a) through (3)(i) regarding information the Department is entitled to receive; in (4), at beginning of first sentence, substituted "If a resident or financially responsible person fails" for "Willful failure", after "provide" inserted "or cooperate in obtaining", after "information" inserted "or documentation", and after "by the department" substituted "the department may make a determination of ability to pay based upon any information or documentation available to the department, including a determination of ability to pay up to the full cost of care" for "may result in a determination of ability to pay up to the full per diem and full ancillary charges" and in second sentence, at beginning, inserted "The determination is effective", after "information" inserted "and documentation", and at end inserted "taking into consideration the additional information and documentation"; deleted former (3) that read: "(3)(a) A representative of the department authorized by the director may administer oaths, take testimony, and subpoena and compel the attendance of witnesses and the production of books, papers, records, and documents in connection with the duty of securing payments for care as provided by this part.

(b) A person who fails to obey the subpoena, upon petition of the department to any judge of a district court of the state, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after a hearing, may order that the subpoena be obeyed or, if it appears that the subpoena was inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena when so ordered by the judge may be punished for contempt of court on application of the department to the district court"; inserted (5) regarding determination of ability to pay as determined in a hearing; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

53-1-407. Appeal of determination of ability to pay.

Compiler's Comments

1997 Amendment: Chapter 190 substituted present text concerning appeal of determination of ability to pay for former text that read: "If a resident or financially responsible person disagrees with the final determination of the department as to his ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date of the department's determination in any court of record in Montana having jurisdiction of the resident or financially responsible person liable for payment." Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

1989 Amendment: Near beginning, before "determination", inserted "final". Amendment effective July 1, 1989.

Attorney General's Opinions

Determination Not Required: A District Judge need not certify that a patient is financially responsible for the cost of his treatment when being committed or voluntarily admitted to the State Hospital at Warm Springs. 31 A.G. Op. 8 (1965).

53-1-408. Periodic review by department of ability to pay.

Compiler's Comments

1997 Amendment: Chapter 190 in (1), at beginning, deleted "At appropriate intervals" and after "review" inserted "at least annually"; inserted (2) regarding review of a determination of ability to pay; in (3)(a), in two places after "monthly", substituted reference to payment amount for reference to assessment; in (3)(b), near beginning after "person has", deleted "materially", after "misrepresented" inserted "or failed to provide", and after "financial information" inserted "or documentation that the person was obligated to provide under 53-1-406 and unless the resident or financially responsible person would have been required to pay a higher monthly amount based upon consideration of the complete and correct information and documentation"; in (4), near beginning, substituted "may adopt" for "shall make"; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

53-1-409. Limitations on liability of resident or financially responsible person for cost of care.

Compiler's Comments

2005 Amendment: Chapter 383 deleted former (4) that read: "(4) (a) A resident or financially responsible person is not financially liable for care provided to a resident under any provision of a criminal statute.

(b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana chemical dependency treatment center"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 190 in (1), near beginning of first sentence, substituted "cost of care" for "per diem and ancillary charges" and after "department has" substituted "determined that the person is able to pay and for which the department has" for "assessed and" and at beginning of second sentence substituted "amount payable" for "amounts assessed and billed"; in (2), near beginning, substituted "long-term resident may not be required to pay for the resident's cost of care" for "long-term residents are liable only for the charges made by the department for care" and after "home as determined" substituted "and updated annually by the department based upon the annual cost of raising a child, as estimated by the United States department of agriculture" for "from standard sources by the department"; in (3), after "resident", substituted "may not be required to pay for the resident's cost of care for periods after the resident attains" for "are not liable for any charges made by the department for care of a long-term resident incurred or accrued subsequent to the resident attaining"; inserted (5) precluding application of the section to reduce liability of a third party for a resident's cost of care; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

1995 Amendment: Chapter 35 at end of (4)(b) substituted "chemical dependency treatment center" for "state hospital alcohol program"; and made minor changes in style.

1983 Amendments: Chapter 594 inserted (4)(b) providing that financial liability does not apply to a person enrolled in the state hospital alcohol program.

Chapter 361, in (4)(b), substituted "Montana state hospital" for "Galen state hospital".

Attorney General's Opinions

Returning Patients to Montana State Hospital — Financial Responsibility: A Sheriff who returns a patient to Warm Springs (now Montana State Hospital) pursuant to 7-32-2144 when the patient has been subjected to an involuntary civil or a criminal commitment is entitled to reimbursement for his costs from the applicable county for a person committed pursuant to 46-14-221 and 46-14-222 or the institution to which the person is committed when committed pursuant to 46-14-301, 53-21-121, 53-21-124, and 53-21-127. 37 A.G. Op. 129 (1978).

53-1-410. Nonpayment not grounds for discharge.

Compiler's Comments

1997 Amendment: Chapter 190 in two places substituted reference to discharge for reference to release and near middle, before "unless", substituted "resident's cost of care" for "per diem or the ancillary charge". Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

53-1-411. Collections from residents and financially responsible persons.

Compiler's Comments

1997 Amendment: Chapter 190 in (1), after "person", deleted "liable for payment of per diem and ancillary charges due under this part" and after "fails to" substituted "pay the amount required under this part, any amount remaining unpaid 30 days after the department mails a written demand for payment may be collected" for "make the payment, it is collectible"; inserted (1)(a) regarding collection by the Department in any lawful manner; inserted (2) requiring payment in case of a resident's death or discharge; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(2), Ch. 190, L. 1997, provided: "[Section 11] [amending 53-1-411] applies to proceedings begun on or after July 1, 1997."

1995 Amendment: Chapter 35 in two places substituted "state auditor" for "department of revenue"; and made minor changes in style. Pursuant to sec. 7(2), Ch. 589, L. 1995, a coordination instruction, in two places substituted "department of administration" for "state auditor".

53-1-412. Collections from estates.

Compiler's Comments

1997 Amendment: Chapter 190 at beginning substituted "department" for "state", after "resident" substituted "and" for "or", and at end, after "person for", substituted "the amounts that the department determined that the resident or financially responsible person was able to pay under 53-1-405, less any amounts actually paid by the resident, a financially responsible person, or a third party" for "an amount due to the state at the death of the resident or financially responsible person. The attorney general shall collect any claim which the state may have against the estate"; inserted (2) regarding liability for cost of care from a resident's estate; inserted (3) regarding enforceability of the Department's claim against a resident's estate; in (4), at beginning, inserted "The department's", after "claim" inserted "under subsection (1)", and after "spouse" inserted "or dependent"; in (4)(b), after "spouse", inserted "or dependent"; and made minor changes in style. Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 19, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

53-1-413. Deposit of payments and collections.

Compiler's Comments

2009 Amendment: Chapter 461 in (2) in first sentence in two places substituted "homes" for "home". Amendment effective May 6, 2009.

2003 Amendment: Chapter 57 deleted former (3) that read: "(3) Subject to 90-7-221, payments from a managed care organization that is contracting with the department to administer a mental health managed care program for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the state special revenue account, subject to appropriation by the legislature for the benefit of those institutions"; and deleted former (4) that read: "(4) Medicaid payments for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the federal special revenue fund and are subject to appropriation for the benefit of the mental health managed care program." Amendment effective July 1, 2003.

1999 Amendment: Chapter 577 inserted (4) regarding deposit and appropriation of certain medicaid payments. Amendment effective May 6, 1999.

Preamble: The preamble attached to Ch. 577, L. 1999, provided: "WHEREAS, the Legislature is firmly committed to a managed care system for the delivery of public mental health services in an efficient and cost-effective manner and to ensuring access to services and quality of care; and

WHEREAS, in order for mental health managed care to be successful, care management must be carefully monitored and any contract for services must be enforced; and

WHEREAS, the state, service providers, and service recipients and their families must work cooperatively to ensure that the public mental health delivery system is successful; and

WHEREAS, the Legislature is committed to a transition from the existing contract to a competitive procurement of mental health managed care services."

1997 Amendment: Chapter 190 in (1), before "this section", deleted "subsection (2) of" and after "payments" substituted "and collections of charges for a resident's cost of care" for "of per diem and ancillary charges"; in (2), at beginning of first sentence after "Payments", substituted "and collections for services provided to residents of" for "from" and near middle, after "deposited in the", substituted "special revenue account" for "federal special revenue fund" and at beginning of second sentence, after "Payments", substituted "and collections for services provided to residents of" for "from", after "center" deleted "program", after "deposited" substituted "in the" for "to an alcohol", and at end inserted "for the facility"; and in (3), at beginning, inserted "Subject to 90-7-221", after "care" substituted "organization that is contracting with the department to administer a mental health managed care program" for "contractor, provided for in 53-6-116", and near end, after "special revenue", substituted "account" for "fund". Amendment effective July 1, 1997.

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

1995 Amendments: Chapter 35 near middle of (2) substituted "chemical dependency treatment center" for "state hospital alcohol"; and made minor changes in style.

Chapter 557 in (1) inserted "90-7-221"; and made minor changes in style. Amendment effective April 26, 1995.

Chapter 590 inserted (3) concerning deposit of payments from managed care contractor; and made minor changes in style.

Phrase Change: Section 6, Ch. 94, L. 1995, directed the Code Commissioner to change references to the Montana Center for the Aged to references to the Montana Mental Health Nursing Care Center in material enacted by the 54th Legislature. In this section, the Code Commissioner has made the change in (3).

1991 Amendment: In (1) inserted reference to 90-7-220; and made minor change in style. Amendment effective May 24, 1991.

1983 Amendments: Chapter 594, at beginning of (1), inserted exception clause and inserted (2) providing for deposit of payments from the Montana Veterans' Home and the state hospital alcohol program.

Chapter 281, in (2), substituted "the federal special revenue fund" for "a federal and private revenue fund account" and substituted "alcohol state special revenue account" for "alcohol earmarked revenue fund account".

Chapter 361, in (2), substituted "Montana state hospital" for "Galen state hospital".

53-1-414. Automatic assignment of resident's resources from third party.

Compiler's Comments

Severability: Section 16, Ch. 190, L. 1997, was a severability clause.

Applicability: Section 17(1), Ch. 190, L. 1997, provided: "...[this act] applies to care provided on or after July 1, 1997."

Effective Date: Section 18(1), Ch. 190, L. 1997, provided that this section was effective July 1, 1997.

Part 5
Per Diem Payments
for Residential Correctional Programs

53-1-501. Rates for residential community correctional program board, room, and services charged by the department of corrections.

Compiler's Comments

2005 Amendment: Chapter 517 in (2) in first sentence near middle and near end inserted references to participants. Amendment effective July 1, 2006.

1995 Amendment: Chapter 546 throughout section substituted "department of corrections" for "department". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 240 substituted present section concerning per diem rates for community correctional programs for former language that read: "The department of corrections and human services shall establish and charge reasonable rates for board and room for persons committed to any residential community correctional programs operated by the department. The department is directed to establish policies and rules to implement the charging of reasonable rates of board and room for such programs operated by the department."

1993 Statement of Intent: The statement of intent attached to Ch. 240, L. 1993, provided: "A statement of intent is required for this bill because the bill gives the department of corrections and human services [now department of corrections] authority to adopt administrative rules. The department shall adopt rules that establish criteria and a procedure for determining ability to pay per diem rates for room, board, or services or for a combination of room, board, and services for persons committed to or placed in community corrections programs operated by the department. The department shall adopt rules and procedures for the establishment of rates and charges to residents in any community correctional program that is under contract with the department.

It is the intent of the legislature that the amount assessed by these programs be subject to the resident's ability to pay and that the department may not make an assessment that would place an undue financial burden on the resident."

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1979 Statement of Intent: The statement of intent adopted with HB 77 (Ch. 517, L. 1979) provided: "A statement of intent is required for this bill in that it delegates authority to adopt rules in the last sentence of Section 1.

1. The rates for board and room established by policies or rules adopted by the Department of Institutions [now Department of Corrections] under the authority delegated in Section 1 shall not exceed the cost of providing board and room.
2. The rates shall be based upon the person's ability to pay."

Administrative Rules

Title 20, chapter 7, subchapter 2, ARM Resident reimbursement — community correctional centers.

Case Notes

Sentencing Condition Proper — Court Not Required to Determine Ability to Pay Costs: The District Court did not err when it imposed a condition in the presentence investigation report without first determining whether the defendant was financially able to pay the costs of imprisonment, probation, or alcohol treatment. On appeal, the defendant argued that the court was obligated to calculate, or at least estimate, the anticipated sum of the costs and to more thoroughly inquire into his financial assets, debts, recurring obligations, and future ability to pay. The Supreme Court affirmed the order, holding that the imposition of the condition complied with the plain language of 61-8-731 (now repealed) and that the District Court had properly deferred to the Department of Corrections the responsibility for assessing the defendant's ability to pay. St. v. Daricek, 2018 MT 31, 390 Mont. 273, 412 P.3d 1044.

53-1-502. Rates for board, room, and ancillary services charged to correctional facility inmates.

Compiler's Comments

1995 Amendment: Chapter 546 in three places substituted "department of corrections" for "department". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Statement of Intent: The statement of intent attached to Ch. 579, L. 1993, provided: "A statement of intent is required for this bill because it authorizes the department of corrections and human services [now department of corrections] to adopt rules concerning the granting of good time to inmates when the population of an institution reaches capacity and providing that individuals within the corrections system pay for services. It is the intent of the legislature that rules adopted by the department to grant good time to inmates when the capacity of an institution is exceeded be primarily based upon proximity to parole eligibility or discharge but also take into consideration factors such as behavior, attitude, and criminal history.

The rules adopted to manage the Montana state hospital population must take into account the facilities, the personnel available at the hospital, emergency access to services, public and individual safety, active treatment of patients, discharge planning of patients, and access to community-based services. The department is directed to involve consumers, family members of consumers, mental health advocates, mental health providers, law enforcement officials, and other governmental officials in the development of the administrative rules authorized by this bill."

Effective Date: Section 22, Ch. 579, L. 1993, provided that this section is effective April 28, 1993.

Case Notes

Sentencing Condition Proper — Court Not Required to Determine Ability to Pay Costs: The District Court did not err when it imposed a condition in the presentence investigation report without first determining whether the defendant was financially able to pay the costs of imprisonment, probation, or alcohol treatment. On appeal, the defendant argued that the court was obligated to calculate, or at least estimate, the anticipated sum of the costs and to more thoroughly inquire into his financial assets, debts, recurring obligations, and future ability to pay. The Supreme Court affirmed the order, holding that the imposition of the condition complied with the plain language of 61-8-731 (now repealed) and that the District Court had properly deferred to the Department of Corrections the responsibility for assessing the defendant's ability to pay. St. v. Daricek, 2018 MT 31, 390 Mont. 273, 412 P.3d 1044.

Part 6
Department of Public Health and Human Services

Part Compiler's Comments

Effective Date: Section 572, Ch. 546, L. 1995, provided that this part is effective July 1, 1995.

53-1-601. Purpose of department of public health and human services.

Compiler's Comments

Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (2).

53-1-602. Department of public health and human services.

Compiler's Comments

2009 Amendment: Chapter 461 inserted (1)(e)(iii) including southwestern Montana veterans' home; and made minor changes in style. Amendment effective May 6, 2009.

2003 Amendment: Chapter 575 deleted former (1)(c)(ii) that read: "(ii) the Eastmont human services center"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 602 in (1)(b) substituted "part 10" for "part 2"; and made minor changes in style. Amendment effective October 1, 2003.

Preamble: The preamble attached to Ch. 575, L. 2003, provided: "WHEREAS, the Eastmont Human Services Center has provided consistent high-quality care to the residents of the Center; and

WHEREAS, the community of Glendive has continuously supported the staff and residents of the Eastmont Human Services Center; and

WHEREAS, the lack of a need to continue the use of the Eastmont Human Services Center as a residential facility for persons with developmental disabilities does not diminish the state's admiration of the dedication of the staff and the support of the community of Glendive for the Center; and

WHEREAS, section 53-1-602(2), MCA, provides that a state institution may not be moved, discontinued, or abandoned without the consent of the Legislature, this act constitutes consent for the discontinuance of the Eastmont Human Services Center."

Transition: Section 5, Ch. 575, L. 2003, provided: "The Eastmont human services center must be closed by December 31, 2003, and be transferred to the department of corrections by that date. When the department contracts for additional group homes for the developmentally disabled, the department shall give priority to providing those homes in a community in eastern Montana in which a residential facility has been closed. It is the intent of the legislature that the department of public health and human services have access to the personal services contingency funds in House Bill No. 13 [Ch. 552, L. 2003] in order to address any severance pay and costs for reduction in force associated with the closure of Eastmont human services center."

Saving Clause: Section 18, Ch. 602, L. 2003, was a saving clause.

Phrase Changes: Section 6, Ch. 94, L. 1995, directed the Code Commissioner to change references to the Montana Center for the Aged to references to the Montana Mental Health Nursing Care Center in material enacted by the 54th Legislature. In this section, the Code Commissioner has made the change in (1)(a)(ii). Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (1)(c).

53-1-610. Refinancing by department.

Compiler's Comments

Effective Date: Section 7, Ch. 576, L. 2003, provided: "[This act] is effective July 1, 2003."

53-1-611. Evaluation of proposed medicaid block grant and acceptance of grant.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 86, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Effective Date: Section 7, Ch. 576, L. 2003, provided: "[This act] is effective July 1, 2003."

53-1-612. Use of funding obtained by refinancing.

Compiler's Comments

Effective Date: Section 7, Ch. 576, L. 2003, provided: "[This act] is effective July 1, 2003."

Part 7
Statewide 2-1-1 System

Part Compiler's Comments

Performance of Required Functions: Section 11, Ch. 548, L. 2005, provided: "It is the intent of the legislature that the functions required in [this act] be conducted with existing employees and within existing levels of funding."

Severability: Section 13, Ch. 548, L. 2005, was a severability clause.

Effective Date: Section 14, Ch. 548, L. 2005, provided: "[This act] is effective July 1, 2005."

53-1-703. Definitions.

Compiler's Comments

2017 Amendment: Chapter 81 deleted definition that read: ""Coalition" means the Montana 2-1-1 community coalition provided for in 53-1-704"; and made minor changes in style. Amendment effective July 1, 2017.

53-1-710. Approved 2-1-1 service providers.

Compiler's Comments

2017 Amendment: Chapter 81 in (1) near beginning of second sentence after "department" deleted "in consultation with the coalition"; and made minor changes in style. Amendment effective July 1, 2017.

53-1-711. Scope of 2-1-1 service.

Compiler's Comments

2017 Amendment: Chapter 81 in (2) in two places after "department" deleted "in consultation with the coalition"; and made minor changes in style. Amendment effective July 1, 2017.

CHAPTER 2
ADMINISTRATION OF PUBLIC ASSISTANCE

Chapter Case Notes

County — Definite Obligations to Poor: Public Welfare Act (Title 71, ch. 2 through 10, R.C.M. 1947, now, with substantial change, a major portion of Title 53) did not place sole duty of caring for county poor on State Board of Public Welfare (now Department of Public Health and Human Services); while the state and federal governments now cooperate with the county in the matter, counties still have definite obligations to the poor and needy and must bear their proportionate share of social relief. State ex rel. Broadwater County v. Potter, 107 M 284, 84 P2d 796 (1938).

Chapter Attorney General's Opinions

OPINIONS UNDER FORMER LAW

Determination of Staffing Patterns of County Public Assistance Offices: Both the Department of Public Health and Human Services and county welfare boards have an interest in staffing patterns for county public assistance offices, and when possible, staffing patterns should be determined through a process of consultation and negotiation between the Department and the county welfare board. However, if an agreement cannot be reached through that process, the Department has the final authority for determining staffing patterns for the county public welfare office in a nonassumed county. (See 2001 amendments eliminating county welfare boards.) 48 A.G. Op. 18 (2000).

Payment of Proportionate Share of Administrative Costs by Nonassumed Counties — Action to Recover Disputed Claims: Under 53-2-322 (now repealed), a nonassumed county is required to pay its proportionate share of administrative costs for protective services, including rent, adequate equipment, and supplies. The responsibility to pay a proportionate share, other than salaries, travel expenses, and indirect employee costs, is not capped at the amount paid in fiscal year 1987. An action to recover a disputed claim filed more than 6 months after denial of the claim is barred by the statute of limitations in 27-2-209. 45 A.G. Op. 23 (1994).

Residential Homestead Property — Lien for Welfare Payments Not Allowed: A county may not execute on a lien for welfare payments against residential property owned by welfare recipients when there has been a homestead declaration recorded on the property. 42 A.G. Op. 112 (1988).

Distribution of Corporate License Fees: Corporate license fees received between July 1, 1983, and June 30, 1984, under 15-31-702 (now repealed), are properly distributed pursuant to tax levies adopted by the Board of County Commissioners for fiscal year 1984, including any levy promulgated pursuant to 53-2-813 (now repealed). 41 A.G. Op. 26 (1985).

Distribution of Motor Vehicle Fees: Motor vehicle fees subject to distribution under 61-3-509 (see 2001 amendment) are properly allocated in the same manner as personal property taxes. Consequently, for fiscal year 1984 the state special revenue fund is entitled to receive, under 53-2-813 (now repealed), the appropriate proportional share of such money collected between January 1, 1984, and December 31, 1984, from counties whose public assistance programs and protective services were assumed on July 1, 1983. 41 A.G. Op. 26 (1985).

Payment Into State Special Revenue Fund — When Proper: State aid received pursuant to 61-3-536 (repealed, 1987) during March 1984 is, as to any county whose public assistance programs and protective services were assumed on July 1, 1983, by the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), properly paid into the state special revenue fund under 53-2-813 (now repealed) in such amount as determined by fiscal year 1984 mill levies. 41 A.G. Op. 26 (1985).

Extent of State Assumption: After state assumption pursuant to 53-2-811 (now repealed), the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) is not responsible for the expenses associated with transfer of seriously mentally ill patients involuntarily committed to the Montana State Hospital. The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) is not responsible by virtue of state assumption for those duties that do not statutorily attach to county welfare departments. The Legislature has allocated the costs of involuntary commitment proceedings to the county of residence, and the county welfare departments have no statutorily mandated involvement in those proceedings. 40 A.G. Op. 73 (1984).

Clerk and Recorder's Report — Basis for Determining Levy: The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) should rely upon the tax levies presented in the County Clerk and Recorder's report that is provided pursuant to 7-6-2322 (now repealed) for determining the amount levied by the county for purposes of its county poor fund during fiscal year 1982. 40 A.G. Op. 18 (1983).

Mill Levy Proceeds to Include Revenue From All Normal Sources: The proceeds of the 12-mill levy (see 1993 amendment) provided for in 53-2-813 (now repealed) should include all revenue from any source that is normally allocated among county funds in the proportion a fund bears to the total mill levies of the county. 40 A.G. Op. 18 (1983).

Chapter Law Review Articles

Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place, Pruitt, 71 Mont. L. Rev. 1 (2010).

Butte Community Union v. Lewis: A New Constitutional Standard for Evaluating General Assistance Legislation, Wurster, 48 Mont. L. Rev. 163 (1987).

Part 1
General Provisions

53-2-101. Definitions.

Compiler's Comments

2005 Amendment: Chapter 350 inserted definitions of section 1115 waiver and section 1915 waiver. Amendment effective April 21, 2005.

Preamble: The preamble attached to Ch. 350, L. 2005, provided: "WHEREAS, the Montana public health care redesign project has studied health care and related services funded with state and federal money and has recommended the implementation of a set of measures to ensure that the expenditure of state and federal money more effectively benefits those citizens who are most in need of health care and other public assistance services; and

WHEREAS, the State of Montana has through the Montana public health care redesign project determined that the implementation of federally authorized health insurance flexibility and accountability (HIFA) demonstration initiatives or other demonstration projects under the waiver authority of section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315, is in the best interest of the citizens of Montana; and

WHEREAS, the section 1115 waiver is intended to foster more appropriate use of state general fund money and federal money in funding state-administered health care and related services; and

WHEREAS, the section 1115 waiver would allow for the expansion of coverage for children covered under Title XXI of the Social Security Act, 42 U.S.C. 1397aa, et seq., state children's health insurance program (CHIP), for the expansion of Medicaid coverage for children who cannot be covered through CHIP because of limits on enrollment, for the implementation of new programs of assistance to a significant number of persons in Montana who are chronically unable to obtain health insurance coverage, and for improvements in the funding for and delivery of certain health care services, such as prescription drugs and mental health services to specific populations."

Severability: Section 6, Ch. 350, L. 2005, was a severability clause.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services"; and in definition of protective services substituted "department" for "department of family services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Deleted definitions of net monthly income and ward Indian. Amendment effective July 1, 1989.

1987 Amendment: Inserted definition of protective services.

Case Notes

Relief to Emancipated Indians Shared by County: Where Indian has been awarded a patent to tribal land, he becomes emancipated, and the county in which he resides must bear its share of relief of all kinds. State ex rel. Williams v. Kamp, 106 M 444, 78 P2d 585 (1938).

Attorney General's Opinions

Budgeting — Ward Indians: The state, rather than counties, has the duty under section 75-508, R.C.M. 1947, (recodified as 53-4-246, now repealed) to budget for indigent ward Indians who are eligible for "aid to dependent children whose father is unemployed". 34 A.G. Op. 50 (1972).

53-2-103. Records and reports.

Compiler's Comments

2003 Amendment: Chapter 114 in (1) at beginning substituted "local office of public assistance" for "county department"; and made minor changes in style. Amendment effective October 1, 2003.

53-2-105. Misuse of public assistance information unlawful.

Compiler's Comments

1995 Amendment: Chapter 491 inserted second sentence allowing limited disclosure of public assistance information by the Department; and made minor changes in style.

1993 Amendment: Chapter 410 at beginning inserted exception clause; and made minor changes in style.

53-2-107. Fraudulent obtaining of public assistance treated as theft.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Case Notes

False Representation of Separate Household to Obtain Food Stamps: The Supreme Court affirmed a conviction for felony theft of food stamps that involved false representations after finding that defendant did not maintain a separate household in accordance with governing regulations, and that the false statement was knowingly made since the regulations had been reviewed by defendant with several SRS (now Department of Public Health and Human Services) employees but the application for assistance nevertheless claimed separate households. St. v. Crumley, 223 M 224, 725 P2d 214, 43 St. Rep. 1675 (1986).

53-2-108. Overpayment of assistance — department errors involving food stamps — civil penalty when fraud.

Compiler's Comments

2007 Amendment: Chapter 205 inserted (2) providing that a recipient who receives an overpayment of food stamp benefits because of a department error in processing or administering the recipient's case is not required to repay the department under certain circumstances; and made minor changes in style. Amendment effective April 17, 2007.

Retroactive Applicability: Section 4, Ch. 205, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any cases pending before a Montana court on [the effective date of this act]." Effective April 17, 2007.

1997 Amendment: Chapter 486 near beginning of (1), after "department", inserted "or recipient" and near end, after "receive", substituted "may" for "shall"; and made minor changes in style.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

Administrative Rules

Title 37, chapter 2, subchapter 3, ARM Recovery and offset of debts.

Attorney General's Opinions

No Authority to File Property Lien Upon Overpayment of Assistance: A county welfare department has no statutory authority to assert a lien against the real property of a general assistance recipient who has received an excess of general assistance funds. The county may file a civil action for recovery of the overpayment. 43 A.G. Op. 10 (1989).

53-2-109. Recipients to report changes in factors affecting eligibility.

Compiler's Comments

1997 Amendment: Chapter 486 in first sentence, after "department", substituted language requiring notice of any change or anticipated change in income or other factor affecting eligibility for assistance or benefit amount for "within 10 days of the receipt of any income or resources not previously declared to the department"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

53-2-110. Payment of debts to department.

Compiler's Comments

2009 Amendment: Chapter 184 near beginning after "chapter 5" substituted "part 2, 4, 7, or 9" for "part 2 or 4"; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 10, Ch. 184, L. 2009, was a saving clause.

Preamble: The preamble attached to Ch. 631, L. 1993, provided: "WHEREAS, it is necessary to draft a composite bill containing unrelated sections in order to present the proposed program improvements in a single, comprehensive bill that promotes the needs of legislative energy, efficiency, and economy by limiting the number of possible bills and by reducing the need for hearings and readings on those bills.

THEREFORE, the Legislature finds it appropriate to enact the following legislation."

Severability: Section 29, Ch. 631, L. 1993, was a severability clause.

53-2-111. Coordination of certain workforce development programs — requirement for agreement between agencies.

Compiler's Comments

Executive Order — Transfer of Workforce Development Programs: Section 2, Ch. 343, L. 2001, provided: "(1) The governor may transfer by executive order to the department of labor and industry any workforce development programs not identified in [section 1] [53-2-111] and that are developed and administered by other state agencies unless a program is statutorily required to be administered by another agency. If a program is statutorily required to be administered by another agency, the governor may direct the agency to enter an agreement similar to the agreement provided for in [section 1] [53-2-111].

(2) The governor shall inform the business and labor interim committee and the 58th legislature of any program transfers made pursuant to subsection (1)."

Effective Date: Section 4, Ch. 343, L. 2001, provided that this section is effective on passage and approval. Approved April 21, 2001.

Part 2

Department of Public Health and Human Services

Part Administrative Rules

Title 37, ARM Department rules.

53-2-201. Powers and duties of department.

Compiler's Comments

2019 Amendment: Chapter 41 in (1)(a) near beginning and in (1)(h) substituted "cash assistance" for "financial assistance"; in (2)(b) substituted "comply with requirements for receiving federal aid and assistance" for "do all things necessary in order to avail itself of federal aid and assistance"; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendments — Composite Section: Chapter 125 in (2)(a) in first sentence inserted reference to Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 465 in (1)(a) near beginning after "food commodities" substituted "financial assistance and nonfinancial assistance" for "FAIM financial assistance"; in (1)(d) substituted "organize and supervise the local offices of public assistance in an efficient and economical manner" for "provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy"; and in (1)(h) after "application for" deleted "FAIM". Amendment effective July 1, 2001.

Chapter 571 substituted (1)(d) regarding organization and supervision of local offices of public assistance for former (1)(d) that read: "(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy". Amendment effective July 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

Coordination: Section 42, Ch. 465, L. 2001, provided: "If House Bill No. 101 is not passed and approved, then all references in [this act] to local offices of public assistance are changed to references to county welfare offices." House Bill No. 101 was not passed and approved; therefore, the reference to local offices of public assistance in the amendment to (1)(d) was changed to a reference to county welfare offices. However, see Ch. 571 amendment.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendments: Chapter 472 in (1)(b) substituted reference to adults with disabilities for reference to handicapped adults; and made minor changes in style.

Chapter 486 in (1)(a), after "commodities", substituted "FAIM financial assistance, as defined in 53-2-902" for "aid to families with dependent children" and at end, after "assistance", inserted "employment and training services for recipients of public assistance, and other programs as necessary to strengthen and preserve families"; inserted (1)(h) requiring Department to adopt rules regarding assignment of money and medical support when applying for FAIM financial assistance; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1993 Amendment: Chapter 561 in (1)(a), before "medical care", inserted "food stamps, food commodities, aid to families with dependent children, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, and"; and made minor changes in style. Amendment effective July 1, 1993.

Alternative Plans: Section 31, Ch. 561, L. 1993, provided: "(1) The department of social and rehabilitation services [now department of public health and human services] shall develop alternative structures for the administration of public assistance programs. At least three alternative plans must be prepared for presentation to the 54th legislature. One alternative must be administered primarily by each county, one alternative must be administered primarily by the state, and one alternative must provide for multicounty administration. Each plan must include an analysis of alternative financing methods, including a statewide mill levy.

(2) The department director shall appoint and consult with an advisory committee of not more than 12 persons in developing the plans. The committee should include representatives of the legislature, the low-income coalition, the human resource development councils, the Montana united Indian alliance, other state departments, county commissioners, and county welfare directors. The committee shall serve without pay.

(3) In preparing the recommendations, the department shall analyze the effect on persons previously receiving general assistance and on persons who would have received general assistance prior to the approval of [this act] [Ch. 561, L. 1993]. The department shall analyze methods of providing assistance to persons who do not qualify for federal assistance programs. The department shall analyze the effectiveness of different general relief programs in the various counties." Section 31, Ch. 561, L. 1993, effective April 28, 1993.

1987 Amendment: At beginning of (1)(a), after "supervise", deleted "all forms of" and after "assistance" deleted "child protection, and child welfare"; deleted former (1)(b) that read: "(b) administer or supervise all child welfare activities, including:

(i) importation and exportation of children;

(ii) licensing of all children's foster family homes, group homes, child-care agencies and child-placing agencies;

(iii) the care of dependent and neglected children in substitute care placement and children who are free for adoption;

(iv) the maintenance of supplemental day care for children; and

(v) all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, and state programs for youth in need of care, youth in need of supervision, and delinquent youth".

1983 Amendment: Inserted (1)(b)(v) requiring the Department to administer state and federal funds for youth foster homes, group homes, child-care agencies, and state programs for youth in need of care and supervision and delinquent youth.

1981 Amendment: Substituted "licensing of all children's foster family homes, group homes, child-care agencies, and child-placing agencies" for "licensing and supervising of private and local child-caring agencies" in (1)(b)(ii); substituted (1)(b)(iii) requiring Department supervision of licensing of all children's foster family homes, group homes, child-care agencies, and child-placing agencies for former (1)(b)(iii) that read: "(iii) the care of dependent, neglected, and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth"; and inserted (1)(b)(iv) requiring Department maintenance of supplemental day care.

Statement of Intent: The statement of intent attached to Ch. 199, L. 1979, provided: "A statement of intent is required for this bill in that it delegates authority to adopt rules in sections 1 through 4.

1. Under present law, SRS [now Department of Public Health and Human Services] has express rulemaking authority to carry out most of its duties under Title 53. The Department's

present authority includes the power to adopt rules to implement and carry out the following: child welfare services; Aid to Dependent Children programs; subsidized adoption; protective services for adults; Medical Assistance programs; sheltered workshop programs; community based services; community homes and protective services for the developmentally disabled; and vocational rehabilitation programs.

2. While there are duties for which SRS [now Department of Public Health and Human Services] has express rulemaking authority, there also are duties for which the Department's rulemaking authority could only be implied. The Montana Administrative Procedure Act, Section 2-4-102(11)(a), MCA, requires that substantive rules be adopted under express authority in order to be valid. Under an agreement with the Administrative Code Committee [now appropriate administrative rule review committee], SRS [now Department of Public Health and Human Services] introduced legislation to eliminate this gap in the Department's express authority. This bill gives SRS [now Department of Public Health and Human Services] express rulemaking authority to adopt rules to comply with federal law; to carry out its responsibilities for public welfare; and to administer vocational rehabilitation for the blind.

3. The express authority given to SRS [now Department of Public Health and Human Services] under this bill will allow the Department to adopt rules which cover the following areas: eligibility requirements for various services; scope of services to be offered; specific criteria that providers of services must meet to qualify as providers; how, when, and in what form various types of assistance will be offered; and procedure for applying for and receiving aid. The area of social services is a field which evolves as the needs of the population change. Federal programs and their concomitant regulations are constantly being revised and altered. This legislation allows SRS [now Department of Public Health and Human Services] to adapt the specifics of its social services programs to meet those federal changes but within the confines of state law."

Case Notes

SNAP Benefit Termination — Refusal to Provide Information — Household Determination Proper: The appellant lived with her partner, their biological child, and her four other children. The appellant was receiving public assistance in the form of SNAP benefits. The Department of Health and Human Services terminated the appellant's benefits after she did not answer income information relating to her partner. An administrative hearing examiner, the Board of Public Assistance, and the District Court subsequently upheld the Department's determination. On appeal, the Supreme Court affirmed, holding that the appellant and her partner were properly considered part of a household because they lived together with a minor child in common and the Department was required to terminate the SNAP benefits when the appellant refused to provide income information. McGee v. Dept. of Public Health and Human Services, 2017 MT 166, 388 Mont. 129, 398 P.3d 259.

Mandate: Mandate was issued by the Supreme Court to compel State Board of Public Welfare (now Department of Public Health and Human Services) to forthwith present to the state Board of Examiners written application setting forth the circumstances confronting it with reference to the need for money to carry out the relief program in Silver Bow County and requesting authorization for expenditures to meet the relief requirements in Silver Bow County, Montana. St. v. Fouse, 137 M 483, 353 P2d 755 (1960).

Disbursement of Funds — Supervision: An application for a Writ of Injunction lies to prevent the delivery of a check for $150,000 made in favor of the United States in behalf of the Works Progress Administration by the State Board of Public Welfare (the relevant functions of which were transferred to the Department of Public Health and Human Services) in payment of materials and supplies to be used in construction of public works sponsored by the state, since it is the duty of the Board to supervise the expenditure of state funds appropriated for its use. State ex rel. Browning v. Brandjord, 106 M 395, 81 P2d 677 (1938).

Attorney General's Opinions

County Welfare Department Personnel as State Employees — Applicable Grievance Procedure: County welfare department employees are state employees for purposes of the federal Fair Labor Standards Act of 1938, entitlement to employee benefits, and participation in employee-related programs. If county welfare department personnel are involuntarily terminated from employment and wish to pursue a grievance, they must follow the grievance procedure established by the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) unless the Department and the county have agreed upon an alternative process. (See 2001 amendment.) 45 A.G. Op. 16 (1993).

Child Abuse, Neglect, and Dependency Proceedings — Duty of County Attorney: It is the duty of the County Attorney to represent the Department of Family Services (now Department of Public Health and Human Services) in child abuse, neglect, and dependency proceedings brought under Title 41, ch. 3. 42 A.G. Op. 45 (1987).

Exclusive Tribal Jurisdiction of Indian Children — No Departmental Jurisdiction: The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) has no jurisdiction to provide child protection services to Indian children who are subject to exclusive tribal jurisdiction under the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., or to children residing on the reservation and eligible for tribal membership. The scope of the Department's responsibility is unaffected by the child's eligibility, or lack thereof, for participation in Bureau of Indian Affairs programs, and the Department is not obligated to provide child protective services and benefits to the extent the federal program offers comparable assistance. 41 A.G. Op. 76 (1986).

Foster Care or Adoption Placement of Indian Children — No Department Payments Under Social Security Act: The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) may not make payments under Title IV-E of the Social Security Act (42 U.S.C. 670 through 676) to Indian children whose foster care or adoption placement is subject to exclusive tribal jurisdiction under the Indian Child Welfare Act (25 U.S.C. 1901, et seq.). 41 A.G. Op. 76 (1986).

Licensure of Foster Care Homes on Indian Reservations: The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) has the authority to license foster care homes maintained by nontribal members on Indian reservations. The Department has authority to license foster care homes operated by tribal members located on Indian reservations only if the tribe does not engage in such licensing activity. 41 A.G. Op. 76 (1986).

Transfer of Child Custody Proceeding to Tribal Jurisdiction — No Continuance of State Child Protection Services: Once a child custody proceeding has been transferred from state District Court to tribal jurisdiction under sec. 101(b) of the Indian Child Welfare Act (25 U.S.C. 1911(b)), the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) may not continue to provide child protection services or benefits to the Indian child. 41 A.G. Op. 76 (1986).

Retroactive Foster Care Payments: In the absence of a determination that foster care assistance was improperly denied, neither a County Department of Public Welfare nor the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) is required to retroactively pay foster care costs on behalf of a relinquished child. Where there is a determination made that foster care assistance was improperly denied, only the foster home involved is entitled to foster care payments. 38 A.G. Op. 11 (1979).

Public and Private Placement Agencies: County Departments of Public Welfare may not deny foster care payments solely because the child receiving foster care has been relinquished to a private rather than public placement agency. If eligibility is established, County Departments of Public Welfare are required to approve foster care payments to a foster home on behalf of a child who has been relinquished to a private placement agency. 38 A.G. Op. 11 (1979).

County Power — "4-C's": Counties, jointly with the state Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), may contract with local "4-C's" projects to provide coordination and support of child abuse prevention and treatment services. 37 A.G. Op. 105 (1978).

Federal Funds: The State Department of Public Welfare (now Department of Public Health and Human Services) has the power to participate in programs initiated pursuant to section 204 of Public Law 90-248, cited as the "Social Security Amendments of 1967". 32 A.G. Op. 14 (1968).

53-2-203. Department to supervise public assistance personnel.

Compiler's Comments

2001 Amendment: Chapter 571 substituted text regarding public assistance personnel for former (1) through (4) that read: "(1) maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and salary schedules for all public assistance personnel; personnel standards must conform as far as possible with general standards established or required by the federal government;

(2) have examinations held from time to time throughout the state to establish and furnish to county departments lists, in order of merit, of persons eligible for appointment;

(3) develop policies relating to educational leave of employees and to staff development needs;

(4) supervise the appointment, dismissal, and entire status of the public assistance personnel attached to county boards in accordance with the merit system"; and made minor changes in style. Amendment effective July 1, 2001.

1993 Amendment: Chapter 561 deleted former (2) that read: "(2) All public assistance personnel shall be residents of this state unless it is impossible to find residents of this state possessing qualifications required by the merit system. If possible, county assistance personnel shall be residents of the county in which they work"; and made minor changes in style. Amendment effective July 1, 1993.

Attorney General's Opinions

Determination of Staffing Patterns of County Public Assistance Offices: Both the Department of Public Health and Human Services and county welfare boards have an interest in staffing patterns for county public assistance offices, and when possible, staffing patterns should be determined through a process of consultation and negotiation between the Department and the county welfare board. However, if an agreement cannot be reached through that process, the Department has the final authority for determining staffing patterns for the county public welfare office in a nonassumed county. (See 2001 amendments eliminating county welfare boards.) 48 A.G. Op. 18 (2000).

County Welfare Department Personnel as State Employees — Applicable Grievance Procedure: County welfare department employees are state employees for purposes of the federal Fair Labor Standards Act of 1938, entitlement to employee benefits, and participation in employee-related programs. If county welfare department personnel are involuntarily terminated from employment and wish to pursue a grievance, they must follow the grievance procedure established by the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) unless the Department and the county have agreed upon an alternative process. (See 2001 amendment.) 45 A.G. Op. 16 (1993).

53-2-205. Department authorized to establish and collect social services fees.

Compiler's Comments

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

53-2-207. Power of department in administering state and federal funds.

Compiler's Comments

2002 Amendment: Chapter 13 deleted former (1) that read: "(1) require the county to pay an administrative fee to the state general fund for the purpose of reimbursing the department, in part, for the costs of administering and providing public assistance to county residents in need"; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

2001 Amendment — Coordination Void: Chapter 571 in (1) substituted text regarding payment of administrative fee to reimburse department for former (1) that read: "(1) require the county to bear the proportion of the total of local public assistance as is fixed by law relating to the assistance". Amendment effective July 1, 2001.

The amendment to this section made by Ch. 571, L. 2001, was purportedly voided by sec. 46, Ch. 571, L. 2001, a coordination section, which was itself rendered void by sec. 255, Ch. 574, L. 2001, also a coordination section.

The amendments to this section in sec. 153, Ch. 574, L. 2001, were rendered void by sec. 255(8), Ch. 574, L. 2001, a coordination section.

1993 Amendment: Chapter 561 at beginning of (1), after "require", deleted "as a condition for receiving grants-in-aid that"; in (2), before "standards", deleted "minimum", after "prescribed" inserted "for public assistance purposes", and after "department" deleted "under laws providing for grants-in-aid, provided that such standards shall not exceed in cost the amount derived from levies established by state law"; and made minor changes in style. Amendment effective July 1, 1993.

Alternative Plans: Section 31, Ch. 561, L. 1993, provided: "(1) The department of social and rehabilitation services [now department of public health and human services] shall develop alternative structures for the administration of public assistance programs. At least three alternative plans must be prepared for presentation to the 54th legislature. One alternative must be administered primarily by each county, one alternative must be administered primarily by the state, and one alternative must provide for multicounty administration. Each plan must include an analysis of alternative financing methods, including a statewide mill levy.

(2) The department director shall appoint and consult with an advisory committee of not more than 12 persons in developing the plans. The committee should include representatives of the legislature, the low-income coalition, the human resource development councils, the Montana united Indian alliance, other state departments, county commissioners, and county welfare directors. The committee shall serve without pay.

(3) In preparing the recommendations, the department shall analyze the effect on persons previously receiving general assistance and on persons who would have received general assistance prior to the approval of [this act] [Ch. 561, L. 1993]. The department shall analyze methods of providing assistance to persons who do not qualify for federal assistance programs. The department shall analyze the effectiveness of different general relief programs in the various counties." Section 31, Ch. 561, L. 1993, effective April 28, 1993.

Attorney General's Opinions

Reimbursement by County Required for Computerization Expenses Related to Public Assistance: State law uniformly requires that counties reimburse the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) for the legitimate costs of administration of county public assistance programs, including expenses associated with the computerization of public assistance eligibility determinations. (See 2001 amendment.) 45 A.G. Op. 26 (1994).

53-2-209. Olmstead plan — stakeholder involvement — elements.

Compiler's Comments

Effective Date: Section 4, Ch. 554, L. 2023, provided: "[This act] is effective July 1, 2023."

53-2-211. Department to share eligibility data.

Compiler's Comments

2021 Amendment: Chapter 503 in (3)(a) at end substituted "15-30-2618(8)(b)" for "15-30-2618(9)(c)". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2019 Amendment: Chapter 41 in (1) in first sentence and in (4) substituted "cash assistance" for "financial assistance". Amendment effective July 1, 2019.

2013 Amendment: Chapter 21 in (3)(a) at end substituted "15-30-2618(9)(c)" for "15-30-2618(8)(c)"; and made minor changes in style. Amendment effective October 1, 2013.

Retroactive Applicability: Section 3, Ch. 21, L. 2013, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2012."

2001 Amendment: Chapter 465 in (1) near end of first sentence after "medicaid" substituted "financial assistance and nonfinancial assistance" for "FAIM financial assistance"; in (4) near middle after "medicaid" substituted "financial assistance and nonfinancial assistance" for "FAIM financial assistance" and deleted former second sentence that read: "The information may be disclosed only for purposes directly connected with the administration of a program or purpose of the agency and may not be used by the agency for any other purpose"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 in first sentence in (1) and (4), after "medicaid", substituted "FAIM financial assistance, as defined in 53-2-902" for "aid to families with dependent children"; at end of first sentence in (2), after "weatherization", deleted "and general relief" and at end of third sentence, after "state", inserted "and for no other purpose"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendment: Chapter 491 inserted (4) allowing the Department to make available certain eligibility information to the extent permitted by federal law.

53-2-212. Rate adequacy — plan for collection of data — reports.

Compiler's Comments

Effective Date: Section 3, Ch. 384, L. 2021, provided: "[This act] is effective July 1, 2021."

53-2-215. Social Security Act section 1115 waiver.

Compiler's Comments

2019 Amendment: Chapter 41 in (2)(b) near end after "section 1115 waiver" deleted "inclusive of the demonstration program authorized by 53-4-202 and Title 53, chapter 4, part 6"; deleted former (3) that read: "(3) The department may amend the existing section 1115 demonstration project authorized in 53-4-601 and 53-6-101 to expand the demonstration project to implement the purposes of this section"; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 442 inserted (14)(b) prohibiting adoption of rules that exclude children in foster care from medicaid services or require prior authorization for children in foster care to access medicaid services; and made minor changes in style. Amendment effective July 1, 2017.

Preamble: The preamble attached to Ch. 442, L. 2017, provided: "WHEREAS, in providing Medicaid services, the Department of Public Health and Human Services is treating children with disabilities who are in foster care differently from children with disabilities who are not in foster care; and

WHEREAS, children in foster care are having to take additional steps to receive Medicaid services and, in some cases, Medicaid providers automatically are not providing services to children in foster care; and

WHEREAS, the Legislature intends to revise the Department's rulemaking authority relating to the provision of Medicaid services and to revise existing administrative rules relating to the provision of Medicaid services to provide that foster children may not be excluded or restricted from accessing Medicaid services solely because the children are in foster care."

2015 Amendment: Chapter 63 deleted former (8)(b) that read: "(b) persons who because of low income and health-care needs are unable to procure health insurance coverage and are eligible to participate in a comprehensive health association plan authorized under Title 33, chapter 22, part 15"; and made minor changes in style. Amendment effective January 1, 2016.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

Preamble: The preamble attached to Ch. 350, L. 2005, provided: "WHEREAS, the Montana public health care redesign project has studied health care and related services funded with state and federal money and has recommended the implementation of a set of measures to ensure that the expenditure of state and federal money more effectively benefits those citizens who are most in need of health care and other public assistance services; and

WHEREAS, the State of Montana has through the Montana public health care redesign project determined that the implementation of federally authorized health insurance flexibility and accountability (HIFA) demonstration initiatives or other demonstration projects under the waiver authority of section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315, is in the best interest of the citizens of Montana; and

WHEREAS, the section 1115 waiver is intended to foster more appropriate use of state general fund money and federal money in funding state-administered health care and related services; and

WHEREAS, the section 1115 waiver would allow for the expansion of coverage for children covered under Title XXI of the Social Security Act, 42 U.S.C. 1397aa, et seq., state children's health insurance program (CHIP), for the expansion of Medicaid coverage for children who cannot be covered through CHIP because of limits on enrollment, for the implementation of new programs of assistance to a significant number of persons in Montana who are chronically unable to obtain health insurance coverage, and for improvements in the funding for and delivery of certain health care services, such as prescription drugs and mental health services to specific populations."

Severability: Section 6, Ch. 350, L. 2005, was a severability clause.

Effective Date: Section 7, Ch. 350, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 21, 2005.

Part 3
Local Offices of Public Assistance

Part Case Notes

CASES OF HISTORICAL INTEREST

Liability for Expenses: Where an indigent nonresident is injured within county and requires immediate medical and surgical attention and hospitalization and is removed to another county to obtain such treatment, the county in which the injury occurred is liable. Musselshell County v. Petroleum County, 118 M 1, 161 P2d 905 (1945).

Power to Maintain County Reemployment Offices: The power of Boards of County Commissioners to establish county reemployment offices, while not in express terms, flows from powers expressly conferred with relation to the care of the poor, such as 53-2-321 (now repealed), giving them broad discretionary power to "otherwise provide for the same"; on application for Writ of Supervisory Control to review judgment of District Court in upholding the action of a Board declaring an emergency necessitating appropriation of additional money for its poor fund budget from anticipated revenue, held such authority exists, the cost thereof chargeable against the county poor fund. State ex rel. Barr v. District Court, 108 M 433, 91 P2d 399 (1939).

Compensation Per Diem Payable by County: Extra compensation of County Commissioners acting as ex officio members of County Board of Public Welfare is payable by county (7-4-2107 and 7-4-2108), nothing in this act (Ch. 82, L. 1937, portions of which have been repealed or amended) indicating that payment should be made by state board. State ex rel. Broadwater County v. Potter, 107 M 284, 84 P2d 796 (1938).

Anticipation Warrants Required to Secure Aid: Before a county may secure aid from the State Board of Public Welfare (now Department of Public Health and Human Services) for relief purposes, it must issue warrants in anticipation of the revenues derived from the levy authorized by 53-2-322 (now repealed), in accordance with the budget, and such additional emergency warrants which may be freely converted into cash without discount. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 82 P2d 589 (1938).

Interest on Warrants From Poor Fund Lawful: Payment of interest on registered warrants drawn against the county poor fund is a lawful expenditure from such fund. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 82 P2d 589 (1938).

Where County Budgets So as to Throw Burden on State: If a county, in making a levy authorized by 53-2-322 (now repealed), budgets excessive appropriations so as to cast the whole burden of general relief on the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), the latter may compel such excesses to be transferred to the poor fund for general relief before extending aid to the county. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 82 P2d 589 (1938).

Constitutionality: Legislative control over counties is supreme, except as restricted by the constitution, and while the duty to care for the poor is primarily an obligation of the counties under Art. X, sec. 5, 1889 Mont. Const. (not specifically included in 1972 Montana Constitution), the State may offer cooperation and assistance, and the Legislature has the right to enact provisions, binding upon the counties, as to how they shall care for their poor, even though such action may amount to dictation to them concerning expenditures of their own funds. Not violative also of Art, XII, sec. 4, 1889 Mont. Const. State ex rel. Wilson v. Weir, 106 M 526, 79 P2d 305 (1938).

County Board Rules to Conform to Statute: The rules adopted by a County Board of Public Welfare must conform to and not be inconsistent with the positive provisions of the statutes (now repealed), the power given to the Board in that behalf not authorizing it to change the form of relief prescribed by the Legislature, under the claim that by certain provisions of the Public Welfare Act (Title 71, ch. 2 through 10, R.C.M. 1947, now, with substantial change, a major portion of Title 53) it is given discretion in choosing the kind or form of relief it may award. State ex rel. Wilson v. Weir, 106 M 526, 79 P2d 305 (1938).

How Exhaustion of Poor Fund Remedied: Exhaustion of the county poor fund out of which County Welfare Board applications for relief must be paid, held no excuse for declining to issue warrants or checks thereon, since in such event a special tax levy may be made unless prohibited by the 1889 Montana Constitution or assistance may be asked from the state welfare fund. State ex rel. Wilson v. Weir, 106 M 526, 79 P2d 305 (1938).

Not Coercion or Duress by Legislature: Requirement of 53-2-322 (now repealed) that County Commissioners make levy for poor fund in order that their county might place itself in line to receive aid from state in caring for poor was not an exercise of coercion or duress on part of Legislature. State ex rel. Wilson v. Weir, 106 M 526, 70 P2d 305 (1938).

Discretion of Commissioners: The policy of the Legislature under Art. X, sec. 5, 1889 Mont. Const. (not specifically included in the 1972 Montana Constitution), has been to impose a wide discretion in the County Commissioners and, in carrying out such policy, their power is not limited to placing the poor in the county poorhouse or to contracting for their maintenance, but they may, if they consider it proper, extend aid in the form of fuel, groceries, clothing, or small doles of money. Jones v. Cooney, 81 M 340, 263 P 429 (1928).

County Authority to Construct Detention Hospital: The Board of County Commissioners did not have the power to erect and maintain at county expense a detention hospital for persons affected with contagious or pestilent diseases. Yegen v. Bd. of County Comm'rs, 34 M 79, 85 P 740 (1906).

Part Attorney General's Opinions

Determination of Staffing Patterns of County Public Assistance Offices: Both the Department of Public Health and Human Services and county welfare boards have an interest in staffing patterns for county public assistance offices, and when possible, staffing patterns should be determined through a process of consultation and negotiation between the Department and the county welfare board. However, if an agreement cannot be reached through that process, the Department has the final authority for determining staffing patterns for the county public welfare office in a nonassumed county. (See 2001 amendments eliminating county welfare boards.) 48 A.G. Op. 18 (2000).

Payment of Proportionate Share of Administrative Costs by Nonassumed Counties — Action to Recover Disputed Claims: Under 53-2-322 (now repealed), a nonassumed county is required to pay its proportionate share of administrative costs for protective services, including rent, adequate equipment, and supplies. The responsibility to pay a proportionate share, other than salaries, travel expenses, and indirect employee costs, is not capped at the amount paid in fiscal year 1987. An action to recover a disputed claim filed more than 6 months after denial of the claim is barred by the statute of limitations in 27-2-209. 45 A.G. Op. 23 (1994).

Exhaustion of Poor Fund — Maximum Levy to Be Assessed to Trigger Emergency Grant-in-Aid: Before a county that has exhausted its poor fund due to liability for an indigent felon's medical expenses becomes eligible for an emergency grant-in-aid under 53-2-323 (now repealed), it must first assess the maximum poor fund levy of 13.5 mills authorized by 53-2-321 (now repealed) and 53-2-322(1) (now repealed). In light of the adoption of Initiative No. 105, this may be done pursuant to either 15-10-412(8) or (9) (now repealed). 42 A.G. Op. 113 (1988).

Procedures Required in Imposing Additional Levies to Meet Poor Fund Shortfall: Although 15-10-401, 15-10-402, 15-10-411 (now repealed), and 15-10-412 (now repealed) substantially limit the authority of taxing units to increase a property taxpayer's liability over the taxpayer's 1986 obligation, an additional levy increasing property taxes over 1986 levels may be made if either the poor fund liability has been reduced to a judgment against the county or the County Commissioners have passed a resolution pursuant to 15-10-412(9) (now repealed). Passage of such a resolution must be followed by a special or general election in which the issue of increased property tax liability is presented to the voters for authorization. (See 2001 amendment to 53-2-304.) 42 A.G. Op. 113 (1988). See also 42 A.G. Op. 118 (1988).

Application of Money in Poor Fund: Section 53-2-322 (now repealed) and 53-2-323(7) (now repealed) govern the proper use of money in a county's poor fund and must be applied on a case-by-case basis. (See 2001 amendment to 53-2-304.) 41 A.G. Op. 26 (1985).

Poor Fund — Use to Build New Nursing Home: Section 53-2-322(7) (now repealed) permits the use of county poor fund money to build a new nursing home but not to improve an existing nursing home. A county must comply with the provisions of 53-2-322 (now repealed) before expending money from the poor fund to build or improve county facilities, including certification and approval from the Departments of Health and Environmental Sciences and Social and Rehabilitation Services (functions now consolidated into Department of Public Health and Human Services). (See 2001 amendment to 53-2-304.) 40 A.G. Op. 29 (1983). See also 30 A.G. Op. 13, relating to restriction of fund use for building while needed for general relief.

Restrictions — Set-Aside and Transfer of Poor Fund: Title 53, ch. 2, part 3, does not authorize a county to set aside money in the poor fund that will not be available for supporting public assistance activities in the county, as provided in 53-2-322 (now repealed). All money in the poor fund must be used for public assistance activities. However, 7-6-2326 (now repealed) permits the transfer of a poor fund cash balance to another fund at the end of a fiscal year. This may be done only when there is an ending balance in excess of the amount budgeted for the poor fund for the next fiscal year, and only the excess may be transferred. 40 A.G. Op. 29 (1983).

Poor Fund Levy — Counties With Self-Government Powers: For purposes of the state grant-in-aid program, counties with self-government powers are eligible for a grant if they have exhausted all of the 13.5 mill levy authorized by 53-2-321 (now repealed), assuming the county has satisfied all other requirements specified in 53-2-323 (now repealed). 39 A.G. Op. 20 (1981).

Public and Private Placement Agencies: County Departments of Public Welfare may not deny foster care payments solely because the child receiving foster care has been relinquished to a private rather than public placement agency. If eligibility is established, County Departments of Public Welfare are required to approve foster care payments to a foster home on behalf of a child who has been relinquished to a private placement agency. 38 A.G. Op. 11 (1979).

Retroactive Foster Care Payments: In the absence of a determination that foster care assistance was improperly denied, neither a County Department of Public Welfare nor the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) is required to retroactively pay foster care costs on behalf of a relinquished child. Where there is a determination made that foster care assistance was improperly denied, only the foster home involved is entitled to foster care payments. 38 A.G. Op. 11 (1979).

County Power — "Big Brothers and Big Sisters": Counties may contract with Big Brothers and Big Sisters organizations to furnish adult companionship, guidance, and counseling to needy and troubled children. 37 A.G. Op. 105 (1978).

County Power — "4-C's": Counties, jointly with the state Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), may contract with local "4-C's" projects to provide coordination and support of child abuse prevention and treatment services. 37 A.G. Op. 105 (1978).

County Authority to Construct Medical Facility: A county has no authority under 7-8-2102 or 53-2-321 (now repealed) to construct a medical facility for doctors. A county does have power under 90-5-101, et seq., to construct such facility using industrial revenue bonds or gifts but may not use federal revenue sharing funds or payments in lieu of taxes and may lease the facility to a hospital district in the county. 37 A.G. Op. 61 (1977).

County Financial Responsibility for Indigents: A county is financially responsible for a voluntary commitment proceeding of an indigent person. 36 A.G. Op. 98 (1976).

53-2-301. Local offices of public assistance to be established by department.

Compiler's Comments

2013 Amendment: Chapter 59 in first sentence at beginning substituted "The department shall establish" for "There must be established in each county of the state" and at end after "public assistance" inserted "in each county of the state". Amendment effective March 1, 2013.

2001 Amendments — Composite Section: Chapter 571 substituted text regarding establishment of county public assistance offices for "There shall be established in each county of the state, except in a county that has transferred its public assistance and protective services responsibilities to the state under the provisions of part 8 of this chapter, a county department of public welfare, which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public assistance activities of the county. If conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit." Amendment effective July 1, 2001.

Chapter 574 at end of first sentence substituted "one or more local offices of public assistance" for "except in a county that has transferred its public assistance and protective services responsibilities to the state under the provisions of part 8 of this chapter, a county department of public welfare, which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public assistance activities of the county" and in second sentence after "warrant" deleted "and if two or more county boards enter into an agreement" and after "unit" substituted "and the department may use the same local office of public assistance and staff to administer public assistance in the combined counties" for "and use the same staff personnel throughout the administrative unit". Amendment effective July 1, 2001.

1987 Amendment: Near middle of first sentence, after "responsibilities to the", substituted "state" for "department of social and rehabilitation services".

1983 Amendment: Near beginning, after "of the state" inserted exception clause.

53-2-304. Staff of public assistance program.

Compiler's Comments

2013 Amendment: Chapter 59 at end deleted former language that read: "A fully qualified person must be employed by the department pursuant to subsections (1)(b) and (1)(c) to supervise the staff.

(b) In accordance with subsection (1)(a), the department shall establish a hiring committee for the purpose of choosing a qualified applicant to serve as primary supervisor of the public assistance staff. The hiring committee must consist of two county commissioners from the county where the vacancy exists and two representatives or designees of the department. If the primary supervisor is to supervise staff in more than one county, then the county commissioners from each of the counties shall designate two county commissioners to represent the county as members of the hiring committee.

(c) The department shall screen the applicants who apply for the position of primary supervisor and shall compile a list of the most qualified applicants on the basis of merit. The department shall present the list to the hiring committee. The committee shall rank the applicants in the order it considers most appropriate, and the department shall offer the primary supervisor position to the applicants in the order determined by the hiring committee unless the department is unable to contact a particular applicant after having made a good faith effort. An offer of employment may not be made to a lower-ranking applicant until all available higher-ranking applicants have been offered the primary supervisor position and have either refused the offer or withdrawn their applications.

(2) Public assistance staff must be paid from state public assistance funds both their salaries and their travel expenses, as provided for in 2-18-501 through 2-18-503, when traveling in the performance of their duties. However, the county shall reimburse the department from county funds for the full amount of the salaries and travel expenses that are not reimbursed to the department by the federal government and for the full amount of the department's administrative costs that are allocated by the department to the county for the administration of public assistance programs and that are not reimbursed to the department by the federal government. Under circumstances prescribed by the department, the reimbursement by the county may be less than the county share as prescribed in this subsection. All other administrative costs of the local office of public assistance must be paid from county funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff were made, the department shall present to the county a claim for the required reimbursements. The county shall make reimbursements within 20 days after the presentation of the claim, and the department shall credit all reimbursements to its account for administrative costs"; and made minor changes in style. Amendment effective March 1, 2013.

2001 Amendment — Coordination Void: Chapter 571 in (1)(a) substituted text regarding qualified staff of local public assistance office for former (1) that read: "(1) Each county board shall select and appoint from a list of qualified persons furnished by the department of public health and human services staff personnel that are necessary. The staff personnel in each county must consist of at least one qualified staff worker or investigator and clerks and stenographers that may be necessary. If conditions warrant, the county board, with the approval of the department of public health and human services, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of public health and human services may supervise the county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department of public health and human services. The department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department"; inserted (1)(b) regarding hiring committee; inserted (1)(c) regarding screening of applicants; in (2) in first sentence near beginning after "Public assistance staff" deleted "personnel attached to the county board" and after "2-18-501 through 2-18-503 when" substituted "traveling" for "away from the county seat", in second sentence near beginning after "However, the county" deleted "board of public welfare", after "department from" substituted "county funds" for "county poor funds", and after "county for the administration of" substituted "public assistance" for "county welfare", in third sentence after "reimbursement by the county" deleted "board of public welfare", and in fourth sentence after "administrative costs of the" substituted "local office of public assistance" for "county department" and at end substituted "county funds" for "county poor funds"; in (3) in first sentence near beginning after "public assistance staff" deleted "personnel of the county" and near end after "shall present to the county" deleted "department of public welfare" and in second sentence near beginning after "The county" deleted "board"; deleted former (4) that read: "(4) If a county has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the department shall select, appoint, and supervise all necessary public assistance and protective services personnel, including if necessary a supervisor of staff personnel. All personnel are directly responsible to the department"; and made minor changes in style. Amendment effective July 1, 2001.

The amendment to this section made by Ch. 571, L. 2001, was purportedly voided by sec. 46, Ch. 571, L. 2001, a coordination section, which was itself rendered void by sec. 255, Ch. 574, L. 2001, also a coordination section.

The amendments to this section in sec. 155, Ch. 574, L. 2001, were rendered void by sec. 255(8), Ch. 574, L. 2001, a coordination section.

1999 Amendment: Chapter 341 substituted language in (2) requiring department to pay salaries of public assistance staff and outlining requirement for reimbursement of salaries, travel expenses, and administrative costs for former language that read: "(2) Public assistance staff personnel attached to the county board must be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the department of public health and human services from county poor funds the full amount of the salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the department's administrative costs that are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government. Under circumstances prescribed by the department of public health and human services, the reimbursement by the county board of public welfare may be less than the county share as prescribed in this subsection. All other administrative costs of the county department must be paid from county poor funds"; and made minor changes in style. Amendment effective July 1, 1999, and terminates June 30, 2001.

1995 Amendment: Chapter 546 throughout section substituted "department of public health and human services" for "department of social and rehabilitation services"; in (4), near middle of first sentence before "department", deleted "appropriate"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendments: Chapter 146 in (1) inserted last two sentences relating to final authority for dismissal and made minor changes in phraseology.

Chapter 609 in first sentence of (4), after "responsibilities to the", substituted "state" for "department of social and rehabilitation services" and inserted reference to "appropriate" department.

1983 Amendment: Inserted (4) requiring Department control of personnel in counties that transfer public assistance and protective services to the Department.

Attorney General's Opinions

Determination of Staffing Patterns of County Public Assistance Offices: Both the Department of Public Health and Human Services and county welfare boards have an interest in staffing patterns for county public assistance offices, and when possible, staffing patterns should be determined through a process of consultation and negotiation between the Department and the county welfare board. However, if an agreement cannot be reached through that process, the Department has the final authority for determining staffing patterns for the county public welfare office in a nonassumed county. (See 2001 amendments eliminating county welfare boards.) 48 A.G. Op. 18 (2000).

Reimbursement by County Required for Computerization Expenses Related to Public Assistance: State law uniformly requires that counties reimburse the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) for the legitimate costs of administration of county public assistance programs, including expenses associated with the computerization of public assistance eligibility determinations. 45 A.G. Op. 26 (1994).

County Welfare Department Personnel as State Employees — Applicable Grievance Procedure: County welfare department employees are state employees for purposes of the federal Fair Labor Standards Act of 1938, entitlement to employee benefits, and participation in employee-related programs. If county welfare department personnel are involuntarily terminated from employment and wish to pursue a grievance, they must follow the grievance procedure established by the

Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) unless the Department and the county have agreed upon an alternative process. (See 2001 amendment.) 45 A.G. Op. 16 (1993).

Payments Mandated Even if Poor Fund Depleted: A county shall make the payments mandated by 53-2-304(2) and (3), 53-2-322 (now repealed), 53-2-610 (now repealed), and 53-4-246 (now repealed) even if its county poor fund is depleted. The payments must be made by the county even if the deficiency in the poor fund resulted from inaccurate data on projected expenses provided by the county welfare director. (See 2001 amendment to 53-2-304(2).) 42 A.G. Op. 118 (1988).

County Power — "4-C's": Counties, jointly with the state Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), may contract with local "4-C's" projects to provide coordination and support of child abuse prevention and treatment services. 37 A.G. Op. 105 (1978).

County Power — "Big Brothers and Big Sisters": Counties may contract with Big Brothers and Big Sisters organizations to furnish adult companionship, guidance, and counseling to needy and troubled children. 37 A.G. Op. 105 (1978).

53-2-305. Local offices of public assistance under supervision of department.

Compiler's Comments

2013 Amendment: Chapter 59 in (1) near beginning after "Local offices of public assistance are" inserted "offices of the department" and at end deleted former language that read: "and are subject to audit by the department. However, the department shall enter into agreements with the counties regarding minimum standards of operation, including but not limited to office hours, staffing, significant program changes, administration of county public assistance programs, and office facilities. If the board of county commissioners in a county disagrees with a specific method used, approach taken, or decision made that has a broad impact on the provision of public assistance in the county, the board of county commissioners may present their objections to the department in accordance with subsection (2). Prior to and during the development of an agreement, the department shall ensure the participation of the tribal government in the development of a plan for any county that serves an Indian reservation.

(2) All objections made by the board of county commissioners pursuant to subsection (1) must be presented to the department in writing. Within 45 days of receiving a written objection, the department shall convene a resolution committee. The committee must be composed of two county commissioners to be appointed for 2-year terms by the Montana association of counties, two representatives or designees of the department, and a fifth member selected by the other members. If the other members cannot agree on the fifth member, the attorney general shall appoint the fifth member. The resolution committee shall review the objections made by the county and shall attempt, in good faith, to develop an alternative method, approach, or resolution that is satisfactory to both the department and the county. The resolution committee shall present the results of its deliberations to the director of the department to carry out the alternative method, approach, or resolution"; inserted (2) concerning tribal government participation; and made minor changes in style. Amendment effective March 1, 2013.

2001 Amendment: Chapter 571 substituted text regarding supervision of local offices of public assistance, agreements for operation of county public assistance programs, objections to agreements by board of county commissioners, and resolution committee for "County departments are under the supervision of the department of public health and human services and are subject to audit by the department." Amendment effective July 1, 2001.

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Attorney General's Opinions

County Welfare Department Personnel as State Employees — Applicable Grievance Procedure: County welfare department employees are state employees for purposes of the federal Fair Labor Standards Act of 1938, entitlement to employee benefits, and participation in employee-related programs. If county welfare department personnel are involuntarily terminated from employment and wish to pursue a grievance, they must follow the grievance procedure established by the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) unless the Department and the county have agreed upon an alternative process. (See 2001 amendment.) 45 A.G. Op. 16 (1993).

Part 5
Investigations by Department of Justice

Part Compiler's Comments

Implementation of Transfer of Investigative Functions: Chapter 414, L. 1993, transferred from the Department of Revenue to the Department of Justice the investigation of matters relating to alcohol and tobacco licensing and regulation and to public assistance violations. Sections 25 through 27 of Ch. 414 provided in part that the provisions of 2-15-131 through 2-15-137 govern the transfer, that the Governor shall by executive order implement the transfer, that there is appropriated $215,000 to be used to implement the transfer, and that there is transferred from the Department of Revenue to the Department of Justice 12 full-time equivalent positions to implement the transfer.

53-2-501. Investigations and enforcement actions by department of justice.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 414 in (1) and (2) substituted "department of justice" for "department of revenue". Amendment effective July 1, 1993.

1989 Amendment: Inserted (2) relating to the status of Department of Revenue as a criminal justice agency and the designation of certain employees as peace officers. Amendment effective March 18, 1989.

53-2-502. Cooperation of governmental agencies with department of justice.

Compiler's Comments

1993 Amendment: Chapter 414 substituted "department of justice" for "department of revenue". Amendment effective July 1, 1993.

53-2-503. Information made available to department of justice.

Compiler's Comments

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 414 in (1) and in middle of (2) substituted "department of justice" for "department of revenue". Amendment effective July 1, 1993.

53-2-504. Unauthorized disclosure of information obtained in department of justice investigations a criminal act.

Compiler's Comments

1993 Amendment: Chapter 414 in (1), near beginning, substituted "department of justice" for "department of revenue". Amendment effective July 1, 1993.

1989 Amendment: In (1), in last sentence after "disclosed", substituted reference to 40-5-261 and 40-5-262 for "under 31-3-127"; and made minor changes in phraseology.

1985 Amendment: In (1) near end, after "disclosed", inserted "under 31-3-127 or".

53-2-505. Rulemaking authority of department of justice.

Compiler's Comments

Effective Date: Section 29, Ch. 414, L. 1993, provided that this section is effective April 19, 1993.

Part 6
Grants of Assistance and Liability Therefor — Appeals

Part Compiler's Comments

Section Not Codified: Section 71-246.1, R.C.M. 1947, a section releasing certain liens of the department, was not codified. That section is still valid law. Citation may be made to sec. 1, Ch. 299, L. 1973.

Part Case Notes

Residency — Constitutionality: Despite the invalidity of the requirement of 1-year's residency in the state in order to qualify for relief, county's obligation to pay general relief assistance may be limited by Legislature's residency requirements as it was in section 71-302, R.C.M. 1947 (now repealed). Where no provision has been made to care for transients, state must provide relief until such time as indigent has established county residency. Pease v. Hansen, 159 M 43, 494 P2d 925 (1972).

Applications of Ward Indians: Since the Public Welfare Act (Title 71, ch. 2 through 10, R.C.M. 1947, now with substantial change, a major portion of Title 53) makes no different arrangement for passing upon applications for relief to ward Indians from that applied to others, the County Board of Public Welfare has authority to pass upon such applications, and state's rights are fully protected by maving the right to review, on its own motion, any decision of the county board (53-2-606). State ex rel. Williams v. Kamp, 106 M 444, 78 P2d 585 (1938).

Medical Aid and Hospitalization of Ward Indians — State Expense: When not adequately provided for by the federal government, the state, without reimbursement by the county in which such Indians live, must provide medical aid and services and hospitalization for ward Indians. State ex rel. Williams v. Kamp, 106 M 444, 78 P2d 585 (1938).

Relief to Emancipated Indians Shared by County: Where Indian has been awarded a patent to tribal land, he becomes emancipated and the county in which he resides must bear its share of relief of all kinds. State ex rel. Williams v. Kamp, 106 M 444, 78 P2d 585 (1938).

Part Attorney General's Opinions

Payments Mandated Even if Poor Fund Depleted: A county shall make the payments mandated by 53-2-304(2) and (3), 53-2-322 (now repealed), 53-2-610 (now repealed), and 53-4-246 (now repealed) even if its county poor fund is depleted. The payments must be made by the county even if the deficiency in the poor fund resulted from inaccurate data on projected expenses provided by the county welfare director. 42 A.G. Op. 118 (1988).

Residency Determination — Nursing Home Residents on General Relief: Under 53-3-306, a county may not automatically disclaim financial responsibility for new applicants for general relief who have moved to that county in order to receive medical care in a nursing home. The county of financial responsibility is the county where the applicant resides. Residence is determined by factors such as whether the placement in the nursing home is permanent or temporary, in which county the applicant is registered to vote, owns property, pays property taxes, or registers a vehicle, and in which county the applicant intends to remain. The original county remains financially responsible unless a court decree declares under 53-2-610 (now repealed) that the recipient's residence has changed. 40 A.G. Op. 8 (1983).

Budgeting — Ward Indians: The state, rather than counties, has the duty under section 75-508, R.C.M. 1947, (recodified as 53-4-246, now repealed) to budget for indigent ward Indians who are eligible for "aid to dependent children whose father is unemployed". 34 A.G. Op. 50 (1972).

53-2-602. Grants based on need.

Compiler's Comments

2001 Amendment: Chapter 571 at beginning deleted "Subject to review by the county board, the staff of the county" and near middle after "needs of each applicant, after" substituted "an eligibility determination is made" for "investigation"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 546 at end substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1983 Amendment: Deleted last sentence, which read: "In determining the amount of grants, casual, periodic, or occasional income shall not be deducted from the grant nor shall such income render a recipient ineligible for assistance unless such income equals or exceeds the monthly assistance grant of the recipient."

53-2-603. Award of public assistance after eligibility determination.

Compiler's Comments

2001 Amendment: Chapter 571 in first sentence at beginning substituted "Upon completion of an application, the department, through the appropriate local office of public assistance, shall determine" for "Upon completion of an investigation, the county board shall determine";

deleted former (2) that read: "(2) The department, if necessary to conform with the United States Social Security Act, may issue rules to the county welfare departments requiring the use of the declaration method, in a form that the department may prescribe, for the purpose of determining eligibility, regardless of any other investigative provisions under this title, and for all types of assistance. These rules may include any additional investigations the department may require"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 590 in (1) inserted second sentence concerning nonapplicability to public assistance managed by managed care contractor; and made minor changes in style.

1985 Amendment: In (1) before "investigation" substituted "an" for "the".

United States Statutes: The Federal Social Security Act referred to in this section is compiled in 42 U.S.C. § 301, et seq.

53-2-606. Right of appeal.

Compiler's Comments

2019 Amendment: Chapter 41 in (1) in first sentence near beginning substituted "cash assistance" for "financial assistance" and at end after "department" deleted "of public health and human services"; in (2) in last sentence substituted "shall determine whether and in what amount assistance is to be granted under the provisions of this title" for "shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this title"; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendments — Composite Section: Chapter 465 in (1) near beginning of first sentence after "food stamps" substituted "financial assistance or nonfinancial assistance" for "FAIM financial assistance"; in (2) in second sentence after "additional" substituted "eligibility determination" for "investigation"; and deleted former (4) that read: "(4) All decisions of the department or the board of public assistance are final and are binding and must be complied with by the county department." Amendment effective July 1, 2001.

Chapter 571 in (1) in first sentence near middle after "applicant or recipient is" substituted "aggrieved" for "not satisfied"; in (2) in first sentence near middle after "review any decision of a" substituted "local office of public assistance" for "county welfare board" and after "has not been made" deleted "by the county board" and in second sentence near beginning after "may have an additional" substituted "determination" for "investigation"; in (3) near beginning after "department reviews a" deleted "county"; deleted former (4) (see Ch. 465 note); and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 in first sentence in (1), after "food stamps", substituted "FAIM financial assistance, as defined in 53-2-902" for "aid to families with dependent children". Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendment: Chapter 546 throughout section substituted "board of public assistance" for "board of social and rehabilitation appeals"; and in (1), at end of first sentence, substituted "department of public health and human services" for "department". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 561 near beginning of first sentence of (1), after "assistance", substituted "for food stamps, aid to families with dependent children, or medicaid" for "under this title" and deleted third sentence that read: "A county welfare board which is involved in a grievance shall be represented at such a hearing"; and made minor changes in style. Amendment effective July 1, 1993.

Administrative Rules

Title 37, chapter 5, subchapter 3, ARM Formal and informal hearing and appeal procedures.

Case Notes

Legislative Intent: Legislature has imposed upon County Welfare Department and County Commissioners the duty of establishing whether indigency exists in given case and has set up procedural steps to be followed in carrying out Public Welfare Act (Title 71, ch. 2 through 10, R.C.M. 1947, now, with substantial change, a major portion of Title 53). Mont. Deaconess Hosp. v. Lewis & Clark County, 149 M 206, 425 P2d 316 (1967).

When Mandate to Compel Grant May Not Issue: When there is an issue between the state and county departments (of welfare) as to the number of applicants entitled to relief and the amount to which they are entitled, the Supreme Court may not issue a Writ of Mandate to compel the state department to make a grant of state relief funds to a county under this section, in view of the discretionary powers and the right of review granted the state department. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 82 P2d 589 (1938).

Applications of Ward Indians: Since the Public Welfare Act (Title 71, ch. 2 through 10, R.C.M. 1947, now with substantial change, a major portion of Title 53) makes no different arrangement for passing upon applications for relief to ward Indians from that applied to others, the County Board of Public Welfare has authority to pass upon such applications, and state's rights are fully protected by having the right to review, on its own motion, any decision of the county Board (53-2-606). State ex rel. Williams v. Kamp, 106 M 444, 78 P2d 585 (1938).

53-2-607. Assistance not assignable or subject to legal process — exceptions.

Compiler's Comments

2003 Amendment: Chapter 510 in (1) after "granted" inserted "to a needy person"; inserted (2) subjecting to execution, levy, attachment, garnishment, or other legal process money paid or payable to person or entity who is not needy person but who receives money for providing goods or services to needy person; and made minor changes in style. Amendment effective October 1, 2003.

53-2-608. Method of issuing assistance grants.

Compiler's Comments

2005 Amendment: Chapter 94 in (1) at beginning substituted "When an individual or household is determined to be eligible for public assistance under this title, the department shall make payments to the individual or household or to a vendor on behalf of the individual or household in the full amount approved. Payment may be made by check or by electronic transfer, which includes but is not limited to direct deposits to an account at a financial institution and electronic benefit transfer cards" for "Checks in payment of public assistance must be issued by the department of public health and human services upon approved certificates of award and reports of changes of eligible grantees as are forwarded by the county to the state department, and all checks must be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance must be issued in the full approved amount for each eligible approved grantee, and the original monthly payment must be from the state public assistance accounts"; in (2) near beginning after "department" deleted "of public health and human services"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 546 in (1) and (2) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 561 near beginning of first sentence of (1), after "assistance", substituted "must" for "with the exception of general relief, shall" and near middle, after "county", deleted "department"; and made minor changes in style. Amendment effective July 1, 1993.

1981 Amendment: Changed "old age assistance aid to the needy blind, or aid to the permanently and totally disabled" to "public assistance" in the first sentence of (2); deleted bond requirement for persons who are protective payees for recipients of public assistance from the end of (2).

Statement of Intent: The statement of intent attached to HB 80 (Ch. 398, L. 1981) provided: "Although a statement of intent is not specifically needed for this bill, the legislature felt that it was necessary to express its intention regarding the handling of protective payees for those recipients of public assistance who need aid in handling their finances. Because this bill removes the bonding requirement for protective payees, it was felt to be necessary to give some guidance on the handling of protective payees. The attached draft has been approved as a suitable approach to the protective payee situation. It is intended that SRS [now Department of Public Health and Human Services] handle protective payees as described in the attached draft or in a manner substantially similar.

AFDC PROGRAM PROTECTIVE PAYEE

A protective payee program is established to assure that AFDC payments are used in a manner consistent with the purpose of assistance in providing for the best interest of the child/

children. Montana SRS [now Department of Public Health and Human Services] would establish the following procedure to administer the protective payee program:

1. Establish Need — When there is documented evidence that a caretaker mismanages funds and that the needs of the child are not consistently met, a protective payee may be established.

2. Selection of Payee — The protective payee must be reliable and capable of managing household funds.

Restrictions — The payee can be a family member, friend or staff member of a community or department agency. Ineligible persons would be ET staff, vendors of goods or services dealing directly with the client and specific restricted personnel of the agency. Those restricted include County Commissioners, executive heads of public welfare departments, special investigative or resource staff, staff handling fiscal processes and landlords.

Selection of Payee — The recipient may participate in the selection of the payee, following the selection criteria.

A contractual agreement shall be entered into between the payee and the county outlining the duties and responsibilities of each.

3. Monitor of Payee — The Department shall establish within reasonable guidelines, the method in which the payee shall carry out his responsibilities. Shelter, food and personal need of payment shall be provided in a manner designed to best meet the needs of the recipient.

A record of payments shall be kept on a regular basis by the payee. This record shall be accessible to the Department for review as frequently as indicated by circumstances, but at least every three months. The review shall specifically address the continuing need for a protective payee, and the way the responsibilities are being carried out.

4. Termination of Protective Payee — Termination shall occur when:

a. The caretaker is determined able to assume management of funds.

b. It appears that the protective payee arrangement likely will continue beyond two years. Judicial appointment of a guardian shall be sought.

5. Fair Hearing — Opportunity for a Fair Hearing shall be given to an individual who requests it as a result of any protective payee procedure.

A contractual agreement between the County Welfare Department and protective payee would be made. That agreement would designate the payee, the recipient, and the responsibilities and duties of both the payee and County Welfare Department. A statement would be included designating the payee's understanding of his personal liability in the event of irresponsible actions taken in the role of the payee.

PROTECTIVE PAYEE AGREEMENT

I, ..., hereby agree to accept the responsibilities and duties of Protective Payee for .... until such time as I am relieved of said duties.

By signing this agreement I understand that my duties include providing for the shelter, food, and personal needs of .... by properly disbursing the funds provided by the AFDC payment provided by The Montana State Department of Social and Rehabilitation Services [now Department of Public Health and Human Services].

I further acknowledge that my responsibilities include maintaining a regular record of receipts and method of disbursement to be available to the (county) Department of Public Welfare for review.

I understand that improperly exercising the responsibilities of Protective Payee shall result in the penalties as included in .... MCA.

(SEAL)

....
Signature

....
Date"

53-2-609. Revocation of assistance.

Compiler's Comments

2001 Amendment: Chapter 571 in first sentence at beginning after "If the" deleted "county department or" and in two places inserted reference to local office of public assistance and in second sentence near middle after "was improperly granted" deleted "the department of public health and human services shall notify the county department that"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 546 in two places substituted "department of public health and human services" for "department of social and rehabilitation services; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-2-612. Lien of department upon third-party recoveries.

Compiler's Comments

2009 Amendment: Chapter 153 throughout section following reference to department deleted reference to county; in (1) in middle following "upon" deleted "all", and at end inserted "and to the extent that the money represents payment for medical expenses"; deleted (3)(a)(i) that read: "applies to all money paid by a third party or a third party's insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages"; in (3)(c) inserted language at end of second sentence capping the amount that can be collected; in (4)(a) near end of second sentence following "department" deleted "or the county commissioners of the county that paid medical assistance"; in (6)(a) deleted definition of county that read: ""County" means a county that has provided medical assistance to a recipient through an indigent assistance program operated at the option of the county"; and made minor changes in style. Amendment effective July 1, 2009.

2001 Amendments — Composite Section: Chapter 571 in (4)(a) in second sentence near middle after "department or the" substituted "county commissioners of the county" for "director of the county department"; and in (6)(a) near beginning after "means a county" substituted "that has provided medical assistance to a recipient through an indigent assistance program operated at the option of the county" for "department of welfare in a county that has not transferred its public assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8". Amendment effective July 1, 2001.

Chapter 574 in (6)(a) substituted definition of county as providing medical assistance through indigent assistance program for "means a county department of welfare in a county that has not transferred its public assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8". Amendment effective July 1, 2001.

1997 Amendment: Chapter 262 inserted (3)(e) disallowing imposition of a lien upon a self-sufficiency trust or the assets of a self-sufficiency trust; inserted (3)(e)(i) and (3)(e)(ii) providing exceptions to the lien imposition restrictions; and made minor changes in style. Amendment effective July 1, 1997.

1989 Amendment: Rewrote section to allow Department lien on, rather than subrogation interest in, third-party recovery by recipient whose medical expenses were paid by Department or county (see 1989 Session Law for text). Amendment effective April 10, 1989.

Applicability: Section 6, Ch. 482, L. 1989, provided that the amendments to this section apply to recoveries for personal injury that occurs, disease or illness that is diagnosed, or disability that commences on or after the effective date of the act. Effective April 10, 1989.

1985 Amendment: Throughout section substituted "recipient or beneficiary" for references to needy person; in first sentence of (1) after "medical benefits", deleted "under Title XIX or XX of the Social Security Act"; in (2) deleted second and third sentences that read: "From the amount collected from legal proceedings or as a result of settlement, the department shall retain the full amount previously paid as medical benefits, allocating to the county and federal government a share proportionate to their contribution and, after deducting the costs of the proceeding, deliver the remainder to the needy person. The total amounts awarded as compensation for pain and suffering or which are punitive in nature shall be delivered to the needy person", and at end of (2) inserted "in accordance with the provisions of this section"; inserted (3) providing for payment of attorney fees and costs; in (4), after "notify the department", substituted language requiring notification to the Department by a certified letter if claim is asserted against a third party or his insurer for an injury for which the Department paid medical benefits and specifying information the notice must contain for "of any action initiated or of any compromise or settlement agreed to by the needy person or his legal representative for the recovery of compensation or damages for medical expenses to which medical benefits have been applied. Notice shall be given by service upon the department of the legal instrument initiating the action or embodying the compromise or settlement"; deleted former (4) that read: "No portion of attorneys' fees may be withheld from the amount collected from legal proceedings or as a result of settlement which is due the department under subsection (1) without prior approval of the department"; inserted (5) providing for third-party liability for medical benefits paid by the Department on behalf of a recipient or beneficiary; and in (6) substituted “recipient or beneficiary of medical benefits from the state or county” for “needy person to which Title XIX or XX benefits have been applied”.

Statement of Intent: The statement of intent attached to Ch. 535, L. 1985, provided: “Under the amendment set forth as 53-2-612(3), the legislature intends that the department recover all medical expenses paid, less its share of reasonable attorney’s costs, in those cases where the total recovery net of attorney fees and costs is sufficient to pay the department and allow the recipient at least one-third of the net recovery. Where the net recovery is insufficient to reimburse the department for its costs and the recipient for other damages, this section requires the department to compromise its claim but only to the extent necessary to allow the recipient one-third of the net recovery. A recipient would not, under this statute, receive more than one-third of the net recovery unless and until the department has been reimbursed for its costs, net of attorney fees.”

Case Notes

Collection on Medicaid Liens by Department — Statute of Limitations on Overpayments — Interpretation of “Third Party”: The plaintiffs in a class action filed suit against the Department of Public Health and Human Services for its collection of settlement proceeds in excess of federal Medicaid law. The plaintiffs sought declaratory judgment, injunctive relief, and reimbursement for overpayment for 2,500 plaintiffs. Following the issuance of Arkansas Department of Health and Human Services v. Ahlborn, 547 U.S. 268 (2006), Montana amended its Medicaid lien statutes to seek reimbursement of only those settlement proceeds representing compensation for medical expenses, instead of all settlement proceeds. The term “third party” as used in 53-2-612 includes all other sources of medical assistance available to Medicaid recipients, including a recipient’s private health or automobile insurance. As there was no specific statute of limitations applied to relief sought by the plaintiffs, the statute of limitations was 5 years from the issuance of Ahlborn. Blanton v. Dept. of Public Health and Human Services, 2011 MT 110, 360 Mont. 396, 255 P.3d 1229.

Medicaid Third-Party Recovery Laws Inapplicable to Tobacco Settlement — Settlement Not Trigger for Remainder Payment: Plaintiff, on behalf of her deceased husband who had previously assigned a medical care claim to the state, contended that when Montana entered into a master settlement agreement with tobacco manufacturers based in part on Medicaid statistics, the agreement had the effect of releasing the remainder of any settlement money to Medicaid recipients pursuant to this section. The District Court disagreed, concluding that because the tobacco litigation was neither initiated by the Department of Public Health and Human Services nor filed in the name of the Medicaid recipients, the settlement did not trigger a remainder payment under subsection (3)(c) of this section. The Supreme Court affirmed. Under the agreement, the definition of releasing parties excludes individual Medicaid recipients, and “released claims” includes only those claims that the state could have brought, so the state would have no standing to assert the individuals’ claims for damages. Further, if there was any question as to whether Medicaid third-party recovery laws applied to the settlement payments, Congress made clear that they do not through passage of 42 U.S.C. 1396b(d)(3) in 1999. Robinson v. St., 2003 MT 110, 315 M 353, 68 P3d 750 (2003). See also Cardenas v. Anzai, 311 F3d 929 (9th Cir. 2002).

53-2-613. Application for assistance — assignment of support rights.

Compiler’s Comments

2019 Amendment: Chapter 41 in (1) in first sentence and in (2) in two places substituted “cash assistance” for “financial assistance”. Amendment effective July 1, 2019.

2009 Amendment: Chapter 184 in (3)(a) after “effective for” deleted “both”, after “current” deleted “and accrued”, and after “support” deleted “including unpaid support that accrued before the applicant received public assistance”; and made minor changes in style. Amendment effective October 1, 2009.

Saving Clause: Section 10, Ch. 184, L. 2009, was a saving clause.

2001 Amendment: Chapter 465 in (1) near middle of first sentence after “limited to” substituted “financial assistance or nonfinancial assistance” for “FAIM financial assistance” and at end substituted “may be made in any local office of public assistance” for “must be made to the county department of public welfare in the county in which the person is residing”; in (2) near beginning of first sentence after “application for” deleted “FAIM” and near middle after “to the county” substituted “if county funds were used to pay for services” for “welfare department” and in second sentence near beginning after “other than” deleted “FAIM” and near middle after “to the county” deleted “welfare department”; and made minor changes in style. Amendment effective July 1, 2001.

The amendment to this section made by Ch. 571, L. 2001, was rendered void by sec. 46, Ch. 571, L. 2001, a coordination section.

Coordination: Section 42, Ch. 465, L. 2001, provided: "If House Bill No. 101 is not passed and approved, then all references in [this act] to local offices of public assistance are changed to references to county welfare offices." House Bill No. 101 was not passed and approved; therefore, the reference to local office of public assistance in the amendment to (1) was changed to a reference to county welfare office.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

Code Commissioner Instruction: Pursuant to sec. 45, Ch. 571, L. 2001, in (1) the code commissioner changed "county welfare office" to "local office of public assistance"; and in (5)(d) changed "county welfare department" to "local office of public assistance".

1999 Amendment: Chapter 29 in (3)(a) after "support" inserted language to include unpaid child support accruing before receipt of public assistance; deleted former (3)(d) that read: "(d) does not apply to support that accrued before the applicant received public assistance"; in (5)(a) after "reimburse" inserted "the cumulative total of"; and made minor changes in style. Amendment effective February 18, 1999.

1997 Amendments: Chapter 486 in first sentence in (1), after "limited", substituted "to FAIM financial assistance, as defined in 53-2-902" for "to aid to families with dependent children"; in two places in second sentence in (1), in first sentence in (2), and in (5), after "department", deleted "of public health and human services"; in (2), in first sentence after "application for", substituted "FAIM financial assistance, as defined in 53-2-902, or related medical assistance" for "public assistance" and after "applicant" substituted "may have to monetary and medical support" for "may have to support and medical payments" and inserted second sentence authorizing Department to require that person applying for assistance other than FAIM or medical assistance assign all rights to monetary and medical support from another person; and made minor changes in style. Amendment effective May 2, 1997.

Chapter 552 inserted (3)(d) providing that the assignment "does not apply to support that accrued before the applicant received public assistance"; inserted (4) regarding transfer of a child support obligation by operation of law to a caretaker relative, assignment of it as provided in subsection (2), and termination of the transfer and assignment when the caretaker relative no longer has physical custody of the child; and inserted (5)(e) providing that an assigned support obligation may not be terminated, invalidated, waived, set aside, or considered uncollectible by the act or failure to act of a recipient or former recipient of public assistance. Amendment effective July 1, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendments: Chapter 60 in (4), at beginning after "Whenever a", inserted "child support or spousal"; in (4)(b), near beginning after "recover", inserted "or enforce" and after "support obligation" substituted "or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202" for "without notifying the department's child support enforcement division. The department may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned"; in (4)(d), at end of first sentence, substituted "under the provisions of 40-5-202" for "and an opportunity to participate"; and made minor changes in style.

Chapter 546 in (1), in two places, in (2), and in (4) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Severability: Section 18, Ch. 60, L. 1995, was a severability clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 631 in (4)(b), (4)(c), and (4)(d) substituted "department's child support enforcement division" for "department"; near end of (4)(d), after "the department", deleted "of social and rehabilitation services"; and made minor changes in style.

Preamble: The preamble attached to Ch. 631, L. 1993, provided: "WHEREAS, it is necessary to draft a composite bill containing unrelated sections in order to present the proposed program improvements in a single, comprehensive bill that promotes the needs of legislative energy, efficiency, and economy by limiting the number of possible bills and by reducing the need for hearings and readings on those bills.

THEREFORE, the Legislature finds it appropriate to enact the following legislation."

Severability: Section 29, Ch. 631, L. 1993, was a severability clause.

1989 Amendment: In (4), before "assigned", inserted "is" and after "this section" deleted "is referred to the department of revenue pursuant to 40-5-202"; in (4)(a), after "department", deleted "of revenue"; in (4)(b), in first sentence after "department", deleted "of revenue" and in second sentence, after "department", deleted "of social and rehabilitation services"; in (4)(c), after "department", deleted "of revenue"; and in (4)(d), in two places after "department", deleted "of revenue" and before "and the county welfare department" deleted "the department of revenue". Amendment effective July 1, 1989.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

1987 Amendments: Chapter 131 in (1), in two places, and in (2), after "department", inserted "of social and rehabilitation services"; and inserted (4) outlining conditions applicable to referral to the Department of Revenue, pursuant to 40-5-202, of a support obligation assigned to the Department of Social and Rehabilitation Services.

Chapter 370 in (1) substituted "aid to families with dependent children" for "aid to dependent children".

Case Notes

Collection on Medicaid Liens by Department — Statute of Limitations on Overpayments — Interpretation of "Third Party": The plaintiffs in a class action filed suit against the Department of Public Health and Human Services for its collection of settlement proceeds in excess of federal Medicaid law. The plaintiffs sought declaratory judgment, injunctive relief, and reimbursement for overpayment for 2,500 plaintiffs. Following the issuance of Arkansas Department of Health and Human Services v. Ahlborn, 547 U.S. 268 (2006), Montana amended its Medicaid lien statutes to seek reimbursement of only those settlement proceeds representing compensation for medical expenses, instead of all settlement proceeds. The term "third party" as used in 53-2-612 includes all other sources of medical assistance available to Medicaid recipients, including a recipient's private health or automobile insurance. As there was no specific statute of limitations applied to relief sought by the plaintiffs, the statute of limitations was 5 years from the issuance of Ahlborn. Blanton v. Dept. of Public Health and Human Services, 2011 MT 110, 360 Mont. 396, 255 P.3d 1229.

Medicaid Third-Party Recovery Laws Inapplicable to Tobacco Settlement — Settlement Not Trigger for Remainder Payment: Plaintiff, on behalf of her deceased husband who had previously assigned a medical care claim to the state, contended that when Montana entered into a master settlement agreement with tobacco manufacturers based in part on Medicaid statistics, the agreement had the effect of releasing the remainder of any settlement money to Medicaid recipients pursuant to 53-2-612. The District Court disagreed, concluding that because the tobacco litigation was neither initiated by the Department of Public Health and Human Services nor filed in the name of the Medicaid recipients, the settlement did not trigger a remainder payment under 53-2-612(3)(c). The Supreme Court affirmed. Under the agreement, the definition of releasing parties excludes individual Medicaid recipients, and "released claims" includes only those claims that the state could have brought, so the state would have no standing to assert the individuals' claims for damages. Further, if there was any question as to whether Medicaid third-party recovery laws applied to the settlement payments, Congress made clear that they do not through passage of 42 U.S.C. 1396b(d)(3) in 1999. Robinson v. St., 2003 MT 110, 315 M 353, 68 P3d 750 (2003). See also Cardenas v. Anzai, 311 F3d 929 (9th Cir. 2002).

Parent-Child Relationship Thwarted — Equitable Estoppel Precluding Payment of Child Support: When Stiles and his wife separated, he was given responsibility for the care of his newborn son. Because Stiles was in the military at the time, he asked his sister, Cynthia, if she would care for the child for a short time while he fulfilled his duties in the Navy. Cynthia agreed, but immediately sought legal custody of the child, and physical custody of the child was ultimately granted to her by a California court. She often did not comply with court orders resulting from her custody efforts, including orders to allow Stiles visitation with the child. Stiles initially offered to pay for the child's care, but Cynthia refused any money, saying it was not needed. Nevertheless, Stiles did provide ongoing health insurance for the child. Over a decade later, Cynthia applied for and was granted public assistance, assigning any right to child support to the state. The Child Support Enforcement Division established Stiles's support obligation at $511 a month. Stiles asked Cynthia to sign a waiver of this obligation, but she refused. Stiles petitioned for judicial review, and the District Court remanded to an administrative law judge to make findings regarding Stiles's claim that Cynthia had waived her right to receive child support or that she was equitably estopped from asserting or assigning those rights. The administrative law judge found that the requisite elements of waiver and estoppel were present, and the District Court upheld the findings, holding that because Cynthia had no right to child support, she could not convey to the state rights greater than those to which she was entitled. The state appealed, asserting that the court erred when it held that estoppel and waiver applied to relieve Stiles of the obligation to provide support. The Supreme Court concluded that all six elements of equitable estoppel were met and that Cynthia had no right to receive child support from Stiles either retroactively or prospectively. Cynthia waived her right to support through her language and conduct. Nothing in the record indicated that the child's needs were not being met, and the court declined to order additional support. Although a parent is still responsible for support even in cases of voluntary relinquishment of parental rights, Stiles's relinquishment was involuntary. The court declined to hold Stiles to normal parental responsibilities under these unique circumstances, given that the child's best interests were being served, Stiles provided health insurance for the child at all times, and Stiles was thwarted by Cynthia in his attempts to have a parent-child relationship and was not attempting to exploit narrow legal technicalities to avoid undisputed court-ordered support obligations awarded at the time of dissolution. Stiles v. Dept. of Public Health and Human Services, 2000 MT 257, 301 M 482, 10 P3d 819, 57 St. Rep. 1054 (2000), distinguishing Fitzgerald v. Fitzgerald, 190 M 66, 618 P2d 867 (1980), In re Marriage of Neiss, 228 M 479, 743 P2d 1022 (1987), and In re Support of Krug, 231 M 78, 751 P2d 171 (1988).

State's Right to Public Assistance Reimbursement Predicated Upon Beneficiary Having Rights Capable of Assignment: When Stiles and his wife separated, he was given responsibility for the care of his newborn son. Because Stiles was in the military at the time, he asked his sister, Cynthia, if she would care for the child for a short time while he fulfilled his duties in the Navy. Cynthia agreed, but immediately sought legal custody of the child, and physical custody of the child was ultimately granted to her by a California court. Over a decade later, Cynthia applied for and was granted public assistance, assigning any right to child support to the state. The Child Support Enforcement Division established Stiles's support obligation at $511 a month. Stiles asked Cynthia to sign a waiver of this obligation, but she refused. Stiles petitioned for judicial review, and the District Court remanded to an administrative law judge to make findings regarding Stiles's claim that Cynthia had waived her right to receive child support or that she was equitably estopped from asserting or assigning those rights. The administrative law judge found that the requisite elements of waiver and estoppel were present, and the District Court upheld the findings, holding that because Cynthia had no right to child support, she could not convey to the state rights greater than those to which she was entitled. The state appealed, asserting that the court erred when it held that the statutory rights of the state to be reimbursed for the payment of public benefits were negated by Cynthia's conduct. The Supreme Court affirmed. The statutory right of the state to be reimbursed is predicated upon the beneficiary actually having rights capable of being assigned to the state. The language in this section is discretionary, indicating no legislative intent that the state would inherit an unequivocal right to collect from all parties at the time that public assistance is granted, regardless of whether a court had approved an order of support. The Supreme Court declined to expand the regular meaning of the discretionary language in the statute to confer greater rights to the state than the rights possessed by Cynthia. Stiles v. Dept. of Public Health and Human Services, 2000 MT 257, 301 M 482, 10 P3d 819, 57 St. Rep. 1054 (2000).

Excess Support Properly Retained by State: Holthusen made his child support payments directly to the Child Support Enforcement Division. The payment amount was for $75 more than his current obligation, and the Division retained the excess to reimburse the state for public assistance money that the wife received during the time Holthusen had failed to pay support. The Supreme Court held that the state properly retained the money rather than tendering the excess to the wife for past child support and that after being reimbursed, the state would then be required to pay the excess to the wife. In re Marriage of Holthusen/Jakobson, 259 M 42, 854 P2d 333, 50 St. Rep. 666 (1993).

Part 9
Food Stamp Program

53-2-901. Administration of food stamp program — rulemaking authority.

Compiler's Comments

2019 Amendment: Chapter 41 in (3)(h) substituted "cash assistance" for "financial assistance". Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 in (3)(h) after "recipients of" deleted "FAIM". Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 at end of (1) inserted "in compliance with all federal laws and requirements"; in (3)(c) substituted "periodic redetermination of eligibility" for "certification periods"; in (3)(h), after "recipients", substituted "of FAIM financial assistance" for "of aid to families with dependent children" and after "requirement of" substituted "that" for "the aid to families with dependent children"; inserted (4) authorizing adoption of rules regarding assignment of support rights, cooperation with child support enforcement program requirements, and disqualification from programs; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Statement of Intent: The statement of intent attached to Ch. 491, L. 1995, provided: "A statement of intent is required for this bill because [section 11] [53-2-901] grants the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules for the administration of the food stamp program.

(1) It is the intent of the legislature that the department adopt rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amounts;

(c) certification periods;

(d) reporting requirements;

(e) work registration and employment and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;

(g) disqualification because of intentional program violations, voluntarily quitting a job without good cause, or any other violation of program rules;

(h) penalties applicable to recipients of aid to families with dependent children who have been sanctioned because of failure to meet any requirement of the aid to families with dependent children program; and

(i) special requirements or criteria applicable to participants in the families achieving independence in Montana (FAIM) project.

(2) It is intended that the rules adopted by the department comply with federal requirements under the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq., and 7 CFR 271 through 285, as may be amended, or, in the event that waivers of federal law have been granted by the food and nutrition service of the U.S. department of agriculture, with the waivers.

(3) [Section 19] [53-4-212] revises the department's rulemaking authority for the aid to families with dependent children program, including the FAIM project.

It is the intent of the legislature that the department adopt rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance and methods for computing benefit amounts;

(c) deprivation of parental support or care for purposes of qualifying as a dependent child;

(d) the degree of kinship required for a person to qualify as a specified caretaker relative with whom a child may live to be eligible for assistance;

(e) reporting requirements;

(f) requirements for participation in the JOBS program and exemptions from participation;

(g) procedures and policies of the JOBS program;

(h) sanctions, disqualification, or other penalties for failure to comply with program rules or requirements; and

(i) special requirements or policies applicable to participants in the FAIM project.

(4) It is intended that rules adopted under [section 19] [53-4-212] comply with federal requirements under Title IV of the Social Security Act, 42 U.S.C. 601, et seq., and 45 CFR parts 200 through 499, as amended, or, in the event that waivers of federal law have been granted by the U.S. department of health and human services, with the waivers.

(5) [Section 26] [53-6-113] grants the department additional rulemaking authority. It is the intent of the legislature that the department adopt rules specifying the income limits for eligibility for extended medical assistance for persons receiving aid to families with dependent children under the FAIM project who lose eligibility because of increased income and specifying the length of time for which they may receive extended medical assistance.

It is intended that rules adopted under [section 26] [53-6-113] comply with waivers of federal medicaid law granted by the secretary of the U.S. department of health and human services pertaining to the FAIM project and promote the goals of the FAIM project of self-sufficiency and responsibility of participants. In adopting the rules, the department may consider the amount of funds appropriated by the legislature for the Montana medicaid program."

53-2-902. Definitions.

Compiler's Comments

2019 Amendment: Chapter 41 inserted definition of cash assistance; in definition of department substituted "provided for in 2-15-2201" for "provided in Title 2, chapter 15, part 22"; deleted definitions of employment and training demonstration project, FAIM project, and financial assistance that read: ""Employment and training demonstration project" means the employment and training program for recipients of financial assistance who are participating in the FAIM project.

"FAIM project" means the families achieving independence in Montana project, including the financial assistance part, a food stamp part administered pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315.

"(a) Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a)."

(b) The term does not include nonfinancial assistance"; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 in (2) after "recipients of' deleted "FAIM"; deleted former definition of FAIM financial assistance that read: ""FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash, services, and noncash assistance"; in definition of FAIM project after "including the" substituted "financial assistance part" for "FAIM financial assistance part established in 53-4-603"; inserted definitions of financial assistance, nonfinancial assistance, and temporary assistance for needy families; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 deleted definition of child support pass-through payments that read: ""Child support pass-through payments" means child support received for a dependent child or children in a family receiving aid to families with dependent children, up to $50 a month, that is paid or "passed through" to the family pursuant to section 402 of the Social Security Act, 42 U.S.C. 602(a)(8)(A)(vi)"; in definition of employment and training demonstration project after "recipients", substituted "of FAIM financial assistance" for "of aid to families with dependent children"; inserted definition of FAIM financial assistance; in definition of FAIM project, after "including", substituted "the FAIM financial assistance" for "the aid to families with dependent children"; in definition of food stamp program, after "provision", substituted "of food stamp benefits" for "of coupons"; deleted definition of JOBS program that read: ""JOBS program" means the job opportunities and basic skills training program for recipients of aid to families with dependent children that is conducted in accordance with the requirements of section 201 of the federal Family Support Act of 1988, 42 U.S.C.602(a)(19), 681 through 686"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

53-2-903. Employment and training program.

Compiler's Comments

2019 Amendment: Chapter 41 deleted former last sentence that read: "For purposes of the FAIM project, in accordance with waivers of federal law that are granted by the food and consumer service of the U.S. department of agriculture, the department may merge its food stamp program employment and training program with its financial assistance employment and training program or may modify the rules and requirements of the food stamp program employment and training program as necessary to make them consistent with those of the employment and training demonstration project." Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 near middle of second sentence before "financial assistance employment" deleted "FAIM". Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 in second sentence, after "FAIM project", substituted "in accordance with waivers" for "if waivers", after "food" substituted "and consumer service" for "and nutrition service", and after "with its" substituted "FAIM financial assistance employment and training program" for "JOBS program". Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

53-2-904. Income and resource exclusions — FAIM participants.

Compiler's Comments

Code Commissioner Clarification: Because Ch. 41, L. 2019, intended to remove from the MCA all references to the FAIM project, it appears that this section should have been repealed as part of Ch. 41, L. 2019.

2001 Amendment: Chapter 465 deleted former second sentence that read: "Exclusions that may be established include but are not limited to exclusions for one-time only cash payments for special employment-related needs as provided in 53-4-603 in determining the recipients' eligibility for food stamps and determining the benefit amount." Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 at beginning of first sentence substituted "In accordance with waivers" for "If waivers" and after "food" substituted "and consumer service" for "and nutrition service" and in second sentence, after "53-4-603", deleted "and child support pass-through payments of up to $50 a month"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

Part 12

Administration of Workforce Development, Educational, and Human Resource Programs

Part Compiler's Comments

Severability: Section 12, Ch. 424, L. 2001, was a severability clause.

Effective Date: Section 13, Ch. 424, L. 2001, provided that this part is effective July 1, 2001.

Part Administrative Rules

Title 24, chapter 22, subchapter 3, ARM Incumbent worker training program.

53-2-1202. Definitions.

Compiler's Comments

2017 Amendment: Chapter 37 in definition of act substituted "Workforce Innovation and Opportunity Act, Public Law 113-128, 29 U.S.C. 3101, et seq." for "Workforce Investment Act of 1998, Public Law 105-220 (29 U.S.C. 2801, et seq.)"; in definition of one-stop center substituted "29 U.S.C. 3151(d)" for "29 U.S.C. 2841(d)"; inserted definition of board; deleted definitions that read: ""Local board" means a local workforce investment board provided for in 53-2-1204"; ""State board" means the state workforce investment board provided for in 53-2-1203"; and ""Workforce investment area" means a local area designated by the governor in accordance with section 116 of the Act (29 U.S.C. 2831)"; and made minor changes in style. Amendment effective February 20, 2017.

53-2-1203. Montana state workforce innovation board — membership — duties.

Compiler's Comments

2019 Amendment: Chapter 363 in (4) at end inserted a requirement that the board assist the department of commerce with trade promotion; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 37 in (1) substituted "Montana state workforce innovation board" for "state workforce investment board"; inserted (2) concerning membership of board; deleted former (2) that read: "(2) The state board consists of:

(a) the governor or a person designated by the governor to act on behalf of the governor;

(b) subject to 5-5-234, two members of the house of representatives, one from the majority party and one from the minority party, and two members of the senate, one from the majority party and one from the minority party, appointed by the presiding officer of each respective chamber; and

(c) individuals appointed by the governor, including:

(i) representatives of businesses located in Montana who:

(A) are owners of businesses, chief executive or operating officers, and other business executives or employers with optimum policymaking or hiring authority, including business members of local boards; and

(B) represent businesses with employment opportunities that reflect the employment opportunities in Montana;

(ii) chief elected officials of local government;

(iii) representatives of labor organizations;

(iv) representatives of individuals and organizations who have experience with respect to youth activities;

(v) representatives of individuals and organizations who have experience and expertise in the delivery of workforce investment activities;

(vi) representatives of the state agencies who are responsible for the programs and activities that are carried out by the one-stop centers, including but not limited to:

(A) the department of labor and industry;

(B) the department of public health and human services;

(C) the office of the commissioner of higher education; and

(D) the office of public instruction;

(vii) at least one representative of military veterans; and

(viii) other representatives whom the governor may designate"; in (3) at end before "board" deleted "state"; in (4) near beginning before "board" deleted "state" and at end substituted "section 101(d) of the Act, 29 U.S.C. 3111(d)" for "section 111 of the Act, 29 U.S.C. 2821"; deleted former (3) and (4) that read: "(3) The selection and appointment of members of the state board must follow the nominating provisions of section 111 of the Act, 29 U.S.C. 2821.

(4) The governor shall appoint enough individuals described in subsection (2)(c)(i) so that those persons compose a majority of the membership of the state board"; and made minor changes in style. Amendment effective February 20, 2017.

2007 Special Session Amendment: Chapter 4 in (2)(b) at beginning inserted "subject to 5-5-234" and in two places substituted "one from the majority party and one from the minority party" for "each from a different political party"; and made minor changes in style. Amendment effective May 25, 2007.

Retroactive Applicability: Section 22, Ch. 4, Sp. L. May 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to appointments made for members of the 60th legislature."

2007 Amendment: Chapter 224 inserted (2)(c)(vii) concerning military veteran; and made minor changes in style. Amendment effective April 17, 2007.

Saving Clause: Section 2, Ch. 224, L. 2007, was a saving clause.

2003 Amendment: Chapter 190 deleted former (2)(c)(vi)(A) that read: "(A) the department of commerce"; and made minor changes in style. Amendment effective April 1, 2003.

53-2-1205. Workforce development program.

Compiler's Comments

2017 Amendment: Chapter 37 in (1) substituted "development" for "investment" and substituted "29 U.S.C. 3101, et seq." for "29 U.S.C. 2801, et seq."; in (2) in first sentence substituted "4-year combined state plan" for "5-year strategic statewide workforce investment plan" and substituted "section 103 of the Act, 29 U.S.C. 3113" for "section 112 of the Act (29 U.S.C. 2822)", and in second sentence substituted "combined state plan" for "strategic statewide plan" and before "board" deleted "state"; deleted former (3) that read: "(3) There must be a 5-year local workforce investment plan for each workforce investment area. The local plan must be created by the local board. The local plan must meet the requirements of the state plan and section 116 of the Act (29 U.S.C. 2831)"; and made minor changes in style. Amendment effective February 20, 2017.

53-2-1206. Performance indicators.

Compiler's Comments

2017 Amendment: Chapter 37 in first sentence substituted "The 4-year combined state plan" for "The 5-year strategic statewide workforce investment plan" and substituted "29 U.S.C. 3101, et seq." for "29 U.S.C. 2801, et seq."; in second sentence substituted "The combined state plan" for "The strategic statewide plan" and substituted "section 103 of the Act, 29 U.S.C. 3113" for "section 112 of the Act (29 U.S.C. 2822)"; deleted former (2) that read: "(2) Each 5-year local workforce investment plan must include a description of the local levels of performance to be used to measure the performance of the local area and to be used by the local board for measuring the performance of the one-stop delivery system and the one-stop centers providing services in the local area. The local plan must include the performance accountability systems required by section 136 of the Act (29 U.S.C. 2871)"; and made minor changes in style. Amendment effective February 20, 2017.

53-2-1207. Coordination of services.

Compiler's Comments

2017 Amendment: Chapter 37 before "board" deleted "state", substituted "development" for investment", and substituted "29 U.S.C. 3151(b)" for "29 U.S.C. 2841(b)"; deleted former (1)(b) that read: "(b) reviewing local plans, which include a description of the one-stop delivery system to be established or designated in the local area"; deleted former (2) that read: "(2) Local boards shall coordinate services provided to Indians with providers offering services pursuant to section 166 of the Act (29 U.S.C. 2911) and providers offering services pursuant to the Indian Employment, Training and Related Services Demonstration Act of 1992, Public Law 102-477 (25 U.S.C. 3401)"; and made minor changes in style. Amendment effective February 20, 2017.

53-2-1215. Incumbent worker training program — purpose.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 54, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 25 in (1) after "businesses employing" substituted "50" for "20" and after "fewer workers in this state" deleted "at any one location but not more than 50 workers statewide". Amendment effective July 1, 2017.

Effective Date: This section is effective October 1, 2009.

53-2-1216. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 54, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 25 deleted definition that read: ""BEAR program" means a business expansion and retention program implemented by local communities that uses assessments, interviews, and surveys to assist employers and that has been recognized as a BEAR program for the purposes of 53-2-1215 through 53-2-1220 by the governor's office of economic development, the department of commerce, and the department"; in definition of eligible training provider in (e) after "training that is approved by" substituted "the department" for "representatives of the

BEAR program, the small business development centers, or the Montana manufacturing extension center at Montana state university-Bozeman"; in definition of employee after "individual currently employed in a" substituted "predominantly year-round job and working an average of at least 20 hours a week" for "full-time job or a permanent part-time job"; in definition of employer after "a business entity that employs" substituted "50" for "20" and after "fewer employees in this state" deleted "in one location but not more than 50 employees statewide"; deleted definition that read: ""Full-time job" means a predominantly year-round position requiring an average of 35 hours or more of work each week"; in definition of incumbent worker substituted "at least 6 months of employment with the employer" for "a probationary period as defined by the employer's policy or as described in 39-2-904, whichever period is shorter"; deleted definition that read: ""Permanent part-time job" means a predominantly year-round position requiring an average of 20 to 34 hours of work each week"; and made minor changes in style. Amendment effective July 1, 2017.

Effective Date: This section is effective October 1, 2009.

53-2-1217. Incumbent worker training program criteria for applicants.

Compiler's Comments

2017 Amendment: Chapter 25 deleted former (1)(c) that read: "(c) be an existing client of a BEAR program recognized by the department, of a small business development center, or of the Montana manufacturing extension center at Montana state university-Bozeman"; deleted former (2) that read: "(2) An applicant for an incumbent worker training program grant shall agree to:

(a) provide certified education or skills-based training for incumbent workers in existing full-time jobs and permanent part-time jobs through an eligible training provider;

(b) match every $4 requested with at least $1 of employer funds. The same match applies for in-state training and for out-of-state training. Matching funds may include wages and benefits paid for the day that the actual training takes place and for appropriate travel and lodging charges associated with the approved training. For out-of-state training the employer is responsible for at least 50% of the actual costs of appropriate travel and lodging";

(c) provide evidence to the department that training was completed"; inserted (2) providing an application process for an incumbent worker training program grant and requiring employer contribution; deleted former (3)(a) that read: "(a) a cover letter describing the goals of the training for the incumbent workers, the anticipated economic benefits from the training, and the amount of funding requested"; deleted former (3)(e) that read: "(e) the total number of the employer's employees at the location of the proposed training and within the state"; deleted former (3)(f) that read: "(f) the sources of matching funds to be provided"; and made minor changes in style. Amendment effective July 1, 2017.

Effective Date: This section is effective October 1, 2009.

53-2-1218. Incumbent worker training program grant award criteria.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 54, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 25 in (1) after "the department shall award grants" substituted "as provided in this section" for "based on recommendations from BEAR programs, small business development centers, or the Montana manufacturing extension center at Montana state university-Bozeman as provided in subsection (2)"; deleted former (2) that read: "(2) A BEAR program, a small business development center, or the Montana manufacturing extension center at Montana state university-Bozeman participating in the incumbent worker training program shall review applications and make recommendations for awards to the department regarding qualified applicants based on the criteria in subsection (3)"; in (3) substituted "each incumbent worker who is" for "each full-time job for which an incumbent worker is"; deleted former (4)(b) that read: "(b) $1,000 or less for each permanent part-time job for which an incumbent worker is being trained"; deleted former (5)(c) that read: "(c) award a higher amount than that provided in subsection (4) if a full-time job for which an incumbent worker is being trained under an incumbent worker training program grant award pays significantly higher wages and benefits than the incumbent worker's current job. Before making an award for a higher amount as provided in this subsection (5)(c), the department must receive a recommendation for the higher amount from a BEAR program, a small business development center, or the Montana manufacturing extension center at Montana state university-Bozeman working with the employer and documentation from the employer regarding the need for the higher amount"; in (5)(b) after "that the training was" substituted "purchased" for "provided"; and made minor changes in style. Amendment effective July 1, 2017.

Effective Date: This section is effective October 1, 2009.

53-2-1219. Special revenue account.

Compiler's Comments

2017 Amendment: Chapter 25 substituted "state special" for "federal special" and in last sentence before "funds" deleted "federal". Amendment effective July 1, 2017.

Effective Date: This section is effective October 1, 2009.

53-2-1220. Rulemaking.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

CHAPTER 3
GENERAL RELIEF

Chapter Case Notes

Eligibility — Date Determined: Petroleum County denied medical assistance benefits to unemployed applicant because his unemployment compensation exceeded the county income limitation. The county failed to reduce the applicant's income by the amount of the medical expenses as allowed for in the "spend-down" provision in the county plan. On judicial review before the District Court, the court remanded the case to the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) to determine if the applicant was medically indigent. The Department responded that it was without authority to consider the matter further because the applicant at that time had a new job which placed the applicant above the statutory income limitation. The District Court entered a final judgment affirming the denial of benefits. On appeal, the Supreme Court upheld the statutory and county income limitations but held that the Department had used the wrong income in considering the applicant's need on remand from the District Court. The Supreme Court remanded for a determination of whether the applicant was medically needy under 53-3-103 (substantially reenacted as 53-3-206, now repealed) at the time medical treatment first began. Deaconess Medical Center of Billings, Inc. v. Dept. of Social and Rehabilitation Services, 222 M 127, 720 P2d 1165, 43 St. Rep. 1112 (1986).

Medical Assistance — Income Limitations Constitutional: Provision in 53-3-103(3), MCA (1983) (substantively reenacted as 53-3-206, now repealed; however, see 53-6-131), that denies medical assistance benefits to those with incomes in excess of 300% of the AFDC standard passes middle-tier scrutiny and is constitutional. The limitation is reasonable, and the state's interest in limiting medical assistance outweighs the interest in obtaining benefits by those whose incomes exceed the limitation. Much lower income limitation in the county plan with a "spend-down" provision, allowing medical expenses to be deducted from the income before comparison with the AFDC standard, is also constitutional. Denial of medical benefits solely because the applicant's income exceeds the AFDC standard would be unconstitutional. Deaconess Medical Center of Billings, Inc. v. Dept. of Social and Rehabilitation Services, 222 M 127, 720 P2d 1165, 43 St. Rep. 1112 (1986).

Indigent Student's Right to County Medical Assistance — Residence Question: A college student born and raised in Cascade County was injured far from home. During recuperation at her parents' residence in Cascade County, she applied for medical assistance. She was denied. The Supreme Court of Montana found her to be a resident of Cascade County for purposes of county medical assistance, noting that she gives the county as her permanent address and intends to reside there after she finishes school and citing the rule that it is customary to look to the parents' residence in order to determine the residence of the student. Michels v. Dept. of Social and Rehabilitation Services, 187 M 173, 609 P2d 271, 37 St. Rep. 546 (1980). (Decided prior to 1985 amendment.)

Use of Medical Resources: In order for a person to qualify for Medicaid, that person must be eligible, and to be eligible, a person must qualify under a state plan which has been approved by the Director of Health, Education, and Welfare. Such a plan must agree with all the statutes and regulations promulgated under the Social Security Act. In other words, use of the plan implies legal use under federal regulations which in turn means sole use by definition. Therefore, applicants or recipients who have access to medical resources will be required to use only the resources enumerated under the federal regulations. County medical programs are not considered resources under the regulations and are therefore excluded from use. Flathead Health Center v. Flathead County, 183 M 211, 598 P2d 1111, 36 St. Rep. 1465 (1979).

Unreasonable Application of Welfare Standards: The trial court did not err in holding as a matter of law that a recipient of plaintiff's services was medically indigent even though the recipient's spouse's income was above welfare standards, for such application of administrative standards was unreasonable in this case. Furthermore, recipient's indigent status was unaffected by her failure to have the federal government pay her medical bills as a qualified candidate for Indian medical benefits. Sisters of Charity of Providence of Mont. v. Glacier County, 177 M 259, 581 P2d 830 (1978).

Measure of Eligibility: The proper measure for eligibility under the county medical assistance program is based on the applicant's available, spendable income or resources and disregards noncash income such as rent, food, and utilities that cannot be converted into cash necessary to pay medical bills. Wheatland County v. Bleeker, 175 M 478, 575 P2d 48 (1978).

Standard for Review — Clearly Erroneous: In an appeal from an order of District Court finding respondents eligible for county medical assistance, the Supreme Court found that evidence in the form of an unsolicited opinion voiced by an interested party, with no foundation, did not constitute substantial evidence which would render the decision clearly erroneous. Wheatland County v. Bleeker, 175 M 478, 575 P2d 48 (1978).

County of Most Significant Contacts: The hearings officer, Board of Social and Rehabilitation Appeals (now Board of Public Assistance), and District Court properly found Blaine County the resource financially responsible for paying the respondents' medical debts even though respondents resided in Hill County at the end of a year's residence in Montana because Blaine County had the most significant contacts. Blaine County v. Moore, 174 M 114, 568 P2d 1216 (1977). (Decided prior to 1985 amendment.)

County-State Obligation: Despite the invalidity of the requirement of 1-year's residency in the state in order to qualify for relief, county's obligation to pay general relief assistance may be limited by Legislature's residency requirements as it did in section 71-302, R.C.M. 1947 (since repealed); where no provision has been made to care for transients, state must provide relief until such time as indigent has established county residency. Pease v. Hansen, 159 M 43, 494 P2d 925 (1972).

Durational Residency Requirement — Constitutionality — Historical Perspective: Durational residency requirement in state welfare program (since amended out) imposed unconstitutional restraint on right to travel. Pease v. Hansen, 404 US 70, 30 L Ed 2d 224, 92 S Ct 318 (1971), following Shapiro v. Thompson, 394 US 618, 22 L Ed 2d 600, 89 S Ct 1322 (1969), and reversing Pease v. Hansen, 157 M 99, 483 P2d 720 (1971).

Emergency Hospitalization:

Although family of 10 had earnings in excess of County Welfare Board's standard minimum income for determining indigency, application of the standard to deny medical assistance was unreasonable where the family had considerable medical expense and a history of indebtedness. St. Patrick Hosp. v. Powell County, 156 M 153, 477 P2d 340 (1970).

Hospital, located in one county, which performed emergency appendectomy on indigent who was resident of another county, was a real party in interest in suit against county in which patient resided; statute providing that medical aid for indigents is "responsibility of the county" was broad enough to encompass emergency medical aid rendered outside indigent's county of residence. Mont. Deaconess Hosp. v. Lewis & Clark County, 149 M 206, 425 P2d 316 (1967). (Decided prior to 1985 amendment.)

Evidence of Indigency: Fact that alleged indigent had never supported herself and apparently never would was proof of medical indigency in every legal and social sense in spite of fact she was employable and notwithstanding absence of evidence of reasons for her inability to be productive citizen. Mont. Deaconess Hosp. v. Lewis & Clark County, 149 M 206, 425 P2d 316 (1967). (Decided prior to 1985 amendment.)

Wandering Child: Mandamus lies to compel State Board of Public Welfare (now Department of Public Health and Human Services) to reimburse county for medical and hospital expenses paid for a wandering 13-year-old child from another state who had roamed from place to place for approximately 1 month, without means of support, before she threw herself in front of a moving automobile. State ex rel. Lewis & Clark County v. St. Bd. of Pub. Welfare, 141 M 209, 376 P2d 1002 (1962).

County in Which Injury Occurred Liable: Where an indigent nonresident is injured within county and requires immediate medical and surgical attention and hospitalization and is removed to another county to obtain such treatment, the county in which the injury occurred is liable. Musselshell County v. Petroleum County, 118 M 1, 161 P2d 905 (1945).

Relief Warrants to Be Readily Convertible Into Cash: Provision in 53-3-302 (now repealed) that relief disbursements shall be by warrant or check representing cash on demand means warrants or checks which are the equivalent of cash, i.e., readily convertible into cash without discount. State ex rel. Silver Bow County v. Brandjord, 107 M 231, 82 P2d 589 (1938).

Appeal From County to State Board: Exercise of the right of appeal from the action of a county body to a state body, as from a county to the State Board of Public Welfare (now Department of Public Health and Human Services), is not always a condition precedent to the right to resort to the courts for relief, as where County Board of Public Welfare wrongfully refused to issue a check to applicant, in which case appeal to state Board would have been without object or purpose under the Public Welfare Act (Title 71, ch. 2 through 10, R.C.M. 1947, now, with substantial change, a major portion of Title 53). State ex rel. Wilson v. Weir, 106 M 526, 79 P2d 305 (1938).

Sending to Poor Farm Violation of Duty: Where a County Board of Public Welfare placed applicant in poor farm instead of issuing to him a warrant or check representing cash on demand as required by 53-3-302 (now repealed), it violated a clear legal duty, enforceable by the Writ of Mandate. State ex rel. Wilson v. Weir, 106 M 526, 79 P2d 305 (1938).

Chapter Attorney General's Opinions

Residency Determination — Nursing Home Residents on General Relief: Under 53-3-306 (now repealed), a county could not automatically disclaim financial responsibility for new applicants for general relief who have moved to that county in order to receive medical care in a nursing home. The county of financial responsibility is the county where the applicant resides. Residence is determined by factors such as whether the placement in the nursing home is permanent or temporary, in which county the applicant is registered to vote, owns property, pays property taxes, or registers a vehicle, and in which county the applicant intends to remain. The original county remains financially responsible unless a court decree declares under 53-2-610 (now repealed) that the recipient's residence has changed. 40 A.G. Op. 8 (1983).

Workfare — Prevailing Wage for Similar Work: Prior to the 1983 amendment allowing payment at the minimum wage, 53-3-304 (now repealed) required that all participants in the "workfare" program receive benefits equal to wages paid at the prevailing rate for similar county work. The prevailing wage as determined under the "Little Bacon-Davis Act" (18-2-401 and 18-2-402) is the most frequent or commonly used rate of pay. The prevailing wage is not necessarily the minimum wage. The county could have paid the minimum wage only if similar work, as that done under workfare, had generally been performed for the minimum wage or if the county had never had similar work performed. To determine what is similar work, the county should classify work to be performed under the workfare program with other work closely resembling the type currently being done for the county. 40 A.G. Op. 3 (1983).

General Relief Apportionment Among Counties: A person who has moved from one county to another and did not receive public assistance from the original county is not the financial responsibility of the original county. 37 A.G. Op. 35 (1977).

Chapter Law Review Articles

Butte Community Union v. Lewis: A New Constitutional Standard for Evaluating General Assistance Legislation, Wurster, 48 Mont. L. Rev. 163 (1987).

Part 1
General Provisions

Part Case Notes

Limitation of Assistance Not to Be Arbitrary Between Classes of Eligible Individuals: The state may legitimately limit its expenditures for public assistance, public education, or any other program evenhandedly applied. It may not limit its expenditures by the expedient of eliminating classes of eligible individuals from public assistance without regard to their constitutionally grounded right to society's aid when needed for the basic necessities of life. While not declaring that inhabitants have a constitutional right to public assistance, the Supreme Court did declare that the Legislature, in performing its duties under Art. XII, sec. 3, Mont. Const., may not act arbitrarily between classes of entitled persons. Butte Community Union v. Lewis, 229 M 212, 745 P2d 1128, 44 St. Rep. 1911 (1987).

Legislative Intent: Legislature has imposed upon County Welfare Department and County Commissioners the duty of establishing whether indigency exists in given case and has set up procedural steps to be followed in carrying out Public Welfare Act (Title 71, ch. 2 through 10, R.C.M. 1947, now, with substantial change, a major portion of Title 53). Mont. Deaconess Hosp. v. Lewis & Clark County, 149 M 206, 425 P2d 316 (1967).

Assistance to Striking Union Members: Mandamus could be used to compel the Department of Public Welfare (now Department of Public Health and Human Services) to rescind a general order providing that striking members of a union were to receive less general relief assistance than other general relief recipients and to require the Department to give union members the same general relief as given other applicants in the same class. State ex rel. Int'l Union of Mine, Mill & Smelter Workers v. Dept. of Public Welfare, 136 M 283, 347 P2d 727 (1959).

Part Attorney General's Opinions

No Authority to File Property Lien Upon Overpayment of Assistance: A county welfare department has no statutory authority to assert a lien against the real property of a general assistance recipient who has received an excess of general assistance funds. The county may file a civil action for recovery of the overpayment. 43 A.G. Op. 10 (1989).

Indigent Residency Requirement for Nursing Home: A county may restrict entry into the county boarding or nursing home to only those indigent aged who are bona fide residents of the county as the obligation of the counties to provide institutional care to indigent aged appears to be limited to indigent county residents according to the language of 7-34-2302 (now repealed). 35 A.G. Op. 63 (1974).

Part Law Review Articles

Administrative Agencies—Department of Public Welfare—Discrimination Against Welfare Recipients Because of Source of Unemployment (State ex rel. Int'l Union of Mine, Mill & Smelter Workers v. Dept. of Public Welfare, 136 M 283, 347 P2d 727 (1959)), 21 Mont. L. Rev. 222 (1960).

53-3-111. Confidentiality.

Compiler's Comments

2001 Amendment: Chapter 571 in (1) near middle after "or obtained by the" deleted "county welfare department or the"; and in (2) near beginning after exception clause inserted "or as authorized by law", near middle after "concerning applicants for" substituted "indigent assistance" for "general relief", and near end substituted "a local office of public assistance" for "the department". Amendment effective July 1, 2001.

1993 Amendment: Chapter 410 at beginning of (1) and (2) inserted exception clause; and in (5), after "support", inserted "the purposes of 53-2-211"; and made minor changes in style.

53-3-115. Legislative findings.

Compiler's Comments

2019 Amendment: Chapter 41 in (3)(a)(ii) substituted "cash assistance" for "financial assistance". Amendment effective July 1, 2019.

2003 Amendment: Chapter 114 in (3)(a)(ii) substituted "financial assistance, as defined in 53-2-902" for "aid for dependent children". Amendment effective October 1, 2003.

2001 Amendments — Composite Section: Chapter 571 in (3)(b) at end after "with money derived from" substituted "a county mill levy" for "the county poor fund mill levy". Amendment effective July 1, 2001.

Chapter 574 in (3)(b) at end substituted "a county mill levy" for "the county poor fund mill levy". Amendment effective July 1, 2001.

1995 Amendment: Chapter 546 at end of (2) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Alternative Plans: Section 31, Ch. 561, L. 1993, provided: "(1) The department of social and rehabilitation services [now department of public health and human services] shall develop alternative structures for the administration of public assistance programs. At least three alternative plans must be prepared for presentation to the 54th legislature. One alternative must be administered primarily by each county, one alternative must be administered primarily by the state, and one alternative must provide for multicounty administration. Each plan must include an analysis of alternative financing methods, including a statewide mill levy.

(2) The department director shall appoint and consult with an advisory committee of not more than 12 persons in developing the plans. The committee should include representatives of the legislature, the low-income coalition, the human resource development councils, the Montana united Indian alliance, other state departments, county commissioners, and county welfare directors. The committee shall serve without pay.

(3) In preparing the recommendations, the department shall analyze the effect on persons previously receiving general assistance and on persons who would have received general assistance prior to the approval of [this act] [Ch. 561, L. 1993]. The department shall analyze methods of providing assistance to persons who do not qualify for federal assistance programs.

The department shall analyze the effectiveness of different general relief programs in the various counties." Section 31, Ch. 561, L. 1993, effective April 28, 1993.

Effective Date: Section 34(2), Ch. 561, L. 1993, provided that this section is effective July 1, 1993.

53-3-116. Indigent assistance — optional county program.

Compiler's Comments

2021 Amendment: Chapter 213 deleted former (6) that read: "(6) A county may seek reimbursement under 40-6-303, if applicable, for costs paid under this section"; in (6) after "deduct amounts that may be" deleted "recovered from an adult child of a deceased indigent or"; and made minor changes in style. Amendment effective October 1, 2021.

2001 Amendments — Composite Section: Chapter 571 in (4) at end substituted "a county mill levy as authorized by law" for "the county poor fund mill levy established in 53-2-322". Amendment effective July 1, 2001.

Chapter 574 in (4) at end substituted "a county mill levy" for "the county poor fund mill levy established in 53-2-322". Amendment effective July 1, 2001.

Effective Date: Section 34(2), Ch. 561, L. 1993, provided that this section is effective July 1, 1993.

CHAPTER 4
CHILDREN'S SERVICES

Chapter Compiler's Comments

1985 Resolution: House Joint Resolution 19, L. 1985, provided: "WHEREAS, teenage pregnancy and young, single parenting are recognized as a state as well as a national crisis, with 4 in 10 teenage girls becoming pregnant and with 97% of those who carry their pregnancies to term choosing to parent their children; and

WHEREAS, teenage pregnancy often leads to an increase in the school dropout rate, poor job skills, and a life of poverty; and

WHEREAS, young, single parenting often leads to early marriage, divorce, poverty, frustration, and child abuse or neglect; and

WHEREAS, the State of Montana sets a high priority on using available comprehensive services to assist young, single, pregnant women and young, single mothers and their children; and

WHEREAS, comprehensive services have proven capable of changing the cycle of poverty and abuse for 50% to 80% of the clients served; and

WHEREAS, the State of Montana wishes to take advantage of the opportunity of assisting these young women and their children in improving their lives.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature strongly urge the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] to provide priority referral and placement for comprehensive services for young, single, pregnant women and young, single mothers.

(2) That the Legislature urge that these comprehensive services include prenatal care, indepth counseling to explore options as to parenting or planning adoption, and parenting classes and supervision through which skills can be learned and practiced to provide the best possible parenting for the children involved."

Chapter Law Review Articles

Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place, Pruitt, 71 Mont. L. Rev. 1 (2010).

Chapter Collateral References

"Who is Minding the Children?", A Report to the 57th Legislature From the Children, Families, Health, and Human Services Interim Committee, Mont. Leg. Serv. Div. (2000).

Part 2
Temporary Assistance for Needy Families (TANF) — General Provisions

Part Administrative Rules

Title 37, chapter 78, ARM Temporary assistance for needy families (TANF).

Part Attorney General's Opinions

DECISIONS UNDER FORMER LAW

Payments Mandated Even if Poor Fund Depleted: A county shall make the payments mandated by 53-2-304(2) and (3), 53-2-322 (now repealed), 53-2-610 (now repealed), and 53-4-246 (now repealed) even if its county poor fund is depleted. The payments must be made by the county even if the deficiency in the poor fund resulted from inaccurate data on projected expenses provided by the county welfare director. 42 A.G. Op. 118 (1988).

Budgeting — Ward Indians: The state, rather than counties, has the duty under section 75-508, R.C.M. 1947, (recodified as 53-4-246, now repealed) to budget for indigent ward Indians who are eligible for "aid to dependent children whose father is unemployed". 34 A.G. Op. 50 (1972).

Federal Funding: It was permissible to make an amendment to 53-4-246 (now repealed) contingent upon the receipt of federal funds. 34 A.G. Op. 48 (1972).

Part Collateral References

Public Assistance Benefits and Convicted Felony Drug Offenders, A Report Prepared for the Children, Families, Health, and Human Services Interim Committee, Mont. Leg. Serv. Div. (2004).

53-4-201. Definitions.

Compiler's Comments

2019 Amendment: Chapter 41 inserted definitions of cash assistance and individual responsibility plan; deleted definitions of FAIM project and financial assistance that read: ""FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

"Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a)"; in definition of state plan substituted "the programs funded by temporary assistance for needy families" for "the state of Montana's FAIM project and other programs funded by temporary assistance for needy families"; and made minor changes in style. Amendment effective July 1, 2019.

2005 Amendment: (Version effective July 1, 2006) Chapter 184 inserted definition of approved educational program; and made minor changes in style. Amendment effective July 1, 2006.

2001 Amendment: Chapter 465 inserted definitions of assessment, financial assistance, and nonfinancial assistance; deleted former definition of FAIM financial assistance that read: ""FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash, services, and noncash assistance"; in definition of state plan after "FAIM" substituted "project" for "financial assistance program"; in definition of temporary assistance for needy families after "block grant" substituted "established pursuant to 42 U.S.C. 601, et seq." for "that funds FAIM financial assistance and other programs to strengthen and preserve families pursuant to Title IV of the Social Security Act, 42 U.S.C. 601, et seq., as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 deleted definition of aid to families with dependent children that read: "The term "aid to families with dependent children" means money payments made on behalf of a dependent child pursuant to Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.) and may include payments to meet the needs of a specified caretaker relative with whom the dependent child is living. The term also includes emergency assistance to families with children as provided by the federal Social Security Act"; in definition of dependent child substituted language in (a)(ii) and (b) for former (a)(ii) and (b) that defined dependent child as "(ii) a person under the age of 19 who is a student under the regulations prescribed by the department.

(b) The child described in subsection (3)(a)(i) or (3)(a)(ii) must be deprived of parental support or care by reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of a parent and be living with a specified caretaker relative, as defined in rules adopted by the department"; inserted definitions of FAIM financial assistance, family, state plan, and temporary assistance for needy families; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendments: Chapter 491 inserted introductory clause; in definition of aid to families with dependent children, near middle of first sentence after "needs of a", inserted "specified caretaker"; in definition of dependent child, in (b) near middle after "living with a", inserted "specified caretaker"; inserted definitions of FAIM project, federal poverty level, and specified caretaker relative; and made minor changes in style.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of social and rehabilitation services provided for in Title 2, chapter 15, part 22"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: At end of (1)(b) inserted reference to relative as defined by rule for "his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin in a place of residence maintained by one or more of such relatives as his or their own home"; in first sentence of (2) inserted corrected references to federal law and deleted references to medical care; and made changes in phraseology. Amendment effective July 1, 1989.

1987 Amendment: In (2) substituted "aid to families with dependent children" for "aid to dependent children".

1985 Amendment: In (1)(b) near beginning of sentence, inserted "continued unemployment"; and in (2) near middle of first sentence, inserted "pursuant to the federal Social Security Act"; see compiler's comments under 53-4-231.

1981 Special Session Amendment: Reduced age from 21 to 19 in (1)(a)(ii); deleted "continued unemployment" after "absence from the home" in (1)(b).

Attorney General's Opinions

County Power — "4-C's": Counties, jointly with the state Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), may contract with local "4-C's" projects to provide coordination and support of child abuse prevention and treatment services. 37 A.G. Op. 105 (1978).

53-4-202. Cash assistance to be in effect in all counties.

Compiler's Comments

2019 Amendment: Chapter 41 in (2) in first sentence substituted "the programs are administered" for "it is administered". Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 in (2) near beginning of first sentence after "needy families" deleted "block grant"; in (3) near beginning after "funded" inserted "at least in part", near middle after "needy families" deleted "block grant administered by the state of Montana", and at end after "needy families" substituted "unless an exception is expressly granted by federal law" for "block grant"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 in first sentence in (1), after "state plan and", substituted "programs described in the state plan" for "operation of aid to families with dependent children" and at end, after "state", deleted "and the administration and supervision of aid to families with dependent children must be uniform throughout the counties of the state"; inserted first sentence in (2) providing that temporary assistance for needy families block grant program need not be administered uniformly but requiring compliance with state plan and federal law; inserted (3) subjecting temporary assistance for needy families block grant program administered by state for benefit of enrolled tribal member to same rules and requirements applied to nontribal applicants or recipients; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendment: Chapter 491 inserted second sentence regarding the administration of demonstration projects; and made minor changes in style.

1987 Amendment: Substituted "aid to families with dependent children" for "aid to dependent children".

53-4-209. Montana parents as scholars program — department duties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 141, L. 2023. Amendment effective April 18, 2023.

2021 Amendment: See 2021 Session Law for amendment made by sec. 87, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2015 Amendment: Chapter 55 in (2)(a) substituted "high school equivalency diploma" for "general equivalency degree"; and in (4) substituted "student studying for a high school equivalency diploma" for "GED student". Amendment effective October 1, 2015.

2011 Amendment: Chapter 287 in (2)(a) near beginning after "funds" deleted "to the extent practicable", near middle substituted "provide assistance to eligible households" for "provide public assistance only to eligible individuals", and near end inserted "vocational training"; deleted former (2)(b) that read: "(b) establish or coordinate a skills training center pilot program in coordination with the board of regents or a community college district to provide training to individuals identified as appropriate through an assessment process"; in (2)(b) substituted "temporary assistance for needy families" for "public assistance from the program"; deleted former (2)(c)(i) that read: "(i) has completed an employee assessment conducted as provided by rule"; in (2)(b)(i) near end inserted "for temporary assistance for needy families"; deleted former (2)(c)(iv) that read: "(iv) completes a 180-hour work activity requirement in a 12-month period that may include work study, internships, or paid employment"; in (2)(c) at end after "level" deleted "or one vocational training program"; deleted former (2)(e) that read: "(e) amend the state plan submitted to the United States department of health and human services to provide that the state elects, as authorized by 42 U.S.C. 602(a)(1)(A)(ii), to define work as including all activities permitted under 42 U.S.C. 607 and satisfactory full-time school attendance"; in (3) substituted current text for "The department shall provide for dependent day care while the recipient is in a work activity"; in (4) in two places substituted "participant" for "recipient"; inserted (4)(b) regarding definition of full-time student; in (4)(c) near middle inserted "or be making satisfactory progress as defined by the institution in which the participant is enrolled"; deleted former (4)(c) that read: "(c) shall cooperate with paternity and child support requirements"; deleted former (4)(d) that read: "(d) shall agree to relocate after graduation, if necessary, to seek employment in a job for which the education was intended"; inserted (5) regarding number of participants in program; inserted (6) regarding annual reports; and made minor changes in style. Amendment effective April 28, 2011.

Effective Date: Section 6, Ch. 184, L. 2005, provided: "[This act] is effective July 1, 2006."

53-4-210. Tribal family assistance plan.

Compiler's Comments

2011 Amendment: Chapter 361 in (3)(a) after "proportionate state share" deleted "for cash benefits"; inserted (3)(b) regarding tribal use of proportionate state share; and made minor changes in style. Amendment effective May 9, 2011.

Effective Date: Section 4, Ch. 509, L. 1999, provided that this section is effective on passage and approval. Approved April 28, 1999.

53-4-211. Administration of programs funded under temporary assistance for needy families block grant.

Compiler's Comments

2001 Amendment: Chapter 395 in (2) reduced fiscal effort equivalent to 75% of historic state expenditures from 77% of historic state expenditures. Amendment effective July 1, 2001.

Retroactive Applicability: Section 3, Ch. 395, L. 2001, provided: "[Section 1] [53-4-211] applies retroactively, within the meaning of 1-2-109, to July 1, 1999."

1999 Amendments — Composite Section: Chapters 341 and 567 in (2) substituted "77% of its historic state expenditures, as defined in 42 U.S.C. 609(a)(7)(B)(iii), governing maintenance" for "80% of the federally calculated maintenance". Chapter 341 amendment effective July 1, 1999, and terminates June 30, 2001. Termination date rendered void by Ch. 567 amendment. Chapter 567 amendment effective May 5, 1999.

1997 Amendment: Chapter 486 in (1), after "supervision", substituted "of programs funded under the temporary assistance for needy families block grant" for "of aid to families with dependent children"; inserted (2) requiring state to maintain minimum fiscal effort equivalent of 80% of federally calculated maintenance of effort for grant; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1987 Amendment: Substituted "aid to families with dependent children" for "aid to dependent children".

53-4-212. Department to adopt rules.

Compiler's Comments

2019 Amendment: Chapter 41 in (2)(f) substituted "cash assistance" for "financial assistance"; in (2)(h) substituted "an individual responsibility plan" for "a family investment agreement, as provided for in 53-4-606" and substituted "under the plan" for "under the agreement, including the length of the period of ineligibility, if any"; in (2)(i) substituted "a temporary assistance to needy families employment and training program" for "the employment and training demonstration project"; deleted former (2)(j) that read: "(j) eligibility for and terms and conditions of extended medical assistance benefits"; in (2)(o) in two places substituted "child support" for "child and medical support"; in (3) at beginning deleted "By October 1, 2009"; and made minor changes in style. Amendment effective July 1, 2019.

2009 Amendments — Composite Section: Chapter 486 in (1) substituted "adopt" for "make"; in (2) at beginning of introductory clause inserted "Subject to subsection (3)"; inserted (3) requiring the adoption of rules establishing a net income limit; and made minor changes in style. Amendment effective July 1, 2009.

Chapter 489 in (2) at beginning inserted "Subject to subsection (4)"; inserted (4) concerning raising eligibility standard for cash assistance benefits; and made minor changes in style. Amendment effective May 14, 2009, and terminates June 30, 2011.

2005 Amendments — Composite Section: (Version effective July 1, 2006) Chapter 184 inserted (2)(u) requiring rules on approved educational programs, appropriate educational courses of study, employee assessment instruments, and administration of the parents as scholars program; and made minor changes in style. Amendment effective July 1, 2006.

Chapter 230 inserted (2)(t) requiring the adoption of rules regarding random drug testing or reporting requirements for persons who are required to comply with 53-4-231(3); and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 465 in (1) at end substituted "public assistance programs" for "the FAIM financial assistance program and other programs funded under the temporary assistance for needy families block grant"; in (2)(b) at end inserted "and the length of time for which benefits may be granted"; in (2)(e) after "relatives" deleted "participating in the community services program", after "including" inserted "cooperation with assessments", and after "hours of" substituted "participation required for each month, specific activities required to address employment barriers" for "community service work per month"; in (2)(f) after "assistance for" substituted "financial assistance recipients" for "FAIM project participants"; in (2)(g) substituted "eligibility criteria and participation requirements for nonfinancial assistance recipients" for "maximum amounts of one-time only cash payments for special employment-related needs and the length of time that a family is required to remain off cash assistance after a payment is received"; deleted former (2)(h) that read: "(h) exemptions from time limits in pathways and the community services program"; at beginning of (2)(h) after "terms of" inserted "ineligibility or sanctions against", after "caretaker" substituted "relative or other family member who fails" for "relative's or other family member's ineligibility for assistance because of failure", after "investment agreement" inserted "as provided for in 53-4-606", and at end inserted "if any"; in (2)(i) after "participation in" deleted "and exemptions from participation in and procedures and policies of"; in (2)(j) after "extended" deleted "child care and"; in (2)(l) after "failure" inserted "or refusal" and after "comply with the" substituted "rules or requirements of a public assistance program" for "program rules or requirements"; in (2)(s) after "continued when" inserted "an adult or"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 in (1), after "administration", substituted "of the FAIM financial assistance program and other programs funded under the temporary assistance for needy families block grant" for "of the aid to families with dependent children program, including the FAIM project"; deleted (2)(c) that required adoption of rules concerning "what constitutes deprivation of parental support or care sufficient to qualify a child as dependent"; at beginning of (2)(d) inserted "procedures and policies for employment and training programs" and after "participation" substituted "in employment and training programs" for "in the JOBS program"; deleted former (2)(f),(2)(g), and (2)(g)(i) regarding adoption of rules that read: "(f) procedures and policies of the JOBS program;

(g) special requirements or criteria applicable to participants in the FAIM project, such as:

(i) community service"; in (2)(h), after "pathways", inserted "and the community services program"; in (2)(i), after "relative's", inserted "or other family member's" and after "comply with" substituted "the individual's obligations" for "the specified caretaker relative's obligations"; inserted (2)(n) through (2)(t) requiring adoption of rules regarding exemptions from 60-month assistance limitation, individuals as members of assistance unit, categories of eligible aliens, assignment of support rights in cooperation with establishing paternity, eligibility requirements to strengthen families, special eligibility related to teenage parents, and assistance for dependent child temporarily absent from home; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendment: Chapter 491 in (1), at end, substituted "the administration of the aid to families with dependent children program, including the FAIM project" for "carrying out the provisions of this part"; inserted (2) regarding the adoption of rules; and made minor changes in style.

1995 Statement of Intent: The statement of intent attached to Ch. 491, L. 1995, provided: "A statement of intent is required for this bill because [section 11] [53-2-901] grants the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules for the administration of the food stamp program.

(1) It is the intent of the legislature that the department adopt rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amounts;

(c) certification periods;

(d) reporting requirements;

(e) work registration and employment and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;

(g) disqualification because of intentional program violations, voluntarily quitting a job without good cause, or any other violation of program rules;

(h) penalties applicable to recipients of aid to families with dependent children who have been sanctioned because of failure to meet any requirement of the aid to families with dependent children program; and

(i) special requirements or criteria applicable to participants in the families achieving independence in Montana (FAIM) project.

(2) It is intended that the rules adopted by the department comply with federal requirements under the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq., and 7 CFR 271 through 285, as may be amended, or, in the event that waivers of federal law have been granted by the food and nutrition service of the U.S. department of agriculture, with the waivers.

(3) [Section 19] [53-4-212] revises the department's rulemaking authority for the aid to families with dependent children program, including the FAIM project.

It is the intent of the legislature that the department adopt rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance and methods for computing benefit amounts;

(c) deprivation of parental support or care for purposes of qualifying as a dependent child;

(d) the degree of kinship required for a person to qualify as a specified caretaker relative with whom a child may live to be eligible for assistance;

(e) reporting requirements;

(f) requirements for participation in the JOBS program and exemptions from participation;
(g) procedures and policies of the JOBS program;
(h) sanctions, disqualification, or other penalties for failure to comply with program rules or requirements; and
(i) special requirements or policies applicable to participants in the FAIM project.

(4) It is intended that rules adopted under [section 19] [53-4-212] comply with federal requirements under Title IV of the Social Security Act, 42 U.S.C. 601, et seq., and 45 CFR parts 200 through 499, as amended, or, in the event that waivers of federal law have been granted by the U.S. department of health and human services, with the waivers.

(5) [Section 26] [53-6-113] grants the department additional rulemaking authority. It is the intent of the legislature that the department adopt rules specifying the income limits for eligibility for extended medical assistance for persons receiving aid to families with dependent children under the FAIM project who lose eligibility because of increased income and specifying the length of time for which they may receive extended medical assistance.

It is intended that rules adopted under [section 26] [53-6-113] comply with waivers of federal medicaid law granted by the secretary of the U.S. department of health and human services pertaining to the FAIM project and promote the goals of the FAIM project of self-sufficiency and responsibility of participants. In adopting the rules, the department may consider the amount of funds appropriated by the legislature for the Montana medicaid program."

Administrative Rules

Title 37, chapter 5, ARM Fair hearings and contested case proceedings.
Title 37, chapter 78, ARM Temporary assistance for needy families (TANF).
Title 37, chapter 80, ARM Child care assistance.

53-4-213. Department rules binding.

Compiler's Comments

2001 Amendment: Chapter 571 at end substituted "local offices of public assistance" for "county departments of public welfare"; and made minor changes in style. Amendment effective July 1, 2001.

53-4-214. Distribution of copies of law and forms by department.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 465 in two places substituted references to local offices of public assistance for references to county welfare departments and at end substituted "administration of public assistance programs" for "FAIM financial assistance and other programs funded under the temporary assistance for needy families block grant"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 571 near beginning and near middle substituted references to local office of public assistance for references to county welfare department. Amendment effective July 1, 2001.

Coordination: Section 42, Ch. 465, L. 2001, provided: "If House Bill No. 101 is not passed and approved, then all references in [this act] to local offices of public assistance are changed to references to county welfare offices." House Bill No. 101 was not passed and approved; therefore, the references to local offices of public assistance in the amendment to this section were changed to references to county welfare offices. However, see Ch. 571 amendment.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 at end of section, after "relation", substituted "to the FAIM financial assistance and other programs funded under the temporary assistance for needy families block grant" for "to aid to families with dependent children"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1987 Amendment: Substituted "aid to families with dependent children" for "aid to dependent children".

53-4-221. State administration.

Compiler's Comments

2019 Amendment: Chapter 41 at beginning substituted "The department" for "The local office of public assistance" and at end after "block grant" deleted "subject to the powers, duties, and functions prescribed for the office in chapter 2 of this title"; and made minor changes in style. Amendment effective July 1, 2019.

2003 Amendment: Chapter 114 at beginning substituted "local office of public assistance" for "county department of public welfare" and near end substituted "office" for "county department"; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 486 near middle, after "supervision of", substituted "programs funded under the temporary assistance for needy families block grant" for "aid to families with dependent children"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1987 Amendment: Substituted "aid to families with dependent children" for "aid to dependent children".

53-4-222. County administration subject to rules prescribed by department.

Compiler's Comments

2003 Amendment: Chapter 114 at beginning substituted "local office of public assistance" for "county department of public welfare". Amendment effective October 1, 2003.

1995 Amendment: Chapter 546 near end substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-4-231. Eligibility.

Compiler's Comments

2019 Amendment: Chapter 41 in (1)(b)(i) substituted "individual responsibility plan" for "family investment agreement, as provided for in 53-4-606"; in (3) after "conditions of supervision" inserted "including participating in treatment if required" and after "felony conviction" deleted "and if the person is actively participating in treatment, if required"; in (4)(d) in two places substituted "child support rights" for "child and medical support rights" and substituted "obtaining child support" for "obtaining child or medical support"; in (4)(e)(ii) substituted "individual responsibility plan" for "family investment agreement required by the department under 53-4-606"; in (5) in two places substituted "cash assistance" for "financial assistance"; and made minor changes in style. Amendment effective July 1, 2019.

2005 Amendment: Chapter 230 inserted (3) exempting individuals convicted of a felony drug offense from the federal prohibition on eligibility for benefits under food stamps or temporary assistance for needy families under certain conditions; deleted former (3)(j) that read: "(j) an individual convicted after August 22, 1996, of any offense that is classified as a felony and that has as an element the possession, use, or distribution of a controlled substance as defined in section 102(6) of the Controlled Substance Act, 21 U.S.C. 802(6)"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 465 inserted (1)(b)(i) allowing assistance to a caretaker who enters into a family investment agreement; inserted (1)(b)(ii) allowing assistance to a caretaker who cooperates in all assessments and screening; in (3)(b) at beginning inserted "an adult or"; inserted (3)(e) providing that assistance is not available to families in which the caretaker fails or refuses to cooperate in screening or assessment or enter into a family investment agreement; in (4) near beginning after "eligible for" inserted "financial", after "received" inserted "financial", after "needy families" deleted "block grant", and at end after "consecutive" substituted "unless an exception is expressly granted by federal law" for "except as provided by the department by rule in accordance with section 103 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 608"; in (5) at end after "needy families" deleted "block grant"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 at beginning of (1) substituted "Subject to the provisions of subsections (2) through (5), assistance may" for "Assistance shall" and after "part" substituted (1)(a) through (1)(e) outlining eligible dependents for "any dependent child, as defined in 53-4-201, who is in need of such assistance.

(2) Aid to families with dependent children assistance payments may be made to"; inserted (2) describing assistance for which noncitizens are eligible; deleted former (3) that read: "(3) Aid to families with dependent children shall be granted to or for the care of children of unemployed

parents who would not otherwise be entitled to such aid because the child is living in the home with both parents. The department may adopt rules to administer the grant of assistance to children of unemployed parents pursuant to Title IV, section 407, of the federal Social Security Act (42 U.S.C. 607), as amended"; inserted (3) outlining persons not eligible for assistance; inserted (4) providing when family not eligible for assistance; inserted (5) providing for interpretation of section; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1987 Amendments: Chapter 370 in (2) and (3) substituted "aid to families with dependent children" for "aid to dependent children".

Chapter 403 in first sentence of (3), after "care of children", inserted "of unemployed parents" and in second sentence, after "administer", substituted "the grant of assistance to children of unemployed parents" for "this program".

1985 Amendment — No Definition of "Program": Inserted (3) requiring aid to dependent children to or for the care of children who would not otherwise be entitled to aid because the child is living in the home with both parents and allowing the Department to adopt rules to administer the program, which was enacted as two separate sections of Ch. 53, L. 1985, and was codified as one subsection for logical placement and convenience to the user. Chapter 53, L. 1985, enacting this subsection also amended 53-4-201 to include "continued unemployment" as an eligibility criteria for aid to dependent children. The title of Ch. 53, L. 1985, read, in part: "An act adding parental unemployment to the eligibility criteria for aid to dependent children". The "program" referred to in the second sentence of (3) is apparently a reference to aid to dependent children funding for children of continuously unemployed parents, although there is no substantive language establishing or defining such a program. The catchline to sec. 2, Ch. 53, L. 1985, referred to a "program". It read: "Aid to dependent children — unemployed parent program". However, catchlines are not part of the legislative text and do not have the force and effect of law; see 1-11-103.

Statement of Intent: The statement of intent attached to Senate Bill 122 (Ch. 53, L. 1985) read: "Because section 3 [53-4-231(3)] delegates rulemaking authority to the department of social and rehabilitation services [now department of public health and human services], a statement of legislative intent is required. It is the intent of the legislature that the department adopt rules to administer this program pursuant to Title IV, section 407 of the Social Security Act, as amended."

1981 Special Session Amendment: Inserted (2) providing assistance payments for certain needy pregnant women.

Case Notes

Child Care Deduction Applicable Only to Costs Actually Paid: ARM 46.10.512 (now repealed) is consistent with and properly applies 42 U.S.C.A. 602(a)(8)(A)(iii), relating to earned income disregards; therefore, only day-care costs actually paid should be allowed as a deduction from gross income when figuring AFDC payments. D'Ewart v. Neibauer, 228 M 335, 742 P2d 1015, 44 St. Rep. 1578 (1987).

Collateral References

Public Assistance Benefits and Convicted Felony Drug Offenders, A Report Prepared for the Children, Families, Health, and Human Services Interim Committee, Mont. Leg. Serv. Div. (2004).

53-4-232. Application for assistance.

Compiler's Comments

2019 Amendment: Chapter 41 at end of first sentence substituted "department" for "local office of public assistance in the county in which the dependent child is residing". Amendment effective July 1, 2019.

2003 Amendment: Chapter 114 near middle of first sentence substituted "local office of public assistance in the county" for "county department of the county"; and made minor changes in style. Amendment effective October 1, 2003.

53-4-233. Eligibility determination for applications.

Compiler's Comments

2019 Amendment: Chapter 41 in (1) substituted current text concerning requirements for eligibility determinations for former text that read: "Whenever a local office of public assistance receives an application for assistance under this part, an eligibility determination must be promptly made by the local office of public assistance"; in (3) deleted former last sentence that read: "Each applicant must receive written notice of the decision concerning the applicant's request for assistance"; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendments — Composite Section: Chapter 465 in first sentence in two places substituted references to local office of public assistance for references to county department, at beginning of second sentence after "Each applicant" inserted "shall participate in any screening required by the department and", and near beginning of third sentence after "completion of an" substituted "eligibility determination and any required screening" for "investigation". Amendment effective July 1, 2001.

Chapter 571 in first sentence near beginning and near end substituted "local office of public assistance" for references to county department of public welfare and in first and second sentences near middle substituted "eligibility determination" for "investigation". Amendment effective July 1, 2001.

Coordination: Section 42, Ch. 465, L. 2001, provided: "If House Bill No. 101 is not passed and approved, then all references in [this act] to local offices of public assistance are changed to references to county welfare offices." House Bill No. 101 was not passed and approved; therefore, references to local office of public assistance in the amendment to this section were changed to references to county welfare office. However, see Ch. 571 amendment.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 at end of first sentence, after "promptly made", deleted "The investigation of each application for aid to families with dependent children shall be conducted"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1989 Amendment: In first sentence, after "receives", deleted "a notification of the dependency of a child or" and inserted reference to part; in second sentence substituted reference to county department of public welfare for "county board through a staff worker of the county department"; combined third and fourth sentences and deleted language in third sentence requiring county welfare board to determine eligibility, amount, and beginning date of assistance; and made minor change in phraseology. Amendment effective July 1, 1989.

1987 Amendment: Substituted "aid to families with dependent children" for "aid to dependent children".

53-4-241. Amount of assistance determined by department rules.

Compiler's Comments

2019 Amendment: Chapter 41 substituted "cash assistance" for "financial assistance". Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 near beginning after "amount of" substituted "financial assistance or nonfinancial assistance" for "FAIM financial assistance". Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 near beginning, after "amount of", substituted "FAIM financial assistance" for "aid to families with dependent children", near middle, after "case", deleted "including cases in which the recipient is participating in the FAIM project", and at end, after "department", deleted "as required by the federal Social Security Act"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendment: Chapter 491 near middle inserted "including cases in which the recipient is participating in the FAIM project"; and made minor changes in style.

1989 Amendment: Near middle deleted language providing that the county welfare board determine the amount by Department rules and standards. Amendment effective July 1, 1989.

1987 Amendment: Substituted "aid to families with dependent children" for "aid to dependent children".

Case Notes

Child Care Deduction Applicable Only to Costs Actually Paid: ARM 46.10.512 (now repealed) is consistent with and properly applies 42 U.S.C.A. 602(a)(8)(A)(iii), relating to earned income disregards; therefore, only day-care costs actually paid should be allowed as a deduction from gross income when figuring AFDC payments. D'Ewart v. Neibauer, 228 M 335, 742 P2d 1015, 44 St. Rep. 1578 (1987).

53-4-242. Periodic reconsideration of assistance.

Compiler's Comments

1995 Amendment: Chapter 546 near end substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: In first sentence deleted reference to reconsideration by county department; and deleted second sentence that provided that amount of assistance may be changed or withdrawn if county or Department finds sufficient change in child's circumstances. Amendment effective July 1, 1989.

53-4-244. Payments to person interested in child's welfare in lieu of special guardianship.

Compiler's Comments

2019 Amendment: Chapter 41 substituted "department" for "local office of public assistance". Amendment effective July 1, 2019.

2001 Amendment: Chapter 571 near middle after "another person found by the" substituted "local office of public assistance" for "county department"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 546 at end substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1981 Amendment: Deleted bond requirement for persons who are protective payees for needy children from the end of the section.

Statement of Intent: The statement of intent attached to HB 80 (Ch. 398, L. 1981) provided: "Although a statement of intent is not specifically needed for this bill, the legislature felt that it was necessary to express its intention regarding the handling of protective payees for those recipients of public assistance who need aid in handling their finances. Because this bill removes the bonding requirement for protective payees, it was felt to be necessary to give some guidance on the handling of protective payees. The attached draft has been approved as a suitable approach to the protective payee situation. It is intended that SRS [now Department of Public Health and Human Services] handle protective payees as described in the attached draft or in a manner substantially similar.

AFDC PROGRAM PROTECTIVE PAYEE

A protective payee program is established to assure that AFDC payments are used in a manner consistent with the purpose of assistance in providing for the best interest of the child/children. Montana SRS [now Department of Public Health and Human Services] would establish the following procedure to administer the protective payee program:

1. Establish Need — When there is documented evidence that a caretaker mismanages funds and that the needs of the child are not consistently met, a protective payee may be established.

2. Selection of Payee — The protective payee must be reliable and capable of managing household funds.

Restrictions — The payee can be a family member, friend or staff member of a community or department agency. Ineligible persons would be ET staff, vendors of goods or services dealing directly with the client and specific restricted personnel of the agency. Those restricted include County Commissioners, executive heads of public welfare departments, special investigative or resource staff, staff handling fiscal processes and landlords.

Selection of Payee — The recipient may participate in the selection of the payee, following the selection criteria.

A contractual agreement shall be entered into between the payee and the county outlining the duties and responsibilities of each.

3. Monitor of Payee — The Department shall establish within reasonable guidelines, the method in which the payee shall carry out his responsibilities. Shelter, food and personal need of payment shall be provided in a manner designed to best meet the needs of the recipient.

A record of payments shall be kept on a regular basis by the payee. This record shall be accessible to the Department for review as frequently as indicated by circumstances, but at least every three months. The review shall specifically address the continuing need for a protective payee, and the way the responsibilities are being carried out.

4. Termination of Protective Payee — Termination shall occur when:

a. The caretaker is determined able to assume management of funds.

b. It appears that the protective payee arrangement likely will continue beyond two years. Judicial appointment of a guardian shall be sought.

5. Fair Hearing — Opportunity for a Fair Hearing shall be given to an individual who requests it as a result of any protective payee procedure.

A contractual agreement between the County Welfare Department and protective payee would be made. That agreement would designate the payee, the recipient, and the responsibilities and duties of both the payee and County Welfare Department. A statement would be included designating the payee's understanding of his personal liability in the event of irresponsible actions taken in the role of the payee.

PROTECTIVE PAYEE AGREEMENT

I, ..., hereby agree to accept the responsibilities and duties of Protective Payee for .... until such time as I am relieved of said duties.

By signing this agreement I understand that my duties include providing for the shelter, food, and personal needs of .... by properly disbursing the funds provided by the AFDC payment provided by The Montana State Department of Social and Rehabilitation Services [now Department of Public Health and Human Services].

I further acknowledge that my responsibilities include maintaining a regular record of receipts and method of disbursement to be available to the (county) Department of Public Welfare for review.

I understand that improperly exercising the responsibilities of Protective Payee shall result in the penalties as included in .... MCA.

(SEAL)

....
Signature
....
Date"

53-4-248. Parents liable to department for public assistance payments.

Compiler's Comments

1997 Amendment: Chapter 486 in (4) substituted "provided in this section" for "herein provided"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

Case Notes

Child Support Not Court Ordered — Obligation Not Relieved: In an action brought by the Department of Revenue (now Department of Public Health and Human Services) pursuant to 40-5-221 and 53-4-248 to recoup funds paid by the state to support a father's two children, summary judgment for the Department was upheld. Although the trial court's prior dissolution and custody decree did not provide for support payments, a parent's legal and moral obligation to support his children was not relieved, nor was his obligation relieved by laches. St. v. Hubbard, 222 M 156, 720 P2d 1177, 43 St. Rep. 1135 (1986).

AFDC Payments — Father Not Absolved of Duty to Support Minor Children: The District Court did not abuse its discretion in ordering child support and maintenance. It is the legal as well as moral duty of husband to support his minor children. He is not absolved from this duty by public assistance provided to his children by a state agency in the form of AFDC payments. The District Court was not punishing husband for perceived marital misconduct. In re Marriage of Hickey, 213 M 38, 689 P2d 1222, 41 St. Rep. 1931 (1984).

State — Third "Person": Including the state as a "person" in the context of 40-6-215 was held proper in an action to recover amounts paid through aid to dependent children for the support and necessaries of children as it was beneficial to the state and general public. Dept. of Social and Rehabilitation Services v. Hultgren, 168 M 257, 541 P2d 1211 (1975).

53-4-260. Child support payment pass-through and income disregard.

Compiler's Comments

Effective Date: Section 3, Ch. 558, L. 2005, provided that this section is effective July 1, 2005.

Part 6

Temporary Assistance for Needy Families (TANF) — Cash Assistance

Part Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 491, L. 1995, provided: "A statement of intent is required for this bill because [section 11] [53-2-901] grants the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules for the administration of the food stamp program.

(1) It is the intent of the legislature that the department adopt rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amounts;

(c) certification periods;

(d) reporting requirements;

(e) work registration and employment and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;

(g) disqualification because of intentional program violations, voluntarily quitting a job without good cause, or any other violation of program rules;

(h) penalties applicable to recipients of aid to families with dependent children who have been sanctioned because of failure to meet any requirement of the aid to families with dependent children program; and

(i) special requirements or criteria applicable to participants in the families achieving independence in Montana (FAIM) project.

(2) It is intended that the rules adopted by the department comply with federal requirements under the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq., and 7 CFR 271 through 285, as may be amended, or, in the event that waivers of federal law have been granted by the food and nutrition service of the U.S. department of agriculture, with the waivers.

(3) [Section 19] [53-4-212] revises the department's rulemaking authority for the aid to families with dependent children program, including the FAIM project.

It is the intent of the legislature that the department adopt rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance and methods for computing benefit amounts;

(c) deprivation of parental support or care for purposes of qualifying as a dependent child;

(d) the degree of kinship required for a person to qualify as a specified caretaker relative with whom a child may live to be eligible for assistance;

(e) reporting requirements;

(f) requirements for participation in the JOBS program and exemptions from participation;

(g) procedures and policies of the JOBS program;

(h) sanctions, disqualification, or other penalties for failure to comply with program rules or requirements; and

(i) special requirements or policies applicable to participants in the FAIM project.

(4) It is intended that rules adopted under [section 19] [53-4-212] comply with federal requirements under Title IV of the Social Security Act, 42 U.S.C. 601, et seq., and 45 CFR parts 200 through 499, as amended, or, in the event that waivers of federal law have been granted by the U.S. department of health and human services, with the waivers.

(5) [Section 26] [53-6-113] grants the department additional rulemaking authority. It is the intent of the legislature that the department adopt rules specifying the income limits for eligibility for extended medical assistance for persons receiving aid to families with dependent children under the FAIM project who lose eligibility because of increased income and specifying the length of time for which they may receive extended medical assistance.

It is intended that rules adopted under [section 26] [53-6-113] comply with waivers of federal medicaid law granted by the secretary of the U.S. department of health and human services pertaining to the FAIM project and promote the goals of the FAIM project of self-sufficiency and responsibility of participants. In adopting the rules, the department may consider the amount of funds appropriated by the legislature for the Montana medicaid program."

Part Administrative Rules

Title 37, chapter 78, ARM Temporary assistance for needy families (TANF).

53-4-602. Definitions.

Compiler's Comments

2019 Amendment: Chapter 41 substituted current definition of cash assistance for former definition that read: ""Cash assistance" means monetary payments to a recipient of financial assistance to meet basic needs, such as shelter, utilities, clothing, and personal needs"; deleted definition of FAIM project that read: ""FAIM project" means the families achieving independence in Montana project, including a financial assistance part, a food stamp part administered under the Food Stamp Act of 1977, 7 U.S.C. 2026, and a medicaid part administered pursuant to the Social Security Act, 42 U.S.C. 1315"; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 in definition of cash assistance after "recipient of" deleted "FAIM"; in definition of FAIM project after "including a" deleted "FAIM" and after "assistance part" deleted "established in 53-4-603"; and inserted definition of section 1931 medicaid benefits. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 in definitions of cash assistance and FAIM project substituted "FAIM financial assistance" for "aid to families with dependent children"; deleted definition of JOBS program that read: ""JOBS program" means the job opportunities and basic skills training program established in 53-4-703"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

53-4-611. Child-care assistance.

Compiler's Comments

2019 Amendment: Chapter 41 in (1) and (2) substituted "cash assistance" for "financial assistance"; in (2) substituted "individual responsibility plan" for "family investment agreement under 53-4-606"; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 at beginning of first sentence deleted "In the job supplement program component of the FAIM project" and after "assistance to all" substituted "families receiving financial assistance" for "single-parent families" and in second sentence after "assistance may" deleted "at the department's discretion", after "provided to" substituted "families receiving financial assistance" for "two-parent families", and near end after "engage in" substituted "the activities required by a family investment agreement under 53-4-606" for "paid employment"; deleted former (2) and (3) that read: "(2) In the pathways component of the FAIM project, the department may provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement and if funding is available. Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement and if funding is available.

(3) In the community services program component of the FAIM project, the department may provide child-care assistance to all single-parent families if child care is necessary to allow the parent to participate in an activity required by the family investment agreement and if funding is available. Child-care assistance may, at the department's discretion, be provided to two-parent families if child care is necessary to allow either or both of the parents to participate in an activity required by the family investment agreement and if funding is available"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 in first sentence in (1) and (2), after "department", substituted "may" for "shall"; at end of first and second sentences in (1), (2), and (3) inserted "and if funding is available"; and deleted former second sentence in (2) that read: "However, child care assistance for single-parent families to enable the parent to participate in postsecondary education is not guaranteed and may be provided only if funding is available." Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

53-4-613. Employment and training program.

Compiler's Comments

2019 Amendment: Chapter 41 substituted "cash assistance" for "financial assistance", substituted "eligibility conditions" for "conditions of the family investment agreement required under 53-4-606", and deleted former last sentence that read: "The department may count education activities as an allowable work activity in a family investment agreement for up to 60 months in a FAIM project cash assistance program consistent with federal law." Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 near middle of first sentence after "appropriate for a" substituted "recipient of financial assistance, the recipient may" for "participant in pathways, the participant may" and at end after "agreement" inserted "required under 53-4-606" and inserted second sentence allowing the department to count education activities as an allowable work activity in a family investment agreement for up to 60 months in a FAIM project cash assistance program; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 in two places substituted references to employment and training program for "JOBS program"; deleted (2) that read: "(2) If waivers of federal law are granted by the secretary of the U.S. department of health and human services, the exemptions from participation in the JOBS program provided in section 201 of the federal Family Support Act of 1988, 42 U.S.C. 602(a)(19), may not apply to recipients of aid to families with dependent children benefits who are participating in the FAIM employment and training demonstration project"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

Part 7
Temporary Assistance for Needy Families (TANF) — Training

Part Compiler's Comments

Coordination Requirements — Consolidation of Programs Authorized: Section 12, Ch. 550, L. 1989, provided: "(1) The governor shall assure that program activities under [this act] are coordinated with programs administered under the federal Job Training Partnership Act and any other relevant employment, training, education, or work program in this state.

(2) The governor may consolidate the program established in [section 3] [53-4-703] with other programs in order to maximize coordination of program activities as required in subsection (1) and to prevent overlapping and duplication of services.

(3) Where adult basic education programs exist, basic and remedial education services provided for in [section 4] [53-4-705] must be coordinated, through contracts or cooperative agreements, with state or local agencies having responsibility for programs administered under the federal Adult Education Act, Public Law 100-297."

Severability: Section 17, Ch. 550, L. 1989, was a severability clause.

Audit: Section 18, Ch. 550, L. 1989, provided: "The legislative auditor shall conduct a performance audit of the program established in [section 3] [53-4-703] and report the results of the audit to the 53rd legislature."

Interim Study Committee Bill: Chapter 550, L. 1989, enacted by SB 70, was introduced by request of the Joint Interim Subcommittee on Welfare. See "Welfare in Montana: A Time for Reform", A Report to the 51st Legislature, Mont. Leg. Council (Dec. 1988).

Part Administrative Rules

Title 37, chapter 78, subchapter 8, ARM TANF employment and training.

53-4-702. Definitions.

Compiler's Comments

2019 Amendment: Chapter 41 inserted definition of cash assistance; deleted definitions of FAIM project and financial assistance that read: ""FAIM project" means the families achieving independence in Montana project as established in 53-4-601.

(a) "Financial assistance" means the programs funded, in part, with temporary assistance for needy families, as provided in 45 CFR 260.31(a).

(b) The term does not include nonfinancial assistance"; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 deleted former definition of FAIM financial assistance that read: ""FAIM financial assistance" means the program that provides participants in the job supplement program, pathways program, and community services program of the FAIM project with benefits that may include cash payments, services, and noncash assistance"; inserted definitions of financial assistance, nonfinancial assistance, and temporary assistance for needy families; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 deleted definition of aid to families with dependent children that read: ""Aid to families with dependent children" has the same meaning as provided in 53-4-201"; inserted definition of FAIM financial assistance; deleted definitions of Family Support Act of 1988 and JOBS program that read: ""Family Support Act of 1988" means the federal Family Support Act of 1988, Public Law 100-485, as amended" and ""JOBS program" or "program" means the job opportunities and basic skills training program established in 53-4-703"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendments: Chapter 491 inserted definition of FAIM project; and made minor changes in style.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of social and rehabilitation services provided for in Title 2, chapter 15, part 22". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 19(1), Ch. 550, L. 1989, provided that this section is effective July 1, 1990.

53-4-703. Employment and training program established.

Compiler's Comments

1997 Amendment: Chapter 486 after "administer" substituted language regarding intensive employment in accordance with federal Reconciliation Act for "a job opportunities and basic skills training (JOBS) program that meets the requirements of section 201 of the federal Family Support Act of 1988 (42 U.S.C.602(a)(19), 681 through 686); and deleted (2) that read: "(2) The purpose of the program is to provide recipients of aid to families with dependent children the education, training, and employment that will help them avoid long-term welfare dependency." Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

Effective Date: Section 19(1), Ch. 550, L. 1989, provided that this section is effective July 1, 1990.

53-4-704. Placement of cash assistance recipients for purpose of training.

Compiler's Comments

2019 Amendment: Chapter 41 in (1) substituted "individual receiving cash assistance" for "individual receiving financial assistance or participating in the food stamp program". Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 in (1) near middle after "individual" substituted "receiving financial assistance or participating in the food stamp program" for "participating in the FAIM project"; in (2) near beginning after "individual" deleted "participating in the FAIM project"; and in (3) at end of third sentence substituted "program" for "FAIM project". Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

Effective Date: Section 6, Ch. 124, L. 1999, provided: "[This act] is effective July 1, 1999."

Applicability: Section 7, Ch. 124, L. 1999, provided: "[This act] applies to individuals participating in the FAIM project on and after July 1, 1999."

53-4-705. Services and activities.

Compiler's Comments

2019 Amendment: Chapter 41 substituted "cash assistance" for "financial assistance". Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 near middle after "recipients of" deleted "FAIM". Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 at end of section, after "recipients of", substituted "FAIM financial assistance as specified by the department by rule" for "aid to families with dependent children. Such services and activities may include:

(a) appropriate educational activities, including:

(i) high school education or its equivalent, combined with training as needed;

(ii) basic and remedial education to help participants achieve a basic literacy level; and

(iii) education for individuals with limited English language proficiency;

(b) job skills training;

(c) job readiness activities to help prepare participants for work;

(d) job development and job placement;

(e) group and individual job search activities as provided for in 42 U.S.C. 682(g);

(f) on-the-job training;

(g) work supplementation programs as provided for in 42 U.S.C. 682(e); and

(h) community work experience programs as provided for in 42 U.S.C. 682(f).

(2) In addition to the services and activities provided in subsection (1), the department may offer to participants under the program:

(a) postsecondary education in appropriate cases; and

(b) such other education, training, and employment activities as may be determined necessary"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

Effective Date: Section 19(1), Ch. 550, L. 1989, provided that this section is effective July 1, 1990.

53-4-706. Participation requirements.

Compiler's Comments

2019 Amendment: Chapter 41 in (1) and (2) substituted "cash assistance" for "financial assistance"; in (2) at end substituted "individual responsibility plan" for "family investment agreement as provided for in 53-4-606"; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 in (1) near end after "eligibility for" deleted "FAIM"; in (2) near middle after "recipients of" deleted "FAIM", after "assistance" deleted "who are participating in the pathways component of the FAIM project", and at end after "agreement" inserted "as provided for in 53-4-606". Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 in first sentence in (1), after "section", deleted "and 53-4-707" and after "participate", substituted "in the employment and training program as a condition of their eligibility for FAIM financial assistance" for "in the JOBS program as a condition of their eligibility for aid to families with dependent children"; deleted (2)(a) that required that Department "require recipients of aid to families with dependent children who are not participating in the FAIM project and with respect to whom the state guarantees child care in accordance with section 402(g) of the Social Security Act (42 U.S.C. 602(g)) to participate in the program"; in (2), after "recipients of", substituted "FAIM financial assistance" for "aid to families with dependent children" and after "pathways" deleted "or community service program"; deleted (2)(c) that required that Department "allow applicants for and recipients of aid to families with dependent children who are not required under subsection (2)(a) to participate in the program to do so on a voluntary basis"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendment: Chapter 491 in (2)(a), after "children", inserted "who are not participating in the FAIM project and"; inserted (2)(b) requiring program participation under certain circumstances; and made minor changes in style.

Effective Date: Section 19(1), Ch. 550, L. 1989, provided that this section is effective July 1, 1990.

53-4-717. Sanctions.

Compiler's Comments

2019 Amendment: Chapter 41 near beginning substituted "cash assistance" for "financial assistance" and in three places substituted references to individual responsibility plans for references to family investment agreements; and made minor changes in style. Amendment effective July 1, 2019.

2001 Amendment: Chapter 465 near beginning of first sentence after "receiving" deleted "FAIM", after "assistance" deleted "under the FAIM project", and near middle after "agreement" inserted "as provided for in 53-4-606" and in second sentence near end before "participant" deleted "FAIM". Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1999 Amendment: Chapter 458 inserted second and third sentences prohibiting sanction from including restriction or termination of food stamps or medicaid coverage, authorizing continuation of child care benefits for certain required employment-related activities, and authorizing department rulemaking related to proper sanctioning and agreement compliance. Amendment effective July 1, 1999.

1997 Amendment: Chapter 486 deleted (1) that read: "(1) Except as provided in subsection (2), an individual who without good cause fails to participate in the JOBS program as required or who without good cause refuses to accept suitable employment shall lose eligibility for aid to families with dependent children as provided in 42 U.S.C. 602(a)(19)(G)"; near beginning, after "receiving", substituted "FAIM financial assistance" for "aid to families with dependent children" and after "participate" substituted "in the employment and training program" for "in the JOBS program"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendment: Chapter 491 in (1), at beginning, inserted exception clause; and inserted (2) requiring sanction of certain individuals who fail without good cause to participate in the JOBS program.

Effective Date: Section 19(1), Ch. 550, L. 1989, provided that this section is effective July 1, 1990.

53-4-719. Rulemaking authority.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 19(3), Ch. 550, L. 1989, provided that this section is effective April 15, 1989.

Part 10
Children's Health Insurance

Part Compiler's Comments

Contingent Appropriation: Section 12, Ch. 571, L. 1999, provided: "If money is not recovered as provided for in [section 11] [not codified—appropriation], the department of public health and human services is authorized to receive a general fund loan pursuant to 17-2-107 in the amount of $8 million for the purposes of the children's health insurance program provided for in [sections 1 through 9] [53-4-1001 through 53-4-1005 and 53-4-1007 through 53-4-1011] for the 2001 biennium. The general fund loan must be repaid from any money recovered by the state of Montana, by June 30, 2001, from any judgment, settlement, or fine received as a result of a criminal or civil claim against a tobacco company related to the production, marketing, or use of tobacco products."

Part Administrative Rules

Title 37, chapter 79, ARM Healthy Montana Kids (HMK).

53-4-1001. Short title.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-4-1002. Purpose — definition.

Compiler's Comments

2001 Amendment: Chapter 476 in (1) at end of second sentence inserted "or direct payment to a health care provider"; and made minor changes in style. Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 476, L. 2001, provided: "WHEREAS, the Legislature is firmly committed to providing health services for children of families with limited income; and

WHEREAS, the Legislature is aware of the limited financial resources of the state, the many competing and worthwhile needs of citizens of the state, and the provisions of Article VIII, section 9, of the Montana Constitution requiring a balanced state budget under which appropriations by the Legislature may not exceed anticipated revenue."

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-4-1003. Establishment and administration of program.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-4-1004. Eligibility for program — rulemaking.

Compiler's Comments

2017 Amendment: Chapter 151 in (1)(c) at end deleted "[, except that the break in coverage is waived for a covered dependent whose coverage moves from the purchasing pool provided under Title 33, chapter 22, part 20, to coverage under this part]". Amendment effective October 1, 2017.

Contingent Voidness — Ineffective: Section 7, Ch. 87, L. 2009, provided: "[Section 6] [amending 53-4-1004(1)(c)] is void on the date that the centers for medicare and medicaid services notifies the department of public health and human services of disapproval of the state plan amendment. The department of public health and human services shall notify the code commissioner of the date of the notification if the state plan amendment is disapproved." Section 52, Ch. 151, L. 2017, amended this section to delete the language inserted by sec. 6, Ch. 87, L. 2009.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2009 Amendment: Chapter 87 in (1)(c) at end inserted "except that the break in coverage is waived for a covered dependent whose coverage moves from the purchasing pool provided under Title 33, chapter 22, part 20, to coverage under this part"; and made minor changes in style. Amendment effective July 1, 2009.

2008 Amendment by Initiative: Section 11, I.M. No. 155, proposed by initiative petition and approved at the general election held November 4, 2008, in (1)(b) increased percentage of federal poverty rate from 175% to 250%; in (1)(c) at end inserted reference to 3 months prior to enrollment or since birth, whichever is less; and made minor changes in style. Amendment effective November 4, 2008.

2007 Amendment: Chapter 490 in (1)(b) near middle substituted "175%" for "150%". Amendment effective July 1, 2007.

2001 Amendment: Chapter 476 in (1)(b) at beginning deleted "except as provided in subsection (4)" and after "level" inserted "or at a lower level determined by the department of public health and human services as provided in subsection (4)"; in (4) at end inserted "or may limit the amount, scope, or duration of specific services provided"; and made minor changes in style. Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 476, L. 2001, provided: "WHEREAS, the Legislature is firmly committed to providing health services for children of families with limited income; and

WHEREAS, the Legislature is aware of the limited financial resources of the state, the many competing and worthwhile needs of citizens of the state, and the provisions of Article VIII, section 9, of the Montana Constitution requiring a balanced state budget under which appropriations by the Legislature may not exceed anticipated revenue."

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-4-1005. Benefits provided.

Compiler's Comments

2023 Amendments — Composite Section: Section 17, Ch. 88, L. 2023, in (1)(b) after "physician" inserted "physician assistant"; and made minor changes in style. Amendment effective April 18, 2023.

Section 2, Ch. 488, L. 2023, in (2) at end inserted "and 53-6-197". Amendment effective July 1, 2023.

2017 Amendment: Chapter 399 inserted (1)(j) concerning habilitative services; and made minor changes in style. Amendment effective July 1, 2017, and terminates on occurrence of contingency.

2013 Amendment: Chapter 97 inserted (2) requiring program to comply with 33-22-153; and made minor changes in style. Amendment effective March 27, 2013.

2009 Amendment: Chapter 486 inserted (4) requiring the department to notify enrollees of any restrictions on access to health care providers, of any restrictions on the availability of services by out-of-state providers, and of the methodology for an out-of-state provider to be an eligible provider. Amendment effective July 1, 2009.

2007 Amendment: Chapter 169 inserted (2) expanding dental care benefits under the children's health insurance program; and made minor changes in style. Amendment effective July 1, 2007, and terminates upon occurrence of contingency.

2001 Amendment: Chapter 476 in (1) after "program" inserted "may". Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 476, L. 2001, provided: "WHEREAS, the Legislature is firmly committed to providing health services for children of families with limited income; and

WHEREAS, the Legislature is aware of the limited financial resources of the state, the many competing and worthwhile needs of citizens of the state, and the provisions of Article VIII, section 9, of the Montana Constitution requiring a balanced state budget under which appropriations by the Legislature may not exceed anticipated revenue."

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-4-1007. Department may contract for services.

Compiler's Comments

2015 Amendment: Chapter 63 deleted former (3)(a) that read: "(a) direct and indirect expenses as specified in 33-22-1514"; and made minor changes in style. Amendment effective February 27, 2015.

Severability: Section 36, Ch. 63, L. 2015, was a severability clause.

2009 Amendment: Chapter 486 in (2) inserted second sentence providing that a contract may not limit enrollee access to providers who are willing to provide services at the rates provided for under the program. Amendment effective July 1, 2009.

2007 Amendment: Chapter 129 in (4) near end after "10%" inserted "of total program expenses" and at end inserted "excluding costs for federally required audits"; and made minor changes in style. Amendment effective April 5, 2007.

Retroactive Applicability: Section 4, Ch. 129, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2006."

2005 Amendment: Chapter 565 in (1) near beginning after "may" inserted "administer the program directly or"; in (2) substituted last sentence and (2)(a) through (2)(d) establishing payments and purchases the department may make in operating the program and providing health services for former second sentence that read: "The department shall first offer the insurer the opportunity to negotiate a contract price prior to purchasing a health care service on a fee-for-service basis"; inserted (3) and (4) limiting administrative costs; inserted (5) providing that an insurance company or other entity that contracts with the department for a fully insured contract shall calculate the surplus account balance at the end of each contract year and may retain an amount equal to 50% of the risk charge allowed under the contract and providing definitions; and made minor changes in style. Amendment effective May 2, 2005.

Applicability: Section 6, Ch. 565, L. 2005, provided: "[This act] applies to contracts offered, issued, or renewed after [the effective date of this act]". Effective May 2, 2005.

2001 Amendment: Chapter 476 in (1) at end inserted "or based on a fee for service as established by the department"; inserted (2) authorizing department to contract for health care service based on fee for service if department does not contract through insurance plan, health maintenance organization, or managed care plan and requiring department to first offer opportunity to negotiate price prior to purchasing service on fee-for-service basis; and made minor changes in style. Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 476, L. 2001, provided: "WHEREAS, the Legislature is firmly committed to providing health services for children of families with limited income; and

WHEREAS, the Legislature is aware of the limited financial resources of the state, the many competing and worthwhile needs of citizens of the state, and the provisions of Article VIII, section 9, of the Montana Constitution requiring a balanced state budget under which appropriations by the Legislature may not exceed anticipated revenue."

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-4-1008. Participant cost sharing.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-4-1009. Department to adopt rules — review by interim committee.

Compiler's Comments

2001 Amendment: Chapter 476 in (3) inserted second sentence requiring department rules to consider availability of appropriated funds. Amendment effective July 1, 2001.

Preamble: The preamble attached to Ch. 476, L. 2001, provided: "WHEREAS, the Legislature is firmly committed to providing health services for children of families with limited income; and

WHEREAS, the Legislature is aware of the limited financial resources of the state, the many competing and worthwhile needs of citizens of the state, and the provisions of Article VIII, section 9, of the Montana Constitution requiring a balanced state budget under which appropriations by the Legislature may not exceed anticipated revenue."

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-4-1010. Sharing of information.

Compiler's Comments

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-4-1011. Tobacco settlement funds to general fund.

Compiler's Comments

2002 Amendment by Initiative: Section 4, I.M. No. 146, at beginning of first sentence inserted "Unless deposited into the trust fund, provided for in 17-6-603, or a state special revenue account, provided for in 17-6-606" and in second sentence after "appropriated" inserted "from the general fund". Amendment effective November 5, 2002.

Effective Date: Section 14, Ch. 571, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-4-1012. State special revenue account.

Compiler's Comments

2009 Amendment: Chapter 486 in (2) near middle after "cover" deleted "additional" and after "children" deleted "to expand eligibility within the limits provided in 53-4-1004"; deleted former (3) that read: "(3) The department shall transfer the unexpended balance of an appropriation into the account provided for in subsection (1) at the expiration of the appropriation to be used for the purposes stated in subsection (2)"; and made minor changes in style. Amendment effective July 1, 2009.

2007 Amendment: Chapter 129 in (2) near end after "premiums" inserted "to pay health care claims"; and made minor changes in style. Amendment effective April 5, 2007.

Retroactive Applicability: Section 4, Ch. 129, L. 2007, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2006."

Effective Date: Section 5, Ch. 565, L. 2005, provided: "[This act] is effective on passage and approval." Approved May 2, 2005.

Applicability: Section 6, Ch. 565, L. 2005, provided: "[This act] applies to contracts offered, issued, or renewed after [the effective date of this act]." Effective May 2, 2005.

Part 11
Healthy Montana Kids Plan

Part Compiler's Comments

Effective Date: Section 15, I.M. No. 155, provided that this part is effective upon approval by the electorate. Approved November 4, 2008.

Part Administrative Rules

Title 37, chapter 79, ARM Healthy Montana Kids (HMK).

53-4-1103. Definitions.

Compiler's Comments

2017 Amendment: Chapter 399 in introductory clause inserted "part 10 and"; inserted definition of habilitative services; and made minor changes in style. Amendment effective July 1, 2017.

53-4-1110. Exemption from resource test.

Compiler's Comments

2021 Amendment: Chapter 155 in temporary version substituted "53-6-131(9)" for "53-6-131(8)"; and in version effective on occurrence of contingency substituted "53-6-131(8)" for "53-6-131(7)". Amendment effective July 1, 2021.

2019 Amendment: Chapter 415 substituted "53-6-131(8)" for "53-6-131(7)". Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

CHAPTER 5
ADULT SERVICES

Part 9
Notice of Medicare Assignments

53-5-901. Medicare assignments — notice required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 6
HEALTH CARE SERVICES

Chapter Law Review Articles

Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place, Pruitt, 71 Mont. L. Rev. 1 (2010).

Chapter Collateral References

Examining Health Care: From Congressional Reforms to Cannabis: A Final Report of the Children, Families, Health, and Human Services Interim Committee, Mont. Leg. Serv. Div. (2010).

Part 1
Medical Assistance — Medicaid

Part Compiler's Comments

Interim Study — Department of Public Health and Human Services to Study Increasing Reimbursement to Medicaid Direct-Care Service Providers in Order to Provide Employee Health Insurance: Section 1, Ch. 504, L. 2007, provided: "(1) The department of public health and human services, in conjunction with the commissioner of insurance, health insurers, persons providing medicaid personal assistance and other direct-care services and their employers, and other interested parties, shall conduct and coordinate a study that, at a minimum:

(a) (i) examines the feasibility of increasing medicaid payments to employers of personal-care attendants and other organizations that employ direct-care employees and that receive the majority of their revenue as a result of providing medicaid-funded long-term care services, with the increase in payments earmarked to pay the cost of providing employer-sponsored health insurance to those employees;

(ii) identifies organizations that employ personal-care attendants and direct-care employees and that receive the majority of their revenue for providing medicaid-funded long-term care services, including organizations such as personal-assistance providers, private-duty nursing providers, licensed nursing facilities, developmental disability community services providers, and providers of certain child and adult mental health services;

(iii) determines the number of employees that would be eligible for coverage;

(iv) calculates the cost to the state of the increased payments after recognizing that nearly 70% of the increase will be covered by the federal government's portion of the payments; and

(v) calculates, to the extent possible, the cost incurred by other government programs, such as temporary assistance to needy families and medicaid, due to the lack of health insurance on the part of personal-care attendants and other direct-care employees and calculates the projected impact, if any, that providing these employees with adequate health insurance would have on future utilization of and costs incurred by other government programs;

(b) determines, in conjunction with the commissioner of insurance, the health insurance coverage that employers would be required to provide to personal-care attendants and direct-care employees in order to be eligible to receive the earmarked increase in medicaid payments;

(c) determines the cost, if any, to individual employees for the proposed health insurance;

(d) calculates the increased need for and projected availability of personal-care attendants and direct-care employees in Montana over the next 20 to 30 years as a result of the aging population and examines whether the provision of health insurance for those workers has the potential to increase the number and quality of workers available in the future;

(e) explores the possibility of combining any health insurance program developed for personal-care attendants and direct-care employees with other state programs designed to provide Montanans with increased access to affordable health insurance, such as the small business health insurance pool; and

(f) calculates, to the extent possible, the health care costs that are shifted to the insurance premiums and other health care expenses paid by privately insured Montanans and their employers or that are incurred by hospitals as uncompensated care due to the lack of health insurance for personal-care attendants and direct-care employees.

(2) (a) The department of public health and human services may, to the extent that funds are available, establish a pilot program to provide employer-sponsored health insurance to a portion of the personal-care attendants and direct-care employees who are determined by the department to be eligible for the pilot program by increasing medicaid payments to their employers with the requirement that the increased payments be used to provide those employees with health insurance that meets the requirements established by the department.

(b) The purpose of the pilot program is to test the feasibility, impact, and cost of providing health insurance payments to the employers of personal-care attendants and direct-care employees. The pilot program may require partial payment of health insurance costs by an employee if necessary.

(c) In establishing and conducting the pilot program, the department of public health and human services shall consult with the commissioner of insurance, persons providing medicaid personal assistance and direct-care services and their employers, and other interested parties.

(3) If a pilot program is established, the department of public health and human services shall monitor the pilot program, shall report its study findings and pilot program results, if any, to the legislature, and shall report on the feasibility, impact, and cost of providing health insurance to personal-care attendants and direct-care employees who provide medicaid-funded long-term

care services, as designated in subsection (1)(a). The report must be made to the legislature as provided in 5-11-210.

(4) The department of public health and human services may adopt rules to implement this section." Effective May 16, 2007, and terminates January 1, 2009.

Study of Conversion to Private Coverage: Chapter 523, L. 1995, requires the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) to, if sufficient funds are available from public and private sources, contract with the Legislative Auditor for a study of the conversion and cost-effectiveness of converting Medicaid to a combined private insurance and medical savings accounts program. After the study is completed, if the Office of Budget and Program Planning decides that conversion would be cost-effective, the Department must apply to the United States government for a waiver of Medicaid statutes and rules and, if the waiver is granted, convert Medicaid to a combined private insurance and medical savings accounts program. The act is effective July 1, 1995, and terminates October 1, 1996.

Part Administrative Rules

Title 37, chapter 34, subchapter 30, ARM Reimbursement for services.

Title 37, chapter 40, ARM Senior and long-term services.

Title 37, chapter 49, ARM IV-E foster care services.

Title 37, chapter 82, ARM Medicaid eligibility.

Title 37, chapter 83, ARM Medicaid for certain Medicare beneficiaries and others.

Title 37, chapter 84, ARM Medicaid expansion.

Title 37, chapter 85, ARM General Medicaid services.

Title 37, chapter 86, ARM Medicaid primary care services.

Title 37, chapter 87, subchapter 13, ARM Home and community services for youth with serious emotional disturbance.

Title 37, chapter 88, ARM Medicaid mental health services.

Title 37, chapter 90, ARM Mental health Medicaid-funded 1115 and 1915 waivers.

Part Case Notes

Implied Contracts — Medicaid Payments: The principle underlying the implied contract doctrine is that one person should not be permitted to be unjustly enriched at the expense of another but should be required to make restitution for property or benefits received where it is just and equitable that such restitution be made and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly. The circumstances on the record do not justify payment be made on any formula other than the "reasonable costs" formula as set forth in federal Medicaid statutes and regulations. Flathead Health Center v. Flathead County, 183 M 211, 598 P2d 1111, 36 St. Rep. 1465 (1979).

Part Law Review Articles

Will Uncooperative Federalism Survive NFIB?, Moncrieff & Dinerstein, 76 Mont. L. Rev. 75 (2015).

53-6-101. Montana medicaid program — authorization of services.

Compiler's Comments

2023 Amendments — Composite Section — Code Commissioner Correction: Section 3, Ch. 291, L. 2023, inserted (3)(q) concerning planned home births; and made minor changes in style. Amendment effective July 1, 2023.

Section 4, Ch. 628, L. 2023, in (4)(b) at end inserted "including services provided by pediatric complex care assistants licensed pursuant to 37-2-603"; and in (12)(a) near middle after "department" deleted "of public health and human services". Amendment effective July 1, 2023, and insertion in (4)(b) terminates June 30, 2031.

Section 27, Ch. 713, L. 2023, in (4)(l) before "professional counselors" inserted "clinical' and at end substituted "Title 37, chapter 39" for "Title 37, chapter 23"; inserted (4)(m) concerning services of a marriage and family therapist; in (4)(r) near middle substituted "Title 37, chapter 39" for "Title 37, chapter 38"; and made minor changes in style. Amendment effective October 1, 2023.

Section 8, Ch. 782, L. 2023, inserted (3)(p) concerning fertility preservation services; and made minor changes in style. Amendment effective January 1, 2024.

Because 53-6-155 defines "department" as "the department of public health and human services provided for in 2-15-2201" for all of Title 53, chapter 6, part 1, the Code Commissioner determined that the substitution of "the department" for "the department of public health and human services" in subsection (12)(a) (see Ch. 628 note) is a nonsubstantive style change and did not terminate that change.

Extension of Termination Date: Section 1, Ch. 298, L. 2023, amended sec. 7, Ch. 412, L. 2019, by extending the termination date imposed by Ch. 412 to September 30, 2025. Effective April 26, 2023.

Applicability: Section 12, Ch. 782, L. 2023, provided: "[This act] applies to insurance policies, certificates, and contracts issued or renewed on or after January 1, 2024."

2021 Amendment: Chapter 491 in (12) concerning reporting by the department of public health and human services prior to enacting changes to provider rates, medicaid waivers, or the medicaid state plan; and made minor changes in style. Amendment effective May 12, 2021.

The amendments made to this section by sec. 4, Ch. 491, L. 2021, were replaced by sec. 10, Ch. 491, L. 2021, a coordination section.

2019 Amendments — Composite Section: Chapter 41 in (6) in first sentence in two places substituted "cash assistance" for "financial assistance" and after "dependent child" deleted "under the FAIM project". Amendment effective July 1, 2019.

Chapter 297 inserted (4)(q) concerning services of behavioral health peer support specialists that are provided to adults 18 years of age and older with a diagnosis of a mental disorder; and made minor changes in style. Amendment effective July 1, 2019.

Chapter 412 inserted (3)(o) to include services provided by a person certified in accordance with 37-2-318; and made minor changes in style. Amendment effective October 1, 2019, and terminates September 30, 2023.

2017 Amendments — Composite Section: Chapter 395 inserted (8)(b) concerning closing gaps in services provided to individuals suffering from mental illness and co-occurring disorders; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 398 in (3)(g) at end inserted "in accordance with federal regulations and subsection (10)(b)"; inserted (10)(b) concerning department's duty to provide access to medically necessary services; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 399 inserted (3)(n) concerning habilitative services for children 18 years of age and younger; and made minor changes in style. Amendment effective July 1, 2017.

2013 Amendment: Chapter 97 inserted (3)(m) pertaining to routine patient costs for individuals in clinical trials for cancer; in (6) in second sentence substituted "subsection (3)" for "subsections (3)(a) through (3)(l)"; and made minor changes in style. Amendment effective March 27, 2013.

2005 Amendments — Composite Section: Chapter 353 in (1) at end of second sentence after "et seq." deleted "as may be amended" and at beginning of third sentence after "department" deleted "of public health and human services"; in (5) near beginning of first sentence after "the department" deleted "of public health and human services"; deleted former (12) and (13) that read: "(12) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted under this chapter.

(13) Medicaid payment for assisted living facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided"; and made minor changes in style. Amendment effective April 21, 2005.

Chapter 519 in (2)(j) substituted "physician assistants" for "physician assistants-certified". Amendment effective October 1, 2005.

Chapter 530 inserted (2) listing funding principles that the legislature and department must consider when considering changes in medicaid policy that increase or reduce services; in (12) at end inserted "after taking into consideration the funding principles set forth in subsection (2)"; and made minor changes in style. Amendment effective October 1, 2005.

Severability: Section 5, Ch. 353, L. 2005, was a severability clause.

2003 Amendments — Composite Section: Chapter 54 in (13) near beginning after "payment for" substituted "assisted living" for "personal-care". Amendment effective October 1, 2003.

Chapter 576 in (5) in third sentence after "legislature" inserted "whether approval has been received as provided in 53-1-612". Amendment effective July 1, 2003.

Chapter 602 in (3)(f) substituted "part 10" for "part 2"; inserted (3)(o) concerning psychologist services; and made minor changes in style. Amendment effective October 1, 2003.

Saving Clause: Section 18, Ch. 602, L. 2003, was a saving clause.

2001 Amendment: Chapter 465 in (5) near beginning of first sentence after "accordance with" inserted "federal law or", near middle after "receiving" deleted "FAIM", after "defined in" substituted "53-4-201" for "53-4-702", and at end substituted "a program providing financial assistance, as defined in 53-4-201" for "the program of FAIM financial assistance, as defined in 53-4-702" and in third sentence after "legislature" deleted "for the FAIM project". Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 in first sentence in (5), at beginning, substituted "In accordance with" for "If", before "recipients" inserted "adult", after "receiving" substituted "FAIM financial assistance, as defined in 53-4-702" for "aid to families with dependent children", and at end, after "related to", substituted "the program of FAIM financial assistance, as defined in 53-4-702" for "aid to families with dependent children" and in fourth sentence, after "pregnant", inserted "meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendments — Composite Section: Chapter 491 inserted (5) allowing the implementation of limited Medicaid benefits if waivers of federal law are granted and setting parameters of allowable benefits; and made minor changes in style. Pursuant to sec. 1, Ch. 546, in (5), the Code Commissioner substituted "department of public health and human services" for "department of social and rehabilitation services".

Chapter 546 near end of (1) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Special Session Amendment: Chapter 14 at end of (3)(n), after "mentally ill", deleted "but limited to services provided in crisis intervention programs"; inserted (4) allowing limitations on the scope and application of services to persons qualifying for Medicaid under the medically needy category of assistance; and made minor changes in style. Amendment effective December 23, 1993.

1993 Amendment: Chapter 590 inserted (11) concerning limit of Medicaid payments. Amendment effective July 1, 1994.

1991 Amendments: Chapter 310 in (3)(l), after "chapter 23", deleted "if funds are specifically appropriated for the inclusion of these services in the Montana medicaid program". Amendment effective July 1, 1991.

Chapter 388 deleted former (2)(j) that included hospice care as a service provided by the Medicaid program; inserted (2)(l) to include qualified health center services in the Medicaid program; and inserted (3)(m) to include hospice care as a service that may be provided by Department rule. Amendment effective July 1, 1991.

Section 3, Ch. 460, inserted (3)(n) authorizing case management services; and made minor changes in style. Section 7, Ch. 460, a coordination instruction, in (3)(n), after "1396n(g)", inserted language including targeted case management services under the Medicaid program for the mentally ill in crisis intervention programs. Amendments effective July 1, 1991.

Chapter 634 inserted (2)(h) providing for mandatory ambulatory prenatal care; inserted (2)(i) providing mandatory targeted case management services for high-risk pregnant women; and deleted former (3)(m) providing permissive ambulatory prenatal care. Amendment effective June 30, 1991.

Chapter 663 in (2)(c) inserted language relating to minimum mammography examination.

Chapter 764 inserted (3)(o) authorizing medical assistance provided by the state Medicaid program to include "inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201". Amendment effective July 1, 1991.

Termination Provision Eliminated: Section 3, Ch. 388, L. 1991, amended sec. 15, Ch. 649, L. 1989, to read: "[Sections 1 through 9 and 11 through 14] terminate June 30, 1991." The effect of the amendment was to eliminate the termination date of subsection (3)(m) (rendered void by Ch. 634), reauthorizing ambulatory prenatal care for pregnant women during the presumptive eligibility period provided by federal law. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 460, L. 1991, provided: "A statement of intent is required for this bill because it grants the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules for the administration of medicaid managed-care systems.

It is the intent of the legislature that the department may adopt rules concerning:

(1) participation in managed care;

(2) selection and qualifications for providers of managed care; and

(3) standards for the provision of managed care.

It is also intended that rules adopted by the department comply with federal regulations governing administration of the medicaid program."

Coordination Instruction: The amendments to this section in sec. 5, Ch. 636, L. 1991, were voided by sec. 7, Ch. 460, L. 1991, a coordination instruction.

1989 Amendments: Chapter 97 inserted (2)(h) regarding services provided by a physician assistant-certified; and made minor changes in form.

Chapter 417 inserted (2)(i) relating to health services provided by a public health department.

Chapter 633 inserted (2)(j) relating to hospice care. Amendment effective July 1, 1989, and terminates June 30, 1991.

Chapter 649 inserted (1) establishing the Medicaid program; in introductory clause of (2) substituted "Medical assistance provided by the Montana medicaid program includes the following services" for "The definition of medical assistance shall include"; in introductory clause of (3) substituted "Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following" for "It may also include, although not necessarily limited to, the following"; and inserted (3)(m) relating to ambulatory prenatal care. Amendment effective July 1, 1989, and terminates June 30, 1991.

Chapter 711 inserted (1) relating to description of Montana Medicaid program; substituted introductory clause of (2) relating to Medicaid for "The definition of medical assistance shall include"; in (2)(d) substituted "nursing services in long-term care facilities" for "nursing home services"; at end of (2)(e) deleted "whether furnished in the office, the patient's home, a hospital, a skilled nursing home, or elsewhere"; in (2)(f) substituted "nurse specialist services" for "services provided by nurse specialists, as specifically listed in 37-8-202(5), within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider"; inserted (2)(g) relating to screening, diagnosis, and treatment services for persons under 21 years of age; substituted introductory clause of (3) relating to Medicaid for "It may also include, although not necessarily limited to, the following"; in (3)(e), after "therapy", deleted "and other related"; in (3)(f) substituted language relating to mental health center services for "clinic services"; in (3)(g) substituted "clinical social worker services" for "services provided by social workers licensed under Title 37, chapter 22"; in (3)(i) substituted "prescribed eyeglasses" for "eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select"; inserted (3)(k) relating to inpatient psychiatric hospital services for persons under 21 years of age; inserted (3)(l) relating to services of professional counselors; inserted (4) relating to Medicaid program to pay Medicare costs; inserted (5) relating to allowable rates for Medicaid services; inserted (6) requiring services to be necessary, efficient, and effective; inserted (7) relating to amount, scope, and duration of services; inserted (8) prohibiting provision of experimental or cosmetic services, procedures, or items; inserted (9) relating to prioritized payment for services when Medicaid funding is insufficient; and inserted (10) relating to community-based Medicaid services. Amendment effective May 22, 1989.

Severability: Section 22, Ch. 97, L. 1989, was a severability clause.

1987 Amendment: Inserted (1)(f) to include services provided by nurse specialists in the definition of medical assistance.

1985 Amendment: Inserted (2)(g) to include services provided by social workers.

Case Notes

Medicaid — Trust Principal Not Countable Asset — No Ability to Terminate Trust: The petitioner's estate appealed a District Court order affirming an administrative law judge's proposed order that trust principal consisting of a jointly owned home constituted a countable asset for the purposes of the petitioner's Medicaid eligibility. The dispositive issue on appeal was whether there were any circumstances under which the trust's principal could be returned to the petitioner or used for her benefit. The Supreme Court reversed and remanded the case, concluding there were no circumstances under which payment from the trust's corpus could be made for the petitioner's benefit. The express terms of the trust disclaimed the petitioner's ability to terminate the trust. These terms took precedence over the Uniform Trust Code's default provisions, and a court could not recognize as legitimate any attempt by the petitioner to terminate or modify the trust. In re Estate of Scheidecker v. Dept. of Public Health and Human Services, 2021 MT 158, 404 Mont. 407, 490 P.3d 87.

Gastric Bypass Excluded by Administrative Rules — Lack of Evidence of Discrimination: The plaintiff, an extremely obese patient, requested Medicaid authorization through her physician for gastric bypass surgery. The Department of Public Health and Human Services (DPHHS) denied her request because its rules do not provide coverage for invasive medical procedures for weight reduction. The plaintiff asked for an administrative hearing and argued that the blanket exclusion was contrary to federal law. A hearings officer affirmed the denial of her request, which was affirmed by both the Board of Public Assistance and the District Court. On appeal to the Supreme Court, the plaintiff argued that DPHHS's rules effectively excluded all treatments for obesity and therefore discriminated on the basis of diagnosis or condition. The Supreme Court, concluding that the record was insufficient to determine whether the rule excluded all treatments for obesity or whether the requested surgery was medically necessary, affirmed the decision of the District Court but allowed the patient to initiate further proceedings if her condition warranted it. Bailey v. Dept. of Public Health and Human Services, 2015 MT 37, 378 Mont. 162, 343 P.3d 170.

Medicaid — Payer of Last Resort — Provider Obliged to Bill Third-Party Insurers First — Summary Judgment Granted: A passenger injured in a car accident incurred over $200,000 in hospital costs in the first 2 months following the accident. His mother, who had been appointed the conservator of his estate, successfully applied for Medicaid on her son's behalf. However, both drivers involved in the accident had insurance coverage that applied to the injuries incurred. Instead of billing Medicaid, the hospital billed the estate directly and filed a notice of lien with the insurance companies and the estate's attorneys. The estate sued the hospital, claiming the hospital was obligated to first bill Medicaid and accept its payment as payment in full. The Supreme Court affirmed the District Court's grant of summary judgment in favor of the hospital, agreeing that the hospital was obligated to bill third-party insurers under the Montana Medicaid program, which provides that Medicaid is the payer of last resort. Estate of Donald v. Kalispell Regional Medical Center, 2011 MT 166, 361 Mont. 179, 258 P.3d 395.

Constitutionality of Montana Medicaid "No Corporation, No Trust" Rule: A provision of the Montana Medicaid Manual adopted by the Department of Public Health and Human Services (DPHHS) established a "no corporation, no trust" rule providing that property held in a trust or owned by a corporation is not owned by a filing/assistance unit, so no personal property exclusions could be applied to trust or corporation property regardless of whether any member of the filing/assistance unit was a trust beneficiary or corporate shareholder. In order to circumvent the rule and reduce countable resources to qualify for Medicaid services for his wife, plaintiff traded a one-third interest in a corporation for a truck to be used by plaintiff for business purposes and self-support, thus converting the countable corporate interest into an excludable interest. Plaintiff later contended that the "no corporation, no trust" rule violated equal protection under the state constitution because no rational basis existed for discriminating between whether an asset is countable or excludable based on the form of ownership and because neither the goal of controlling Montana Medicaid costs nor any other professional reason provided a rational basis for the discrimination. The Supreme Court applied the rational basis test and agreed. The court noted a 2008 DPHHS rule that apparently permits an exclusion for property essential for self-support that is owned by a limited liability company, while still disallowing an exclusion for property owned by a corporation such as plaintiff's. Therefore, DPHHS's premise that a rational basis existed for excluding plaintiff's corporate property could not withstand scrutiny, and the court concluded that the "no corporation, no trust" rule as applied to plaintiff violated the right to equal protection. Timm v. Dept. of Public Health and Human Services, 2008 MT 126, 343 M 11, 184 P3d 994 (2008).

Medicaid — Allowable Use of Posteligibility Income to Pay Costs of Preeligibility Nursing Home Care: The District Court upheld the decision of the Board of Public Assistance affirming a decision by a hearings examiner preventing a woman from using her posteligibility income to pay for nursing home care costs incurred prior to her eligibility for Medicaid because the services were not covered by Medicaid. On appeal, the Supreme Court reversed. A final decision by the administrator of the federal Centers for Medicare and Medicaid Services (CMS), after a review of federal legislative history, concluded that a policy that allowed a deduction in the posteligibility program process only if an individual was eligible for Medicaid during the period was inconsistent with CMS policy. Under the CMS decision, costs incurred for services prior to Medicaid eligibility must be considered "not a Medicaid covered service" as long as they were not actually covered by Medicaid, and consistency with that decision was required in the Montana Medicaid plan. Thus, the use of posteligibility income to pay for nursing home care costs incurred prior to eligibility for Medicaid was allowed. Timm v. Dept. of Public Health and Human Services, 2008 MT 126, 343 M 11, 184 P3d 994 (2008).

Medicaid — Disallowance of Offset of Countable Resources by Amount of Accumulated Nursing Home Costs Affirmed: The District Court upheld a decision by the Board of Public Assistance affirming a decision by a hearings examiner not to offset plaintiffs' countable resources by the amount of their accumulated nursing home care expenses. The court reasoned that because federal law does not allow a deduction for incurred medical expenses in resource determinations, equal protection did not apply. On appeal, plaintiffs asserted that failure to allow the offset had no rational basis and therefore violated equal protection. However, plaintiffs provided no authority showing that federal law requires states to use resource spend down in administering Medicaid, so the equal protection claim was without merit and the District Court was affirmed. Timm v. Dept. of Public Health and Human Services, 2008 MT 126, 343 M 11, 184 P3d 994 (2008), distinguishing Deaconess Medical Center of Billings, Inc. v. Dept. of Social and Rehabilitation Services, 222 M 127, 720 P2d 1165 (1986).

Question of Applicability of Federal Medicaid Law to Members of Hutterite Colony — Remand: The District Court overruled a hearings examiner's findings that an express trust existed between an incorporated Hutterite Colony and the colony members. The hearings examiner determined that because colony trust assets were available to colony members and that because trust assets were in excess of the $3,000 allowable resource limit, the colony members were ineligible to receive federal Medicaid benefits. On appeal, the Supreme Court applied neutral secular principles of law to this church property dispute and held that an express trust existed between the corporation and the colony members. However, the court did not reach the issues of whether the colony owed a legal duty to support its members and whether colony members were eligible for benefits under the family-related Medicaid program, so the case was remanded for further findings and consideration of applicable federal law. In re Fair Hearing of Hofer v. Dept. of Public Health and Human Services, 2005 MT 302, 329 M 368, 124 P3d 1098 (2005).

Medicaid Provider Reenrollment — Conviction of Unsworn Falsification to Authorities Reversed on Grounds of Insufficient Evidence of Intent to Mislead: Vainio, an optometrist, was convicted of one count of unsworn falsification to authorities under 45-7-203 in connection with information omitted on a Medicaid provider reenrollment form. The state claimed that Vainio should have listed his sister and wife as managing employees, his brother as a co-owner of the business, and all of the counties in which he owned optometric stores. Vainio had a longstanding relationship with the Medicaid program by the time that he filled out the reenrollment form, and maintained that he merely filled out the reenrollment form as he had the previous enrollment form. Section 45-7-203 requires proof that information was omitted from the form with the conscious objective of misleading a public servant in the performance of official duties. The state never presented any evidence of Vainio's intent to mislead, and absent sufficient evidence of that intent, the conviction was reversed. St. v. Vainio, 2001 MT 220, 306 M 439, 35 P3d 948 (2001).

Reversal of Conviction for Medicaid Fraud Based on Violation of Improperly Adopted Administrative Policy: Vainio, an optometrist, was charged with three counts of Medicaid fraud under 45-6-313. The jury found Vainio guilty, and the District Court concluded as a matter of law that a violation of the administrative policies at issue formed a criminal act. On appeal, Vainio argued that by criminalizing violations of administrative policies that were not formally promulgated as rules, 45-6-313 contravened the Montana Administrative Procedure Act (MAPA), Title 2, ch. 4, and that policies that were not promulgated according to MAPA lacked the force of law. The state contended that because 45-6-313 specifically refers to violations of "policies", it was not necessary for those policies to be embodied in a rule promulgated pursuant to MAPA. The Supreme Court agreed with Vainio. The use of the term "policies" in 45-6-313 is limited to those policies that have been formally adopted as rules pursuant to MAPA. The fact that 45-6-313 does not expressly reference MAPA does not mean that Medicaid providers can be criminally prosecuted for violating the state's informal policies. Further, 45-6-313 does not have to expressly reference MAPA for MAPA to apply; rather, MAPA must be followed because 45-6-313 does not expressly repudiate it. When the Legislature authorizes an agency to adopt rules, the procedures mandated by MAPA apply regardless of whether the authorizing statute refers to MAPA. The practices for which Vainio was convicted were not prohibited by rules adopted in compliance with MAPA and in effect at the time of the alleged offenses and thus were not illegal, so the convictions were reversed. St. v. Vainio, 2001 MT 220, 306 M 439, 35 P3d 948 (2001), following NW. Airlines, Inc. v. St. Tax Appeal Bd., 221 M 441, 720 P2d 676 (1986), and Rosebud County v. Dept. of Revenue, 257 M 306, 849 P2d 177 (1993), and distinguishing Huether v. District Court, 2000 MT 158, 300 M 212, 4 P3d 1193 (2000).

Supplementing Medicaid Payments Made Under "Reasonable Costs" Formula Prohibited: Participation in the federal Medicaid program is voluntary, but if a state elects to participate, it must comply with the requirements of the federal statutes and regulations in order to remain eligible for federal funds. Montana as a participant in the Medicaid program must conform to the

Social Security Act and all valid regulations promulgated thereunder as long as it remains in the program. Under federal law and regulations, a state plan must provide that the Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency under the federal "reasonable costs" formula. Supplementing Medicaid payments beyond this formula is prohibited. Flathead Health Center v. Flathead County, 183 M 211, 598 P2d 1111, 36 St. Rep. 1465 (1979).

Attorney General's Opinions

Occupational Therapists Not Permitted to Use Therapeutic Modalities — Rule Allowing for Reimbursement Void: The use of therapeutic modalities by occupational therapists has not been authorized by the Legislature and is impermissible. Therefore, ARM 46.12.547 (now repealed), authorizing occupational therapists to be reimbursed through Medicaid for modalities performed in the course of treatment, is invalid as an improper exercise of rulemaking authority. 44 A.G. Op. 3 (1991).

53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor.

Compiler's Comments

1995 Amendment: Chapter 546 at beginning of (1) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Special Session Amendment: Chapter 31 in (2), at end, substituted "53-6-116" for "53-6-115". Amendment effective January 1, 1994.

1989 Amendment: At end of (2) deleted reference to 53-6-141. Amendment effective May 22, 1989.

1985 Amendment: Inserted (2) to provide that the Department may impose conditions on payment of provider services and receipt of medical assistance.

1985 Statement of Intent: The statement of intent attached to Ch. 475, L. 1985, provided: "A statement of intent is desired for this bill because it affects the rulemaking authority of the department of social and rehabilitation services [now department of public health and human services]. Under present law the department has express rulemaking authority to administer and supervise the state's medical assistance programs under Title 53. The intent of this bill is to clarify that the department has the same options provided under federal freedom of choice statutes to restrict access to and services of health care providers, which restrictions the department may adopt under existing state statutes."

53-6-106. Health care facility standards — definitions.

Compiler's Comments

1997 Amendment: Chapter 93 at end of definition of health care facility inserted "and includes a public health center as defined in 7-34-2102". Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1995 Amendments: Chapter 354 in (3), in first sentence after "sciences", substituted "may" for "shall" and in second sentence, after "must", substituted "be consistent with" for "include, as a minimum" and substituted "Title 42 of the Code of Federal Regulations" for "42 CFR 430, et seq."; and made minor changes in style. Amendment effective April 11, 1995.

Chapter 418 in (2), in two places in (3), and in (4) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services"; at beginning of (2) substituted "department" for "department and the department of health and environmental sciences"; in (3), at beginning, substituted "department of public health and human services" for "department of health and environmental sciences" and near end substituted "department" for "department of health and environmental sciences"; and in (4) substituted "department" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

Effective Date: Section 11, Ch. 711, L. 1989, provided that this section is effective May 22, 1989.

53-6-107. Sanctions — penalties.

Compiler's Comments

2001 Amendment: Chapter 346 in (1) in first sentence after "department" deleted "of public health and human services" and at end of second sentence after "regulations" deleted "and policies"; in (2) in first sentence after "rules" deleted "or policies"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendments — Composite Section: Chapter 354 in (1), in first sentence after "certification", deleted "adopted", after "for" inserted "or participation in", and at end inserted "or other applicable law" and in second sentence, after "penalties", inserted "or sanctions" and after "53-6-111" inserted "or Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and any implementing federal regulations and policies"; in (2), in first sentence after "standards", inserted "or participation requirements provided by applicable state or federal laws, regulations, rules, or policies, including but not limited to standards" and near middle of second sentence, after "including", inserted "but not limited to"; and made minor changes in style. Amendment effective April 11, 1995.

Chapter 418 in (2), in first sentence, substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995. Because of the change made by Ch. 546 at the beginning of (1), the change made by Ch. 418 was not codified.

Chapter 546 at beginning of (1) substituted "department of public health and human services" for "department"; and in (2), near middle of first sentence, substituted "department" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

Effective Date: Section 11, Ch. 711, L. 1989, provided that this section is effective May 22, 1989.

53-6-108. Rules governing sanctions or remedies.

Compiler's Comments

2001 Amendment: Chapter 346 in first sentence after "department" deleted "of public health and human services" and in third sentence after "rules" deleted "or policies"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendments — Composite Section: Chapter 354 in third sentence, after "violation of the", substituted "applicable standards imposed by state or federal laws, regulations, rules, or policies" for "standards adopted by the department of health and environmental sciences or those federal standards established in 53-6-106" and increased maximum penalty from $1,000 a day to $10,000 a day; and made minor changes in style. Amendment effective April 11, 1995.

Chapter 418 in third sentence substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 at beginning of first sentence substituted "department of public health and human services" for "department" and in third sentence substituted "department" for "department of health and environmental sciences". Amendment effective July 1, 1995.

The Ch. 354 amendment rendered the amendments to the third sentence made by Ch. 418 and Ch. 546 void.

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1989 Statement of Intent: The statement of intent attached to Ch. 711, L. 1989, provided: "A statement of intent is required for this bill because [sections 4 and 5] [53-6-108 and 53-6-113] grant authority to the department of social and rehabilitation services [now department of public health and human services] and to the department of health and environmental sciences [now department of public health and human services] to adopt rules to administer and supervise services provided under the Montana medicaid program.

The bill expands the existing rulemaking authority of the department of social and rehabilitation services [now department of public health and human services] under [section 5] [53-6-113] and provides new authority for the department to adopt rules under [section 4]

[53-6-108] governing the application of sanctions or action against health care facilities that fail to meet the requirements for certification as a medicaid service provider. Under [section 5] [53-6-113], the department is authorized to establish rules necessary for reimbursement or payment of medicaid service providers. It is intended that these rules address the types of medical services that are eligible for medicaid reimbursement; the nature, amount, scope, and duration of services; the rates for reimbursement of services, and the department's interaction with medicaid service providers.

Rules adopted under [sections 4 and 5] [53-6-108 and 53-6-113] should be in accordance with federal regulations applicable to the medicaid program under Title XIX of the federal Social Security Act. In establishing rules on the scope of services and the rates for reimbursement of services, the department of social and rehabilitation services [now department of public health and human services] should consider the amount of funds appropriated by the legislature for the Montana medicaid program. The department should also consider the need to provide for services in an efficient and cost-effective manner.

In adopting rules governing the provision of medicaid services, the department of social and rehabilitation services [now department of public health and human services] shall take particular care to provide only those services that are medically necessary and to ensure that such services are provided in the least costly setting and by the most efficient and cost-effective means. For example, hospital treatment should not be provided if adequate but less costly nursing home or physician's office services are available.

Under [section 4] [53-6-108], the department of social and rehabilitation services [now department of public health and human services] and the department of health and environmental sciences [now department of public health and human services] are given authority to establish standards for the health, safety, and care provided in a health care facility. This authority is intended to be in addition to existing authority of the department of health and environmental sciences [now department of public health and human services] under Title 50 of the Montana Code Annotated.

Pursuant to [section 4] [53-6-108], the department of social and rehabilitation services [now department of public health and human services] shall adopt rules establishing appropriate sanctions or action that may be taken against a health care facility that does not meet the minimum standards for certification as a medicaid provider. Such sanctions or action may include civil monetary penalties with interest, the suspension and termination of medicaid certification, and the appointment of management personnel to oversee the operation of a health care facility on a temporary basis in the case of an emergency or when necessary for the orderly closure of a facility or to bring a facility into compliance with minimum standards. This authority is in addition to the authority provided to the department under section 53-6-111, MCA.

The bill also provides the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules establishing eligibility for medicaid payment of premiums on behalf of individuals eligible for medicare under Title XVIII of the federal Social Security Act. It is intended that these rules establish the conditions for payments by the department to the federal government for supplemental insurance coverage provided under medicare.

Finally, the bill grants the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules for the implementation of local demonstration programs, which would not be available to all residents of the state. The purpose of these demonstration programs is to provide for the delivery of different medical services to different classes of medically indigent persons on a trial basis in order to assess the efficiency or cost-effectiveness of providing alternative services."

Effective Date: Section 11, Ch. 711, L. 1989, provided that this section is effective May 22, 1989.

53-6-109. Consistent regulation of long-term care facilities — rulemaking authority — timeframes.

Compiler's Comments

2005 Amendment: Chapter 514 in (1) in introductory clause near end after "consumer groups" deleted "by July 1, 2003"; in (1)(b) inserted last two sentences relating to timeframe for providing a written determination after dispute is submitted; inserted (2) relating to time for informing long-term facilities of the results of a survey; and made minor changes in style. Amendment effective July 1, 2005.

Funding: Section 2, Ch. 514, L. 2005, provided: "It is the intent of the legislature that the requirements of [this act] be conducted within existing levels of funding."

Effective Date: This section is effective October 1, 2001.

53-6-110. Report and recommendations on medicaid funding.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 261 in (4) inserted last sentence concerning yearend summaries provided to the legislature. Amendment effective April 20, 2021.

Chapter 477 in (1)(b)(iv) after "new and projected" inserted "long-term care" and near end substituted "long-term care facilities" for "health care facilities". Amendment effective October 1, 2021.

2013 Amendment: Chapter 120 in (4) in two places substituted "legislative fiscal analyst" for "legislative finance committee". Amendment effective July 1, 2013.

2005 Amendment: Chapter 380 in (4) substituted language requiring department to make monthly reports and submit a fiscal yearend summary of medicaid costs to the legislative finance committee in an agreed-upon format for former language that read: "Whenever the department of public health and human services establishes an estimate of medicaid expenditures for medicaid services, the department shall submit the estimate to the legislative finance committee. The legislative finance committee shall consider the estimate at its next regularly scheduled meeting." Amendment effective April 25, 2005.

1997 Amendments: Chapter 42 in (1)(b)(iv), after "state health plan", deleted "prepared pursuant to 42 U.S.C. 300m-2(a)(2)". Amendment effective March 12, 1997.

Chapter 93 in (1)(b)(iv) and (2) substituted "state health care facilities plan" for "state health plan"; and in (1)(b)(iv), after "plan", deleted "prepared pursuant to 42 U.S.C. 300m-2(a)(2)". Amendment effective March 19, 1997.

Saving Clause: Section 21, Ch. 93, L. 1997, was a saving clause.

1995 Amendments: Chapter 418 in (3) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in (1), (2), and (4) substituted "department of public health and human services" for "department of social and rehabilitation services"; and deleted former (3) that read: "(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of health and environmental sciences." Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

Effective Date: Section 4, Ch. 14, Sp. L. November 1993, provided that subsection (5) of this section is effective December 23, 1993.

1993 Amendment: Chapter 349 at beginning of first sentence of (1) substituted "As a part of the information required in 17-7-111" for "At the commencement of each legislative session" and after "report" deleted "as provided in 5-11-210, to the legislature"; and made minor changes in style.

1991 Amendment: Near middle of (1) inserted reference to 5-11-210; and at beginning of (2) substituted "As an integral part of" for "In addition to". Amendment effective March 20, 1991.

53-6-111. Department charged with administration and supervision of medical assistance program — overpayment recovery — sanctions for fraudulent and abusive activities — adoption of rules.

Compiler's Comments

2017 Amendment: Chapter 82 inserted (1)(b) concerning a provider's reasonable reliance on written department instructions and advice"; in (2)(a)(i) in middle inserted exception clause; in (2)(e) at end after "dispute" inserted CFR citation; inserted (3) concerning overpayment determinations involving medically necessary services that were improperly billed; in (6) substituted last sentence concerning procedural requirements for the recovery of overpayments for former sentence that read: "This section does not require that the hearing under Title 2, chapter 4, part 6, be granted prior to recovery of overpayment"; inserted (7) concerning the department's duties when identifying an underpayment to a provider; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 14, Ch. 82, L. 2017, provided: "[This act] applies to overpayment audits, record requests, and overpayment determinations made or commenced on or after [the effective date of this act]." Effective July 1, 2017.

2015 Amendment: Chapter 453 in (2)(a)(i) after "entitled" substituted reference to incorrect payment resulting from provider's error or unreasonable interpretation for "regardless of whether the incorrect payment was the result of department or provider error or other cause"; inserted (2)(b) concerning placing the burden on the provider to prove that its interpretation of the pertinent billing rule is reasonable; and made minor changes in style. Amendment effective July 1, 2015.

1995 Amendments: Chapter 354 in (1), near end, substituted "Title 53, chapter 2, and this chapter and that is in compliance with" for "chapter 2 of this title, as amended, and as contemplated by the provisions of" and before "Social" deleted "federal"; inserted (2) regarding collection of payments by the Department; in (3), in first sentence after "system of", deleted "penalties and", after "providers" deleted "of medical assistance services and supplies", and after "engage in" substituted "fraud and abuse" for "fraudulent, abusive, or improper activities" and substituted second sentence regarding rules for former sentence that read: "The department shall define by rule those activities which are fraudulent, abusive, or improper"; in (4), at beginning of introductory clause, substituted "Subject to subsections (5) and (6), the" for "The penalties or" and after "imposed" inserted "under rules adopted by the department under subsection (3) may"; deleted former (3)(b) that read: "(b) withholding of payments to offset previous improper payments to a provider"; deleted former (3)(c) that read: "(c) suspension of payments to a provider pending resolution of a dispute involving fraudulent, abusive, or improper activities"; inserted (3)(d) regarding imposition of civil monetary penalties; deleted former (4) that read: "(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent, abusive, or improper activities, together with interest at the rate set by 15-30-142 for tax deficiencies from the date of such payment"; in (5), near beginning of first sentence after "in which", substituted "the department may recover medicaid payments or impose a sanction" for "a penalty or sanction may be imposed" and inserted second sentence providing that a hearing is not required prior to recovery of overpayment; inserted (6) providing that remedies are separate and cumulative; and made minor changes in style. Amendment effective April 11, 1995.

Chapter 546 at beginning of (1) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Statement of Intent: The statement of intent adopted with Ch. 276, L. 1979, provided: "A statement of intent is required for this bill because it amends section 53-6-111, MCA, to authorize the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] to adopt rules in subsections (2) through (5).

Under present law, SRS [now Department of Public Health and Human Services] has express rulemaking authority to administer and supervise the state's medical assistance program under Title 53 of the MCA. There is no express rulemaking authority for the Department to adopt rules establishing penalties and sanctions applicable to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The Montana Administrative Procedure Act, section 2-4-102(11)(a), MCA, requires that substantive rules be adopted under expressly delegated authority in order to be valid.

Federal regulations require the state to suspend or terminate from the Medicaid program any provider who has also been terminated from the Medicare program or lose federal financial participation in Medicaid payments to those providers. If SRS [now Department of Public Health and Human Services] does not have the authority to suspend or terminate those providers, the state must continue to pay them but without federal funds which presently amount to 63 percent of the payments. Additional funds from the state's general fund would be needed to pay those providers of medical assistance in Montana.

The intent of this bill is to grant to the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] express authority to adopt rules establishing penalties and sanctions as enumerated in subsections (3) through (5) and the flexibility to comply with federal regulations and to adopt additional penalties and sanctions necessary to provide uninterrupted access to medical care and supplies in areas of Montana where alternative sources are unavailable."

Case Notes

Agency Letter Seeking Repayment of Alleged Medicaid Overpayments — No Action Commenced: Following an audit, the Department of Public Health and Human Services determined that the petitioner, a Medicaid medical supplier, had been overpaid and sent a letter to the petitioner requesting repayment. After a fair hearing in which the hearings officer upheld the Department's overpayment determination and concluded that an 8-year statute of limitations applied to the overpayment claim, the petitioner sought judicial review. The District Court concluded that the 2-year statute of limitations found in 27-2-211 applied and that the action was commenced when the Department sent the overpayment letter to the petitioner. On appeal, the Supreme Court reversed, noting that the statute of limitations issue was relevant only if an action had been commenced. Because the Department had merely sent a letter and had never filed a complaint, it had not commenced an action within the meaning of 27-2-102 and Rule 3, M.R.Civ.P. (Title 25, ch. 20). Independence Medical Supply, Inc. v. Dept. of Pub. Health and Human Serv., 2018 MT 57, 391 Mont. 1, 414 P.3d 781.

Constitutionality of Montana Medicaid "No Corporation, No Trust" Rule: A provision of the Montana Medicaid Manual adopted by the Department of Public Health and Human Services (DPHHS) established a "no corporation, no trust" rule providing that property held in a trust or owned by a corporation is not owned by a filing/assistance unit, so no personal property exclusions could be applied to trust or corporation property regardless of whether any member of the filing/assistance unit was a trust beneficiary or corporate shareholder. In order to circumvent the rule and reduce countable resources to qualify for Medicaid services for his wife, plaintiff traded a one-third interest in a corporation for a truck to be used by plaintiff for business purposes and self-support, thus converting the countable corporate interest into an excludable interest. Plaintiff later contended that the "no corporation, no trust" rule violated equal protection under the state constitution because no rational basis existed for discriminating between whether an asset is countable or excludable based on the form of ownership and because neither the goal of controlling Montana Medicaid costs nor any other professional reason provided a rational basis for the discrimination. The Supreme Court applied the rational basis test and agreed. The court noted a 2008 DPHHS rule that apparently permits an exclusion for property essential for self-support that is owned by a limited liability company, while still disallowing an exclusion for property owned by a corporation such as plaintiff's. Therefore, DPHHS's premise that a rational basis existed for excluding plaintiff's corporate property could not withstand scrutiny, and the court concluded that the "no corporation, no trust" rule as applied to plaintiff violated the right to equal protection. Timm v. Dept. of Public Health and Human Services, 2008 MT 126, 343 M 11, 184 P3d 994 (2008).

Medicaid — Allowable Use of Posteligibility Income to Pay Costs of Preeligibility Nursing Home Care: The District Court upheld the decision of the Board of Public Assistance affirming a decision by a hearings examiner preventing a woman from using her posteligibility income to pay for nursing home care costs incurred prior to her eligibility for Medicaid because the services were not covered by Medicaid. On appeal, the Supreme Court reversed. A final decision by the administrator of the federal Centers for Medicare and Medicaid Services (CMS), after a review of federal legislative history, concluded that a policy that allowed a deduction in the posteligibility program process only if an individual was eligible for Medicaid during the period was inconsistent with CMS policy. Under the CMS decision, costs incurred for services prior to Medicaid eligibility must be considered "not a Medicaid covered service" as long as they were not actually covered by Medicaid, and consistency with that decision was required in the Montana Medicaid plan. Thus, the use of posteligibility income to pay for nursing home care costs incurred prior to eligibility for Medicaid was allowed. Timm v. Dept. of Public Health and Human Services, 2008 MT 126, 343 M 11, 184 P3d 994 (2008).

Medicaid — Disallowance of Offset of Countable Resources by Amount of Accumulated Nursing Home Costs Affirmed: The District Court upheld a decision by the Board of Public Assistance affirming a decision by a hearings examiner not to offset plaintiffs' countable resources by the amount of their accumulated nursing home care expenses. The court reasoned that because federal law does not allow a deduction for incurred medical expenses in resource determinations, equal protection did not apply. On appeal, plaintiffs asserted that failure to allow the offset had no rational basis and therefore violated equal protection. However, plaintiffs provided no authority showing that federal law requires states to use resource spend down in administering Medicaid, so the equal protection claim was without merit and the District Court was affirmed. Timm v. Dept. of Public Health and Human Services, 2008 MT 126, 343 M 11, 184 P3d 994 (2008), distinguishing Deaconess Medical Center of Billings, Inc. v. Dept. of Social and Rehabilitation Services, 222 M 127, 720 P2d 1165 (1986).

Medical Provider Liable for Reimbursement of Medicaid Payments Erroneously Billed Under Pre-1999 Billing Codes: A 1999 change in Medicaid billing procedures implemented a national bill coding system that required medical providers to bill for each visit rather than for the actual time spent providing the service. Despite the change, Kirchner continued to use the old billing method until an audit revealed the problem. The Department of Public Health and Human Services (DPHHS) then required Kirchner to pay back fees that were improperly paid to Kirchner using the old coding system. Kirchner contested the DPHHS findings, but all administrative factfinders and the District Court concluded that Kirchner had in fact overbilled the Medicaid program. On appeal, the Supreme Court held that the DPHHS interpretation of its rules and the billing codes was reasonable, that the findings of the hearings officer were adequately supported by the evidence and not clearly erroneous, and, in deference to the DPHHS interpretation of its rule, that the agency's interpretation would be sustained. Thus, Kirchner was not entitled to payment for overbilled services and was liable for reimbursement of the overpayment. Kirchner v. Dept. of Public Health and Human Services, 2005 MT 202, 328 M 203, 119 P3d 82 (2005).

Interpretation of Administrative Rule Precluding Reimbursement of Shipping Costs for Diapers Affirmed: ARM 37.86.1806 states that Medicaid will not reimburse delivery fees in addition to the amount reimbursed for diapers. The Department of Public Health and Human Services interpreted the rule to preclude Medicaid reimbursement of any costs associated with transporting diapers from a provider to Medicaid recipients and concluded that shipping fees for diapers therefore included delivery fees. Plaintiff contested the Department's interpretation, and following an administrative hearing, the Department's interpretation was affirmed. On appeal, the Supreme Court examined the rule along with 1995 and 2001 amendments to the rule and concluded that the Department's interpretation was reasonable and not plainly inconsistent with the spirit of the rule. Plaintiff failed to meet the burden of establishing error based on the common meaning of terms or on the fact that the Department's policy of paying claims on an "as submitted" basis and then later auditing the payments constituted an interpretation of the rule as allowing reimbursement of diaper shipping costs. The District Court decision upholding the Department's interpretation was affirmed. Juro's United Drug v. Dept. of Public Health and Human Services, 2004 MT 117, 321 M 167, 90 P3d 388 (2004).

Veterans Administration (Now Department of Veterans Affairs) Per Diem Payments to Be Reported as Third-Party Liability Payments for Medicaid Reimbursement — Reasonable Administrative Rule Defining Third Party: A longstanding administrative rule of the Department of Public Health and Human Services (DPHHS), ARM 46.12.304 (now ARM 37.85.407), required monthly Veterans Administration (now Department of Veterans Affairs) per diem payments to be reported as third-party liability payments that would result in a reduction of Medicaid reimbursements. Plaintiff challenged the interpretation of the administrative rule with the Board of Public Assistance, which confirmed DPHHS's interpretation, and the District Court affirmed the finding of the Board. On appeal to the Supreme Court, plaintiff asserted that it was not required to report its receipt of monthly Veterans Administration (now Department of Veterans Affairs) per diem payments as anything other than a subsidy to offset against its general operating expenses. The Supreme Court found that the plain meaning of the rule provided specific notice that a public agency will be considered a third party if it is liable to pay all or part of the cost of medical treatment and medical-related services for a person's personal injury, disease, or illness. The rule sufficiently identified entities considered third parties, which included the Veterans Administration (now Department of Veterans Affairs). DPHHS's interpretation of the rule lay within the range of reasonable interpretation permitted by the wording of the rule and was not plainly inconsistent with the spirit or plain language of the rule. Therefore, DPHHS's interpretation was correct, and the District Court did not err in holding that the decision of the Board of Public Assistance affirming DPHHS's interpretation was legally correct. Glendive Medical Center, Inc. v. Dept. of Public Health and Human Services, 2002 MT 131, 310 M 156, 49 P3d 560 (2002).

Contested Case — Requirement for Judicial Review — Exhaustion of Administrative Remedies: Plaintiff, a nursing home operator, was notified by the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) that it was disallowing certain nursing care costs claimed by plaintiff. The Department notified plaintiff that a hearing could be requested under the Department's administrative rules. Plaintiff requested time extensions in which to submit objections, and the Department agreed. The Department finally set a time limitation that plaintiff did not meet. The Department then filed its reimbursement rate for plaintiff. Plaintiff filed a complaint in District Court for judicial review of the Department's determination. The District Court dismissed the case. On appeal, the Supreme Court held that only a party who has exhausted all administrative remedies is entitled to judicial review if aggrieved in a contested case. A contested case is a determination of legal rights after an opportunity for hearing. Because there was no hearing in this case, dismissal was proper. B.G.M. Enterprises v. St., 673 P2d 1205, 40 St. Rep. 1827 (1983) (apparently not reported in Montana Reports).

Supplementing Medicaid Payments Made Under "Reasonable Costs" Formula Prohibited: Participation in the federal Medicaid program is voluntary, but if a state elects to participate, it must comply with the requirements of the federal statutes and regulations in order to remain eligible for federal funds. Montana as a participant in the Medicaid program must conform to the Social Security Act and all valid regulations promulgated thereunder as long as it remains in the program. Under federal law and regulations, a state plan must provide that the Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency under the federal "reasonable costs" formula. Supplementing Medicaid payments beyond this formula is prohibited. Flathead Health Center v. Flathead County, 183 M 211, 598 P2d 1111, 36 St. Rep. 1465 (1979).

53-6-112. Department to print and distribute copies of part and certain forms.

Compiler's Comments

2001 Amendment: Chapter 571 in first sentence in two places near middle substituted "local offices of public assistance" for "county welfare departments"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 546 at beginning substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-6-113. Department to adopt rules.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 155 inserted (6)(d) prohibiting the department from creating rules or policies requiring a person who is eligible for medicaid pursuant to 53-6-131(1)(e)(ii)(A) to make only cash payments or only incur medical expenses to qualify for medicaid and concerning eligibility of medical expenses related to home and community-based services waivers. Amendment effective July 1, 2021.

Chapter 497 inserted (4)(b) concerning services by means of telehealth; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 442 inserted (10) prohibiting the adoption of rules that exclude children in foster care from medicaid services or require prior authorization for children in foster care to access medicaid services. Amendment effective July 1, 2017.

Preamble: The preamble attached to Ch. 442, L. 2017, provided: "WHEREAS, in providing Medicaid services, the Department of Public Health and Human Services is treating children with disabilities who are in foster care differently from children with disabilities who are not in foster care; and

WHEREAS, children in foster care are having to take additional steps to receive Medicaid services and, in some cases, Medicaid providers automatically are not providing services to children in foster care; and

WHEREAS, the Legislature intends to revise the Department's rulemaking authority relating to the provision of Medicaid services and to revise existing administrative rules relating to the provision of Medicaid services to provide that foster children may not be excluded or restricted from accessing Medicaid services solely because the children are in foster care."

2015 Amendment: Chapter 287 inserted (6)(c) applying a resource limit for eligibility of disabled workers; and made minor changes in style. Amendment effective July 1, 2015.

2013 Amendment: Chapter 363 inserted (10) regarding rules for implementing and administering patient-centered medical home programs. Amendment effective April 30, 2013, and terminates December 31, 2017.

2009 Amendment: Chapter 452 in (6) in first sentence inserted "including the medicaid program provided for in 53-6-195"; and made minor changes in style. Amendment effective July 1, 2009.

Transition: Section 4, Ch. 452, L. 2009, provided: "During the biennium beginning July 1, 2009, the department shall implement the program provided for in [this act] using existing staff."

2005 Amendment: Chapter 502 in (6) inserted third sentence prohibiting the department from applying financial criteria below $15,000 for resources other than income in determining the eligibility of a child under 19 years of age for poverty level-related children's medicaid coverage groups; in (9) at beginning inserted "Subject to subsection (6)"; and made minor changes in style. Amendment effective July 1, 2006.

2001 Amendment: Chapter 465 in (9) near middle of first sentence after "receiving" substituted "section 1931 medicaid benefits, as defined in 53-4-602" for "benefits from FAIM financial assistance, as defined in 53-4-702, as participants of the FAIM project" and after "increased income" inserted "to the assistance unit, as that term is defined in the rules of the department" and at end of second sentence after "legislature" deleted "for the FAIM project"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 at end of (6), after "information", inserted "and cooperation with the state agency administering the child support enforcement program under Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq."; in first sentence in (9), after "receiving", substituted "benefits from FAIM financial assistance, as defined in 53-4-702" for "aid to families with dependent children"; deleted (9)(b) that read: "(b) Notwithstanding Title 53, chapter 2, part 9, and Title 53, chapter 4, part 6, it is the intent of the legislature that rules may not be adopted except to implement the waiver granted by the U.S. secretary of health and human services under section 1115 of the Social Security Act, 42 U.S.C. 1315, and to implement the FAIM program. Rules may not implement any other program or programs that may result because of federal welfare reform unless the rules are required for compliance with federal law"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendments: Chapter 491 inserted (9) regarding the adoption of rules for income limits and clarifying the scope of the rules with regard to applicable federal law; and made minor changes in style.

Chapter 546 at beginning of (1) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 491, L. 1995, provided: "A statement of intent is required for this bill because [section 11] [53-2-901] grants the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules for the administration of the food stamp program.

(1) It is the intent of the legislature that the department adopt rules concerning:

(a) eligibility for assistance, including income and resource limitations, income and resource exclusions, and transfers of resources;

(b) amounts of assistance and methods for determining benefit amounts;

(c) certification periods;

(d) reporting requirements;

(e) work registration and employment and training requirements and exemptions from those requirements;

(f) procedures and policies of the employment and training program;

(g) disqualification because of intentional program violations, voluntarily quitting a job without good cause, or any other violation of program rules;

(h) penalties applicable to recipients of aid to families with dependent children who have been sanctioned because of failure to meet any requirement of the aid to families with dependent children program; and

(i) special requirements or criteria applicable to participants in the families achieving independence in Montana (FAIM) project.

(2) It is intended that the rules adopted by the department comply with federal requirements under the Food Stamp Act Amendments of 1980, 7 U.S.C. 2011, et seq., and 7 CFR 271 through 285, as may be amended, or, in the event that waivers of federal law have been granted by the food and nutrition service of the U.S. department of agriculture, with the waivers.

(3) [Section 19] [53-4-212] revises the department's rulemaking authority for the aid to families with dependent children program, including the FAIM project.

It is the intent of the legislature that the department adopt rules concerning:

(a) eligibility requirements, including gross and net income limitations, resource limitations, and income and resource exclusions;

(b) amounts of assistance and methods for computing benefit amounts;

(c) deprivation of parental support or care for purposes of qualifying as a dependent child;

(d) the degree of kinship required for a person to qualify as a specified caretaker relative with whom a child may live to be eligible for assistance;

(e) reporting requirements;

(f) requirements for participation in the JOBS program and exemptions from participation;

(g) procedures and policies of the JOBS program;

(h) sanctions, disqualification, or other penalties for failure to comply with program rules or requirements; and

(i) special requirements or policies applicable to participants in the FAIM project.

(4) It is intended that rules adopted under [section 19] [53-4-212] comply with federal requirements under Title IV of the Social Security Act, 42 U.S.C. 601, et seq., and 45 CFR parts 200 through 499, as amended, or, in the event that waivers of federal law have been granted by the U.S. department of health and human services, with the waivers.

(5) [Section 26] [53-6-113] grants the department additional rulemaking authority. It is the intent of the legislature that the department adopt rules specifying the income limits for eligibility for extended medical assistance for persons receiving aid to families with dependent children under the FAIM project who lose eligibility because of increased income and specifying the length of time for which they may receive extended medical assistance.

It is intended that rules adopted under [section 26] [53-6-113] comply with waivers of federal medicaid law granted by the secretary of the U.S. department of health and human services pertaining to the FAIM project and promote the goals of the FAIM project of self-sufficiency and responsibility of participants. In adopting the rules, the department may consider the amount of funds appropriated by the legislature for the Montana medicaid program."

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Inserted (8) authorizing Department to adopt rules to administer Medicaid managed-care systems. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 460, L. 1991, provided: "A statement of intent is required for this bill because it grants the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules for the administration of medicaid managed-care systems.

It is the intent of the legislature that the department may adopt rules concerning:

(1) participation in managed care;

(2) selection and qualifications for providers of managed care; and

(3) standards for the provision of managed care.

It is also intended that rules adopted by the department comply with federal regulations governing administration of the medicaid program."

1989 Amendments: Chapter 310 inserted (6) and (7) to allow adoption of rules governing eligibility for the Montana Medicaid program. Amendment effective March 24, 1989.

Chapter 711 substituted (1) relating to adoption of necessary rules for former language that read: "The department of social and rehabilitation services shall adopt appropriate rules not inconsistent with this part to administer and supervise the program uniformly throughout the state and shall define medical assistance by rules. Medical assistance shall be furnished through payments to providers of services and supplies as contemplated in this part"; inserted (2) granting rulemaking relating to definition of services that may be provided under Medicaid; inserted (3) granting rulemaking relating to reimbursement rates; inserted (4) granting rulemaking relating to who may provide the services; and inserted (5) granting rulemaking relating to payments by recipient. Amendment effective May 22, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 310, L. 1989, provided: "A statement of intent is required for this bill because it amends 53-6-113 to authorize the department of social and rehabilitation services [now department of public health and human services] to adopt rules to govern eligibility for the Montana medicaid program.

It is the intent of the legislature that the department adopt rules for eligibility that comply with federal requirements under Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.) and 42 CFR 430 through 498. The rules of the department should address the standards of eligibility for the Montana medicaid program, including income and resource criteria, treatment of resources, specification of groups eligible to receive medicaid, and all other considerations described in 53-6-113(2) through (4)."

Amendment of Administrative Rule Directed: Section 1, Ch. 457, L. 1989, provided: "The department of social and rehabilitation services [now department of public health and human services] shall amend rule 46.12.1204, Administrative Rules of Montana, to allow the sale of an intermediate care facility for the mentally retarded that is made after July 1, 1982, to have property costs computed for the new owner at the lesser of historical costs or the rate used for all other intermediate care facilities, subject to the limitations in 42 U.S.C. 1396a(a)(13)(C)." Effective April 5, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 711, L. 1989, provided: "A statement of intent is required for this bill because [sections 4 and 5] [53-6-108 and 53-6-113] grant authority to the department of social and rehabilitation services [now department of public health and human services] and to the department of health and environmental sciences [now department of public health and human services] to adopt rules to administer and supervise services provided under the Montana medicaid program.

The bill expands the existing rulemaking authority of the department of social and rehabilitation services [now department of public health and human services] under [section 5] [53-6-113] and provides new authority for the department to adopt rules under [section 4] [53-6-108] governing the application of sanctions or action against health care facilities that fail to meet the requirements for certification as a medicaid service provider. Under [section 5] [53-6-113], the department is authorized to establish rules necessary for reimbursement or payment of medicaid service providers. It is intended that these rules address the types of medical services that are eligible for medicaid reimbursement; the nature, amount, scope, and duration of services; the rates for reimbursement of services, and the department's interaction with medicaid service providers.

Rules adopted under [sections 4 and 5] [53-6-108 and 53-6-113] should be in accordance with federal regulations applicable to the medicaid program under Title XIX of the federal Social Security Act. In establishing rules on the scope of services and the rates for reimbursement of services, the department of social and rehabilitation services [now department of public health and human services] should consider the amount of funds appropriated by the legislature for the Montana medicaid program. The department should also consider the need to provide for services in an efficient and cost-effective manner.

In adopting rules governing the provision of medicaid services, the department of social and rehabilitation services [now department of public health and human services] shall take particular care to provide only those services that are medically necessary and to ensure that such services are provided in the least costly setting and by the most efficient and cost-effective means. For example, hospital treatment should not be provided if adequate but less costly nursing home or physician's office services are available.

Under [section 4] [53-6-108], the department of social and rehabilitation services [now department of public health and human services] and the department of health and environmental sciences [now department of public health and human services] are given authority to establish standards for the health, safety, and care provided in a health care facility. This authority is intended to be in addition to existing authority of the department of health and environmental sciences [now department of public health & human services] under Title 50 of the Montana Code Annotated.

Pursuant to [section 4] [53-6-108], the department of social and rehabilitation services [now department of public health and human services] shall adopt rules establishing appropriate sanctions or action that may be taken against a health care facility that does not meet the minimum standards for certification as a medicaid provider. Such sanctions or action may include civil monetary penalties with interest, the suspension and termination of medicaid certification, and the appointment of management personnel to oversee the operation of a health care facility on a temporary basis in the case of an emergency or when necessary for the orderly closure of a facility or to bring a facility into compliance with minimum standards. This authority is in addition to the authority provided to the department under section 53-6-111, MCA.

The bill also provides the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules establishing eligibility for medicaid payment of premiums on behalf of individuals eligible for medicare under Title XVIII of the federal Social Security Act. It is intended that these rules establish the conditions for payments by the department to the federal government for supplemental insurance coverage provided under medicare.

Finally, the bill grants the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules for the implementation of local demonstration programs, which would not be available to all residents of the state. The purpose of these demonstration programs is to provide for the delivery of different medical services to different classes of medically indigent persons on a trial basis in order to assess the efficiency or cost-effectiveness of providing alternative services."

Case Notes

Medicaid — Allowable Use of Posteligibility Income to Pay Costs of Preeligibility Nursing Home Care: The District Court upheld the decision of the Board of Public Assistance affirming a decision by a hearings examiner preventing a woman from using her posteligibility income to pay for nursing home care costs incurred prior to her eligibility for Medicaid because the services were not covered by Medicaid. On appeal, the Supreme Court reversed. A final decision by the administrator of the federal Centers for Medicare and Medicaid Services (CMS), after a review of federal legislative history, concluded that a policy that allowed a deduction in the posteligibility program process only if an individual was eligible for Medicaid during the period was inconsistent with CMS policy. Under the CMS decision, costs incurred for services prior to Medicaid eligibility must be considered "not a Medicaid covered service" as long as they were not actually covered by Medicaid, and consistency with that decision was required in the Montana Medicaid plan. Thus, the use of posteligibility income to pay for nursing home care costs incurred prior to eligibility for Medicaid was allowed. Timm v. Dept. of Public Health and Human Services, 2008 MT 126, 343 M 11, 184 P3d 994 (2008).

Question of Applicability of Federal Medicaid Law to Members of Hutterite Colony — Remand: The District Court overruled a hearings examiner's findings that an express trust existed between an incorporated Hutterite Colony and the colony members. The hearings examiner determined that because colony trust assets were available to colony members and that because trust assets were in excess of the $3,000 allowable resource limit, the colony members were ineligible to receive federal Medicaid benefits. On appeal, the Supreme Court applied neutral secular principles of law to this church property dispute and held that an express trust existed between the corporation and the colony members. However, the court did not reach the issues of whether the colony owed a legal duty to support its members and whether colony members were eligible for benefits under the family-related Medicaid program, so the case was remanded for further findings and consideration of applicable federal law. In re Fair Hearing of Hofer v. Dept. of Public Health and Human Services, 2005 MT 302, 329 M 368, 124 P3d 1098 (2005).

Interpretation of Administrative Rule Precluding Reimbursement of Shipping Costs for Diapers Affirmed: ARM 37.86.1806 states that Medicaid will not reimburse delivery fees in addition to the amount reimbursed for diapers. The Department of Public Health and Human Services interpreted the rule to preclude Medicaid reimbursement of any costs associated with transporting diapers from a provider to Medicaid recipients and concluded that shipping fees for diapers therefore included delivery fees. Plaintiff contested the Department's interpretation, and following an administrative hearing, the Department's interpretation was affirmed. On appeal, the Supreme Court examined the rule along with 1995 and 2001 amendments to the rule and concluded that the Department's interpretation was reasonable and not plainly inconsistent with the spirit of the rule. Plaintiff failed to meet the burden of establishing error based on the common meaning of terms or on the fact that the Department's policy of paying claims on an "as submitted" basis and then later auditing the payments constituted an interpretation of the rule as allowing reimbursement of diaper shipping costs. The District Court decision upholding the Department's interpretation was affirmed. Juro's United Drug v. Dept. of Public Health and Human Services, 2004 MT 117, 321 M 167, 90 P3d 388 (2004).

Veterans Administration (Now Department of Veterans Affairs) Per Diem Payments to Be Reported as Third-Party Liability Payments for Medicaid Reimbursement — Reasonable Administrative Rule Defining Third Party: A longstanding administrative rule of the Department of Public Health and Human Services (DPHHS), ARM 46.12.304 (now ARM 37.85.407), required monthly Veterans Administration (now Department of Veterans Affairs) per diem payments to be reported as third-party liability payments that would result in a reduction of Medicaid reimbursements. Plaintiff challenged the interpretation of the administrative rule with the Board of Public Assistance, which confirmed DPHHS's interpretation, and the District Court affirmed the finding of the Board. On appeal to the Supreme Court, plaintiff asserted that it was not required to report its receipt of monthly Veterans Administration (now Department of Veterans Affairs) per diem payments as anything other than a subsidy to offset against its general operating expenses. The Supreme Court found that the plain meaning of the rule provided specific notice that a public agency will be considered a third party if it is liable to pay all or part of the cost of medical treatment and medical-related services for a person's personal injury, disease, or illness. The rule sufficiently identified entities considered third parties, which included the Veterans Administration (now Department of Veterans Affairs). DPHHS's interpretation of the rule lay within the range of reasonable interpretation permitted by the wording of the rule and was not plainly inconsistent with the spirit or plain language of the rule. Therefore, DPHHS's interpretation was correct, and the District Court did not err in holding that the decision of the Board of Public Assistance affirming DPHHS's interpretation was legally correct. Glendive Medical Center, Inc. v. Dept. of Public Health and Human Services, 2002 MT 131, 310 M 156, 49 P3d 560 (2002).

Contested Case — Requirement for Judicial Review — Exhaustion of Administrative Remedies: Plaintiff, a nursing home operator, was notified by the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) that it was disallowing certain nursing care costs claimed by plaintiff. The Department notified plaintiff that a hearing could be requested under the Department's administrative rules. Plaintiff requested time extensions in which to submit objections, and the Department agreed. The Department finally set a time limitation that plaintiff did not meet. The Department then filed its reimbursement rate for plaintiff. Plaintiff filed a complaint in District Court for judicial review of the Department's determination. The District Court dismissed the case. On appeal, the Supreme Court held that only a party who has exhausted all administrative remedies is entitled to judicial review if aggrieved in a contested case. A contested case is a determination of legal rights after an opportunity for hearing. Because there was no hearing in this case, dismissal was proper. B.G.M. Enterprises v. St., 673 P2d 1205, 40 St. Rep. 1827 (1983) (apparently not reported in Montana Reports).

Implied Contracts — Medicaid Payments: The principle underlying the implied contract doctrine is that one person should not be permitted to be unjustly enriched at the expense of another but should be required to make restitution for property or benefits received where it is just and equitable that such restitution be made and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly. The circumstances on the record do not justify payment be made on any formula other than the "reasonable costs" formula as set forth in federal Medicaid statutes and regulations. Flathead Health Center v. Flathead County, 183 M 211, 598 P2d 1111, 36 St. Rep. 1465 (1979).

Performance of Duty: Board of Public Welfare (now Department of Public Health and Human Services) performed its duty in setting flat rate compensation for care of patients by skilled nursing homes, pending completion of statewide cost survey, and thus mandamus did not lie to compel Board to pay reasonable cost of care rather than flat rate. Lee v. Laitinen, 152 M 230, 448 P2d 154 (1968).

Attorney General's Opinions

Occupational Therapists Not Permitted to Use Therapeutic Modalities — Rule Allowing for Reimbursement Void: The use of therapeutic modalities by occupational therapists has not been authorized by the Legislature and is impermissible. Therefore, ARM 46.12.547 (now repealed), authorizing occupational therapists to be reimbursed through Medicaid for modalities performed in the course of treatment, is invalid as an improper exercise of rulemaking authority. 44 A.G. Op. 3 (1991).

53-6-114. Rules of department binding.

Compiler's Comments

2001 Amendment: Chapter 571 at end after "are binding upon the" substituted "local offices of public assistance" for "county departments of public welfare"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-6-115. Contracts with other agencies.

Compiler's Comments

1995 Amendment: Chapter 546 at beginning substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Case Notes

Authority of Department to Contractually Bind State: Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) cannot claim, because funds might be cut off from the federal Department of Health, Education, and Welfare due to payments of standard charges to private hospitals, that it is not liable on contracts entered into with private hospitals as this section gives the Department authority to enter into contracts with either private or public hospitals and makes the Department and state liable for standard charges regardless of potential loss of funds from federal Department of Health, Education, and Welfare. Mont. Deaconess Hosp. v. Dept. of Social and Rehabilitation Services, 167 M 383, 538 P2d 1021, 32 St. Rep. 801 (1975).

Medicaid Reimbursement: The department has authority under this section and 53-6-141 (now repealed) to contract with hospitals to reimburse them for "full and adequate costs" incurred by Medicaid patients, and the department rather than the federal government is the real party in interest under such contracts. Mont. Deaconess Hosp. v. Dept. of Social and Rehabilitation Services, 167 M 383, 538 P2d 1021 (1975).

53-6-116. Medicaid managed care — capitated health care.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 89, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2011 Amendment: Chapter 351 inserted (6) concerning the application of Title 53, chapter 6, part 7, to a managed care or capitated health care system. Amendment effective May 6, 2011.

Retroactive Applicability: Section 14, Ch. 351, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011."

2001 Amendment: Chapter 466 in (4) at end of first sentence before "53-6-104" deleted "53-6-101 and" and inserted second sentence allowing a system to be based on one or more of the medical assistance services provided for in 53-6-101; in (5) at end after "department" deleted "of public health and human services"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 546 at beginning of (1) and at end of (5) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Special Session Amendment: Chapter 31 in (1) and (4), after "managed-care", inserted "and capitated health care"; inserted (2) authorizing contract for health care services; in (4), after "53-6-101", deleted "53-6-103"; inserted (5) requiring submission to Legislative Finance Committee; and made minor changes in style. Amendment effective January 1, 1994.

Sections Not Codified: Sections 3 and 4, Ch. 31, Sp. L. November 1993, provided: "**Mental health advisory group.** The department of social and rehabilitation services [now department of public health and human services] shall develop the mental health managed care plan in consultation with an advisory group. The advisory group shall consist of representatives from mental health services clients and their family members, community mental health centers, private mental health services providers, the Montana legislature, the department of social and rehabilitation services [now department of public health and human services], the department of corrections and human services [now department of corrections], the state hospital, Montana hospitals, and other appropriate groups.

Physical provider advisory group. The department of social and rehabilitation services [now department of public health and human services] shall develop the physical care managed care plan in consultation with an advisory group. The advisory group must consist of representatives from health services clients and their family members, private physical care providers, the Montana legislature, the department of social and rehabilitation services [now department of public health and human services], the department of corrections and human services [now department of corrections], Montana hospitals, and other appropriate groups." Effective January 1, 1994, and terminates June 30, 1995.

1991 Statement of Intent: The statement of intent attached to Ch. 460, L. 1991, provided: "A statement of intent is required for this bill because it grants the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules for the administration of medicaid managed-care systems.

It is the intent of the legislature that the department may adopt rules concerning:

(1) participation in managed care;

(2) selection and qualifications for providers of managed care; and
(3) standards for the provision of managed care.

It is also intended that rules adopted by the department comply with federal regulations governing administration of the medicaid program."

Effective Date: Section 8, Ch. 460, L. 1991, provided that this section is effective July 1, 1991.

53-6-117. Participation requirements.

Compiler's Comments

1995 Amendment: Chapter 546 at beginning of (1) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Statement of Intent: The statement of intent attached to Ch. 460, L. 1991, provided: "A statement of intent is required for this bill because it grants the department of social and rehabilitation services [now department of public health and human services] authority to adopt rules for the administration of medicaid managed-care systems.

It is the intent of the legislature that the department may adopt rules concerning:
(1) participation in managed care;
(2) selection and qualifications for providers of managed care; and
(3) standards for the provision of managed care.

It is also intended that rules adopted by the department comply with federal regulations governing administration of the medicaid program."

Effective Date: Section 8, Ch. 460, L. 1991, provided that this section is effective July 1, 1991.

53-6-121. Local administration of medical assistance.

Compiler's Comments

2001 Amendment: Chapter 571 at beginning substituted "The local offices of public assistance are" for "The county department of public welfare shall be", near middle after "medical assistance" inserted "including medicaid", and at end substituted "rules, and overall supervision of the department" for "and functions prescribed for the county department in chapter 2 of this title"; and made minor changes in style. Amendment effective July 1, 2001.

53-6-122. Telehealth services — requirements — limitations.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

53-6-124. Definitions.

Compiler's Comments

2011 Amendment: Chapter 397 in introduction deleted reference to 53-6-126; in definition of conversion factor substituted current definition for "means the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance to the most beneficiaries within the state in January 2007 who use the resource-based relative value scale to determine fees for covered services. This January 2007 conversion factor is applicable for state fiscal years 2008, 2009, 2010, 2011, 2012, and 2013. In state fiscal year 2014 and for each state fiscal year thereafter, the conversion factor is the average of the conversion factors used by the top five insurers or third-party administrators providing disability insurance to the most beneficiaries within the state who use the resource-based relative value scale to determine fees for covered services"; and made minor changes in style. Amendment effective May 12, 2011.

Retroactive Applicability: Section 5, Ch. 397, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2010."

Effective Date: This section is effective October 1, 2007.

53-6-125. Physician services reimbursement.

Compiler's Comments

2019 Amendment: Chapter 393 inserted (3) reducing the amount of reimbursement for the biennium beginning July 1, 2019. Amendment effective July 1, 2019, and terminates June 30, 2021.

2017 Amendment: Chapter 364 in (2)(a) substituted current text concerning conversion factor for fiscal years 2018 and 2019 for former text that read: "(a) For state fiscal years 2011 through 2013, the conversion factor is $40.09. The conversion factor may be adjusted by the department in order to maintain reimbursement, at a minimum, at the fiscal year 2010 reimbursement rate"; in (2)(b) at beginning substituted "For each subsequent fiscal year" for "For state fiscal year

2014 and for each subsequent state fiscal year"; and made minor changes in style. Amendment effective July 1, 2017.

Severability: Section 13, Ch. 364, L. 2017, was a severability clause.

2011 Amendment: Chapter 397 in (1) after "multiplying" deleted "a percentage of"; deleted former (2)(a) through (2)(e) that read: "(a) For state fiscal years 2008 and 2009, the percentage of the conversion factor will be determined by the appropriation of the 2007 legislature for physician reimbursement.

(b) For state fiscal year 2010, the 2009 percentage of the conversion factor will be increased by a minimum of 6%.

(c) For state fiscal year 2011, the 2010 percentage of the conversion factor will be increased by a minimum of 6%.

(d) For state fiscal year 2012, the 2011 percentage of the conversion factor will be increased by a minimum of 6%.

(e) For state fiscal year 2013, the 2012 percentage of the conversion factor will be increased by a minimum of 6%"; inserted (2)(a) providing conversion factor for fiscal years 2011 through 2013 and requiring minimum reimbursement; in (2)(b) substituted current language relating to conversion factor for fiscal year 2014 and subsequent years for former language that read: "For state fiscal year 2014 and for each state fiscal year thereafter, the percentage of the conversion factor will be equivalent, at a minimum, to state fiscal year 2013"; and made minor changes in style. Amendment effective May 12, 2011.

Retroactive Applicability: Section 5, Ch. 397, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to July 1, 2010."

Effective Date: This section is effective October 1, 2007.

53-6-127. Rulemaking — policy adjusters.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

53-6-131. Eligibility requirements.

Compiler's Comments

2021 Amendment: Chapter 155 in both versions inserted (4) prohibiting department from requiring a person who is eligible for medicaid pursuant to 53-6-131(1)(e)(ii)(A) to make only cash payments or only incur medical expenses to qualify for medicaid and concerning eligibility of medical expenses related to home and community-based services waivers; and made minor changes in style. Amendment effective July 1, 2021.

2019 Amendment: Chapter 415 in (1) near middle of introductory clause substituted "U.S. citizen or a qualified alien as defined in 8 U.S.C. 1641" for "person" and near end after "services" inserted "to be a Montana resident and"; inserted (2) requiring proof of the applicant's residency in this state; inserted (13) concerning denial of enrollment; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

2015 Amendment: Chapter 287 inserted (2)(b) prohibiting the department from counting as a resource an individual retirement account under certain circumstances; and made minor changes in style. Amendment effective July 1, 2015.

2013 Amendment: Chapter 387 inserted (1)(d)(ii) concerning individuals in guardianships; and made minor changes in style. Amendment effective May 6, 2013.

2009 Amendments — Composite Section: Chapter 165 in (1)(e)(ii)(B)(I) at beginning inserted "in the case of a person who meets the nonfinancial criteria for medical assistance because the person is aged, blind, or disabled" and after "resources that" substituted "do not exceed" for "are within"; inserted (1)(e)(ii)(B)(II) regarding the case of a person who meets the nonfinancial criteria for medical assistance because the person is pregnant, is an infant or child, or is the caretaker of an infant or child; in (7) near middle after "exceed" substituted "income standards adopted by the department that comply with the requirements of" for "133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and"; and made minor changes in style. Amendment effective April 6, 2009.

Chapter 452 inserted (11) requiring medicaid coverage for workers with disabilities. Amendment effective July 1, 2009.

Transition: Section 4, Ch. 452, L. 2009, provided: "During the biennium beginning July 1, 2009, the department shall implement the program provided for in [this act] using existing staff."

2008 Amendment by Initiative: Section 12, I.M. No. 155, proposed by initiative petition and approved at the general election held November 4, 2008, inserted (1)(g) concerning age and income restrictions; in (2) inserted second sentence concerning resource test; and made minor changes in style. Amendment effective November 4, 2008.

2001 Amendments — Composite Section: Chapter 440 inserted (10) establishing requirements for an individual to receive full medical assistance under the Montana medicaid program for treatment of breast or cervical cancer or for treatment of a precancerous condition of the breast or cervix. Amendment effective July 1, 2001.

Chapter 465 in (1)(a) at end after "limits" deleted "or receive from FAIM financial assistance, as defined in 53-4-702, benefits under Title IV of the federal Social Security Act, 42 U.S.C. 601, et seq."; deleted former (1)(d) that read: "(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan, as defined in 53-4-201, other than with respect to age and school attendance"; in (5) near middle of first sentence after "receiving" substituted "section 1931 medicaid benefits, as defined in 53-4-602" for "FAIM financial assistance, as defined in 53-4-702" and at end substituted "section 1931 medicaid program" for "FAIM project and to all adult recipients of medical assistance only who are covered under a group related to the program of FAIM financial assistance"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 466 deleted former (10) that read: "(10) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards for eligibility for mental health services may provide for eligibility for households not eligible for medicaid with family income that does not exceed 200% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees, premiums, or copayments to be charged recipients for services. The fees, premiums, or copayments may vary according to family income"; and made minor changes in style. Amendment effective October 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1999 Amendments — Composite Section: Chapter 21 in (1)(e) substituted "child with special needs" for "hard-to-place child". Amendment effective October 1, 1999.

Chapter 577 in (10) in second sentence after "households" inserted "not eligible for medicaid", in fourth sentence after "fees" inserted "premiums, or copayments", and in fifth sentence after "fees" inserted "premiums, or copayments". Amendment effective May 6, 1999.

Preamble: The preamble attached to Ch. 577, L. 1999, provided: "WHEREAS, the Legislature is firmly committed to a managed care system for the delivery of public mental health services in an efficient and cost-effective manner and to ensuring access to services and quality of care; and

WHEREAS, in order for mental health managed care to be successful, care management must be carefully monitored and any contract for services must be enforced; and

WHEREAS, the state, service providers, and service recipients and their families must work cooperatively to ensure that the public mental health delivery system is successful; and

WHEREAS, the Legislature is committed to a transition from the existing contract to a competitive procurement of mental health managed care services."

1997 Amendment: Chapter 486 in (1)(a), after "et seq.", substituted "and does not have income or resources in excess of the applicable medical assistance limits or receive from FAIM financial assistance, as defined in 53-4-702, benefits" for "or aid to families with dependent children"; in (1)(d), after "state plan", substituted "as defined in 53-4-201" for "for aid to families with dependent children" and after "respect to" inserted "age and"; in first sentence in (5), at beginning, substituted "In accordance with" for "If", after "receiving" substituted "FAIM financial assistance, as defined in 53-4-702" for "aid to families with dependent children", and at end, after "related to", substituted "the program of FAIM financial assistance" for "aid to families with dependent children" and in second sentence, after "pregnant", inserted language regarding recipient who meets disability criteria of Social Security Act or is less than 21 years of age; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendments — Composite Section: Chapter 491 inserted (5) allowing the implementation of limited Medicaid benefits if waivers of federal law are granted and setting parameters of allowable benefits; adjusted subsection references; and made minor changes in style. Pursuant to sec. 1, Ch. 546, the Code Commissioner, in (5), substituted “department of public health and human services” for “department of social and rehabilitation services”.

Chapter 544 inserted (8) allowing the Department to make grants to a nonprofit corporation to provide certain basic services; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 in (1) substituted “department of public health and human services” for “department of social and rehabilitation services”; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 590 inserted (10) concerning establishment of resource and income standards.

1995 Statement of Intent: The statement of intent attached to Ch. 544, L. 1995, provided: “A statement of intent is necessary for this bill because 53-6-131 requires the department of social and rehabilitation services [now department of public health and human services] to adopt rules providing for monthly fees to be assessed medicaid recipients for services received from a medicaid health care provider. The rules adopted by the department must provide for a sliding scale of payments by each new recipient, as described in [this act] or as permitted by federal waiver, based upon the number of medicaid recipients per family and the family’s income.”

Coordination — Amendments Void: Section 2, Ch. 544, L. 1995, provided: “The amendments to 53-6-131(6)(a)(ii) and (6)(b) contained in [this act] are void if specific funding for the expansion is not contained in House Bill No. 2.” House Bill No. 2 did not contain specific funding for the expansion. Therefore, the amendment in Ch. 544, L. 1995, inserting a new (8) (see 1995 amendment note) is effective; however, the amendments to (6) (now (7)) contained in Ch. 544, L. 1995, are void.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Special Session Amendment: Chapter 14 in introductory clause of (1), after “services”, inserted “in its discretion”; inserted (2) allowing the Department to establish income and resource limitations; in introductory clause of (3), after “shall pay”, substituted “as required by federal law” for “for”, after “necessary for” substituted “medicaid-eligible persons participating” for “participation”, before “deductibles” inserted “premiums”, and before “medicare-eligible” inserted “qualified”; adjusted subsection references; and made minor changes in style. Amendment effective December 23, 1993.

1993 Amendment: Chapter 230 in (1)(f)(ii)(A), at end, inserted the alternative of having paid the Department the amount by which income exceeds the income level for federally aided assistance categories; in (5), at end, inserted provision concerning family resources not in excess of reasonable standards established by the Department; and made minor changes in style. Effective July 1, 1993.

1991 Amendments: Chapter 388 in (2), at end of introductory clause, inserted reference to qualified disabled and working individual; and inserted (3) allowing Department to pay certain health insurance costs. Amendment effective July 1, 1991.

Chapter 634 deleted former (1)(g) that read: “(g) The person is under 1 year of age and:

(i) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(ii) has resources that do not exceed standards the department determines reasonable for purposes of the program”; deleted former (2) that read: “(2) A person who is pregnant is eligible for pregnancy-related medical assistance under the Montana medicaid program if she:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program”; inserted (1)(g) providing permissive services for a qualified pregnant woman or a child; in (5), after “exceed”, inserted “133% of” and at end inserted citation to 42 U.S.C. 1396a(1)(2)(A)(i); inserted (6) providing for continuous eligibility for a person described in subsection (5); and made minor changes in style. Amendment effective June 30, 1991.

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated subsection (5) on June 30, 1991. Repealer effective June 30, 1991.

1989 Amendments: Chapter 310 substituted eligibility requirements (see 1989 Session Law for text) for former section that read: “(1) Medical assistance may be granted to a person who resides in the state of Montana, including a resident temporarily absent from the state and who meets the requirements of one or more of the following categories:

(a) he receives all or part of his income from federally funded supplemental security income assistance or aid to families with dependent children;

(b) upon application, he would be eligible for financial assistance under any one of the federally aided programs referred to above;

(c) he would be entitled to financial assistance under one of the federally aided categories except that he does not meet the durational residence requirements or relative responsibility requirements of any of the public assistance programs above enumerated;

(d) he is in a medical institution and if he were no longer in such institution he would be eligible for financial assistance under one of the above programs;

(e) he is under 21 years of age and meets the conditions of eligibility in the state's plan for aid to families with dependent children, other than with respect to school attendance;

(f) he is under 21 years of age and in foster care under the supervision of the state;

(g) he has income less than 133⅓% of the amounts specified as maximum income levels for federally aided categories of assistance;

(h) he is under 21 years of age and medically needy, as defined by the department of social and rehabilitation services; or

(i) he is under 21 years of age, was in foster care under the supervision of the state, and has been adopted as a "hard-to-place" child.

(2) The department of social and rehabilitation services may by rule establish more restrictive property ownership eligibility criteria than required by federal law for federally aided categories of public assistance." Amendment effective July 1, 1989.

Chapter 649 in (1), near beginning, inserted "under the Montana medicaid program"; and inserted (5) relating to medical assistance to pregnant women and to infants. Amendment effective July 1, 1989, and terminates June 30, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 310, L. 1989, provided: "A statement of intent is required for this bill because it amends 53-6-113 to authorize the department of social and rehabilitation services [now department of public health and human services] to adopt rules to govern eligibility for the Montana medicaid program.

It is the intent of the legislature that the department adopt rules for eligibility that comply with federal requirements under Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.) and 42 CFR 430 through 498. The rules of the department should address the standards of eligibility for the Montana medicaid program, including income and resource criteria, treatment of resources, specification of groups eligible to receive medicaid, and all other considerations described in 53-6-113(2) through (4)."

1987 Amendment: In (1)(a) and (1)(e) substituted "aid to families with dependent children" for "aid to dependent children".

1981 Amendment: Changed "shall" to "may" near the beginning of (1); changed "federally aided public assistance programs: old age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled" to "federally funded supplemental security income assistance or aid to dependent children" in (1)(a); inserted (2) allowing the Department to establish more restrictive property ownership eligibility criteria than federally required; and made minor changes in phraseology.

1981 Statement of Intent: The statement of intent attached to HB 127 (Ch. 399, L. 1981) provided: "The bill as amended gives the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] rulemaking authority to grant medical assistance to one or more categories of persons who are eligible for federal financial assistance. These categories include supplemental security income assistance, aid to dependent children, and aid to certain others who may be in financial distress due to high medical expenditures. Furthermore, the bill gives the Department the authority to adopt rules that include eligibility criteria that are more restrictive than federal criteria.

Under present law, the Department must grant medical assistance to all persons in the categories listed in 53-6-131, MCA. The Department presently has express rulemaking authority to adopt rules to include federal eligibility requirements for each category and to define medical assistance but does not have authority to limit services by category of persons.

The availability of federal financial assistance as well as federal eligibility criteria will probably be changed next fiscal year. The Department needs to have the authority to redetermine eligibility criteria and to limit the categories of persons to whom medical assistance will be made available in order to choose the options which offer the most efficient and least costly eligibility system within financial limits."

Case Notes

Medicaid — Trust Principal Not Countable Asset — No Ability to Terminate Trust: The petitioner's estate appealed a District Court order affirming an administrative law judge's proposed order that trust principal consisting of a jointly owned home constituted a countable asset for the purposes of the petitioner's Medicaid eligibility. The dispositive issue on appeal was whether there were any circumstances under which the trust's principal could be returned to the petitioner or used for her benefit. The Supreme Court reversed and remanded the case, concluding there were no circumstances under which payment from the trust's corpus could be made for the petitioner's benefit. The express terms of the trust disclaimed the petitioner's ability to terminate the trust. These terms took precedence over the Uniform Trust Code's default provisions, and a court could not recognize as legitimate any attempt by the petitioner to terminate or modify the trust. In re Estate of Scheidecker v. Dept. of Public Health and Human Services, 2021 MT 158, 404 Mont. 407, 490 P.3d 87.

Medicaid Third-Party Recovery Laws Inapplicable to Tobacco Settlement — Settlement Not Trigger for Remainder Payment: Plaintiff, on behalf of her deceased husband who had previously assigned a medical care claim to the state, contended that when Montana entered into a master settlement agreement with tobacco manufacturers based in part on Medicaid statistics, the agreement had the effect of releasing the remainder of any settlement money to Medicaid recipients pursuant to 53-2-612. The District Court disagreed, concluding that because the tobacco litigation was neither initiated by the Department of Public Health and Human Services nor filed in the name of the Medicaid recipients, the settlement did not trigger a remainder payment under 53-2-612(3)(c). The Supreme Court affirmed. Under the agreement, the definition of releasing parties excludes individual Medicaid recipients, and "released claims" includes only those claims that the state could have brought, so the state would have no standing to assert the individuals' claims for damages. Further, if there was any question as to whether Medicaid third-party recovery laws applied to the settlement payments, Congress made clear that they do not through passage of 42 U.S.C. 1396b(d)(3) in 1999. Robinson v. St., 2003 MT 110, 315 M 353, 68 P3d 750 (2003). See also Cardenas v. Anzai, 311 F3d 929 (9th Cir. 2002).

53-6-132. Application for assistance — exception.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 465 in (1) at beginning of first sentence substituted "Subject to" for "Except as provided in" and at end after "this part" substituted "may be made in any local office of public assistance" for "must be made to the office of the county department in the county in which the person is residing"; and in (2) near middle after "other than the" substituted "local office of public assistance" for "county department". Amendment effective July 1, 2001.

Chapter 571 in (1) in first sentence and in (2) near middle substituted reference to local office of public assistance for reference to county department; and made minor changes in style. Amendment effective July 1, 2001.

Coordination: Section 42, Ch. 465, L. 2001, provided: "If House Bill No. 101 is not passed and approved, then all references in [this act] to local offices of public assistance are changed to references to county welfare offices." House Bill No. 101 was not passed and approved; therefore, the references to local office of public assistance in the amendment to this section were changed to references to county welfare office. However, see Ch. 571 amendment.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1995 Amendments: Chapter 546 in second sentence of (1) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 590 at beginning of (1) inserted exception clause; inserted (2) concerning designation of entity to determine managed care services eligibility; and made minor changes in style.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-6-133. Eligibility determination.

Compiler's Comments

2019 Amendment: Chapter 415 inserted (3) concerning the verification of information provided by applicants before authorizing payment of medicaid benefits; and inserted (4) concerning documentation that may be used to verify that an applicant is a Montana resident. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

2001 Amendment: Chapter 571 in (1) and (2) at beginning substituted "The local office of public assistance" for reference to the county department of public welfare; in (1) at beginning of third sentence substituted "The department, through the local office of public assistance, shall, after the hearing" for "The county department shall"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 546 in two places substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Deleted former fourth sentence of (1) that read: "The county public welfare board shall review the determination of the eligibility or noneligibility made by the county department." Amendment effective July 1, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 310, L. 1989, provided: "A statement of intent is required for this bill because it amends 53-6-113 to authorize the department of social and rehabilitation services [now department of public health and human services] to adopt rules to govern eligibility for the Montana medicaid program.

It is the intent of the legislature that the department adopt rules for eligibility that comply with federal requirements under Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.) and 42 CFR 430 through 498. The rules of the department should address the standards of eligibility for the Montana medicaid program, including income and resource criteria, treatment of resources, specification of groups eligible to receive medicaid, and all other considerations described in 53-6-113(2) through (4)."

53-6-134. Extension of eligibility for medical assistance to persons terminated from section 1931 medicaid program.

Compiler's Comments

2001 Amendment: Chapter 465 in (2) near middle of first sentence after "receiving" substituted "section 1931 medicaid benefits, as defined in 53-4-602" for "FAIM financial assistance, as defined in 53-4-702, under the job supplement program, pathways, or community services program components of the FAIM project described in 53-4-603" and after "increased" substituted "earned or unearned income to the assistance unit, as that term is defined in the rules of the department" for "income from any source or because of exhausting time-limited earned income disregards" and at end of second sentence after "legislature" deleted "for the FAIM project". Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

1997 Amendment: Chapter 486 deleted former (1) that read: "In accordance with section 1925 of Title XIX of the Social Security Act, 42 U.S.C. 1396r-6, the department of public health and human services shall provide for the extension of eligibility for medical assistance to persons who lose eligibility for aid to families with dependent children because of:

(a) increased hours or income from employment; or

(b) loss of federally prescribed earned income disregards"; in (1) substituted "subsection (2)" for "subsection (1)"; in first sentence in (2), at beginning, substituted "In accordance with" for "If", after "receiving" substituted "FAIM financial assistance, as defined in 53-4-702" for "aid to families with dependent children", and near end, after "source", inserted "or because of exhausting time-limited earned income disregards"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 50, Ch. 486, L. 1997, was a saving clause.

1995 Amendments — Composite Section: Chapter 491 inserted (3) allowing extended eligibility for medical assistance for certain persons receiving aid who lose eligibility because of increased income; and made minor changes in style. Pursuant to sec. 1, Ch. 546, the Code Commissioner, in (3), substituted "department of public health and human services" for "department of social and rehabilitation services".

Chapter 546 in (1) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Effective Date: Section 4(1), Ch. 453, L. 1989, provided: "[Section 1] is effective on the date the federal act becomes effective."

Interim Study Committee Bill: Chapter 453, L. 1989, enacted by SB 67, was introduced by request of the Joint Interim Subcommittee on Welfare. See "Welfare in Montana: A Time for Reform", A Report to the 51st Legislature, Mont. Leg. Council (Dec. 1988).

53-6-135. Prohibited reimbursement or coverage.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Severability: Section 10, Ch. 306, L. 2023, was a severability clause.

53-6-140. Account not to be treated as asset for purposes of eligibility.

Compiler's Comments

Effective Date: Section 11, Ch. 295, L. 1995, provided that this section is effective January 1, 1996.

Contingent Voidness: Section 12, Ch. 295, L. 1995, provided: "In order to maintain a balanced budget, because [this act] [House Bill No. 560] reduces revenue, it may not be transmitted to the governor unless a corresponding identified reduction in spending is contained in House Bill No. 2. If a corresponding identified reduction in spending is not contained in House Bill No. 2, [this act] is void." The boilerplate language of sec. 13 of House Bill No. 2 stated that a corresponding spending reduction had been accounted for in House Bill No. 2; therefore, the enactment of Ch. 295, L. 1995, was effective as approved.

53-6-142. Periodic review of assistance.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-6-143. Medical assistance liens and recoveries.

Compiler's Comments

Contingent Effective Date Repealed: Section 2, Ch. 406, L. 2005, repealed sec. 8, Ch. 195, L. 1997, which provided a contingent effective date for this section. Effective October 1, 2005.

Contingent Effective Date: Section 8, Ch. 195, L. 1997, provided: "(1) [Sections 4, 5, and 7 and this section] [53-6-804, 53-6-805, and the codification instruction] are effective on the effective date of the repeal of 42 U.S.C. 1396p(b)(1)(A) and (b)(1)(B) or of the amendment of that section in a manner prohibiting adjustment or recovery of medical assistance paid to individuals described in that section.

(2) [Sections 1 through 3 and 6] [53-6-801 through 53-6-803 and amendments to 53-6-143] are effective 6 months after [the effective date of sections 4 and 5] [53-6-804 and 53-6-805]."

1997 Amendments: Chapter 195 inserted (2)(d) precluding imposition of a lien to the extent that the recipient has received medical assistance based upon resources not disregarded pursuant to the long-term care insurance partnerships statutes; and made minor changes in style. Amendment effective 6 months after occurrence of contingency.

Chapter 262 inserted (5) disallowing imposition of a lien upon a self-sufficiency trust or the assets of a self-sufficiency trust; and inserted (5)(a) and (5)(b) providing exceptions to the lien imposition restrictions. Amendment effective July 1, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 195, L. 1997, provided: "A statement of intent is required for this bill because [sections 4 and 5] [53-6-804 and 53-6-805] grant rulemaking authority to the commissioner of insurance and the department of public health and human services. [Section 4] [53-6-804] authorizes the commissioner and the department to adopt rules regarding requirements for certification of long-term care insurance policies and certificates for the purposes of qualification for medical assistance benefits. [Section 5] [53-6-805] requires the department to adopt rules necessary for the administration of long-term care insurance partnerships, including eligibility requirements for disregard of resources and amounts of resources to be disregarded for the purposes of qualification for medical assistance benefits. In adopting rules pursuant to these sections, the commissioner and the department shall take into consideration the goal of reducing expenditures for long-term care by the Montana medicaid program."

1995 Amendments — Composite Section: Chapter 492 in (1), at beginning, inserted exception clause, near end, after "recipient of", inserted "medical", and at end, after "assistance", deleted "may not be required to execute an agreement creating a lien on his real property"; in (2), near middle after "property of", substituted "a medicaid applicant or recipient" for "an individual"; in (2)(a), after "recovery of", inserted "medical" and after "assistance" deleted "incorrectly"; inserted (2)(c) referencing 53-6-171 through 53-6-188; in (3), after "provided in", substituted present language referencing state and federal laws for former language that read: "53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before he reached age 65"; deleted (3)(b) that read: "(b) The department may recover under 53-2-611 only:

(i) after the death of the recipient's surviving spouse, if any; and

(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and totally disabled"; substituted (4) regarding recovery procedures for former language that read: "(4) Recoveries must be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this section are hereby extended to provide for the recovery of all medical assistance paid under this part and likewise to all medical aid to the aged assistance paid by the department of social and rehabilitation services during the period of time July 1, 1965, through June 30, 1967"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 at end of (4) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995. The amendment by Ch. 492 rendered the amendment by Ch. 546 void.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(1), Ch. 492, L. 1995, provided that this section applied to medical assistance recipients who die on or after the effective date of this section. Effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Rewrote section to allow lien for recovery of medical assistance, subject to certain limitations (see 1989 Session Law for text). Amendment effective April 10, 1989.

Retroactive Applicability: Section 6, Ch. 482, L. 1989, provided that the amendments to this section apply retroactively, within the meaning of 1-2-109.

53-6-144. Relative's responsibility.

Compiler's Comments

1995 Amendment: Chapter 492 at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 1995.

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 37, Ch. 417, L. 1995, was a severability clause.

Applicability: Section 31(1), Ch. 492, L. 1995, provided that this section applied to medical assistance recipients who die on or after the effective date of this section. Effective July 1, 1995.

53-6-145. Agencies to adopt rules governing personal assistant services.

Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 525, L. 1995, provided: "A statement of intent is necessary for this bill because [section 1] [53-6-145] requires the department of social and rehabilitation services [now department of public health and human services] and the department of labor [and industry] to adopt rules governing the use of personal assistants by persons with disabilities.

The legislature intends that the rules adopted by the departments allow a person with a disability or an immediately involved representative, such as a parent or guardian, to arrange for and direct the use of a personal assistant. The rules must allow the person with a disability to act as though the person is the employer, for the purposes of selection, management, and supervision, of the personal assistant in making the decisions of who to employ, terms of employment, length of employment, and other matters, although the personal assistant is the employee of another person or entity. Before a person with a disability would be allowed to act as though that person is the employer, the person must also have a plan of care approved by a physician or health care professional, stating what aspects of the disabled person's care the personal assistant may be assigned.

The contents of a plan of care must be addressed by rule and must include the individual's needs for personal assistance services, a plan for emergency back-up, and tasks assigned to the personal assistant. The plan of care may also address training, recruitment, and replacement of personal assistants and schedules for supervision and annual review of care by the health care professional."

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

Case Notes

Self-Directed Personal Assistant Services Model — Employer of Personal Assistant Involved in Fatal Overdose Immune from Liability — No Respondeat Superior: The plaintiff, the personal representative of his mother's estate, filed suit against the employer of the personal assistant who had cared for his mother at the time she suffered a fatal overdose of medication. The defendant claimed that it was statutorily immune from liability because it was not directing the woman's personal care services. The District Court agreed that the defendant was immune from liability because the woman had been enrolled in a self-directed personal assistance services program and the law placed liability on the consumer. On appeal, the Supreme Court affirmed, agreeing that the District Court had correctly interpreted the law. It also agreed with the plaintiff that public policy should allow him to be able to sue the defendant for its role in his mother's death; however, that would require a change to the law and would be best addressed in a legislative forum. Swanson v. Consumer Direct, 2017 MT 57, 387 Mont. 37, 391 P.3d 79.

53-6-146. Protection of tribal and Indian health service facilities from cost-shifting — seeking to leverage federal financial participation for state children's health insurance program and medicaid.

Compiler's Comments

Effective Date: Section 4, Ch. 128, L. 2005, provided: "[This act] is effective on passage and approval." Approved March 30, 2005.

53-6-148. Indian health services federal revenue account.

Compiler's Comments

Effective Date: Section 14(1), Ch. 364, L. 2017, provided that this section is effective July 1, 2017.

Severability: Section 13, Ch. 364, L. 2017, was a severability clause.

53-6-149. State special revenue fund account — administration.

Compiler's Comments

2019 Amendment: Chapter 415 in (2) after "15-66-102" inserted "except for the money deposited pursuant to 15-66-102(3)(b) into the Montana HELP Act special revenue account provided for in 53-6-1315"; in (3) after "funding" inserted "no later than May 5 of each year"; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

2009 Amendment: Chapter 489 in (2) at beginning inserted exception clause; and made minor changes in style. Amendment effective May 14, 2009, and terminates June 30, 2011.

Termination Provision Repealed: Sections 1 through 3, Ch. 222, L. 2009, repealed sec. 20, Ch. 390, L. 2003, secs. 4 and 7, Ch. 606, L. 2005, and secs. 4, 5, 6, and 8, Ch. 517, L. 2007, which terminated this section June 30, 2009. Effective April 16, 2009.

Extension of Termination Date: Sections 4 and 5, Ch. 517, L. 2007, amended sec. 20, Ch. 390, L. 2003, and sec. 4, Ch. 606, L. 2005, by extending the termination date imposed by those sections to June 30, 2009.

Extension of Termination Date: Section 4, Ch. 606, L. 2005, amended sec. 20, Ch. 390, L. 2003, by extending the termination date imposed by Ch. 390 to June 30, 2007.

Severability: Section 17, Ch. 390, L. 2003, was a severability clause.

Effective Date: Section 19, Ch. 390, L. 2003, provided: "[This act] is effective July 1, 2003."

Termination: Section 20, Ch. 390, L. 2003, provided: "[This act] terminates June 30, 2005."

53-6-150. Donated funds.

Compiler's Comments

1997 Amendment: Chapter 422 deleted (2) that read: "(2) Funds donated to the department for its medical assistance programs are statutorily appropriated to the department as provided in 17-7-502"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 546 in (1) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-6-151. Medicaid reserve account.

Compiler's Comments

Effective Date: Section 80, Ch. 489, L. 2009, provided: "[This act] is effective on passage and approval." Approved May 14, 2009.

53-6-155. Definitions.

Compiler's Comments

2021 Amendment: Chapter 497 inserted definitions of originating site provider and telehealth; and made minor changes in style. Amendment effective October 1, 2021.

2001 Amendment: Chapter 571 in definition of medicaid agency in second sentence near beginning after "the department of corrections" substituted "local offices of public assistance" for "county offices of human services and public welfare". Amendment effective July 1, 2001.

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

Effective Date: Section 19(1), Ch. 354, L. 1995, provided that this section was effective on passage and approval. Approved April 11, 1995.

Code Commissioner Changes: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

Pursuant to sec. 3, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Health and Environmental Sciences.

Pursuant to sec. 4, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Corrections and Human Services.

53-6-156. Medicaid fraud control unit.

Compiler's Comments

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

Effective Date: Section 19(2), Ch. 354, L. 1995, provided that this section was effective July 1, 1995.

Case Notes

Medicaid Provider Reenrollment — Conviction of Unsworn Falsification to Authorities Reversed on Grounds of Insufficient Evidence of Intent to Mislead: Vainio, an optometrist, was convicted of one count of unsworn falsification to authorities under 45-7-203 in connection with information omitted on a Medicaid provider reenrollment form. The state claimed that Vainio should have listed his sister and wife as managing employees, his brother as a co-owner of the business, and all of the counties in which he owned optometric stores. Vainio had a longstanding relationship with the Medicaid program by the time that he filled out the reenrollment form, and maintained that he merely filled out the reenrollment form as he had the previous enrollment form. Section 45-7-203 requires proof that information was omitted from the form with the conscious objective of misleading a public servant in the performance of official duties. The state never presented any evidence of Vainio's intent to mislead, and absent sufficient evidence of that intent, the conviction was reversed. St. v. Vainio, 2001 MT 220, 306 M 439, 35 P3d 948 (2001).

Reversal of Conviction for Medicaid Fraud Based on Violation of Improperly Adopted Administrative Policy: Vainio, an optometrist, was charged with three counts of Medicaid fraud under 45-6-313. The jury found Vainio guilty, and the District Court concluded as a matter of law that a violation of the administrative policies at issue formed a criminal act. On appeal, Vainio argued that by criminalizing violations of administrative policies that were not formally promulgated as rules, 45-6-313 contravened the Montana Administrative Procedure Act (MAPA), Title 2, ch. 4, and that policies that were not promulgated according to MAPA lacked the force of law. The state contended that because 45-6-313 specifically refers to violations of "policies", it was not necessary for those policies to be embodied in a rule promulgated pursuant to MAPA. The Supreme Court agreed with Vainio. The use of the term "policies" in 45-6-313 is limited to those policies that have been formally adopted as rules pursuant to MAPA. The fact that 45-6-313 does not expressly reference MAPA does not mean that Medicaid providers can be criminally prosecuted for violating the state's informal policies. Further, 45-6-313 does not have to expressly reference MAPA for MAPA to apply; rather, MAPA must be followed because 45-6-313 does not expressly repudiate it. When the Legislature authorizes an agency to adopt rules, the procedures mandated by MAPA apply regardless of whether the authorizing statute refers to MAPA. The practices for which Vainio was convicted were not prohibited by rules adopted in compliance with MAPA and in effect at the time of the alleged offenses and thus were not illegal, so the convictions were reversed. St. v. Vainio, 2001 MT 220, 306 M 439, 35 P3d 948 (2001), following NW. Airlines, Inc. v. St. Tax Appeal Bd., 221 M 441, 720 P2d 676 (1986), and Rosebud County v. Dept. of Revenue, 257 M 306, 849 P2d 177 (1993), and distinguishing Huether v. District Court, 2000 MT 158, 300 M 212, 4 P3d 1193 (2000).

53-6-157. Powers and duties of medicaid fraud control unit.

Compiler's Comments

2001 Amendments — Composite Section: Chapter 87 in (1)(d), (2)(e), and (2)(f) inserted reference to local agencies; in (1)(a) after "persons" deleted "under the medical assistance program established under this chapter"; in (1)(b) after "property" deleted "by providers or their employees or agents" and near end substituted "federal, state, or local agency" for "state agency"; in (2)(a) and near beginning of (2)(d) substituted "pursuant to subsection (1)" for "related to the medicaid program"; and made minor changes in style. Amendment effective March 20, 2001.

Chapter 571 in (2)(d) near beginning after "obtain from the department" substituted "local offices of public assistance" for "county welfare and human services offices". Amendment effective July 1, 2001.

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

Effective Date: Section 19(2), Ch. 354, L. 1995, provided that this section was effective July 1, 1995.

53-6-158. Cooperation of governmental agencies with medicaid fraud control unit.

Compiler's Comments

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

Effective Date: Section 19(2), Ch. 354, L. 1995, provided that this section was effective July 1, 1995.

53-6-159. Permitted disclosure of information obtained in medicaid fraud control unit investigations.

Compiler's Comments

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

Effective Date: Section 19(2), Ch. 354, L. 1995, provided that this section was effective July 1, 1995.

53-6-160. Truthfulness, completeness, and accuracy of submissions to medicaid agencies.

Compiler's Comments

2019 Amendment: Chapter 415 inserted (1)(b) concerning community engagement requirements; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Applicability: Section 47, Ch. 415, L. 2019, provided: "An individual enrolled in the expanded medicaid program provided for in Title 53, chapter 6, part 13, on the date the centers for medicare and medicaid services approves a waiver authorizing community engagement requirements shall comply with the community engagement requirements of [this act] within 180 days of the date the department of public health and human services has implemented the community engagement requirements."

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

Effective Date: Section 19(1), Ch. 354, L. 1995, provided that this section was effective on passage and approval. Approved April 11, 1995.

53-6-165. Definitions.

Compiler's Comments

2009 Amendment: Chapter 153 inserted definition of financial institution; in definition of recoverable medical assistance inserted (b) providing exclusionary language; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 403 in definition of recoverable medical assistance in (a) substituted "developmentally disabled" for "mentally retarded". Amendment effective July 1, 2003.

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Effective Date: Section 32(1), Ch. 492, L. 1995, provided that this section was effective on passage and approval. Approved April 14, 1995.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

53-6-166. Period of ineligibility for medical assistance when assets disposed of for less than fair market value — undue hardship exception — department to adopt rules.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

1995 Statement of Intent: The statement of intent attached to Ch. 492, L. 1995, provided: "A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] [53-6-166, 53-6-167, 53-6-180, 53-6-182, and 53-6-189] grant the department of social and rehabilitation services [now department of public health and human services] rulemaking authority to implement the provisions of this bill.

The legislature intends that the department of social and rehabilitation services [now department of public health and human services] adopt rules that are reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should include but are not limited to rules addressing the following:

(1) a description of the circumstances considered to constitute an undue hardship;

(2) the procedures by which an individual may seek an undue hardship exception;

(3) the persons entitled to an undue hardship exception; and

(4) whether the exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Retroactive Applicability: Section 30, Ch. 492, L. 1995, provided: "[Section 2] [53-6-166] applies retroactively, within the meaning of 1-2-109, to assets disposed of or trusts established after August 10, 1993, for purposes of determining eligibility for medical assistance on or after July 1, 1995."

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-167. Recovery of medicaid benefits after recipient's death.

Compiler's Comments

2009 Amendment: Chapter 153 in (1) at beginning of first sentence inserted exception clause and inserted second sentence regarding the department not being required to initiate probate proceedings; in (2) at beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective July 1, 2009.

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

1995 Statement of Intent: The statement of intent attached to Ch. 492, L. 1995, provided: "A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] [53-6-166, 53-6-167, 53-6-180, 53-6-182, and 53-6-189] grant the department of social and rehabilitation services [now department of public health and human services] rulemaking authority to implement the provisions of this bill.

The legislature intends that the department of social and rehabilitation services [now department of public health and human services] adopt rules that are reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should include but are not limited to rules addressing the following:

(1) a description of the circumstances considered to constitute an undue hardship;
(2) the procedures by which an individual may seek an undue hardship exception;
(3) the persons entitled to an undue hardship exception; and
(4) whether the exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(1), Ch. 492, L. 1995, provided that this section applied to medical assistance recipients who die on or after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

Case Notes

Operation and Effect: The State Department of Public Welfare (now Department of Public Health and Human Services) was entitled to share in deceased old-age recipient's estate exceeding value of $500 as shown by inventory and appraisement, and where such excess was more than sufficient to pay Department's claim, it should have been allowed and paid in full. In re Bierman's Estate, 118 M 481, 167 P2d 350 (1946).

53-6-168. Payment of certain funds of deceased recipient to department.

Compiler's Comments

2009 Amendment: Chapter 153 in (1)(a) at beginning following "nursing facility" inserted "a financial institution" and following "a person" deleted "other than a financial institution"; and made minor changes in style. Amendment effective July 1, 2009.

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(1), Ch. 492, L. 1995, provided that this section applied to medical assistance recipients who die on or after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-169. Payment of excess burial funds or assets to department.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(1), Ch. 492, L. 1995, provided that this section applied to medical assistance recipients who die on or after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-171. Department lien upon real property of certain medicaid recipients — conditions.

Compiler's Comments

2003 Amendment: Chapter 403 in (1)(a) substituted "developmentally disabled" for "mentally retarded". Amendment effective July 1, 2003.

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-172. Notice of intent to impose lien — opportunity for hearing.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-173. Contents of lien document — scope of obligation secured.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-174. Filing of lien — effect of filing — priority — renewal — dissolution of lien.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-175. Recovery of medical assistance secured by lien — application for issuance of writ of execution.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-176. Notice of application — proof of notice — request for issuance of writ of execution.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

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WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-177. Action to challenge issuance of writ of execution.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-178. Department right of recovery — limitations.

Compiler's Comments

2009 Amendment: Chapter 153 in (2) near middle of first sentence substituted "18 months" for "1 year". Amendment effective July 1, 2009.

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-179. Payment of amount due — periodic payments — substitute security.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-180. Waiver of recovery in cases of undue hardship — rulemaking.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

1995 Statement of Intent: The statement of intent attached to Ch. 492, L. 1995, provided: "A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] [53-6-166, 53-6-167, 53-6-180, 53-6-182, and 53-6-189] grant the department of social and rehabilitation services [now department of public health and human services] rulemaking authority to implement the provisions of this bill.

The legislature intends that the department of social and rehabilitation services [now department of public health and human services] adopt rules that are reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should include but are not limited to rules addressing the following:

(1) a description of the circumstances considered to constitute an undue hardship;
(2) the procedures by which an individual may seek an undue hardship exception;
(3) the persons entitled to an undue hardship exception; and
(4) whether the exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-181. Delay in recovery — sale subject to lien.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-182. Spouse's limited exemption from lien.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

1995 Statement of Intent: The statement of intent attached to Ch. 492, L. 1995, provided: "A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] [53-6-166, 53-6-167, 53-6-180, 53-6-182, and 53-6-189] grant the department of social and rehabilitation services [now department of public health and human services] rulemaking authority to implement the provisions of this bill.

The legislature intends that the department of social and rehabilitation services [now department of public health and human services] adopt rules that are reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should include but are not limited to rules addressing the following:

(1) a description of the circumstances considered to constitute an undue hardship;

(2) the procedures by which an individual may seek an undue hardship exception;
(3) the persons entitled to an undue hardship exception; and
(4) whether the exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-183. Issuance of writ of execution by clerk of court.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-184. Effect of sale — title acquired.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-185. Disposition of sale proceeds — application of recovered medical assistance.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-186. Action by department or other person to preserve property subject to lien — recovery of costs.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-187. Time for filing of application.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-188. Coordination of lien with other medical assistance recoveries.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Applicability: Section 31(2), Ch. 492, L. 1995, provided that this section applied as a condition of medical assistance eligibility or continuation of medical assistance eligibility after the effective date of this section. Effective July 1, 1995.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-189. Rulemaking authority.

Compiler's Comments

Preamble: The preamble attached to Ch. 492, L. 1995, provided: "WHEREAS, the cost of funding the Montana Medicaid Program has escalated rapidly in recent years and threatens to continue escalating beyond the capacity of Montanans to fund the program;

WHEREAS, prior state laws and rules have inadvertently permitted individuals to become eligible for Medicaid benefits while retaining or disposing of valuable assets through the use of various transfers, trusts, and other arrangements;

WHEREAS, under prior state laws and rules, valuable assets of an individual who received Medicaid benefits were often transferred or disposed of prior to the death of the individual, making the assets unavailable for recovery by the Medicaid Program even when not needed by the individual's surviving spouse, dependent children, or other dependent family members;

WHEREAS, unused funds belonging to Medicaid-eligible nursing facility residents or set aside for burial have often become unavailable for recovery by the Medicaid Program; and

WHEREAS, the United States Congress has recently enacted amendments to the federal Social Security Act that require or permit the state Medicaid agency to deny Medicaid eligibility to a greater number of persons and to recover the value of Medicaid benefits already paid in order to ensure that Medicaid benefits remain available to the truly needy."

1995 Statement of Intent: The statement of intent attached to Ch. 492, L. 1995, provided: "A statement of intent is required for this bill because [sections 2, 5, 17, 19, and 26] [53-6-166, 53-6-167, 53-6-180, 53-6-182, and 53-6-189] grant the department of social and rehabilitation services [now department of public health and human services] rulemaking authority to implement the provisions of this bill.

The legislature intends that the department of social and rehabilitation services [now department of public health and human services] adopt rules that are reasonably necessary to implement this bill and that the rules establish procedures and criteria for undue hardship exceptions that are consistent with 42 U.S.C. 1396p and that implement federal regulations and policies. The rules adopted to implement the provisions of this bill concerning hardship exceptions should include but are not limited to rules addressing the following:

(1) a description of the circumstances considered to constitute an undue hardship;
(2) the procedures by which an individual may seek an undue hardship exception;
(3) the persons entitled to an undue hardship exception; and
(4) whether the exception is partial or temporary and the circumstances under which partial or temporary exceptions may be granted."

Severability: Section 29, Ch. 492, L. 1995, was a severability clause.

Effective Date: Section 32(2), Ch. 492, L. 1995, provided that this section was effective July 1, 1995.

53-6-190. Receipt of transferred assets for less than fair market value — fine.

Compiler's Comments

Effective Date: This section is effective October 1, 2013.

53-6-195. Medicaid program for workers with disabilities — purpose — eligibility — participant costs.

Compiler's Comments

Transition: Section 4, Ch. 452, L. 2009, provided: "During the biennium beginning July 1, 2009, the department shall implement the program provided for in [this act] using existing staff."

Effective Date: Section 6, Ch. 452, L. 2009, provided: "[This act] is effective July 1, 2009."

53-6-196. Performance-based rulemaking — privacy exemption.

Compiler's Comments

Codification Change: Section 3, Ch. 453, L. 2015, provided that this section was intended to be codified as an integral part of Title 2, chapter 4. The code commissioner has codified this section in Title 53, chapter 6, part 1, because the enacted version of the bill applied only to medicaid.

Effective Date: Section 4, Ch. 453, L. 2015, provided that this section is effective July 1, 2015.

Applicability: Section 5, Ch. 453, L. 2015, provided: "[Section 1] applies to rule notices published by the department of public health and human services on or after [the effective date of this act]." Effective July 1, 2015.

53-6-197. Abortion coverage.

Compiler's Comments

Effective Date: Section 4, Ch. 488, L. 2023, provided: "[This act] is effective July 1, 2023."

53-6-198. Enhanced rate to increase access to in-state mental health services for high-risk children with multiagency service needs — reporting requirement — rulemaking.

Compiler's Comments

Termination: Section 4, Ch. 586, L. 2023, provided: "[Section 1] [53-6-198] terminates June 30, 2027."

Part 4
Home and Community-Based Long-Term Care Medicaid Services

Part Compiler's Comments

Severability: Section 6, Ch. 516, L. 1983, was a severability clause.

Part Administrative Rules

Title 37, chapter 34, ARM Developmental disabilities program.
Title 37, chapter 40, ARM Senior and long-term care services.
Title 37, chapter 87, ARM Children's mental health services.
Title 37, chapter 90, ARM Mental health Medicaid-funded 1115 and 1915 waivers.

53-6-401. Definitions.

Compiler's Comments

2013 Amendment: Chapter 68 in definition of long-term care preadmission screening substituted "intellectual disability" for "mental retardation". Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

2005 Amendments — Composite Section: Chapter 72 inserted definition of home and community-based services; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 353 deleted former definition of community-based medicaid services that read: ""Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization"; inserted definition of home and community-based services and definition of level-of-care determination; in definition of long-term care facility near beginning after "department" inserted "as provided in 53-6-106" and at end inserted "or, for the purposes of implementation of medicaid-funded programs of home and community-based services, that is recognized by the U.S. department of health and human services to be an institutional setting from which persons may be diverted through the receipt of home and community-based services"; deleted former definition of long-term care medicaid services that read: ""Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities"; substituted definition of long-term care preadmission screening for former definition of long-term care preadmission screening and resident review that read: ""Long-term care preadmission screening and resident review" means an evaluation that results in a determination as to whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities"; inserted definition of persons with disabilities or persons who are elderly; and made minor changes in style. Amendment effective April 21, 2005.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Preamble: The preamble attached to Ch. 72, L. 2005, provided: "WHEREAS, the 58th legislative session in House Joint Resolution No. 13 directed the Department of Public Health and Human Services to conduct a study regarding the health programs administered by the Department and to provide recommendations to the 59th legislative session; and

WHEREAS, the Department formed an advisory committee that examined the structure and values of the state's Medicaid system; and

WHEREAS, the advisory committee advised the Department to seek a home and community-based services waiver from the Secretary of the Department of Health and Human Services for services to seriously emotionally disturbed children."

Severability: Section 5, Ch. 353, L. 2005, was a severability clause.

1995 Amendments — Phrase Change — Composite Section: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (3).

Chapter 418 in definition of long-term care facilities substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995. Because of the transfer of functions contained in sec. 3, Ch. 546, the Code Commissioner has not codified the amendment by Ch. 418.

Chapter 546 in definition of Department substituted "department of public health and human services as provided for in 2-15-2201" for "department of social and rehabilitation services as provided for in Title 2, chapter 15, part 22"; and in definition of long-term care facilities substituted "department" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1989 Amendment: In (5) substituted "Long-term care preadmission screening and resident review" for "Long-term care placement evaluation" and near middle substituted "the services" for "the level of care". Amendment effective May 22, 1989.

53-6-402. Medicaid-funded home and community-based services — waivers — funding limitations — populations — services — providers — long-term care preadmission screening — powers and duties of department — rulemaking authority.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 628, L. 2023. Amendment effective July 1, 2023, and terminates June 30, 2031.

2021 Amendment: Chapter 258 in (13)(a) near middle of first sentence inserted "including rules for substantive changes to approved waiver provisions as required under 53-6-413"; and made minor changes in style. Amendment effective April 20, 2021.

2019 Amendment: Chapter 194 inserted (14) requiring the department to establish rules concerning the waiting list for services provided through a medicaid home and community-based services waiver; and made minor changes in style. Amendment effective April 18, 2019.

2017 Amendment: Chapter 442 inserted (13)(b) prohibiting adoption of rules that exclude children in foster care from home and community-based services or require prior authorization for children in foster care to access home and community-based services; and made minor changes in style. Amendment effective July 1, 2017.

Preamble: The preamble attached to Ch. 442, L. 2017, provided: "WHEREAS, in providing Medicaid services, the Department of Public Health and Human Services is treating children with disabilities who are in foster care differently from children with disabilities who are not in foster care; and

WHEREAS, children in foster care are having to take additional steps to receive Medicaid services and, in some cases, Medicaid providers automatically are not providing services to children in foster care; and

WHEREAS, the Legislature intends to revise the Department's rulemaking authority relating to the provision of Medicaid services and to revise existing administrative rules relating to the provision of Medicaid services to provide that foster children may not be excluded or restricted from accessing Medicaid services solely because the children are in foster care."

2015 Amendment: Chapter 324 inserted (14) and (15) concerning adoption of rules for fraud prevention training and cost reporting. Amendment effective October 1, 2015.

2013 Amendment: Chapter 68 in (11)(c) and (11)(d) substituted "intellectual disability" for "mental retardation"; and made minor changes in style. Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

2005 Amendments — Composite Section: Chapter 72 in (1) near middle after "community-based" inserted "medicaid"; in former (2) in second sentence near middle after "community-based" inserted "medicaid" (amendment rendered void by Ch. 353 amendment); inserted (2) regarding home and community-based services; in (5) near middle inserted "and home and community-based services" (amendment rendered void by Ch. 353 amendment); and made minor changes in style. Amendment effective October 1, 2005.

Chapter 353 in (1) at beginning after "department may" substituted "obtain waivers of federal medicaid law in accordance with section 1915 of Title XIX of the Social Security Act, 42 U.S.C. 1396n, and administer programs of home and community-based services funded with medicaid money for categories of persons with disabilities or persons who are elderly" for "operate, for persons eligible for medicaid, a program of community-based services as an alternative to long-term care facility services in accordance with the provisions of Title XIX of the Social Security Act, as may be amended"; inserted (3) through (10) allowing the department to administer programs of home and community-based services for persons with disabilities or who are elderly; in (11)(a) at end substituted "in accordance with section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r" for "and resident reviews"; in (11)(b) near beginning after "screenings" deleted "and resident reviews", after "all" deleted "medicaid-eligible", and after "persons" substituted "seeking admission to a long-term care facility" for "entering long-term care facilities and community-based services and for all persons who become eligible for medicaid after entering long-term care facilities, before payment for services in such settings are authorized under medicaid. Preadmission screenings and resident review of persons not applying for medical assistance under this part must be on a voluntary basis, except as required under the Social Security Act"; inserted (11)(c) prohibiting a person with mental retardation or a mental illness from residing in a long-term care facility except under certain conditions; inserted (11)(d) requiring that long-term care preadmission screenings include a determination of whether the person needs specialized mental retardation or mental health treatment while residing in the facility; deleted former (3) that read: "(3) The department shall annually advise medical doctors and current residents of long-term care facilities of the program provided in subsection (1)"; in (12) near beginning after "implement" deleted "a program of community-based medicaid services and to establish a system of" and at end after "preadmission" substituted "screening process as required by section 1919 of Title XIX of the Social Security Act, 42 U.S.C. 1396r. The rules must provide criteria, procedures, schedules, delegations of responsibilities, and other requirements necessary to implement long-term care preadmission screenings" for "screenings and resident reviews as part of that program"; inserted (13) allowing the adoption of rules necessary for the implementation of each program of home and community-based services; and made minor changes in style. Amendment effective April 21, 2005.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Preamble: The preamble attached to Ch. 72, L. 2005, provided: "WHEREAS, the 58th legislative session in House Joint Resolution No. 13 directed the Department of Public Health and Human Services to conduct a study regarding the health programs administered by the Department and to provide recommendations to the 59th legislative session; and

WHEREAS, the Department formed an advisory committee that examined the structure and values of the state's Medicaid system; and

WHEREAS, the advisory committee advised the Department to seek a home and community-based services waiver from the Secretary of the Department of Health and Human Services for services to seriously emotionally disturbed children."

Severability: Section 5, Ch. 353, L. 2005, was a severability clause.

1989 Amendment: At end of (1) substituted "as may be amended" for "as that title reads on July 1, 1983, and 42 CFR parts 435 and 441, as those parts read on July 1, 1983"; in three places in (2) and in (4) substituted "preadmission screenings and resident reviews" for reference to placement evaluations; and at end of (2) inserted exception clause. Amendment effective May 22, 1989.

Statement of Intent: The statement of intent attached to HB 424 (Ch. 516, L. 1983) read: "Section 1. The intent of this bill is to allow the department of social and rehabilitation services [now department of public health and human services] to use federal medicaid funds in supporting services to senior citizens, the handicapped, and the developmentally disabled in the least restrictive and appropriate environments within appropriation limits established by the legislature and consistent with the provisions of The Omnibus Budget Reconciliation Act of 1981. In granting this authority, the legislature intends that:

(1) the recipient make the decision to be placed in the alternative setting;

(2) consistent with patient choice and resources, emphasis will be placed on the patient's own home as an alternative setting to institutional placement;

(3) the physical well-being and safety of the recipients of the program will be provided for in that all facilities utilized for the delivery of services or as residential setting, not including a recipient's own residence, will have to meet adequate health, fire, and life safety requirements before they can be licensed by the department or other licensing authority. The department shall insure that no requirements are adopted which are more onerous than necessary.

(4) The home and community-based services will be provided at no additional cost to the state.

Section 2. Section 5 of the bill [53-6-402(4)] provides the department with explicit rulemaking authority for the purposes of implementing a program of community-based medicaid services and establishing a system of long-term care placement evaluation as part of that program. These rules may address the following areas: the amount, scope, and duration of services provided, standards of quality for services provided, reimbursement methodology for services provided, the appropriate residential settings to be utilized, eligibility of individuals for the program, screening of individuals for appropriateness of services and placement, organization and functions of case management teams, assurances of patient choice, patient rights, and due process for program recipients, and any other purposes as may be required for the implementation of this program."

Case Notes

Self-Directed Personal Assistant Services Model — Employer of Personal Assistant Involved in Fatal Overdose Immune from Liability — No Respondeat Superior: The plaintiff, the personal representative of his mother's estate, filed suit against the employer of the personal assistant who had cared for his mother at the time she suffered a fatal overdose of medication. The defendant claimed that it was statutorily immune from liability because it was not directing the woman's personal care services. The District Court agreed that the defendant was immune from liability because the woman had been enrolled in a self-directed personal assistance services program and the law placed liability on the consumer. On appeal, the Supreme Court affirmed, agreeing that the District Court had correctly interpreted the law. It also agreed with the plaintiff that public policy should allow him to be able to sue the defendant for its role in his mother's death; however, that would require a change to the law and would be best addressed in a legislative forum. Swanson v. Consumer Direct, 2017 MT 57, 387 Mont. 37, 391 P.3d 79.

53-6-403. Home and community-based services waivers — legislative findings and intent.

Compiler's Comments

Effective Date: Section 3, Ch. 84, L. 2021, provided: "[This act] is effective July 1, 2021."

53-6-404. Use of waiver funding.

Compiler's Comments

Direction to Department of Public Health and Human Services: Section 2, Ch. 176, L. 2021, provided: "The legislature directs the department of public health and human services to submit to the centers for medicare and medicaid services, by no later than September 30, 2021, a request for an amendment to the medicaid home and community-based services 0208 waiver for individuals with developmental disabilities that:

(1) allows individuals and providers to use the entirety of each individual's cost plan to provide services that the individual needs to be successful in the community, not to exceed the amount of medicaid waiver appropriations in House Bill No. 2;

(2) provides the flexibility necessary to enable the provision of professional services to an individual; and

(3) provides a sufficient number of emergency slots throughout the state to accommodate individuals who may go into crisis."

Effective Date: Section 4, Ch. 176, L. 2021, provided: "[This act] is effective July 1, 2021."

53-6-405. Fraud prevention education — department responsibilities.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

53-6-406. Fiscal accountability for home and community-based services — report to legislature.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 59, L. 2023. Amendment effective July 1, 2023.

Effective Date: This section is effective October 1, 2015.

53-6-407. Notification required before termination of waiver participation.

Compiler's Comments

Effective Date: Section 3, Ch. 257, L. 2021, provided: "[This act] is effective July 1, 2021."

53-6-413. Substantive changes to waiver provisions — rulemaking requirements — definition.

Compiler's Comments

Effective Date: Section 4, Ch. 258, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 20, 2021.

Part 5
Traumatic Brain Injury — Services

Part Compiler's Comments

Effective Date: Section 4, Ch. 591, L. 1993, provided: "[This act] [53-6-501 and 53-6-502] is effective July 1, 1993."

Part 6
Long-Term Care Reform

Part Compiler's Comments

1995 Report on Implementation of Long-Term Care Reform: Section 4, Ch. 384, L. 1995, provided: "The department of social and rehabilitation services [now department of public health and human services] in cooperation with the departments of family services [now public health and human services], health and environmental sciences [now public health and human services], corrections and human services [now corrections], labor and industry, and commerce shall present a report to the 55th legislature on the implementation of long-term care reform. The report should include suggested legislation, if any, to make necessary changes for the implementation of long-term care reform, including but not limited to the reform of licensing for facilities and professions."

53-6-603. Long-term care service development — coordination — delivery.

Compiler's Comments

Code Commissioner Changes: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

Pursuant to sec. 2, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Family Services.

Pursuant to sec. 3, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Health and Environmental Sciences.

Pursuant to sec. 4, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Corrections and Human Services.

Part 7
Medicaid Managed Care

Part Compiler's Comments

Preamble: The preamble attached to Ch. 502, L. 1995, provided: "WHEREAS, the State of Montana is experiencing substantial rates of growth in Medicaid expenditures and the rate of growth in Medicaid expenditures is higher than the rate of growth of the state general fund; and

WHEREAS, the increasing cost of Medicaid is limiting the ability of the Legislature to address other needs of the citizens of the state of Montana; and

WHEREAS, it is the intent of the Legislature to promote the delivery of necessary medical care to Medicaid recipients in a cost-effective manner and to encourage providers and insurers to put in place programs that will improve the health of Medicaid recipients; and

WHEREAS, the Legislature desires to promote the development of healthy competition among providers of medical care with respect to cost-effectiveness and innovation in the provision of services."

Effective Date: Section 14, Ch. 502, L. 1995, provided: "[This act] is effective July 1, 1995."

Part Administrative Rules

Title 37, chapter 89, ARM Mental health services.

53-6-701. Policy of medicaid managed care — system for integrated health care services.

Compiler's Comments

2001 Amendment: Chapter 466 in first sentence after "a health care" substituted "system" for "program"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Statement of Intent: The statement of intent attached to Ch. 502, L. 1995, provided: "A statement of intent is required for this bill because [sections 1, 4, 5, 6, and 7] [53-6-701 and 53-6-704 through 53-6-707] grant rulemaking authority to the department of social and rehabilitation services [now department of public health and human services] and because [section 3] [53-6-703] grants rulemaking authority to the commissioner of insurance.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 1] [53-6-701] must provide for the identification of persons eligible for enrollment in the integrated health care program.

The rules adopted by the commissioner of insurance pursuant to [section 3] [53-6-703] may provide for the elimination or reduction of any requirement found in Title 33, chapter 31, if the commissioner of insurance finds the requirement unnecessary for the operation of a managed care community network in a rural area or because of federal requirements for prepaid health plans.

The rules adopted by the commissioner of insurance pursuant to [section 3] [53-6-703] must set forth criteria for assessing the financial soundness of a managed care community network and must also establish reserve requirements, as determined appropriate by the commissioner, in the event that a managed care community network is declared insolvent or bankrupt.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 4] [53-6-704] may provide for different benefit packages for different categories of persons enrolled in a managed health care entity.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 5] [53-6-705] must provide:

(1) a definition of emergency care for purposes of reimbursing all providers of emergency care to persons enrolled in the program;

(2) quality assurance and utilization review requirements for managed health care entities; and

(3) a definition of community-based organizations with which managed health care entities are encouraged to seek cooperation.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 6] [53-6-706] must provide for all fee-for-service and managed health care plan options for enrollees.

Under [section 7] [53-6-707], the department of social and rehabilitation services [now department of public health and human services] is required to adopt rules to provide for a method to reduce payments to managed health care entities, taking into consideration any adjustment payments to health care facilities for certain key services and the implementation of methodologies to limit financial liability for managed health care facilities."

53-6-702. Definitions.

Compiler's Comments

2011 Amendment — Coordination: Chapter 346 deleted definition that read: ""Managed care community network" or "network" means an entity, other than a health maintenance organization, that provides or arranges for comprehensive physical or mental health care services under a contract with the department, that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:

(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population.

(b) The term does not include a provider of health care services under a contract with the department on a fee-for-service basis or a PACE organization, as defined in 42 CFR 460.6, that has received a waiver under 33-31-201"; substituted current definition of managed health care entity for: ""Managed health care entity" or "entity" means a health maintenance organization or a managed care community network"; and made minor changes in style. Amendment effective October 1, 2011.

The amendments to this section made by sec. 3, Ch. 346, L. 2011, and by sec. 6, Ch. 351, L. 2011, were rendered void by sec. 4, Ch. 346, L. 2011, a coordination section.

2009 Amendment: Chapter 195 in definition of managed care community network in (b) at end inserted language that excludes a PACE organization that has received a waiver; and made minor changes in style. Amendment effective April 9, 2009.

2003 Amendments — Composite Section: Chapters 401 and 403 in definition of health maintenance organization substituted "33-31-102" for "50-5-101". Chapter 401 amendment effective October 1, 2003, and Ch. 403 amendment effective July 1, 2003.

2001 Amendment: Chapter 466 deleted former definition of commissioner that read: ""Commissioner" means the commissioner of insurance provided for in 2-15-1903"; in definition of managed care community network near beginning of (a) after "maintenance organization" deleted "that is owned, operated, or governed by a person and", after "arranges" substituted "for comprehensive physical or mental" for "managed", and after "department" substituted "that is reimbursed by a capitated rate or a fixed monetary amount for a specified time period with a risk of financial loss or a financial incentive to the entity, and that:

(i) contracts for an estimated annual value of $1 million or more of state and federal medicaid funds; or

(ii) operates statewide or covers 20% or more of the medicaid population" for "to enrollees of the program" and inserted (b) providing that the definition of managed care community network does not include a provider of health care services under a contract with the department on a fee-for-service basis; deleted former definition of person that read: ""Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility"; in definition of program after "means" inserted "an element of" and after "health care" substituted "system" for "program"; and made minor changes in style. Amendment effective October 1, 2001.

Code Commissioner Changes: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

53-6-704. Different benefit packages.

Compiler's Comments

2011 Amendment: Chapter 351 in (1) in third sentence in two places after "managed" inserted "health"; and in (2) in third sentence inserted "and subject to the public comment and review provisions of 53-6-710 and 53-6-711". Amendment effective May 6, 2011.

Retroactive Applicability: Section 14, Ch. 351, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011."

1999 Amendment: Chapter 577 in (1) near end of second sentence after "package" substituted "and" for "if" and after "services" substituted "may be" for "are" and inserted third sentence providing that a managed care entity is subject to part if service is excluded from the program but made available in a separate delivery system by a managed care entity; and in (2) at beginning of third sentence inserted exception clause. Amendment effective May 6, 1999.

Preamble: The preamble attached to Ch. 577, L. 1999, provided: "WHEREAS, the Legislature is firmly committed to a managed care system for the delivery of public mental health services in an efficient and cost-effective manner and to ensuring access to services and quality of care; and

WHEREAS, in order for mental health managed care to be successful, care management must be carefully monitored and any contract for services must be enforced; and

WHEREAS, the state, service providers, and service recipients and their families must work cooperatively to ensure that the public mental health delivery system is successful; and

WHEREAS, the Legislature is committed to a transition from the existing contract to a competitive procurement of mental health managed care services."

1995 Statement of Intent: The statement of intent attached to Ch. 502, L. 1995, provided: "A statement of intent is required for this bill because [sections 1, 4, 5, 6, and 7] [53-6-701 and 53-6-704 through 53-6-707] grant rulemaking authority to the department of social and rehabilitation services [now department of public health and human services] and because [section 3] [53-6-703] grants rulemaking authority to the commissioner of insurance.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 1] [53-6-701] must provide for the identification of persons eligible for enrollment in the integrated health care program.

The rules adopted by the commissioner of insurance pursuant to [section 3] [53-6-703] may provide for the elimination or reduction of any requirement found in Title 33, chapter 31, if the commissioner of insurance finds the requirement unnecessary for the operation of a managed care community network in a rural area or because of federal requirements for prepaid health plans.

The rules adopted by the commissioner of insurance pursuant to [section 3] [53-6-703] must set forth criteria for assessing the financial soundness of a managed care community network and must also establish reserve requirements, as determined appropriate by the commissioner, in the event that a managed care community network is declared insolvent or bankrupt.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 4] [53-6-704] may provide for different benefit packages for different categories of persons enrolled in a managed health care entity.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 5] [53-6-705] must provide:

(1) a definition of emergency care for purposes of reimbursing all providers of emergency care to persons enrolled in the program;

(2) quality assurance and utilization review requirements for managed health care entities; and

(3) a definition of community-based organizations with which managed health care entities are encouraged to seek cooperation.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 6] [53-6-706] must provide for all fee-for-service and managed health care plan options for enrollees.

Under [section 7] [53-6-707], the department of social and rehabilitation services [now department of public health and human services] is required to adopt rules to provide for a method to reduce payments to managed health care entities, taking into consideration any adjustment payments to health care facilities for certain key services and the implementation of methodologies to limit financial liability for managed health care facilities."

__53-6-705. Requirements for managed health care entities.__

Compiler's Comments

2011 Amendment: Chapter 351 inserted (3) concerning the maintenance of a network of health care providers; in (8) inserted "in Title 33, chapter 36, and"; in (10)(a) inserted "the legislative auditor's office, and the state auditor's office"; inserted (15) concerning federal waivers and application review; and made minor changes in style. Amendment effective May 6, 2011.

Retroactive Applicability: Section 14, Ch. 351, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011."

1995 Statement of Intent: The statement of intent attached to Ch. 502, L. 1995, provided: "A statement of intent is required for this bill because [sections 1, 4, 5, 6, and 7] [53-6-701 and 53-6-704 through 53-6-707] grant rulemaking authority to the department of social and rehabilitation services [now department of public health and human services] and because [section 3] [53-6-703] grants rulemaking authority to the commissioner of insurance.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 1] [53-6-701] must provide for the identification of persons eligible for enrollment in the integrated health care program.

The rules adopted by the commissioner of insurance pursuant to [section 3] [53-6-703] may provide for the elimination or reduction of any requirement found in Title 33, chapter 31, if the commissioner of insurance finds the requirement unnecessary for the operation of a managed care community network in a rural area or because of federal requirements for prepaid health plans.

The rules adopted by the commissioner of insurance pursuant to [section 3] [53-6-703] must set forth criteria for assessing the financial soundness of a managed care community network and must also establish reserve requirements, as determined appropriate by the commissioner, in the event that a managed care community network is declared insolvent or bankrupt.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 4] [53-6-704] may provide for different benefit packages for different categories of persons enrolled in a managed health care entity.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 5] [53-6-705] must provide:

(1) a definition of emergency care for purposes of reimbursing all providers of emergency care to persons enrolled in the program;

(2) quality assurance and utilization review requirements for managed health care entities; and

(3) a definition of community-based organizations with which managed health care entities are encouraged to seek cooperation.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 6] [53-6-706] must provide for all fee-for-service and managed health care plan options for enrollees.

Under [section 7] [53-6-707], the department of social and rehabilitation services [now department of public health and human services] is required to adopt rules to provide for a method to reduce payments to managed health care entities, taking into consideration any adjustment payments to health care facilities for certain key services and the implementation of methodologies to limit financial liability for managed health care facilities."

53-6-706. Requirements relating to enrollees.

Compiler's Comments

1999 Amendment: Chapter 577 in (2) near middle of first sentence after "department" substituted "may, but is not required to" for "may not" and after "program" substituted "prior to" for "until after"; in (3)(a) at beginning after "are" deleted "certified to be actuarially sound" and after "accordance" inserted "with federal requirements and"; and made minor changes in style. Amendment effective May 6, 1999.

Preamble: The preamble attached to Ch. 577, L. 1999, provided: "WHEREAS, the Legislature is firmly committed to a managed care system for the delivery of public mental health services in an efficient and cost-effective manner and to ensuring access to services and quality of care; and

WHEREAS, in order for mental health managed care to be successful, care management must be carefully monitored and any contract for services must be enforced; and

WHEREAS, the state, service providers, and service recipients and their families must work cooperatively to ensure that the public mental health delivery system is successful; and

WHEREAS, the Legislature is committed to a transition from the existing contract to a competitive procurement of mental health managed care services."

1995 Statement of Intent: The statement of intent attached to Ch. 502, L. 1995, provided: "A statement of intent is required for this bill because [sections 1, 4, 5, 6, and 7] [53-6-701 and 53-6-704 through 53-6-707] grant rulemaking authority to the department of social and rehabilitation services [now department of public health and human services] and because [section 3] [53-6-703] grants rulemaking authority to the commissioner of insurance.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 1] [53-6-701] must provide for the identification of persons eligible for enrollment in the integrated health care program.

The rules adopted by the commissioner of insurance pursuant to [section 3] [53-6-703] may provide for the elimination or reduction of any requirement found in Title 33, chapter 31, if the commissioner of insurance finds the requirement unnecessary for the operation of a managed care community network in a rural area or because of federal requirements for prepaid health plans.

The rules adopted by the commissioner of insurance pursuant to [section 3] [53-6-703] must set forth criteria for assessing the financial soundness of a managed care community network and must also establish reserve requirements, as determined appropriate by the commissioner, in the event that a managed care community network is declared insolvent or bankrupt.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 4] [53-6-704] may provide for different benefit packages for different categories of persons enrolled in a managed health care entity.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 5] [53-6-705] must provide:

(1) a definition of emergency care for purposes of reimbursing all providers of emergency care to persons enrolled in the program;

(2) quality assurance and utilization review requirements for managed health care entities; and

(3) a definition of community-based organizations with which managed health care entities are encouraged to seek cooperation.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 6] [53-6-706] must provide for all fee-for-service and managed health care plan options for enrollees.

Under [section 7] [53-6-707], the department of social and rehabilitation services [now department of public health and human services] is required to adopt rules to provide for a method to reduce payments to managed health care entities, taking into consideration any adjustment payments to health care facilities for certain key services and the implementation of methodologies to limit financial liability for managed health care facilities."

53-6-707. Payment reductions and adjustments — freedom to contract.

Compiler's Comments

2011 Amendment: Chapter 351 in (2) in two places and in (3) inserted "or nursing facility"; in (2)(c) after "payments for" deleted "capital"; inserted (2)(d) and (2)(e) concerning supplemental medicaid payments to hospitals and nursing facilities; inserted (4) concerning an existing agreement with a medicaid provider; and made minor changes in style. Amendment effective May 6, 2011.

Retroactive Applicability: Section 14, Ch. 351, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011."

1995 Statement of Intent: The statement of intent attached to Ch. 502, L. 1995, provided: "A statement of intent is required for this bill because [sections 1, 4, 5, 6, and 7] [53-6-701 and 53-6-704 through 53-6-707] grant rulemaking authority to the department of social and rehabilitation services [now department of public health and human services] and because [section 3] [53-6-703] grants rulemaking authority to the commissioner of insurance.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 1] [53-6-701] must provide for the identification of persons eligible for enrollment in the integrated health care program.

The rules adopted by the commissioner of insurance pursuant to [section 3] [53-6-703] may provide for the elimination or reduction of any requirement found in Title 33, chapter 31, if the commissioner of insurance finds the requirement unnecessary for the operation of a managed care community network in a rural area or because of federal requirements for prepaid health plans.

The rules adopted by the commissioner of insurance pursuant to [section 3] [53-6-703] must set forth criteria for assessing the financial soundness of a managed care community network and must also establish reserve requirements, as determined appropriate by the commissioner, in the event that a managed care community network is declared insolvent or bankrupt.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 4] [53-6-704] may provide for different benefit packages for different categories of persons enrolled in a managed health care entity.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 5] [53-6-705] must provide:

(1) a definition of emergency care for purposes of reimbursing all providers of emergency care to persons enrolled in the program;

(2) quality assurance and utilization review requirements for managed health care entities; and

(3) a definition of community-based organizations with which managed health care entities are encouraged to seek cooperation.

The rules adopted by the department of social and rehabilitation services [now department of public health and human services] pursuant to [section 6] [53-6-706] must provide for all fee-for-service and managed health care plan options for enrollees.

Under [section 7] [53-6-707], the department of social and rehabilitation services [now department of public health and human services] is required to adopt rules to provide for a method to reduce payments to managed health care entities, taking into consideration any adjustment payments to health care facilities for certain key services and the implementation of methodologies to limit financial liability for managed health care facilities."

53-6-708. Waiver.

Compiler's Comments

1997 Amendment: Chapter 42 in fourth sentence, in two places, substituted "42 U.S.C. 1396a(a)(13)" for "42 U.S.C. 1396(a)(13)". Amendment effective March 12, 1997.

53-6-709. Legislative auditor — oversight.

Compiler's Comments

1999 Amendment: Chapter 577 in (1) near end after "oversee" deleted "all aspects of". Amendment effective May 6, 1999.

Preamble: The preamble attached to Ch. 577, L. 1999, provided: "WHEREAS, the Legislature is firmly committed to a managed care system for the delivery of public mental health services in an efficient and cost-effective manner and to ensuring access to services and quality of care; and

WHEREAS, in order for mental health managed care to be successful, care management must be carefully monitored and any contract for services must be enforced; and

WHEREAS, the state, service providers, and service recipients and their families must work cooperatively to ensure that the public mental health delivery system is successful; and

WHEREAS, the Legislature is committed to a transition from the existing contract to a competitive procurement of mental health managed care services."

53-6-710. Advisory council — duties.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 90, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Effective Date: Section 13, Ch. 351, L. 2011, provided: "[This act] is effective on passage and approval." Approved May 6, 2011.

Retroactive Applicability: Section 14, Ch. 351, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011."

53-6-711. Requests for proposals and contracts — review requirements — public notice and comment.

Compiler's Comments

Effective Date: Section 13, Ch. 351, L. 2011, provided: "[This act] is effective on passage and approval." Approved May 6, 2011.

Retroactive Applicability: Section 14, Ch. 351, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011."

Part 8
Long-Term Care Insurance Partnerships

Part Compiler's Comments

Contingent Effective Date Repealed: Section 2, Ch. 406, L. 2005, repealed sec. 8, Ch. 195, L. 1997, which provided a contingent effective date for this part. Effective October 1, 2005.

Contingent Effective Date: Section 8, Ch. 195, L. 1997, provided: "(1) [Sections 4, 5, and 7 and this section] [53-6-804, 53-6-805, and the codification instruction] are effective on the effective date of the repeal of 42 U.S.C. 1396p(b)(1)(A) and (b)(1)(B) or of the amendment of that section in a manner prohibiting adjustment or recovery of medical assistance paid to individuals described in that section.

(2) [Sections 1 through 3 and 6] [53-6-801 through 53-6-803 and amendments to 53-6-143] are effective 6 months after [the effective date of sections 4 and 5] [53-6-804 and 53-6-805]."

1997 Statement of Intent: The statement of intent attached to Ch. 195, L. 1997, provided: "A statement of intent is required for this bill because [sections 4 and 5] [53-6-804 and 53-6-805] grant rulemaking authority to the commissioner of insurance and the department of public health and human services. [Section 4] [53-6-804] authorizes the commissioner and the department to adopt rules regarding requirements for certification of long-term care insurance policies and certificates for the purposes of qualification for medical assistance benefits. [Section 5] [53-6-805] requires the department to adopt rules necessary for the administration of long-term care insurance partnerships, including eligibility requirements for disregard of resources and amounts of resources to be disregarded for the purposes of qualification for medical assistance benefits. In adopting rules pursuant to these sections, the commissioner and the department shall take into consideration the goal of reducing expenditures for long-term care by the Montana medicaid program."

53-6-803. Long-term care insurance partnerships authorized.

Compiler's Comments

2005 Amendment: Chapter 406 in (1) near beginning after "discretion" substituted "establish" for "create" and at end after "partnerships" substituted "as provided for in federal law under 42 U.S.C. 1396p or if allowed by a waiver of federal law under section 1115 of Title XI of the Social Security Act, 42 U.S.C. 1315" for "if federal law permits those partnerships. If created, the partnerships must be consistent with the requirements of Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq."; in (2) at beginning after "The" deleted "commissioner and the", after "insurers to" substituted "implement" for "create", and at end after "requirements" substituted "in accordance with federal law or an approved waiver in order to facilitate the enrollment of persons into long-term care insurance plans" for "to qualify for those benefits"; in (3) inserted second sentence allowing the department to modify eligibility and other medicaid requirements by administrative rule as allowed by state and federal law to encourage individuals to maintain long-term care insurance; and made minor changes in style. Amendment effective October 1, 2005.

Part 10
Prescription Drug Plus Discount Program

Part Compiler's Comments

Preamble: The preamble attached to Ch. 551, L. 2003, provided: "WHEREAS, the Legislature finds that the cost of prescription drugs is a major threat to the public health of Montana citizens; and

WHEREAS, other states have implemented innovative prescription drug access and affordability legislation that can be adapted to meet Montana's needs; and

WHEREAS, the Legislature finds it necessary to provide some relief for the high cost of prescription drugs by using an expanded Medicaid program for which reimbursement will be sought through Medicaid rebates and federal reimbursement programs."

Loan for Startup Costs: Section 8, Ch. 551, L. 2003, provided: "The department of public health and human services may apply for a loan from the board of investments under the revolving loan program provided for in 17-5-1605 to pay the startup costs of the program provided for in [sections 1 through 7] [this part]."

Severability: Section 10, Ch. 551, L. 2003, was a severability clause.

Effective Date: Section 12, Ch. 551, L. 2003, provided: "[This act] is effective July 1, 2003."

Part Administrative Rules

Title 37, chapter 81, ARM Pharmacy access prescription drug benefit program (Big Sky Rx).

53-6-1001. Definitions.

Compiler's Comments

2011 Amendment: Chapter 19 deleted definition that read: ""Average wholesale price" means the wholesale price charged on a specific drug that is assigned by the drug manufacturer and is listed in a nationally recognized drug pricing file"; deleted definition that read: ""Gross household income" has the meaning provided in 15-30-2337"; and made minor changes in style. Amendment effective October 1, 2011.

2005 Amendment: Chapter 287 in definition of average wholesale price near middle substituted "drug" for "commodity"; in definition of discounted price after "means" substituted "a price set" for "a price that is less than or equal to the average wholesale price, minus a percentage between 6% and 25% determined" and after "department" inserted "by rule"; in definition of program substituted "prescription drug plus discount" for "medicaid prescription drug"; inserted definition of secondary discounted price; and made minor changes in style. Amendment effective July 1, 2005.

53-6-1002. Prescription drug plus discount program — rules.

Compiler's Comments

2005 Amendment: Chapter 287 in (1) at beginning deleted "By July 1, 2004, or upon securing any necessary waivers", after "department" substituted "may provide for a prescription drug plus discount program" for "shall provide for an expansion of prescription drug benefits under the medicaid program", increased percentage of poverty level from 200% to 250%, and at end inserted "and who meet the requirements in 53-6-1003", deleted former second and third sentences that read: "Subject to subsection (7), the department shall charge an annual application fee of $25 for the program. The application fee must be deposited in the medicaid prescription drug rebate account established in subsection (2)"; in (2) at beginning of first sentence substituted "prescription drug plus discount program" for "medicaid prescription drug", in second sentence before "program" deleted "medicaid prescription drug expansion", and in third sentence after "expand" substituted "prescription drug benefits to qualified individuals" for "medicaid prescription drug benefits"; in (2)(a) at end substituted "secondary discounted price" for "discount on the average wholesale price of prescription drugs provided to qualified residents pursuant to this part"; in (2)(b) after "pharmacies" inserted "pharmacy benefit administrators"; in (4) deleted former second sentence that read: "The rules may be based upon rules adopted in other states to administer similar programs"; in (5) near beginning after "shall" inserted "if the department determines that sufficient funds are available" and in two places before "discounted price" inserted "secondary"; in (6) in second sentence increased percentage of poverty level from 200% to 250% and in last sentence substituted "materials" for "cards"; in (7) substituted first sentence concerning compliance with federal laws for former sentence that read: "Establishment of the prescription drug expansion program is contingent upon approval by the federal government that the program in this part will qualify for federal financial participation under federal laws implementing the medicaid program" and at end of second sentence deleted "or conditions required as part of the federal government's agreement to waive certain requirements of federal law"; in (8) near middle after "prices" deleted "the application fee"; inserted (9) concerning voluntary participation; inserted (10) concerning contracting with mail service pharmacy; and made minor changes in style. Amendment effective July 1, 2005.

53-6-1003. Eligibility — income determination.

Compiler's Comments

2005 Amendment: Chapter 287 substituted (1) concerning household income level for "at least 62 years of age"; in (2) substituted language concerning lack of drug coverage or exceeding coverage benefits for former (1)(b) and (1)(c) that read: "(b) 18 years of age or older and determined to be disabled by the federal social security program; or

(c) eligible for mental health services pursuant to 53-21-702(2)"; deleted former (2) that read: "(2) Subject to 53-6-1002(8), individuals are eligible for the program if the gross household income is at or below the amount set by the department, which may not be more than 200% of the federal poverty level"; and made minor changes in style. Amendment effective July 1, 2005.

Contingent Voidness Provision Ineffective: Section 11, Ch. 551, L. 2003, which voided subsection (1)(c) on the occurrence of a contingency, was rendered ineffective by sec. 6, Ch. 287, L. 2005, which deleted subsection (1)(c).

Contingent Voidness: Section 11, Ch. 551, L. 2003, provided: "If the department of public health and human services is unable to obtain a waiver that includes persons who are eligible for mental health services pursuant to 53-21-702(2), the department shall notify the code commissioner and [section 3(1)(c)] [53-6-1003(1)(c)] is void."

53-6-1004. State pharmacy access program.

Compiler's Comments

Effective Date: Section 14, Ch. 287, L. 2005, provided: "[This act] is effective July 1, 2005."

53-6-1005. Department administration — pharmacy access.

Compiler's Comments

2017 Amendment: Chapter 81 deleted former (2) that read: "(2) The department shall report on Montana's prescription drug use, needs, and trends and submit a report with recommendations to the governor and to the legislature by September 15, 2006"; and made minor changes in style. Amendment effective July 1, 2017.

Effective Date: Section 14, Ch. 287, L. 2005, provided: "[This act] is effective July 1, 2005."

53-6-1006. Prescription drug consumer information and technical assistance program — education outreach for consumers and professionals.

Compiler's Comments

Effective Date: Section 14, Ch. 287, L. 2005, provided: "[This act] is effective July 1, 2005."

53-6-1010. Specifications for administration of program.

Compiler's Comments

2005 Amendment: Chapter 287 in (1) deleted former third sentence that read: "The department shall apply for any waivers of federal law that are necessary to implement the program"; in (2) at end substituted "are public information, except for information that the department determines is proprietary information" for "must be kept confidential, except as the department determines is necessary to carry out the program" and deleted former second sentence that read: "The department shall comply with the budget neutrality provisions required by the United States department of health and human services for the granting of any waivers"; inserted (3) concerning use of formulary or other committee; inserted (4) concerning negotiation of rebates; substituted (5) concerning use of access restrictions and preferred drug list for former text that read: "The department may not use access restrictions, supplemental rebates, or a preferred drug list to comply with the budget neutrality provisions when negotiating with the federal government for this waiver. These restrictions do not apply to other components of the medicaid or mental health services plan or drugs provided in those programs. These restrictions apply only to the prescription drug expansion program provided for in 53-6-1002"; inserted (6) concerning multistate purchasing pool; and made minor changes in style. Amendment effective July 1, 2005.

Termination Provision Repealed: Section 11, Ch. 287, L. 2005, repealed sec. 13, Ch. 551, L. 2003, which terminated subsection (3) (now (5)) June 30, 2005. Effective July 1, 2005.

Termination: Section 13, Ch. 551, L. 2003, provided: "[Section 4(3)] [53-6-1010(3)] terminates June 30, 2005."

53-6-1013. Contracting.

Compiler's Comments

2005 Amendment: Chapter 287 in first sentence after "administration" inserted "price and rebate negotiations" and inserted second sentence prohibiting compensation or benefit from drug manufacturer, labeler, or distributor; and made minor changes in style. Amendment effective July 1, 2005.

53-6-1020. Contingency on expenditure.

Compiler's Comments

Effective Date: Section 14, Ch. 287, L. 2005, provided: "[This act] is effective July 1, 2005."

Part 11
Prevention and Stabilization Account

53-6-1101. Prevention and stabilization account — allocation of proceeds.

Compiler's Comments

Contingent Voidness: Section 17, Ch. 531, L. 2003, provided that under certain contingencies, subsection (1) of this section, enacted by sec. 14, Ch. 531, L. 2003, was void. However, because subsection (1) of this section was also enacted by sec. 2, Ch. 608, L. 2003, without a contingent voidness provision, the contingent voidness provision in Ch. 531 is irrelevant.

Severability: Section 19, Ch. 531, L. 2003, was a severability clause.

Effective Dates: Section 20, Ch. 531, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 29, 2003.

Section 7, Ch. 608, L. 2003, provided: "[This act] is effective July 1, 2003."

Retroactive Applicability: Section 21, Ch. 531, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002."

Part 12
Health and Medicaid Initiatives Account

53-6-1201. Special revenue fund — health and medicaid initiatives.

Compiler's Comments

2021 Purported Amendment: Although sec. 85, Ch. 576, L. 2021, purported to amend this section by deleting language that was inserted by sec. 50, Initiative Measure No. 190, approved November 3, 2020, the deletion made by sec. 85, Ch. 576, L. 2021, was effective on the same day as the insertion made by sec. 50, I.M. No. 190, and the final version of the text remained unamended.

Extension of Effective Date: Section 107, Ch. 576, L. 2021, amended sec. 56, Initiative Measure No. 190, by extending the effective date imposed by I.M. No. 190 to January 1, 2022. Effective May 18, 2021.

2020 Amendment by Initiative: Initiative Measure No. 190 inserted (2)(c) concerning money from marijuana taxes; and made minor changes in style. Amendment effective October 1, 2021.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Severability: Section 55, Initiative Measure No. 190, was a severability clause.

2017 Amendments — Composite Section: Chapter 77 in (2)(a) substituted "16-11-119(2)(c)" for "16-11-119(1)(d)"; and in (2)(b) substituted "16-11-119(4)(b)" for "16-11-119(3)(b)". Amendment effective July 1, 2017.

Chapter 151 deleted former (3)(e) through (3)(g) that read: "(e) funding new programs to assist eligible small employers with the costs of providing health insurance benefits to eligible employees;

(f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and premium assistance payments as provided in Title 33, chapter 22, part 20; and

(g) providing a state match for the medicaid program for premium incentive payments or premium assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216"; and in (4)(b) after "in subsections (3)(b) and (3)(d)" deleted "through (3)(g)"; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 233 inserted (3)(e) regarding grants to schools for suicide prevention activities; and made minor changes in style. Amendment effective July 1, 2017.

Severability: Section 57, Ch. 151, L. 2017, was a severability clause.

2009 Amendments — Composite Section: Chapter 2 deleted former (4)(a) that read: "(4) (a) Except for $1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that $25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 461 in (2)(a) substituted "16-11-119(1)(d)" for "16-11-119(1)(c)"; deleted former (4)(a) (see Ch. 2 note); and made minor changes in style. Amendment effective July 1, 2009.

Chapter 486 in (3)(a) near beginning before "maximize" inserted "administer the plan and", after "under the" substituted "healthy Montana kids plan" for "children's health insurance program", after "part" substituted "11" for "10", and deleted former second sentence that read: "The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005"; deleted former (4)(a) (see Ch. 2 note); and made minor changes in style. Amendment effective July 1, 2009.

Chapter 489 in (3)(a) deleted former second sentence that read: "The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005"; in (3)(b) after "ill" inserted "persons"; in (3)(c) deleted former second sentence that read: "The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates"; deleted former (4)(a) (see Ch. 2 note); deleted former (5) that read: "The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets"; and made minor changes in style. Amendment effective May 14, 2009, and terminates June 30, 2011.

2007 Amendment Not Codified: Section 4, Ch. 482, L. 2007, was not codified because of its short duration. Inserted (4) that read: "Money appropriated but not expended for the prescription drug program described in subsection (3)(b) must be transferred annually to the older Montanans trust fund provided for in 52-3-115"; and deleted former (4)(a) that read: "(4) (a) Except for $1 million appropriated for the startup costs of 53-6-1004 and 53-6-1005, the money appropriated for fiscal year 2006 for the programs in subsections (3)(b) and (3)(d) through (3)(g) may not be expended until the office of budget and program planning has certified that $25 million has been deposited in the account provided for in this section or December 1, 2005, whichever occurs earlier"; and made minor changes in style. Amendment effective May 11, 2007, and terminates July 1, 2007.

Retroactive Applicability: Section 31(2), Ch. 399, L. 2007, provided: "(2) For purposes of receiving a tax credit, [this act] and Chapter 595, Laws of 2005, apply retroactively, within the meaning of 1-2-109, to eligible premiums paid after December 31, 2005, by eligible small employers registered under 33-22-208 [33-22-2008, now repealed]."

2005 Amendments — Composite Section: Chapter 287 inserted (2)(c) related to interest and income; in (3)(e) after "assist" substituted "eligible small employers" for "small businesses", before "employees" inserted "eligible", and after "employees" deleted "if these tax credits or programs are established by the legislature after the effective date of this section"; inserted (3)(f) related to administrative costs; inserted (3)(g) related to state match for medicaid program; inserted (4)(a) limiting time when money can be expended; inserted (4)(b) related to revenue reserve balance; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 511 in (2)(b) at end substituted "16-11-119(3)(b)" for "16-11-206(1)(b)". Amendment effective July 27, 2005.

The amendments to this section made by sec. 9, Ch. 287, L. 2005, and sec. 18, Ch. 595, L. 2005, were rendered void by sec. 13, Ch. 287, L. 2005, a coordination section.

Applicability: Section 22, Ch. 595, L. 2005, provided: "[This act] applies to tax years beginning after December 31, 2005."

Preamble: The preamble attached to I.M. No. 149, provided: "WHEREAS, tobacco related disease is the single most preventable cause of death in Montana.

WHEREAS, tobacco related disease kills more people than alcohol, AIDS, car crashes, illegal drugs, murders, and suicides combined.

WHEREAS, 1,400 Montanans die each year from their addiction to smoking.

WHEREAS, smokeless tobacco use can lead to oral cancer, gum disease, and nicotine addiction; and increases the risk of cardiovascular disease, including heart attacks.

WHEREAS, over 18% of Montana high school students use spit tobacco, more than double the national average of 7.8 %.

WHEREAS, 17,100 Montana children, now under 18, will ultimately die prematurely from smoking.

WHEREAS, Montanans spend $216 million annually on health care costs in Montana directly caused by smoking.

WHEREAS, studies have also found that adolescents and young adults are 2 to 3 times more likely to quit than adults due to tobacco price increases.

WHEREAS, significant tax increases on all tobacco products will reduce consumption, prevent kids from becoming addicted, and increase quitting success for all Montanans.

WHEREAS, Montana loses federal matching dollars every year by under funding Medicaid.

WHEREAS, 173,000 Montanans, including 41,500 children, lack health care coverage.

WHEREAS, 56% of uninsured Montanans are self-employed or work for small businesses with 10 or fewer employees; and 60% of small businesses cannot afford to offer health benefits.

WHEREAS, prescription drug costs are increasing 10% per year and are not affordable for many families, seniors or people with disabilities.

NOW THEREFORE, BE IT RESOLVED BY THE PEOPLE OF THE STATE OF MONTANA:

That we raise the tax on cigarettes by $1.00 per pack (from 70 cents to $1.70 per pack) and increase the tax on smokeless tobacco by a proportional amount and dedicate use of those tax funds for health care needs."

Severability: Section 9, I.M. No. 149, was a severability clause.

Effective Date: Section 10, I.M. No. 149, provided: "This act is effective January 1, 2005."

Applicability: Section 11, I.M. No. 149, provided: "This act applies to cigarettes and other tobacco products received by wholesalers after December 31, 2004."

Part 13
Montana Health and Economic Livelihood Partnership (HELP) Act

Part Compiler's Comments

Applicability: Section 47, Ch. 415, L. 2019, provided: "An individual enrolled in the expanded medicaid program provided for in Title 53, chapter 6, part 13, on the date the centers for medicare and medicaid services approves a waiver authorizing community engagement requirements shall comply with the community engagement requirements of [this act] within 180 days of the date the department of public health and human services has implemented the community engagement requirements."

Extension of Termination Date: Section 38, Ch. 415, L. 2019, amended sec. 28, Ch. 368, L. 2015, by extending the termination date imposed by Ch. 368 to June 30, 2025. Effective May 9, 2019.

Transition: Section 41, Ch. 415, L. 2019, provided: "(1) The legislature directs the department of public health and human services to notify the centers for medicare and medicaid services that passage and approval of [this act] constitutes legislative authorization to continue the current research and demonstration project approved under waiver No. 11-W00300/8 for the Montana Health and Economic Livelihood Partnership (HELP) Program Demonstration through December 31, 2020.

(2) The legislature directs the department of public health and human services to:

(a) apply no later than August 30, 2019, to the centers for medicare and medicaid services for any waivers needed to implement the provisions of [this act]; and

(b) carry out any activities before August 30, 2019, that are needed in order to develop and submit waiver proposals by August 30, 2019, including but not limited to:

(i) presenting any section 1115 waiver proposals to the medicaid advisory council and the children, families, health, and human services interim committee prior to submission to the centers for medicare and medicaid services, as required under 53-2-215;

(ii) providing for a public comment period at least 60 days before submission as required under 53-2-215; and

(iii) complying with any other public comment provisions required under federal law or regulation.

(3) The legislature directs the department of public health and human services to notify individuals enrolled in medicaid pursuant to Title 53, chapter 6, part 13, of the proposed changes to the program and the time periods within which the individuals would have to comply with the requirements of [this act] if the centers for medicare and medicaid services approves any waivers

submitted to carry out the provisions of [this act]. Notification may be made at the time any waiver proposal is submitted or approved, at the department's discretion.

(4) The director of the department shall notify the legislative finance committee and the children, families, health, and human services interim committee of:

(a) the date on which waiver approval is received or denied; and

(b) if waiver approval is received, the date on which the community engagement requirements are implemented."

Transition: Section 23, Ch. 368, L. 2015, provided: "(1) For the successful and appropriate implementation of [sections 1 through 13] [Title 53, chapter 6, part 13], the department of public health and human services may initiate eligibility processing and other measures necessary for implementation of [sections 4 and 5] [53-6-1304 and 53-6-1305] prior to the date that health care services provided pursuant to [section 5] [53-6-1305] are covered.

(2) The department may implement coverage of health care services for individuals eligible pursuant to [section 4] [53-6-1304] only after:

(a) the department has obtained the approvals and waivers needed from the U.S. department of health and human services to receive the federal medical assistance percentage provided for in 42 U.S.C. 1396d(y) for individuals eligible for coverage pursuant to [section 4] [53-6-1304] and to provide services in accordance with [sections 1 through 17] [Title 53, chapter 6, part 13, and Title 39, chapter 12]; and

(b) all necessary administrative arrangements, including contract services, are in place."

Nonseverability — Code Commissioner Correction: Section 26, Ch. 368, L. 2015, provided: "[(1)] Except as provided in subsection (2), it is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

(2) If [section 19 or 20] is held unconstitutional, all other parts are valid."

Because these section references were not changed when new sections 20 and 22 were added to the bill by amendment, the code commissioner has determined that "[section 19 or 20]" should be replaced with "[section 19 or 21]" [25-3-106 or 27-2-205].

Termination: Section 28, Ch. 368, L. 2015, provided: "(1) [This act] terminates June 30, 2019.

(2) The department may reapply for the same waiver received to implement the Montana Health and Economic Livelihood Partnership Act program if the waiver expires before June 30, 2019."

Legislative Intent for Implementation of the Montana Health and Economic Livelihood Partnership (HELP) Act: Section 3, Ch. 438, L. 2015, provided: "(1) It is the intent of the legislature that the office of budget and program planning use the statewide accounting, budgeting, and human resource system to capture savings in House Bill No. 2 generated due to the implementation of Senate Bill No. 405.

(2) After medicaid expansion as authorized in Senate Bill No. 405 is implemented, the office of budget and program planning shall calculate the general fund, state special revenue, and federal special revenue savings for each fiscal year attributable to the health insurance flexibility and accountability waiver, the federal medical assistance percentage for the medically needy, new rates for facility outside medical costs, and all net reductions in House Bill No. 2 for fiscal year 2016 and/or fiscal year 2017, transfer the savings to a separate subclass, and designate the subclass as frozen so that the generated savings may not be spent.

(3) For fiscal year 2016, the amount frozen will be determined by a pro rata share of months left in the fiscal year upon implementation. For fiscal year 2016, if savings are less than the remaining share of $11,763,918 general fund, the budget director is authorized to unfreeze appropriations necessary to prevent a supplemental request.

(4) It is the intent of the legislature that the savings revert to the fund from which they were appropriated and are subject to appropriation by future legislatures as applicable.

(5) The legislative finance committee shall review the assumptions used in the office of budget and program planning's calculations for reductions and the specific cost offsets identified by the office."

Part Administrative Rules

Title 24, chapter 13, ARM Montana HELP Act.

Title 37, chapter 84, ARM Medicaid expansion.

Part Law Review Articles

Will Uncooperative Federalism Survive NFIB?, Moncrieff & Dinerstein, 76 Mont. L. Rev. 75 (2015).

53-6-1301. Short title.

Compiler's Comments

Contingent Effective Date:

Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

53-6-1302. Montana HELP Act program — legislative findings and purpose.

Compiler's Comments

2021 Amendment: Chapter 547 in (4) near beginning after "The legislature further finds that" deleted "assessing workforce readiness" and near middle after "skill development" inserted "or supportive services"; and made minor changes in style. Amendment effective July 1, 2021.

2019 Amendment: Chapter 415 in (4) near middle after "skill development" inserted "and establishing community engagement requirements"; and made minor changes in style. Amendment effective January 1, 2020, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

53-6-1303. Definitions.

Compiler's Comments

2019 Amendment: Chapter 415 inserted definition of community engagement; and made minor changes in style. Amendment effective January 1, 2020, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

53-6-1304. Montana HELP Act program — eligibility for coverage of health care services — exceptions.

Compiler's Comments

2019 Amendment: Chapter 415 inserted (2) concerning serving individuals who are eligible for medicaid-funded services pursuant to this part through the medical assistance program established in Title 53, chapter 6, part 1; deleted former (2) through (5) (see 2019 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

53-6-1305. Montana HELP Act program — delivery of health care services — third-party administrator — rulemaking.

Compiler's Comments

2019 Amendment: Chapter 415 in (1) near beginning of introductory clause substituted "may contract" for "shall contract"; in (2) at beginning inserted "If the department decides to contract with a third-party administrator"; deleted former (3)(a)(i) through (3)(a)(iv), (5), and (6) concerning qualifications for exemptions and federal waivers (see 2019 Session Law for former text); in (3)(b) at beginning inserted "If the department contracts with a third-party administrator"; inserted (4) concerning contracting with a third-party administrator upon receipt of a federal waiver; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

53-6-1306. Prohibition on copayments.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 21 deleted former (4) (see 2019 Session Law for former text). Amendment effective February 26, 2019.

Chapter 415 substituted current text prohibiting copayments, coinsurance, and deductibles for former text providing for and limiting copayments (see 2019 Session Law for former text). Amendment effective January 1, 2020, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

53-6-1307. Premiums — collection of overdue premiums — nonpayment as voluntary disenrollment — reenrollment — exemptions.

Compiler's Comments

2019 Amendment: Chapter 415 in (1)(a) near middle of first sentence substituted "equal to a percentage of the participant's modified adjusted gross income" for "equal to 2% of the participant's income" and inserted last sentence and (1)(a)(i) and (1)(a)(ii) concerning premium amounts and increases; inserted (1)(b) concerning exemption from premium increases; in (1)(c) at end substituted "Montana HELP Act special revenue account provided for in 53-6-1315" for "general fund"; in (2) in middle substituted "the department or a third-party administrator administering the program, if any, shall notify the participant" for "the third-party administrator shall notify the participant and the department"; in (6)(d) after "third-party administrator" inserted "if any"; and made minor changes in style. Amendments to subsections (1)(a) and (1)(b) effective January 1, 2020. Amendments to subsections (1)(c), (2), and (6) effective July 1, 2019. Amendments to subsection (1) void on occurrence of contingency and terminate June 30, 2025, on occurrence of contingency. Amendments to subsections (2) and (6) terminate on June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

53-6-1308. Community engagement requirements — countable activities — exemptions — self-attestation.

Compiler's Comments

Effective Date: Section 46(2), Ch. 415, L. 2019, provided that this section is effective January 1, 2020.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

53-6-1309. Community engagement — reporting — suspension — audit.

Compiler's Comments

Effective Date: Section 46(2), Ch. 415, L. 2019, provided that this section is effective January 1, 2020.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

53-6-1310. Health risk analysis.

Compiler's Comments

Effective Date: Section 46(2), Ch. 415, L. 2019, provided that this section is effective January 1, 2020.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

53-6-1311. Medicaid program reforms.

Compiler's Comments

2019 Amendment: Chapter 415 deleted former (1)(f) that read: "(f) reducing fraud, waste, and abuse in the medicaid program before, during, and after enrollment by enhancing technology system support to provide knowledge-based authentication for verifying the identity and financial status of individuals seeking benefits, including the use of public records to confirm identity and flag changes in demographics"; inserted (2) requiring the department to reduce fraud, waste, and abuse in the medicaid program by enhancing technology system support; in (3) substituted "subsections (1) and (2)" for "subsection (1)"; and made minor changes in style. Amendment effective January 1, 2020, and terminates June 30, 2025, on occurrence of contingency.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

53-6-1312. Health care services payment schedules.

Compiler's Comments

2019 Amendment: Chapter 456 in (2)(b) inserted "the state facility at Galen"; and made minor changes in style. Amendment effective July 1, 2019.

Termination Provision Removed: Section 17, Ch. 456, L. 2019, amended sec. 28, Ch. 368, L. 2015, removing the termination provision from this section. Effective May 10, 2019.

Contingent Effective Date: Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

Administrative Rules

Title 20, chapter 15, subchapter 1, ARM Payment of provider claims at Medicaid rate for patients in Department of Corrections custody.

Title 37, chapter 2, subchapter 11, ARM State reimbursement rate for health care providers.

53-6-1313. Reduction in federal medical assistance percentage.

Compiler's Comments

Contingent Effective Date:

Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

53-6-1314. Disenrollment for failure to report change in circumstances.

Compiler's Comments

Effective Date: Section 46(2), Ch. 415, L. 2019, provided that this section is effective January 1, 2020.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

53-6-1315. Montana HELP Act special revenue account.

Compiler's Comments

Effective Date: Section 46(1), Ch. 415, L. 2019, provided that this section is effective July 1, 2019.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

53-6-1318. Rulemaking authority.

Compiler's Comments

Contingent Effective Date:

Section 27(1), Ch. 368, L. 2015, provided that this section is effective upon approval by the U.S. department of health and human services of all waivers and approvals necessary to provide medicaid-funded services to individuals eligible pursuant to 53-6-1304 in the manner provided for in Title 53, chapter 6, part 13, and Title 39, chapter 12. The contingency occurred pursuant to approval by the U.S. department of health and human services in letters dated November 2, 2015, with waivers and eligibility effective January 1, 2016.

53-6-1325. Report to legislature.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 91, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Effective Date: Section 46(3), Ch. 415, L. 2019, provided that this section is effective on passage and approval. Approved May 9, 2019.

Severability: Section 44, Ch. 415, L. 2019, was a severability clause.

Part 14
Medicaid Overpayment Audits

Part Compiler's Comments

Effective Date: Section 13, Ch. 82, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 14, Ch. 82, L. 2017, provided that this part applies to overpayment audits, record requests, and overpayment determinations made or commenced on or after July 1, 2017.

Part Administrative Rules

ARM 37.85.221 Medicaid overpayment auditor evaluation hearings — recovery audit contractor (RAC) program.

CHAPTER 7
VOCATIONAL REHABILITATION

Chapter Administrative Rules

Title 37, chapter 30, ARM Vocational rehabilitation program.

Part 1
General Vocational Rehabilitation

Part Compiler's Comments

Coordination of Services — Program Consolidation: Section 15, Ch. 396, L. 1989, provided: "(1) The governor shall assure that services under Title 53, chapter 19, part 1, are coordinated with programs and services in Title 53, chapter 7, parts 1 through 3, that are administered by the department of social and rehabilitation services [now department of public health and human services] with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under Title 53 with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government.

(3) The governor may transfer employees, appropriations, and spending authority necessary to accomplish the coordination of services as mandated by this section. The authority contained in this subsection is limited to the programs and services described in subsection (1). This subsection

supersedes any restrictions on the transfer of employees, appropriations, and spending authority contained in [House Bill No. 100] [see 1989 Session Law for text]."

Administrative Reorganization of Rehabilitative and Visual Services: Effective March 30, 1984, the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) combined their rules governing rehabilitative services and rules governing visual services by repealing all visual services rules formerly found in Title 46, chapter 7, ARM, and adding new rules and amending existing rules to cover visual services in Title 46, chapter 6, ARM Rehabilitative services (now Title 37, chapter 30, ARM Vocational rehabilitation). The rationale and statement of necessity in the notice to make such changes, published in MAR Notice No. 46-2-402, pages 318 and 319, Issue 3, 1984 Montana Administrative Register (February 16, 1984), read:

"The department is generally revising the rules relating to the development of rehabilitation facilities, the standards for providers of services, civil rights compliance, confidential information, fair hearings, the extended employment program, the visual medical program, and financial limitations upon services. Those revisions are for the purposes of eliminating unneeded provisions and language, providing for clarity, and revising certain criteria and standards. The vocational rehabilitation services and visual services rules are being brought together into one set of rules. This synthesis is necessary due to the current joint administration of the programs. Where necessary, distinctions between those programs are retained."

Severability Clause: Section 14, Ch. 74, L. 1947, was a severability clause.

53-7-101. Definitions.

Compiler's Comments

1997 Amendments: Chapter 42 in former definition of person with an employment handicap substituted "individual with a disability" for "individual with handicaps"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 472 substituted person with a disability for person with an employment handicap as defined term and substituted "individual with a disability" for "individual with handicaps"; in definition of physical restoration, near beginning, substituted "impediment to employment" for "employment handicap"; in definition of rehabilitation engineering, at end of first sentence, substituted "disabilities" for "employment handicaps"; in definitions of rehabilitation plan and vocational rehabilitation substituted "a disability" for "an employment handicap"; in definition of rehabilitation training substituted "a disability to overcome the person's impediment to employment" for "an employment handicap to rehabilitate the person's employment handicap"; and made minor changes in style.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 326 inserted definition of independent living.

1989 Amendment: At beginning substituted "Unless the context requires otherwise, in this part" for "As used in this part"; inserted definitions of Department, person with an employment handicap, and rehabilitation engineering; deleted definition of disabled individual; deleted definition of employment handicap; substituted definition of maintenance for former definition that read: ""Maintenance" means money payments not exceeding the estimated cost of subsistence during vocational rehabilitation"; in definition of physical restoration, near beginning, substituted "the employment handicap of a person" for "a disabled individual's employment handicap", near middle, after "convalescent", deleted "home", after "transitory" inserted "medical", and after "conditions" substituted "unless necessary to maintain a person's health in order to complete a rehabilitation plan" for "except medical care for acute conditions during the course of a rehabilitation plan which, if not corrected, would constitute a hazard to plan completion"; deleted definition of regulations; in definition of rehabilitation plan, after "plan", inserted "developed with the participation of the recipient", after "services" substituted "to assist a person with an employment handicap to become independent and productive or" for "that will render a disabled individual", and after "employable" deleted "and is jointly developed by the client and the department of social and rehabilitation services"; in definition of rehabilitation training, after "means", deleted "all necessary" and after "provided to a" substituted "person with an employment handicap to rehabilitate the person's" for "disabled individual to compensate for his"; substituted definitions of vocational rehabilitation and vocational rehabilitation services for former definition that read: ""Vocational rehabilitation" and "vocational rehabilitation services" mean services provided directly or through public or private instrumentalities found by the department of social and rehabilitation services to be necessary to compensate a disabled individual for his employment handicap and to enable him insofar as possible to engage in a remunerative occupation, including but not limited to medical and vocational diagnosis, vocational guidance, counseling, and placement, rehabilitation training, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, facilities for groups of handicapped, service to family members, and follow-up service"; and made minor changes in phraseology and punctuation. Amendment effective July 1, 1989.

53-7-102. Powers and duties of department.

Compiler's Comments

1997 Amendment: Chapter 472 in (3) and (4) substituted "disabilities" for "employment handicaps"; and made minor changes in style.

1989 Amendment: At beginning, after "department", deleted "of social and rehabilitation services"; substituted (1) relating to adoption of rules for former (1) that read: "(1) shall adopt rules governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility and investigation and determination thereof for vocational rehabilitation services, procedures for fair hearings, and any other rules necessary to carry out this part"; deleted former (2) that read: "(2) except as otherwise provided by law, shall provide vocational rehabilitation services to eligible disabled individuals"; at beginning of (2) substituted "may" for "shall"; near beginning of (3), after "other", inserted "departments and", substituted "persons with employment handicaps" for "disabled individuals", and near end, before "programs", deleted "necessary"; in (4) substituted "persons with employment handicaps" for "disabled individuals"; deleted former last sentence of (5) that read: "Gifts made under conditions which the department considers proper and consistent with this part may be accepted and shall be held, invested, reinvested, and used in accordance with the conditions of the gift"; and made minor changes in phraseology and punctuation. Amendment effective March 30, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 396, L. 1989, provided: "This bill requires a statement of intent because [sections 2 and 13] [53-7-102 and 53-7-315] require the department of social and rehabilitation services [now department of public health and human services] to adopt administrative rules for vocational rehabilitation programs for persons with employment handicaps and for persons with blindness and low vision.

It is the intent of the legislature that the department adopt rules necessary for administration of vocational rehabilitation programs provided for under this bill. Rules adopted by the department may relate to: the provision of vocational rehabilitation services, development of individual rehabilitation service plans, eligibility for services, application requirements, service goals and design, quality of services, provider relationships, program standards, program staffing, staff training, provider accounting procedures, confidential information, recipient grievance procedures, fair hearings, and definitions necessary to carry out the provisions of this bill.

In developing its rules, the department shall provide such methods of administering vocational rehabilitation services as may be required by the federal government for state participation in programs funded under the federal Rehabilitation Act of 1973."

53-7-103. Department to cooperate with federal government.

Compiler's Comments

1989 Amendment: Substituted language relating to federal Act (see 1989 Session Law for text) for former section that read: "The department of social and rehabilitation services shall cooperate, pursuant to agreements, with the federal government in carrying out the purposes of any federal statutes pertaining to rehabilitation and may adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes." Amendment effective July 1, 1989.

53-7-105. Eligibility.

Compiler's Comments

1997 Amendment: Chapter 472, near beginning, substituted "a disability" for "an employment handicap".

1989 Amendment: Substituted language relating to vocational rehabilitation (see 1989 Session Law for text) for former section that read: "(1) Vocational rehabilitation services shall be provided to any disabled individual who:

(a) is in the state at the time of filing his application for services and whose vocational rehabilitation the department of social and rehabilitation services determines after full investigation can be satisfactorily achieved; or

(b) is eligible for services under the terms of an agreement with another state or with the federal government.

(2) Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the department, the following rehabilitation services shall be provided at public cost only to disabled individuals found to require financial assistance with respect thereto:

(a) physical restoration;

(b) transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;

(c) occupational licenses;

(d) customary occupational tools and equipment;

(e) maintenance;

(f) training, including books and materials." Amendment effective July 1, 1989.

1981 Amendment: Inserted ", including" in (2)(f).

53-7-106. Hearings.

Compiler's Comments

1989 Amendment: At beginning substituted "A person" for "An individual", after "rehabilitation" inserted "services", near middle, after "department", deleted "of social and rehabilitation services", after "entitled" inserted "to a fair hearing", and at end substituted "the rules adopted by the department" for "regulations to a fair hearing by the board of social and rehabilitation appeals". Amendment effective July 1, 1989.

Case Notes

Appeal Process Related to Denial of Department Services Not Applicable to Denial of Funds From IAR Account: An injured worker who was denied funds from the industrial accident rehabilitation (IAR) account did not have adequate remedy at law and was entitled to a writ of mandate requiring payment of funds from the account. The appeal process provided for in this section pertains only to relief for a party actually applying for services that are provided by the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) and does not apply to a party who was improperly denied payment of funds from the IAR account. State ex rel. Cobbs v. Dept. of Social and Rehabilitation Services, 274 M 157, 906 P2d 204, 52 St. Rep. 1166 (1995).

53-7-108. Provision of services — financial responsibility for services.

Compiler's Comments

Effective Date: Section 19, Ch. 396, L. 1989, provided in part that [sections 6, 11, 12, and 14], codified as 53-7-108, 53-7-310, 53-7-314, and 53-7-109, respectively, are effective July 1, 1989.

53-7-109. Administration of vocational rehabilitation programs — applicability.

Compiler's Comments

2005 Amendment: Chapter 130 in (1) deleted former second sentence that read: "Within the department, the vocational rehabilitation services provided under the federal act must be administered in such a way that they are kept separate and independent from other programs, except as provided in section 15, Chapter 396, Laws of 1989"; and made minor changes in style. Amendment effective October 1, 2005.

Effective Date: Section 19, Ch. 396, L. 1989, provided in part that [sections 6, 11, 12, and 14], codified as 53-7-108, 53-7-310, 53-7-314, and 53-7-109, respectively, are effective July 1, 1989.

Coordination of Services — Program Consolidation: Section 15, Ch. 396, L. 1989, provided: "(1) The governor shall assure that services under Title 53, chapter 19, part 1, are coordinated with programs and services in Title 53, chapter 7, parts 1 through 3, that are administered by the department of social and rehabilitation services [now department of public health and human services] with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under Title 53 with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government.

(3) The governor may transfer employees, appropriations, and spending authority necessary to accomplish the coordination of services as mandated by this section. The authority contained in

this subsection is limited to the programs and services described in subsection (1). This subsection supersedes any restrictions on the transfer of employees, appropriations, and spending authority contained in [House Bill No. 100] [see 1989 Session Law for text]."

Part 2
Sheltered Workshops

Part Compiler's Comments

Coordination Requirements — Consolidation of Services Authorized: Section 7, Ch. 267, L. 1989, provided: "(1) The governor shall assure that services under this part are coordinated with programs and services in Title 53, chapter 7, parts 1 and 3, and Title 53, chapter 19, part 1, that are administered by the department with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under this part with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government."

Coordination of Services — Program Consolidation: Section 15, Ch. 396, L. 1989, provided: "(1) The governor shall assure that services under Title 53, chapter 19, part 1, are coordinated with programs and services in Title 53, chapter 7, parts 1 through 3, that are administered by the department of social and rehabilitation services [now department of public health and human services] with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under Title 53 with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government.

(3) The governor may transfer employees, appropriations, and spending authority necessary to accomplish the coordination of services as mandated by this section. The authority contained in this subsection is limited to the programs and services described in subsection (1). This subsection supersedes any restrictions on the transfer of employees, appropriations, and spending authority contained in [House Bill No. 100] [see 1989 Session Law for text]."

53-7-201. Legislative findings and purpose.

Compiler's Comments

1989 Amendment: In (1) substituted language stating purpose is to encourage development and improvement of supervised programs and support services for severely disabled for "to encourage the development, improvement, and expansion of sheltered employment and supervised work programs for mentally retarded, severely handicapped, and disadvantaged individuals to enable them to become contributing and self-supporting members of society as an alternative to dependency"; in (2) substituted language providing that supervised work programs and support services should be available to provide severely disabled with skills and means to lead productive lives so they may be integrated into society for language stating reasons training and placement may provide suitable alternative to institutionalization (see 1987 MCA for text); and inserted (3) allowing state to encourage establishment and funding of work programs and support services. Amendment effective July 1, 1989.

53-7-202. Definitions.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1989 Amendment: Inserted definitions of severe disability, supervised work program, supported employment, and support services; deleted definitions of physical or mental disability, self-care, severely handicapped person, and vocational rehabilitation services; and substituted definitions of sheltered employment for sheltered workshop and work activity for work activity center. Amendment effective July 1, 1989.

53-7-203. Purchase of services.

Compiler's Comments

1989 Amendment: In (1) substituted language allowing Department to purchase services to extent that funds are appropriated and allocated from sheltered employment provider, work activity center, supported employment provider, or support services provider within Montana for

"The department may purchase for severely handicapped persons sheltered employment services from any sheltered workshop in Montana or work activity services from any work activity center within Montana. The performance of and payment for such services shall be subject to postaudit review by the state auditor"; in (2) substituted language allowing organization to receive funding if it meets Department standards and criteria for language requiring Department to maintain register of organizations inspected and certified as meeting required standards and qualifying to serve severely handicapped or disadvantaged persons and to receive funding; and in (3) substituted language requiring Department to adopt standards and criteria for purchase of services that may be based on those of nationally recognized accreditation organization for "The department is authorized to promulgate such rules as it may deem necessary or proper to carry out the provisions of this section." Amendment effective July 1, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 267, L. 1989, provided: "A statement of intent is required for this bill because [sections 3 and 6] [53-7-203 and 53-7-206] delegate authority to the department of social and rehabilitation services [now department of public health and human services] to adopt rules necessary for administration of programs and services provided in [sections 1, 3, and 5] [53-7-201, 53-7-203, and 53-7-205].

It is the intent of the legislature, in enacting this bill, to establish a comprehensive program of supervised work and support services for persons with severe disabilities. The program must include sheltered employment, supported employment, work activity, and support services that will help persons who are severely disabled to lead socially and vocationally productive lives so they can be integrated into society.

The department may adopt such rules as are necessary to implement a spectrum of services under the program. Rules may be adopted to govern eligibility for services, certification of services, program staffing, staff training, service goals and design, quality of services, recipient placement procedures, individual service plans, recipient rights and privileges, recipient grievance procedures, fair hearings, provider relationships, provider accounting procedures, and any other matters necessary to implement the provisions of this bill."

53-7-204. Federal and other aid.

Compiler's Comments

2009 Amendment: Chapter 10 in (2) after "available" substituted "may be" for "are"; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Inserted (1) allowing Department to apply for and receive federal money or other aid; near beginning of (2) inserted "and other funding"; and made minor change in form. Amendment effective July 1, 1989.

53-7-205. Eligibility for services.

Compiler's Comments

Effective Date: Section 9, Ch. 267, L. 1989, provided that this section is effective July 1, 1989.

53-7-206. Rulemaking.

Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 267, L. 1989, provided: "A statement of intent is required for this bill because [sections 3 and 6] [53-7-203 and 53-7-206] delegate authority to the department of social and rehabilitation services [now department of public health and human services] to adopt rules necessary for administration of programs and services provided in [sections 1, 3, and 5] [53-7-201, 53-7-203, and 53-7-205].

It is the intent of the legislature, in enacting this bill, to establish a comprehensive program of supervised work and support services for persons with severe disabilities. The program must include sheltered employment, supported employment, work activity, and support services that will help persons who are severely disabled to lead socially and vocationally productive lives so they can be integrated into society.

The department may adopt such rules as are necessary to implement a spectrum of services under the program. Rules may be adopted to govern eligibility for services, certification of services, program staffing, staff training, service goals and design, quality of services, recipient placement procedures, individual service plans, recipient rights and privileges, recipient grievance procedures, fair hearings, provider relationships, provider accounting procedures, and any other matters necessary to implement the provisions of this bill."

Effective Date: Section 9, Ch. 267, L. 1989, provided that this section is effective March 23, 1989.

Part 3
Vocational Rehabilitation of the Blind

Part Compiler's Comments

Coordination of Services — Program Consolidation: Section 15, Ch. 396, L. 1989, provided: "(1) The governor shall assure that services under Title 53, chapter 19, part 1, are coordinated with programs and services in Title 53, chapter 7, parts 1 through 3, that are administered by the department of social and rehabilitation services [now department of public health and human services] with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under Title 53 with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government.

(3) The governor may transfer employees, appropriations, and spending authority necessary to accomplish the coordination of services as mandated by this section. The authority contained in this subsection is limited to the programs and services described in subsection (1). This subsection supersedes any restrictions on the transfer of employees, appropriations, and spending authority contained in [House Bill No. 100] [see 1989 Session Law for text]."

Administrative Reorganization of Rehabilitative and Visual Services: Effective March 30, 1984, the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) combined their rules governing rehabilitative services and rules governing visual services by repealing all visual services rules formerly found in Title 46, chapter 7, ARM, and adding new rules and amending existing rules to cover visual services in Title 46, chapter 6, ARM Rehabilitative services (now Title 37, chapter 30, ARM Vocational rehabilitation). The rationale and statement of necessity in the notice to make such changes, published in MAR Notice No. 46-2-402, pages 318 and 319, Issue 3, 1984 Montana Administrative Register (February 16, 1984), read:

"The department is generally revising the rules relating to the development of rehabilitation facilities, the standards for providers of services, civil rights compliance, confidential information, fair hearings, the extended employment program, the visual medical program, and financial limitations upon services. Those revisions are for the purposes of eliminating unneeded provisions and language, providing for clarity, and revising certain criteria and standards. The vocational rehabilitation services and visual services rules are being brought together into one set of rules. This synthesis is necessary due to the current joint administration of the programs. Where necessary, distinctions between those programs are retained."

53-7-301. Definitions.

Compiler's Comments

1997 Amendments: Chapter 42 in former definition of person with an employment handicap substituted "individual with a disability" for "individual with handicaps"; and made minor changes in style. Amendment effective March 12, 1997.

Chapter 472 substituted person with a disability for person with an employment handicap as defined term and substituted "individual with a disability" for "individual with handicaps"; in definition of physical restoration, in (a), substituted "impediment to employment" for "employment handicap"; in definition of rehabilitation training substituted "overcome the person's impediment to employment" for "rehabilitate the person's employment handicap"; and made minor changes in style.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 326 inserted definition of independent living.

1989 Amendment: Substituted definition of blindness for former definition of blind individual that read: ""Blind individual" means an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees or who has other eye conditions which render vision equally defective or who has an eye condition which will cause blindness"; deleted definition of business license; at end of definition of Department substituted "2-15-2201" for "Title 2, chapter 15, part 22"; inserted definition of low vision; substituted definition of maintenance for former definition that read: ""Maintenance" means money payments not exceeding the estimated cost of subsistence during the provision of vocational rehabilitation and rehabilitation services"; in definition of occupational license, following "unit", deleted "to be obtained in order"; inserted definition of person with an employment handicap; in definition of physical restoration, near beginning after "reduce", deleted "a blind individual's", after "handicap" inserted "caused by blindness or low vision", near end, after "transitory", inserted "medical", and after "conditions" inserted "unless necessary to maintain a person's health in order to complete a rehabilitation plan"; deleted definition of rehabilitation services; inserted definitions of rehabilitation engineering and rehabilitation plan; in definition of rehabilitation training, after "means", deleted "all necessary", after "provided to a" substituted "person with blindness or low vision to rehabilitate the person's" for "blind individual to compensate for his", and after "prevocational" inserted "vocational"; substituted definitions of vocational rehabilitation and vocational rehabilitation services for former definition that read: ""Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the department to be necessary to compensate a blind individual for his employment handicap and to enable him to engage in a remunerative occupation, including but not limited to medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational and business licenses, tools, equipment, initial stocks and supplies, including livestock, capital advances, maintenance, and training books and materials"; and made minor changes in phraseology and punctuation. Amendment effective July 1, 1989.

53-7-302. Administration.

Compiler's Comments

1989 Amendment: Near beginning, after "department", substituted "may" for "shall provide the services authorized by this part to blind individuals determined by it to be eligible therefor. In carrying out the purposes of this part, the department may, among other things"; in (1) substituted "persons with blindness or low vision" for "blind individuals", after "involved" substituted "in vocational rehabilitation" for "therein", after "providing" deleted "in conformity with the purposes of this part, such", and after "services" deleted "as may be necessary or desirable"; deleted former (2) that read: "(2) enter into reciprocal agreements with other states to provide the services authorized by this part to residents of the states concerned"; at end of (2) substituted "for persons with blindness or low vision" for "of blind individuals"; deleted former (4) that read: "(4) provide supplementary services to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his eyesight, whether or not he is blind, if he is otherwise qualified for services or training under this part and if the supplementary services are recommended because of the findings of an ophthalmologist or optometric examination. The supplementary services may include necessary travel and other expenses to receive treatment from a hospital or clinic designated by the department"; inserted (3) that read: "(3) accept and use gifts to carry out this part"; in (4), after "action", inserted "it determines"; and made minor changes in phraseology and punctuation. Amendment effective July 1, 1989.

Statement of Intent: The statement of intent attached to Ch. 199, L. 1979, provided: "A statement of intent is required for this bill in that it delegates authority to adopt rules in sections 1 through 4.

1. Under present law, SRS [now Department of Public Health and Human Services] has express rulemaking authority to carry out most of its duties under Title 53. The Department's present authority includes the power to adopt rules to implement and carry out the following: child welfare services; Aid to Dependent Children programs; subsidized adoption; protective services for adults; Medical Assistance programs; sheltered workshop programs; community based services; community homes and protective services for the developmentally disabled; and vocational rehabilitation programs.

2. While there are duties for which SRS [now Department of Public Health and Human Services] has express rulemaking authority, there also are duties for which the Department's rulemaking authority could only be implied. The Montana Administrative Procedure Act, Section 2-4-102(11)(a), MCA, requires that substantive rules be adopted under express authority in order to be valid. Under an agreement with the Administrative Code Committee [now appropriate administrative rule review committee], SRS [now Department of Public Health and Human Services] introduced legislation to eliminate this gap in the Department's express authority. This bill gives SRS [now Department of Public Health and Human Services] express rulemaking authority to adopt rules to comply with federal law; to carry out its responsibilities for public welfare; and to administer vocational rehabilitation for the blind.

3. The express authority given to SRS [now Department of Public Health and Human Services] under this bill will allow the Department to adopt rules which cover the following areas: eligibility requirements for various services; scope of services to be offered; specific criteria that providers of services must meet to qualify as providers; how, when, and in what form various types of assistance will be offered; and procedure for applying for and receiving aid. The area of social services is a field which evolves as the needs of the population change. Federal programs and their concomitant regulations are constantly being revised and altered. This legislation allows SRS [now Department of Public Health and Human Services] to adapt the specifics of its social services programs to meet those federal changes but within the confines of state law."

53-7-303. Cooperation with federal government.

Compiler's Comments

1989 Amendment: Near beginning, after "department", substituted "shall" for "may", after "purposes of" substituted "the" for "any", and after "federal" substituted "Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, and may adopt methods of administration required by the federal government for state participation in programs funded under the federal act" for "statutes pertaining to the purposes of this part and comply with such conditions as may be necessary to secure the full benefits of such federal statutes". Amendment effective July 1, 1989.

53-7-306. Eligibility for services.

Compiler's Comments

1997 Amendment: Chapter 472 near beginning substituted "a disability because of" for "an employment handicap due to".

1989 Amendment: Substituted language concerning eligibility (see 1989 Session Law for text) for former section that read: "(1) Vocational rehabilitation services shall be provided to any blind individual who:

(a) at the time of filing his application for services, resides in the state for other than a temporary purpose and whose vocational rehabilitation the department, after full investigation, determines can be satisfactorily achieved; or

(b) is eligible for services under the terms of an agreement with another state or with the federal government.

(2) Except as otherwise provided by law or as specified in any agreement with the federal government with respect to classes of individuals certified to the department thereunder, the following vocational rehabilitation services shall be provided at public cost only to blind individuals found to require financial assistance with respect thereto:

(a) physical restoration;

(b) transportation not provided to determine the eligibility of the individual for vocational rehabilitation services and the nature and extent of the services necessary;

(c) occupational and business licenses;

(d) tools, equipment, initial stock and supplies (including livestock), and capital advances;

(e) training, including books and materials;

(f) maintenance." Amendment effective July 1, 1989.

1981 Amendment: Inserted ", including" in (2)(e).

53-7-310. Provision of services — financial responsibility for services.

Compiler's Comments

Effective Date: Section 19, Ch. 396, L. 1989, provided in part that [sections 6, 11, 12, and 14], codified as 53-7-108, 53-7-310, 53-7-314, and 53-7-109, respectively, are effective July 1, 1989.

53-7-314. Hearings.

Compiler's Comments

Effective Date: Section 19, Ch. 396, L. 1989, provided in part that [sections 6, 11, 12, and 14], codified as 53-7-108, 53-7-310, 53-7-314, and 53-7-109, respectively, are effective July 1, 1989.

53-7-315. Rulemaking authority.

Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 396, L. 1989, provided: "This bill requires a statement of intent because [sections 2 and 13] [53-7-102 and 53-7-315] require the department of social and rehabilitation services [now department of public health and human services] to adopt administrative rules for vocational rehabilitation programs for persons with employment handicaps and for persons with blindness and low vision.

It is the intent of the legislature that the department adopt rules necessary for administration of vocational rehabilitation programs provided for under this bill. Rules adopted by the department may relate to: the provision of vocational rehabilitation services, development of individual rehabilitation service plans, eligibility for services, application requirements, service goals and design, quality of services, provider relationships, program standards, program staffing, staff training, provider accounting procedures, confidential information, recipient grievance procedures, fair hearings, and definitions necessary to carry out the provisions of this bill.

In developing its rules, the department shall provide such methods of administering vocational rehabilitation services as may be required by the federal government for state participation in programs funded under the federal Rehabilitation Act of 1973."

Effective Date: Section 19, Ch. 396, L. 1989, provided in part that [section 13], codified as 53-7-315, is effective on passage and approval. Approved March 30, 1989.

CHAPTER 9
SERVICES FOR VICTIMS OF CRIME

Part 1
The Crime Victims Compensation Act of Montana

Part Official Comments

Source: Portions of this part are from the Uniform Crime Victims Reparations Act, National Conference of Commissioners on Uniform State Laws, 1973. The commissioners' prefatory note and selected portions of the commissioners' comments have been included under the heading Official Comments.

Prefatory Note: This Act [part] establishes a state-financed program of reparations to persons who suffer personal injury and dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or to apprehend criminals. Reparations are measured by economic loss such as medical expenses, loss of earnings, and costs incurred in obtaining services as a substitute for those the victim would have provided. Throughout, the emphasis is on the victim rather than the perpetrator of the crime.

The civil and criminal liability of the offender is not covered by this Act, save for provisions directing the offender to reimburse the State. The actual financial return to the State through this mechanism is not anticipated to be large, and a realistic appraisal is that the costs of the program will be borne by the State and its citizens. A variety of limitations and exclusions stated in the Act are designed to limit those costs. The suggested maximum allowance of $50,000 per victim, the exclusion of motor vehicle accidents (with some exceptions), and elimination of pain and suffering as an element of awards are illustrations.

Probably the most perplexing policy choice to be made by any state instituting a program of this sort relates to the relevance, if any, of the financial condition of the victim. Some would further reduce costs by denying reparations to victims able to bear the economic loss caused by crime. Others would conclude that the victim's losses should be borne by the State irrespective of his financial resources. This Act is drafted to accommodate either choice, but the clear preference is to eliminate any "financial needs" or "financial stress" test as a condition precedent to receipt of benefits. [Montana did not adopt a financial needs or stress test.] For those states taking the other view, the Act contains a provision including this condition but defining it in terms of financial hardship or stress rather than "need." The objective of that definition is to ensure that the program is not an unnecessary substitute for welfare but is a program to protect against substantial changes in life style caused by losses through crime.

A kindred issue is that of allocation of criminally caused loss through personal injury among competing sources of payment such as insurance, workmen's compensation and Social Security. This Act reflects the policy choice that these programs are primary. Implementation of that policy occurs in two ways. First, insurers are not entitled to claim reimbursement from the State for their expenditures. Second, victims who have been paid, or who are entitled to be paid, by insurers will have their claims against the State fund reduced by the amount of available insurance. In somewhat overly simplistic terms, the policy of the Act is to preclude double recovery for any criminal incident.

Administration of the Act is entrusted to a three-man Board whose members will serve full or part time, depending upon the expectable workload in any state. [Montana entrusted administration to the Division of Workers' Compensation.] The Act includes procedural details which will be seen to parallel provisions of the Uniform Administrative Procedures Act. Any State legislature in a state having such an administrative procedures act will be well advised to eliminate the duplicate provisions herein.

Part Compiler's Comments

Severability Clause: Section 24, Ch. 527, L. 1977, was a severability clause.

Part Administrative Rules

Title 23, chapter 15, ARM Office of victims services.

Part Attorney General's Opinions

DECISIONS UNDER FORMER LAW

Allocation of Justice's Court Fines and Costs: Money which has been collected as fines and costs in Justice's Court and paid to the County Treasurer by the Justice of the Peace and which remains after the specific allocations made in 53-9-109 (now repealed) should be credited to the county general fund pursuant to 46-18-235. 41 A.G. Op. 39 (1985). (Decided prior to 1987 amendment.)

Payments to Crime Victims Compensation Account: Payments to the Crime Victims Compensation Account are to be calculated as 6% of the total of all nonparking motor vehicle fines and bail forfeitures, including fines and forfeitures for violations of the 55-mile-per-hour speed limit. 37 A.G. Op. 64 (1977). (See 1981 amendments.)

53-9-102. Legislative purpose and intent.

Compiler's Comments

1997 Amendment: Chapter 186 in first sentence, after "criminal acts", inserted "including acts of international terrorism, as defined in 18 U.S.C. 2331, that are committed outside of the United States against a resident of this state"; and made minor changes in style. Amendment effective July 1, 1997.

1991 Amendments: Chapter 354 in first sentence, after "compensating", deleted "and assisting" and at end of second sentence inserted "and to coordinate victims' assistance programs".

Chapter 397 at end of first sentence inserted reference to victims injured or killed in a state that does not have a program to compensate out-of-state residents. Amendment effective July 1, 1991.

53-9-103. Definitions.

Official Comments

The words "criminally injurious conduct" are used throughout this part rather than the simple word "crime" because if the word "crime" were used, it would need to be given an artificial meaning. The reason is that not all crimes will result in reparations under this part, and those crimes which are reparable fall under the definition here given for "criminally injurious conduct."

The definitions of "economic loss" [not adopted in Montana] and its components are derived, with essential modifications, from the Uniform Motor Vehicle Accident Reparations Act.

Compiler's Comments

2021 Amendment: Chapter 498 in (3)(c) at end substituted "61-8-1001" for "61-8-401". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2011 Amendment: Chapter 32 in definition of criminally injurious conduct in (b) after "injury or death" inserted reference to domestic violence; in definition of victim inserted (b) regarding minor child; and made minor changes in style. Amendment effective October 1, 2011.

2001 Amendment: Chapter 124 in definition of criminally injurious conduct near end of (c) substituted "office" for "division"; deleted definition of division that read: ""Division" means the division of crime control of the department of justice"; and inserted definition of office. Amendment effective July 1, 2001.

1997 Amendment: Chapter 186 in definition of collateral source inserted (i) concerning any other third party; in definition of criminally injurious conduct, at end of (a), inserted "or an act of international terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States against a resident of this state"; and made minor changes in style. Amendment effective July 1, 1997.

1991 Amendment: In definition of collateral source inserted (h) regarding benefits from a program operated in another state; in definition of criminally injurious conduct, at end of (c), inserted reference to injury or death inflicted by a person driving under the influence and inserted (d) regarding conduct in a state without a program that covers Montana residents; and made minor changes in style. Amendment effective July 1, 1991.

1989 Amendment: In last sentence of (3)(c) expanded definition of criminally injurious conduct to include bodily injury or death by motor vehicle during offense requiring mental state of purposely. Amendment effective March 13, 1989.

1987 Amendment: In (5) substituted "division of crime control of the department of justice" for "division of workers' compensation provided for in 2-15-1702".

Source: Section 1, UCVRA. See Part Compiler's Comments.

53-9-104. Powers and duties of office.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 139, L. 2021, amended sec. 14, Ch. 374, L. 2009, sec. 2, Ch. 139, L. 2021, amended sec. 27, Ch. 285, L. 2015, and sec. 3, Ch. 139, L. 2021, amended sec. 1, Ch. 292, L. 2015, by extending the termination date imposed by Ch. 374, L. 2009, to June 30, 2027. Effective April 1, 2021.

2017 Amendment: Chapter 358 in (1)(d) near middle substituted "2-15-1029" for "47-1-201". Amendment effective July 1, 2017.

Severability: Section 48, Ch. 358, L. 2017, was a severability clause.

Extension of Termination Date: Section 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, amended sec. 14, Ch. 374, L. 2009, by extending the termination date imposed by Ch. 374 to June 30, 2021. Effective July 1, 2015.

2009 Amendment: Chapter 374 in (1)(d) at end after "must be" substituted "paid to the crime victims compensation and assistance program in the department of justice for deposit in the account provided for in 53-9-113" for "deposited in the state general fund". Amendment effective July 1, 2009, and terminates June 30, 2015.

2007 Amendment: Chapter 266 in (1)(d) near beginning after "individual" deleted "formally charged with or", after "for any" deleted "rendition, interview, statement", after "play" substituted "prepared for a commercial purpose that is based directly upon" for "or article relating to", after "crime" inserted reference to sale of item owned or obtained by convicted person or through unique knowledge of the crime, and after "deceased victim" deleted "if the individual is convicted of the crime"; and made minor changes in style. Amendment effective April 26, 2007.

Severability: Section 5, Ch. 266, L. 2007, was a severability clause.

Applicability: Section 7(2), Ch. 266, L. 2007, provided: "[Section 2] [53-9-104] applies to a contract entered into after October 1, 2007."

2005 Amendment: (Version effective July 1, 2006) Chapter 449 in (1)(d) in second sentence after "used to" deleted "pay the costs and attorney fees of court-appointed" and inserted reference to reimbursing office of state public defender for costs associated with providing assigned counsel and in fourth sentence after "attorney" deleted "appointed" and inserted "assigned". Amendment effective July 1, 2006.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

2001 Amendments — Composite Section: Chapter 118 at end of (1)(d) substituted "deposited in the state general fund" for "deposited in the account established in 53-9-109"; and made minor changes in style. Amendment effective March 23, 2001.

Chapter 124 throughout section substituted "office" for "division"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 585 in (1)(d) in fourth sentence near middle substituted "and the state" for "and the county as reimbursement"; and made minor changes in style. Amendment effective July 1, 2002.

Preamble: The preamble attached to Ch. 118, L. 2001, provided: "WHEREAS, the 1995 Legislature in Senate Bill No. 83 changed funding for the crime victims compensation and assistance program from an earmarked special revenue account to the general fund; and

WHEREAS, the crime victims compensation and assistance program has been supported entirely by general fund money since fiscal year 1996; and

WHEREAS, repealing section 53-9-109 is necessary in order to clarify the conflict that currently exists between actual appropriation practices and the law."

Saving Clause: Section 55, Ch. 585, L. 2001, was a saving clause.

1991 Amendment: Inserted (2)(f) concerning establishing victims' assistance coordinating and planning program; and made minor change in style.

1989 Amendment: Inserted (2)(b) authorizing Division to obtain claimant's medical reports and insurance payment information from provider if claimant fails to release information and exempting Division from civil or criminal liability arising from release of information. Amendment effective March 13, 1989.

1987 Amendment: Inserted (1)(d) providing for dispensation of proceeds gained by a person formally charged with or convicted of a qualifying crime; and deleted former (2)(e) that provided that payment for an interview, article, etc., be paid into escrow for payment to victims, with any excess returned to the charged individual.

Attorney General's Opinions

Confidential Criminal Justice Information: As 53-9-104 was written before 1987 legislative changes, the Workers' Compensation Division had authority to obtain confidential criminal justice information, which it had to keep confidential (see 1987 amendment to 53-9-107). 41 A.G. Op. 92 (1986).

53-9-105. Rehabilitation of victims.

Compiler's Comments

2001 Amendment: Chapter 124 throughout section substituted "office" for "division". Amendment effective July 1, 2001.

1995 Amendment: Chapter 546 in two places substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-9-106. Attorney fees.

Compiler's Comments

2001 Amendment: Chapter 124 throughout section substituted "office" for "division"; and made minor changes in style. Amendment effective July 1, 2001.

1987 Amendment: In (3), near beginning, substituted "a district court" for "the workers' compensation judge" and at end substituted "court" for "judge".

53-9-107. Public inspection and disclosure of office's records.

Compiler's Comments

2001 Amendment: Chapter 124 throughout section substituted "office" for "division"; and made minor changes in style. Amendment effective July 1, 2001.

1997 Amendment: Chapter 286 in (2) deleted second sentence that read: "Information regarding youth court proceedings obtained by the division is subject to the confidentiality provisions of Title 41, chapter 5, part 6"; and made minor changes in style.

Saving Clause: Section 50, Ch. 286, L. 1997, was a saving clause.

Applicability: Section 51, Ch. 286, L. 1997, provided: "[This act] applies to proceedings commenced after [the effective date of this act]." Effective October 1, 1997.

1987 Amendment: In (1), at beginning, inserted exception clause and at end deleted "in accordance with the provisions of 39-71-221 through 39-71-224"; inserted (2) providing for confidentiality of criminal justice information and Youth Court proceedings; inserted (3) exempting certain public records from disclosure; and inserted (4) requiring the Department to separate exempt from nonexempt material and make the nonexempt material available for inspection.

53-9-108. Limitation of benefit entitlements to proportionate share of available funds.

Compiler's Comments

2001 Amendment: Chapter 124 throughout section substituted "office" for "division"; and made minor changes in style. Amendment effective July 1, 2001.

53-9-110. Receipt of federal funds.

Compiler's Comments

2001 Amendment: Chapter 124 near beginning substituted "office" for "division". Amendment effective July 1, 2001.

53-9-112. Sale of confidential criminal justice information prohibited — penalty.

Compiler's Comments

Severability: Section 5, Ch. 266, L. 2007, was a severability clause.

Effective Date: Section 6, Ch. 266, L. 2007, provided that this section is effective on passage and approval. Approved April 26, 2007.

53-9-113. Crime victims compensation account.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 139, L. 2021, amended sec. 14, Ch. 374, L. 2009, sec. 2, Ch. 139, L. 2021, amended sec. 27, Ch. 285, L. 2015, and sec. 3, Ch. 139, L. 2021, amended sec. 1, Ch. 292, L. 2015, by extending the termination date imposed by Ch. 374, L. 2009, to June 30, 2027. Effective April 1, 2021.

Extension of Termination Date: Section 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, amended sec. 14, Ch. 374, L. 2009, by extending the termination date imposed by Ch. 374 to June 30, 2021. Effective July 1, 2015.

Effective Date: Section 13, Ch. 374, L. 2009, provided: "[This act] is effective July 1, 2009."

Termination: Section 14, Ch. 374, L. 2009, provided that this section terminates June 30, 2015.

53-9-121. Application for compensation.

Compiler's Comments

2001 Amendment: Chapter 124 at end substituted "office" for "division". Amendment effective July 1, 2001.

53-9-122. Informal hearings.

Compiler's Comments

2001 Amendment: Chapter 124 throughout section substituted "office" for "division"; and made minor changes in style. Amendment effective July 1, 2001.

53-9-123. Evidence of condition.

Compiler's Comments

2011 Amendment: Chapter 32 in (1) near middle inserted "or counseling". Amendment effective October 1, 2011.

2001 Amendment: Chapter 124 throughout section substituted "office" for "division"; and made minor changes in style. Amendment effective July 1, 2001.

53-9-124. Enforcement of office's orders — improper assertion of privilege.

Compiler's Comments

2001 Amendment: Chapter 124 in two places substituted "office" for "division". Amendment effective July 1, 2001.

53-9-125. Limitations on awards.

Official Comments

The victims of a large percentage of crimes are relatives by blood or marriage of the offender or his accomplice, or live in the same household with him. The award of reparations in these cases involves serious questions of policy. Among those questions are the cost of the program, the possibility of fraud and collusion, and other social judgments. The unjust enrichment language at the end of the first sentence of [subsection (2)] may or may not alone provide adequate protection. The language at the end of [subsection (2)] should be included or omitted in an enacting State according to the legislative appraisal of the questions of policy involved.

Compiler's Comments

2001 Amendment: Chapter 124 throughout section substituted "office" for "division"; and made minor changes in style. Amendment effective July 1, 2001.

1991 Amendments: Chapter 235 in (1), at beginning, inserted exception clause and inserted second sentence regarding time of filing for compensation in cases involving sexual offenses against minors; in (3), near middle of second sentence, inserted exception clause; and made minor change in style.

Chapter 397 in (2) deleted former second sentence restricting compensation awards for family members living in the same household with the offender or his accomplice. Amendment effective July 1, 1991.

Source: Section 5, UCVRA. See Part Compiler's Comments.

53-9-126. Tentative award of compensation.

Compiler's Comments

2001 Amendment: Chapter 124 near beginning substituted "office" for "division". Amendment effective July 1, 2001.

53-9-127. Award of compensation.

Compiler's Comments

2001 Amendment: Chapter 124 throughout section substituted "office" for "division". Amendment effective July 1, 2001.

53-9-128. Compensation benefits.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 85, L. 2023. Amendment effective March 23, 2023.

2021 Amendment: Chapter 230 inserted (9)(c) providing certain benefits for the parent or guardian of a minor victim of criminally injurious conduct involving a sexual offense; in (9)(e) increased the total payment limit from $2,000 to $5,000; and made minor changes in style. Amendment effective October 1, 2021.

2011 Amendment: Chapter 32 inserted (9)(c) regarding minor children in home where domestic violence occurred; and made minor changes in style. Amendment effective October 1, 2011.

2001 Amendment: Chapter 124 throughout section substituted "office" for "division". Amendment effective July 1, 2001.

1997 Amendment: Chapter 186 in (2) inserted second sentence requiring full compensation for total wage loss prior to payment of medical benefits unless requested by the claimant; in (7), at end of second sentence after "labor market", deleted "or for a shorter period as determined by the division"; in (8), at beginning, inserted exception clause; and in (9)(b), after "victim of", substituted "criminally injurious conduct involving a sexual offense" for "a sexual crime" and at end substituted "that criminally injurious conduct" for "the crime". Amendment effective July 1, 1997.

1995 Amendment: Chapter 125 in (4) increased maximum limit for funeral and burial expenses from $2,000 to $3,500; in (9)(b), after "sexual crime", deleted "for which a person has been charged"; in (9)(c) substituted "may not exceed $2,000 or 12 consecutive months of treatment for each person, whichever occurs first" for "may not exceed $500 for each person or $1,500 for a family"; and made minor changes in style.

Severability: Section 42, Ch. 125, L. 1995, was a severability clause.

1989 Amendment: In (9)(c) deleted last sentence requiring payments to terminate 1 year after claim is filed. Amendment effective March 13, 1989.

Retroactive Applicability: Section 7, Ch. 68, L. 1989, provided in part: "[Section 5] applies retroactively, within the meaning of 1-2-109, to compensation claims filed after October 1, 1987."

1987 Amendments: Chapter 203 inserted (9) allowing certain relatives of a victim to be reimbursed for some mental health treatment received as a result of the crime.

Chapter 496 in (1), at end of third sentence, and in (3)(a), at end of first sentence, changed "$125" to "one-half the state's average weekly wage as determined in 39-51-2201"; in (4) increased benefit amount to $2,000 from $1,100; and deleted former (7)(c) that read: "(c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed $20,000, and the limitations of subsection (6) apply to compensation under this subsection (7)."

53-9-129. Award not subject to execution, attachment, garnishment, or assignment — exception.

Compiler's Comments

2005 Amendment: Chapter 431 in (1) at end inserted exception clause. Amendment effective April 28, 2005.

53-9-130. Reconsideration and review of office's decisions.

Compiler's Comments

2001 Amendment: Chapter 124 throughout section substituted "office" for "division"; and made minor changes in style. Amendment effective July 1, 2001.

53-9-131. Appeals.

Compiler's Comments

2021 Amendment: Chapter 535 near end of first sentence after "in which the claimant resides" deleted "or Lewis and Clark County". Amendment effective October 1, 2021.

2001 Amendment: Chapter 124 throughout section substituted references to office for references to division; and made minor changes in style. Amendment effective July 1, 2001.

1987 Amendment: At end of first sentence substituted "the district court for the county in which he resides or Lewis and Clark County" for "the workers' compensation judge"; inserted second sentence concerning review on appeal; near end of third sentence, after "affirming", inserted "reversing"; and deleted former (2) and (3) that read: "(2) All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

(3) Notwithstanding Title 2, chapter 4, part 7, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases."

53-9-132. Subrogation.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 139, L. 2021, amended sec. 14, Ch. 374, L. 2009, sec. 2, Ch. 139, L. 2021, amended sec. 27, Ch. 285, L. 2015, and sec. 3, Ch. 139, L. 2021, amended sec. 1, Ch. 292, L. 2015, by extending the termination date imposed by Ch. 374, L. 2009, to June 30, 2027. Effective April 1, 2021.

Extension of Termination Date: Section 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, amended sec. 14, Ch. 374, L. 2009, by extending the termination date imposed by Ch. 374 to June 30, 2021. Effective July 1, 2015.

2009 Amendment: Chapter 374 in (1) inserted last sentence requiring payment of recovered funds to the crime victims compensation and assistance program. Amendment effective July 1, 2009, and terminates June 30, 2015.

2001 Amendment: Chapter 124 throughout section substituted references to office for references to division; and made minor changes in style. Amendment effective July 1, 2001.

1987 Amendment: In (1), near middle of first sentence, inserted "or a collateral source arising from the criminally injurious conduct committed by the offender" and near middle of third sentence, after "offender", and in (4), near middle of third sentence after "offender", inserted "or collateral source".

53-9-133. Effect of award on probation and parole of offender.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 139, L. 2021, amended sec. 14, Ch. 374, L. 2009, sec. 2, Ch. 139, L. 2021, amended sec. 27, Ch. 285, L. 2015, and sec. 3, Ch. 139, L. 2021, amended sec. 1, Ch. 292, L. 2015, by extending the termination date imposed by Ch. 374, L. 2009, to June 30, 2027. Effective April 1, 2021.

Extension of Termination Date: Section 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, amended sec. 14, Ch. 374, L. 2009, by extending the termination date imposed by Ch. 374 to June 30, 2021. Effective July 1, 2015.

2009 Amendment: Chapter 374 inserted (3) requiring that funds received by the crime victims compensation and assistance program be paid into the account in 53-9-113. Amendment effective July 1, 2009, and terminates June 30, 2015.

2001 Amendment: Chapter 124 in (1) substituted "office" for "division"; and made minor changes in style. Amendment effective July 1, 2001.

CHAPTER 10
ADMINISTRATION OF HUMAN SERVICES

Part 5
Community Services Block Grant Program

Part Compiler's Comments

Preamble: The preamble to HB 659 (Ch. 237, L. 1983) provided: "WHEREAS, the federal Community Services Block Grant is a federal program designed to ameliorate the causes of poverty in communities within each state; and

WHEREAS, Human Resource Development Councils are nonprofit community organizations that have served multicounty areas of the state in the process of helping low-income persons; and

WHEREAS, it is the basic purpose of Human Resource Development Councils to stimulate a better allocation of available local, state, private, and federal resources toward the goal of enabling low-income families and low-income individuals of all ages, in rural and urban areas, to attain skills, knowledge, and motivation and to secure the opportunities needed for them to become self-sufficient; and

WHEREAS, it is recognized that these needs can be best achieved by encouraging the participation of the private sector in these efforts; and

WHEREAS, to achieve these goals it is necessary to strengthen local community capabilities for planning and coordinating federal, state, and other resources so that duplication is eliminated whenever possible through the efforts of local officials, organizations, and interested and affected citizens.

THEREFORE, this act is intended to achieve a better allocation of available federal and state resources."

Part Administrative Rules

Title 37, chapter 2, subchapter 9, ARM Community services block grants.

53-10-501. Definitions.

Compiler's Comments

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

CHAPTER 18
SELF-SUFFICIENCY TRUSTS

Chapter Administrative Rules

Title 37, chapter 2, subchapter 5, ARM Self-sufficiency trusts.

Part 1
General Provisions

53-18-101. Definitions.

Compiler's Comments

2003 Amendment: Chapter 114 in (2) before "Internal Revenue Code" deleted "United States" and substituted "26 U.S.C. 501(c)(3)" for "of 1954". Amendment effective October 1, 2003.

1997 Amendment: Chapter 472 in definition of self-sufficiency trust, near end, substituted "physical disabilities" for "physically handicapped"; and made minor changes in style.

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (2) and made minor changes in grammar to conform to the change.

Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of social and rehabilitation services provided for in Title 2, chapter 15, part 22". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-18-102. Creation of self-sufficiency trust account.

Compiler's Comments

1995 Amendment: Chapter 325 in third sentence of (1) substituted "state treasurer" for "state auditor". Amendment effective July 1, 1995.

53-18-103. Administration of trust account.

Compiler's Comments

1997 Amendment: Chapter 472 in (1), near end of first sentence, substituted "physical disabilities" for "physically handicapped"; and made minor changes in style.

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (1) and made minor changes in grammar to conform to the change.

Chapter 546 at beginning of fourth sentence substituted "The department of public health and human services shall administer" for "The department of corrections and human services shall contract with the department to administer". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 542, L. 1989, provided: "This bill requires a statement of intent because [section 3] [53-18-103] grants rulemaking authority to the department of social and rehabilitation services [now department of public health and human services] to administer the self-sufficiency trust account.

The rules should provide for the orderly administration of the trust account. Because the department of social and rehabilitation services [now department of public health and human services] will be administering the trust account for the department of institutions [now department of corrections], contractual arrangements must be made between these departments. These arrangements must include but are not limited to:

(1) provision for the department of institutions [now department of corrections] to review and approve life care agreements for mentally ill beneficiaries;

(2) provision for the approval of payments from the trust account for mentally ill beneficiaries; and

(3) procedures for reporting to the department of institutions [now department of corrections] on the financial condition of the trust account.

The rules should also provide for the development of procedures and criteria for reviewing and approving the life care agreements between the self-sufficiency trust and the department of social and rehabilitation services [now department of public health and human services]. These procedures and criteria should also provide for the termination of the agreements."

53-18-105. Special account.

Compiler's Comments

1997 Amendment: Chapter 472, in third sentence, near end, substituted "physical disabilities" for "physically handicapped"; and made minor changes in style.

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change and made minor changes in grammar to conform to the change.

CHAPTER 19
PHYSICALLY DISABLED

Part 1
Services and Community Homes

Part Compiler's Comments

Coordination of Services — Program Consolidation: Section 15, Ch. 396, L. 1989, provided: "(1) The governor shall assure that services under Title 53, chapter 19, part 1, are coordinated with programs and services in Title 53, chapter 7, parts 1 through 3, that are administered by the department of social and rehabilitation services [now department of public health and human services] with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as amended.

(2) The governor may consolidate services under Title 53 with other programs and services in order to maximize coordination of services as required in subsection (1) and to prevent overlapping and duplication of services within state government.

(3) The governor may transfer employees, appropriations, and spending authority necessary to accomplish the coordination of services as mandated by this section. The authority contained in this subsection is limited to the programs and services described in subsection (1). This subsection

supersedes any restrictions on the transfer of employees, appropriations, and spending authority contained in [House Bill No. 100] [see 1989 Session Law for text]."

Part Administrative Rules

Title 37, chapter 30, ARM Vocational rehabilitation program.

Title 37, chapter 31, ARM Independent living rehabilitation program.

Title 37, chapter 100, subchapter 4, ARM Community homes for persons with physical disabilities.

53-19-101. Purpose.

Compiler's Comments

1993 Amendment: Chapter 326 at end of first sentence substituted "to live and function independently" for "in living and functioning independently".

1989 Amendment: In two places substituted "persons with severe disabilities" for "severely disabled persons"; in second sentence deleted reference to Part A and inserted "et seq."; near end substituted "persons with severe disabilities" for "disabled persons"; deleted third sentence concerning legislative recognition of community home licensing needs; and made minor changes in style and punctuation. Amendment effective July 1, 1989.

1987 Amendment: In two places substituted "severely disabled" for "physically disabled"; near end of first sentence, after "program to", substituted "assist severely disabled persons in living and functioning independently" for "provide facilities and services for the training and treatment of physically disabled persons"; and inserted second sentence referencing the federal Rehabilitation Act of 1973.

53-19-102. Definitions.

Compiler's Comments

1997 Amendments: Chapter 42 in definition of person with a severe disability substituted "individual with a severe disability" for "individual with severe handicaps". Amendment effective March 12, 1997.

Chapter 472 in definition of person with a severe disability substituted "individual with a severe disability" for "individual with severe handicaps"; and made minor changes in style.

1995 Amendment: Chapter 546 in definition of community home for persons with severe disabilities substituted "department" for "department of family services"; in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 326 inserted definition of live and function independently.

1989 Amendment: Redefined community home for persons with severe disabilities from family-oriented residence for two to eight persons with no skilled nursing care to facility licensed by Department; in definition of disability deleted reference to Part A and inserted "et seq."; inserted definition of person with severe disabilities; deleted definition of severely disabled person; and made minor changes in style. Amendment effective July 1, 1989.

1987 Amendment: At beginning of (1) substituted "severely disabled" for "physically disabled" and in middle of first sentence, after "eight", substituted "severely disabled" for "eligible physically disabled"; substituted definition of disability for former definition that read: ""Eligible physically disabled person" means a physically disabled person who after an assessment of his disabilities and needs is determined by the department to be in need of services and for whom appropriate services are available under this part and who is not eligible for similar services provided under other programs"; in (4) substituted "Severely disabled" for "Physically disabled", after "means a" deleted "disabled", and after "permanent" substituted "disability" for "impairment"; and made minor changes in phraseology.

53-19-103. Department authorized to provide services.

Compiler's Comments

1989 Amendment: In four places substituted "person(s) with severe disabilities" for "severely disabled person(s)"; at end of (1)(a) substituted "engage in or continue in" for "secure and maintain"; in (1)(b) deleted reference to Part A and inserted "et seq."; and made minor changes in style. Amendment effective July 1, 1989.

1987 Amendment: Substituted language outlining services prohibited by the Department and establishing Department discretion for provision of services for former section that read:

"The department may establish and provide services for eligible physically disabled persons and receive services, facilities, and funds as the department and other governmental units may be authorized by law to receive or provide."

53-19-104. Department contracts for services — governmental units providing for community homes for persons with severe disabilities.

Compiler's Comments

1989 Amendment: In two places substituted references to providing services to persons with severe disabilities for "severely disabled person"; and made minor change in phraseology. Amendment effective July 1, 1989.

1987 Amendment: In two places substituted "severely disabled" for "physically disabled".

53-19-106. Eligibility for services.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In (1), after "Title VII", deleted "Part A" and inserted "et seq."; in (2), after "services", deleted "than are available through other state and federal programs"; at beginning of (3) substituted "A person with severe disabilities" for "Disabled persons"; and made minor changes in grammar and style. Amendment effective July 1, 1989.

53-19-110. Eligibility for residential services in community home for persons with severe disabilities.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: In (1), after "home for", substituted "persons with severe disabilities" for "the severely disabled"; in second sentence, after "Any", substituted "person with a severe disability, as defined in 53-19-202 [renumbered 52-4-202]" for "severely disabled person"; in (2) substituted "a community home for persons with severe disabilities" for "residential services", after "Title VII" deleted "Part A" and inserted "et seq.", and at end inserted reference to Title XIX of the Social Security Act; and made minor changes in style. Amendment effective July 1, 1989.

53-19-112. Rulemaking.

Compiler's Comments

1989 Amendment: In (1) and (2) substituted "persons with severe disabilities" for "severely disabled"; in first sentence of (1), after "services provided", deleted "to severely disabled persons", in second sentence, after "services", deleted "licensing", and near end, after "procedures", inserted "fair hearings"; deleted (2) requiring Department for licensing purposes to adopt rules, provide temporary licensing, and provide advice and recommendations concerning health and safety licensing requirements; and made minor change in phraseology. Amendment effective July 1, 1989.

1987 Amendment: In four places substituted "severely disabled" for "physically disabled"; in second sentence of (1), after "eligibility for services", inserted "licensing"; in first sentence of (2)(a), after "safety", substituted "requirements for" for "standards of" and in second sentence substituted "provisional licensing" for "probationary licensing"; and in (2)(b), after "department", deleted "of social and rehabilitation services" and after "concerning" substituted "licensing requirements" for "the standards".

Statement of Intent: The statement of intent attached to Ch. 713, L. 1985, provided: "The department of social and rehabilitation services [now department of public health and human services] currently does not have authority to either operate special programs for physically disabled individuals or license group homes on their behalf. House Bill No. 798 [Ch. 713, L. 1985] would grant such authority.

It is intended that this bill would address some of the more necessary needs of severely disabled persons who:

(1) have a permanent impairment of a physical nature that is diagnosed as such by a physician and substantially limits a major life activity, such as walking, self-care, seeing, hearing, or speaking;

(2) do not meet the state definition for developmental disability;

(3) do not meet the eligibility criteria of vocational rehabilitation; and

(4) do not qualify for medicaid waiver services.

These people represent a wide variety of disability groups, such as people with head or spinal cord injuries, people with a debilitating disease (multiple sclerosis, amyotrophic lateral sclerosis, muscular dystrophy, myasthenia gravis, cancer, etc.), multiply-disabled people, etc. An effort is currently underway to identify such severely physically disabled individuals in addition to the 426 known people that were considered too severe for vocational rehabilitation services in 1984. The fastest growing segment of this group is the head-injured.

Services to this group are the exception rather than the rule, and traditionally have been medical maintenance types of assistance from medicaid, medicare, or medical assistance.

Rules adopted by the department would have to address the problem of personalized service needs of these individuals which usually do not fit an existing structured service model. Based upon some experience with this group, it is presumed that the following types of services would be necessary:

(1) teaching individuals how to better manage their own personal care and thereby reducing the medicaid costs;

(2) instructing people in the use of transit systems to reduce the need for therapy and to increase mobility.

The residential or in-home services for the physically disabled population include but are not limited to:

(1) personal assistance (locating and supervising attendants);
(2) mobility (exploring transportation modes, evaluation of devices needed for ambulation);
(3) home management (adaptive techniques or equipment to facilitate independent housekeeping);
(4) problem solving (problem identification and methods of solution);
(5) equipment (identification of assistive equipment needs: selection, operation, care, and maintenance);
(6) sexuality (sexuality and disability, dating, role expectations); and
(7) other services the department considers appropriate.

In addition to such programmatic rules, it is intended that the department adopt rules for licensing of community homes and in cooperation with other agencies adopt rules to ensure that such homes provide necessary services for the well-being of the individuals in the homes and that their surroundings are safe and healthful. It is intended that the rules providing for such standards recognize the needs of the individual, the resources of home operators, and the goals of this legislation."

Part 3
Telecommunications Services

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 669, L. 1989, provided: "A statement of intent is required for this bill because it requires the committee on telecommunications services for the handicapped to adopt rules to administer and fund a program to provide specialized telecommunications equipment and services to persons who are handicapped.

It is the intent of the legislature that the committee adopt rules, in accordance with [section 8] [53-19-307], as may be necessary to administer the program. Rules adopted by the committee may address matters such as:

(1) eligibility for participation in the program;
(2) the types of equipment and services to be provided under the program;
(3) the conditions and terms for the loan or lease of specialized telecommunications equipment to eligible participants in the program;
(4) requirements governing the purchase or lease of specialized telecommunications equipment from qualified wholesale manufacturers; and
(5) the definition of terms used in the bill.

In addition, the legislature intends that the program be self-supporting and be funded by a 10-cent monthly charge on telephone customers provided for in [section 12] [53-19-311].

In adopting rules, the committee should consider the success of programs in other states that provide specialized telecommunications equipment and services to the handicapped, including programs established in Oregon and Idaho."

Part Administrative Rules

Title 37, chapter 36, ARM Telecommunications access program.

53-19-301. Legislative findings and declaration.

Compiler's Comments

1997 Amendments — Composite Section: Chapter 396 throughout section, in six places, substituted "disabled" for "handicapped" (voided by Ch. 472 amendment). Amendment effective July 1, 1997.

Chapter 472 throughout section substituted references to persons with disabilities for references to handicapped persons; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

53-19-302. Definitions.

Compiler's Comments

2007 Amendment: Chapter 325 deleted definition of local exchange company that read: ""Local exchange company" means a telecommunications company that provides telephone access lines or wireless service to members of the general public who are its customers"; inserted definitions of department, end user connection, net amount billed for the fee, service provider, subscriber, and telecommunications; substituted mobility-disabled for mobility-impaired as defined term and in definition after "arms" inserted "legs"; in definition of person with a disability at end substituted "speech-disabled, or mobility-disabled" for "speech-impaired, or mobility-impaired"; in definition of specialized telecommunications equipment at end of first sentence substituted "public switched telephone network or internet protocol-enabled voice communications service" for "conventional telephone network" and at end of second sentence substituted "mobility-disabled" for "mobility-impaired"; in definition of telecommunications relay service at end inserted "or any other technology or equipment, including but not limited to personal computers and videophones"; deleted former definition of telephone access line that read: ""Telephone access line" means the telephone exchange access line or channel or wireless service that provides the customer of a local exchange company with access to the telecommunications network to effect the transfer of information"; and made minor changes in style. Amendment effective April 28, 2007.

2003 Amendment: Chapter 417 in definition of specialized telecommunications equipment at end of second sentence deleted "and hearing screening equipment"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 297 inserted definition of mobility-impaired; at end of definition of person with a disability inserted "or mobility-impaired"; in definition of specialized telecommunications equipment at end of second sentence inserted "equipment for the mobility-impaired, and hearing screening equipment"; and made minor changes in style. Amendment effective April 20, 2001.

1997 Amendments — Composite Section: Chapter 396 in definitions of Committee and specialized telecommunications equipment substituted reference to disabled for reference to handicapped (voided by Ch. 472 amendment); in definition of Committee inserted "access"; deleted definition of dual party relay system that read: ""Dual party relay system" means a service that permits full and simultaneous communication between those using telecommunications devices for the deaf (TDD) and those using conventional telephone equipment"; substituted disabled for handicapped as defined term (voided by Ch. 472 amendment) and substituted "deaf and blind, deaf" for "blind, deaf"; in definition of local exchange company inserted "or wireless service"; in definition of specialized telecommunications equipment, in second sentence, substituted "text telephones (TTY)" for "telecommunications devices for the deaf (TDD)"; inserted definition of telecommunications relay service; in definition of telephone access line, near middle, inserted "or wireless service", after "that provides" deleted "access from the premises of", and after "company" inserted "with access"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 472 in definitions of Committee and specialized telecommunications equipment substituted reference to persons with disabilities for reference to handicapped persons; substituted person with a disability for handicapped as defined term; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

53-19-303. Term of office — vacancies.

Compiler's Comments

1997 Amendment: Chapter 396 at end of (1), after "term of 3 years", deleted "except that the governor shall appoint four of the initial members to serve terms of 1 year and four of the initial members to serve terms of 2 years"; and made minor changes in style. Amendment effective July 1, 1997.

53-19-304. Officers — meetings — quorum — compensation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 603, L. 2023. Amendment effective July 1, 2023.

1997 Amendment: Chapter 396 in (2) substituted "four times a year" for "once every 3 months"; in (3), at beginning, substituted "Seven" for "Six"; and made minor changes in style. Amendment effective July 1, 1997.

53-19-305. Power and duties.

Compiler's Comments

1993 Amendment: Chapter 10 in introductory clause substituted "53-19-306" for "53-29-306".

53-19-306. Program established — purpose.

Compiler's Comments

2007 Amendment: Chapter 325 deleted former (3) that read: "(3) The legislature may allocate funds from this program to the Montana school for the deaf and blind to be used to provide services to hearing-impaired students for the biennium ending June 30, 2005." Amendment effective April 28, 2007.

2003 Amendment: Chapter 417 in (1) at end deleted "and to assist appropriate facilities in obtaining hearing screening equipment that determines if infants have a hearing impairment. The legislature may allocate funds to the Montana school for the deaf and blind to be used for the purposes established in subsection (2)"; deleted former (2)(c) that read: "(c) determine if infants are hearing-impaired as early as possible in order to reduce long-term costs in providing assistance"; inserted (3) allowing allocation of program funds to the school for the deaf and blind; and made minor changes in style. Amendment effective July 1, 2003.

2002 Amendment: Chapter 18 in (1) inserted last sentence relating to funds for the Montana school for the deaf and blind. Amendment effective August 20, 2002.

2001 Amendment: Chapter 297 in (1) at end inserted "and to assist appropriate facilities in obtaining hearing screening equipment that determines if infants have a hearing impairment"; inserted (2)(c) providing purpose of program to determine as early as possible if infants are hearing-impaired to reduce long-term costs; and made minor changes in style. Amendment effective April 20, 2001.

1997 Amendments — Composite Section: Chapter 396 in three places substituted "disabled" for "handicapped" (voided by Ch. 472 amendment); and in (2)(b) substituted "telecommunications relay service" for "dual party relay". Amendment effective July 1, 1997.

Chapter 472 throughout section substituted "with disabilities" for "who are handicapped".

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

53-19-307. Provision of services.

Compiler's Comments

2007 Amendment: Chapter 325 in (1)(a) near middle substituted "specialized telecommunications equipment" for "participation in the program"; in (1)(b) near beginning substituted "the person with a disability" for "participants in the program" and at end substituted "specialized telecommunications equipment" for "continued participation in the program"; in (1)(c) at beginning substituted "persons with disabilities" for "that participants"; in (1)(g) near middle substituted "equipment vendor" for "original manufacturer"; deleted former (1)(i) that read: "(i) at the discretion of the committee, require an appropriate security deposit for equipment at the time of delivery that must be refunded without interest when the equipment is returned"; and made minor changes in style. Amendment effective April 28, 2007.

2003 Amendment: Chapter 417 in (1)(a) after "less than 250%" deleted "of the federal poverty level but not more than 400%"; in (1)(h) near beginning after "records" inserted "for a minimum of 5 years"; in (2) deleted former second through fourth sentences that read: "For individuals whose family income is more than 250% of the federal poverty level but less than 400% of the federal poverty level, the committee shall develop a sliding fee scale. The sliding fee scale must take into account the amount of funds available after providing the equipment to individuals whose family income is less than 250% of the federal poverty level. The fees must increase progressively based upon the increased percentage of family income"; deleted former (3) that read: "(3) If a fee is required under the program, the rules must provide that the fee must be received by the program and deposited in the account provided for in 53-19-310 prior to providing the equipment to the individual"; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 297 in (1) inserted "for individuals"; in (1)(a) inserted "based on family income of less than 250% of the federal poverty level but not more than 400% of the federal poverty level"; inserted (2) authorizing committee to provide specialized telecommunications equipment at no charge to individuals with family income below 250% of the federal poverty level and requiring development of sliding fee scale based on family income; inserted (3) requiring receipt and deposit of required fee prior to providing equipment; and made minor changes in style. Amendment effective April 20, 2001.

1997 Amendments — Composite Section: Chapter 396 in (3) and (5) substituted "disabled" for "handicapped" (voided by Ch. 472 amendment); in (4) substituted "through loan, lease, cost sharing, or other methods that are determined appropriate by the committee" for "on the basis of a loan or lease arrangement that may include cost sharing between the handicapped person and his employer"; in (9), at beginning, inserted "at the discretion of the committee"; in (11) substituted "telecommunications relay service" for "dual party relay" and after "system that" deleted "if feasible"; deleted former (12) that read: "implement the service described in subsection (11) within 2 years following July 1, 1989"; and made minor changes in style. Amendment effective July 1, 1997.

Chapter 472 in (3), (4) (voided by Ch. 396 amendment), and (5) substituted references to persons with disabilities for references to handicapped persons; deleted former (12) that read "implement the service described in subsection (11) within 2 years following July 1, 1989"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

53-19-308. Telecommunications relay service system — requirements.

Compiler's Comments

2007 Amendment: Chapter 325 in introductory clause near middle of first sentence substituted "one or more qualified providers" for "a qualified provider"; and in (3) before "communications" deleted "telephone". Amendment effective April 28, 2007.

1997 Amendment: Chapter 396 in first sentence, near middle, substituted "telecommunications relay service" for "dual party relay"; and made minor changes in style. Amendment effective July 1, 1997.

53-19-309. Gifts and grants.

Compiler's Comments

2009 Amendment: Chapter 2 near end of second sentence substituted "account" for "fund". Amendment effective October 1, 2009.

53-19-310. Account for telecommunications services and specialized telecommunications equipment for persons with disabilities.

Compiler's Comments

2019 Amendment: Chapter 393 in (1) at beginning inserted "Subject to legislative fund transfer"; and made minor changes in style. Amendment effective July 1, 2019.

2011 Amendment: Chapter 312 in (2) at beginning inserted "Subject to legislative fund transfers" and inserted second sentence relating to gifts and grants not subject to legislative fund transfers; and made minor changes in style. Amendment effective May 4, 2011, and terminates June 30, 2013.

Severability: Section 18, Ch. 312, L. 2011, was a severability clause.

2007 Amendment: Chapter 325 in (1) near middle after "services" inserted "and specialized telecommunications equipment"; in (1)(b) at beginning substituted "fees" for "charges"; in (2) at beginning deleted "Unless allocated to the Montana school for the deaf and blind"; and made minor changes in style. Amendment effective April 28, 2007.

2003 Amendment: Chapter 417 deleted former (1)(c) that read: "(c) all fees received pursuant to 53-19-307"; and made minor changes in style. Amendment effective July 1, 2003.

2002 Amendment: Chapter 18 at beginning of (2) inserted "Unless allocated to the Montana school for the deaf and blind"; and made minor changes in style. Amendment effective August 20, 2002.

2001 Amendment: Chapter 297 inserted (1)(c) including in account all fees received under 53-19-307; and made minor changes in style. Amendment effective April 20, 2001.

1997 Amendments — Composite Section: Chapter 396 in (1) substituted "disabled" for "handicapped" (voided by Ch. 472 amendment). Amendment effective July 1, 1997.

Chapter 472 in (1), in first sentence, substituted "persons with disabilities" for "the handicapped".

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

53-19-311. Special assessment.

Compiler's Comments

2007 Amendment: Chapter 325 throughout section substituted references to service provider for references to local exchange company; in (1) at beginning substituted "fee" for "charge", near middle substituted "end user connection" for "telephone access line", and after "billed" inserted "or any prepaid options"; in (2) in first sentence at beginning substituted "subscriber" for "customer" and near end substituted "fee" for "charge" and in second sentence near middle and near end substituted "fee" for "charge" and at end substituted "subscribers" for "customers"; in (3)(a) substituted first sentence concerning periodic billing for former text that read: "Each local exchange company shall bill each customer for the charge provided for in subsection (1)" and inserted second sentence concerning subscribers not billed periodically; inserted (3)(a)(i) and (3)(a)(ii) concerning collection on monthly basis or calculation of prepaid subscribers; in (3)(b) inserted first sentence concerning filing return, in second sentence near beginning after "all" substituted "fees" for "charges billed and", near middle substituted "department" for "state treasurer", and at end substituted "fees are collected" for "charge is billed", and in third sentence near beginning substituted "fees" for "charges", substituted "department" for "state treasurer", and substituted "account" for "fund"; in (4) near middle substituted "fees" for "charges billed and"; and made minor changes in style. Amendment effective April 28, 2007.

2003 Amendment: Chapter 417 in (1) near beginning after "month" substituted "must" for "may". Amendment effective July 1, 2003.

53-19-315. Records — audit.

Compiler's Comments

Effective Date: Section 16, Ch. 325, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 28, 2007.

53-19-316. Service provider required to hold fee in trust for state penalty and interest.

Compiler's Comments

Effective Date: Section 16, Ch. 325, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 28, 2007.

53-19-317. Credit or refund for overpayment — interest on overpayment.

Compiler's Comments

Effective Date: Section 16, Ch. 325, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 28, 2007.

53-19-318. Statute of limitations.

Compiler's Comments

Effective Date: Section 16, Ch. 325, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 28, 2007.

53-19-319. Service provider considered taxpayer under provisions for fee.

Compiler's Comments

2021 Amendment: Chapter 142 near middle of first sentence substituted "Montana tax appeal board" for "state tax appeal board". Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

Effective Date: Section 16, Ch. 325, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 28, 2007.

Part 4
Newborn Hearing Screening

Part Compiler's Comments

Effective Date: Section 7, Ch. 250, L. 2001, provided: "[This act] [53-19-401 through 53-19-404] is effective July 1, 2001."

Part Administrative Rules

Title 37, chapter 57, subchapter 4, ARM Newborn hearing screening and assessment.

53-19-401. Purpose.

Compiler's Comments

2007 Amendment: Chapter 251 in (2) near end after "services for" substituted "infants and children" for "newborn infants who have a hearing loss" and at end after "deaf" inserted "or hard-of-hearing"; and made minor changes in style. Amendment effective October 1, 2007.

53-19-402. Statewide universal newborn hearing screening, tracking, and intervention program.

Compiler's Comments

2007 Amendment: Chapter 251 in (1) in second sentence near middle after "program to" substituted "ensure" for "encourage" and after "newborn infants" deleted "to undergo" and in third sentence near beginning after "shall" substituted "implement the program to ensure" for "encourage", after "newborn" deleted "infant", after "hearing" inserted "screening", and at end decreased "3 months" to "1 month"; deleted former (2)(a) and (2)(b) that read: "(a) determine the volume of births that would allow a hospital or health care facility to be exempt from providing newborn infant hearing screenings onsite before discharge;

(b) develop information for and procedures by which health care providers, local health departments, health care clinics, school districts, and other appropriate resources may promote the importance of the screening of newborn infants' hearing and provide information regarding locations where screenings may be accessed for those newborn infants either not born in a hospital or who do not receive a screening in a hospital"; inserted (2)(a) through (2)(d) requiring the department to adopt rules to ensure that certain obstetric services providers complete newborn hearing screenings for all newborns and provide required education regarding hearing screenings, to adopt rules to ensure monitoring of all babies screened and referred for audiologic assessment, and to adopt rules to establish newborn hearing screening protocols and education protocols; in (2)(e) at beginning before "reporting" substituted "establish" for "determine any additional" and at end after "screening" substituted "recommendation for audiologic assessment, and audiologic assessment results" for "evaluation, audiologic assessment, treatment, and intervention services"; inserted (2)(f) requiring the department to adopt rules to ensure electronic sharing of audiologic evaluation information with the Montana school for the deaf and blind; in (3) near beginning after "assist" substituted "each licensed hospital, health care facility, or health care provider providing obstetric services" for "hospitals"; and made minor changes in style. Amendment effective October 1, 2007.

53-19-404. Required education — screening — reporting.

Compiler's Comments

2007 Amendment: Chapter 251 in (1) deleted second sentence that read: "Education is not considered a substitute for the hearing screening"; substituted (2) requiring hospitals and health care facilities providing obstetric services to perform newborn hearing screenings and to report monthly to the department regarding infants born in or transferred to the hospital or health care facility, the infants screened and not screened, infants who passed the screening, and infants who did not pass the screening and the primary care provider notified of the failure for former (2) that read: "(2) Every licensed hospital, health care facility, or health care provider that provides obstetric services shall report quarterly to the department of public health and human services and to the task force the following information and any other information required by rule:

(a) the number of infants born in the hospital;
(b) the number of infants screened;
(c) the number of infants who passed the screening, if administered;
(d) the number of infants who did not pass the screening, if administered;
(e) the number of infants who received followup care; and
(f) the number of infants with hearing impairment"; and inserted (3) requiring audiologists performing evaluations on infants identified by screening to report monthly to the department regarding identity of the infants, the referring person or facility, the birthing facility, and results of the audiologic assessments. Amendment effective October 1, 2007.

CHAPTER 20
DEVELOPMENTAL DISABILITIES

Chapter Compiler's Comments

1985 Appropriations Act — Autistic Children — Residential Services Priority: Section 17, Category B, Department of Social and Rehabilitation Services (now Department of Public Health and Human Services] narrative of HB 500, "The General Appropriations Act of 1985", provided in part: "Funds appropriated under item 10b [Developmental Disabilities — Benefits] include $2,890,123 for reduction of the developmental disabilities waiting list. The Department shall adopt as a priority development of residential services for autistic children."

1985 Appropriations Act — Recommendations of Developmental Disabilities Planning and Advisory Council: Section 17, Category B, Department of Social and Rehabilitation Services (now Department of Public Health and Human Services] narrative of HB 500, "The General Appropriations Act of 1985", provided in part: "Funds appropriated under item 11b [Developmental Disabilities Planning and Advisory Council — Benefits] must be expended for direct services in accordance with recommendations of the Developmental Disabilities Planning and Advisory Council."

Chapter Administrative Rules

Title 37, chapter 34, ARM Developmental disabilities program.

Chapter Case Notes

Dismissal of Charges Required if Defendant's Fitness to Proceed Undetermined After Ninety Days — Civil Proceedings Mandated Upon Dismissal: Pursuant to Jackson v. Ind., 406 US 715 (1972), after only a pretrial competency hearing, it is unconstitutional to hold a person who is unfit to proceed without following civil and criminal commitment procedures provided by state law. Due process requires, at a minimum, some rational relationship between the nature and duration of commitment and its purpose. Thus, 46-14-221 requires the committing court to review a defendant's fitness to proceed within 90 days of the original commitment, and if, after 90 days, the court finds that the defendant is still unable to proceed and will not be fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed. However, dismissal does not mandate freedom for a potentially violent mentally ill individual. The statute provides that once the criminal proceeding is dismissed, the next mandatory step is to pursue civil commitment proceedings under chapter 21 or this chapter. However, an alternative procedure is available under 46-14-202, in which the court may set the time for determining fitness to proceed. St. v. Tison, 2003 MT 342, 318 M 465, 81 P3d 471 (2003), following St. v. Meeks, 2002 MT 246, 312 M 126, 58 P3d 167 (2002).

Chapter Collateral References

Montana Developmental Center Closure and Client Transition, Performance Audit, Mont. Leg. Audit Div. (May 2021).

Examining Health Care: From Congressional Reforms to Cannabis: A Final Report of the Children, Families, Health, and Human Services Interim Committee, Mont. Leg. Serv. Div. (2010).

Part 1
Treatment

Part Compiler's Comments

2017 Amendment — Closure of Montana Developmental Center: Section 8, Ch. 258, L. 2017, provided: "**Section 8. Direction to department of public health and human services concerning closure of Montana developmental center.** The legislature directs the department of public health and human services to:

(1) use the assessment and stabilization unit at the Montana developmental center campus as the intensive behavior center provided for in [section 2] [53-20-602];

(2) continue to actively discharge individuals from the Montana developmental center during the biennium beginning July 1, 2017; and

(3) close the Montana developmental center on or before June 30, 2019. The department is authorized to use two of the cottages located on the campus of the Montana developmental center for residential purposes until June 30, 2018, and is authorized to use one cottage for residential purposes until June 30, 2019."

Section 6, Ch. 258, L. 2017, amended sec. 1, Ch. 44, L. 2015, to read: "**Section 1. Legislative intent — direction to department of public health and human services.** It is the intent of the legislature to provide services to individuals with developmental disabilities in the community, as established in 53-20-101 and 53-20-301, and to close the Montana developmental center. To accomplish this purpose, the legislature directs the department of public health and human services to:

(1) close the Montana developmental center by June 30, 2019;

(2) transfer funds as authorized by 17-7-139, 53-20-214, and federal laws and regulations to develop the services needed to move residents out of the Montana developmental center and into community-based services; and

(3) cap the census at the Montana developmental center at 24 residents and continue to transition residents out of the Montana developmental center and into community-based services. As part of this transition, the legislature intends for the department of public health and human services to:

(a) actively pursue the timely discharge of Montana developmental center residents into community-based services;

(b) work with community providers to develop necessary services; and

(c) cap the census at the intensive behavior center provided for in [section 2] [53-20-602] at 12 residents after June 30, 2019."

Section 9, Ch. 258, L. 2017, repealed sec. 2, Ch. 444, L. 2015.

Section 7, Ch. 258, L. 2017, amended sec. 3, Ch. 444, L. 2015, to read: "**Section 3. Department of public health and human services responsibilities — rulemaking.** The department of public health and human services shall designate by rule the criteria that a community-based service must meet to be designated as a residential facility."

Closure of Montana Developmental Center: Sections 1 through 5, Ch. 444, L. 2015, provided: "**Section 1. Legislative intent — direction to department of public health and human services.** It is the intent of the legislature to provide services to individuals with developmental disabilities in the community, as established in 53-20-101 and 53-20-301, and to close the Montana developmental center. To accomplish this purpose, the legislature directs the department of public health and human services to:

(1) in conjunction with the transition planning committee established in [section 2], develop and implement a plan to close the Montana developmental center by June 30, 2017;

(2) transfer funds as authorized by 17-7-139, 53-20-214, and federal laws and regulations to develop the services needed to move residents out of the Montana developmental center and into community-based services; and

(3) transition most residents out of the Montana developmental center and into community-based services by December 31, 2016. As part of this transition, the legislature intends for the department of public health and human services to:

(a) actively pursue the timely discharge of Montana developmental center residents into community-based services; and

(b) work with community providers to develop necessary services.

Section 2. Transition planning committee — membership — duties. (1) There is a transition planning committee to make recommendations and help the department of public health and human services plan for carrying out the purposes of [sections 1 through 4].

(2) The committee shall consist of:

(a) two members of the Montana senate, one appointed by the senate president and one appointed by the senate minority leader;

(b) two members of the Montana house, one appointed by the house speaker and one appointed by the house minority leader; and

(c) 11 members appointed by the governor as follows:

(i) the governor's health policy advisor;

(ii) one representative of the department of public health and human services;

(iii) one representative of the office of budget and program planning;

(iv) one representative of community mental health centers;

(v) one provider of community-based services;

(vi) one representative of the state protection and advocacy program for individuals with developmental disabilities as authorized by 42 U.S.C. 15043(a)(2);

(vii) two family members or guardians of individuals who are committed to the Montana developmental center or who were committed within the previous 20 years, representing varying viewpoints;

(viii) one representative of the Montana developmental center workforce;
(ix) one Jefferson County commissioner; and
(x) one member of the Montana council on developmental disabilities provided for in 2-15-1869.

(3) The committee shall:

(a) design and recommend to the department of public health and human services a plan to close the Montana developmental center and transition residents into community-based services;

(b) propose a rate structure for providers of community-based services;

(c) identify potential sources of funding to support the proposed rate structure;

(d) recommend community-based services necessary to allow for the closure of the Montana developmental center;

(e) identify potential options for repurposing of the Montana developmental center campus;

(f) recommend workforce planning and transition options for the Montana developmental center workforce; and

(g) recommend secure facilities necessary to allow for the closure of the Montana developmental center.

(4) The committee shall meet at least quarterly and must be disbanded no later than June 30, 2017.

(5) The committee shall report to the legislative finance committee and the children, families, health, and human services interim committee as requested by those committees.

Section 3. Transition planning — department of public health and human services responsibilities — rulemaking. The department of public health and human services shall:

(1) provide members of the transition planning committee with necessary information and staff support to carry out the committee's duties;

(2) implement a plan for the closure of the Montana developmental center based on recommendations from the transition planning committee; and

(3) designate by rule the criteria that a community-based service must meet to be designated as a residential facility.

Section 4. Transfer fee. The department of public health and human services shall assess a fee of $1,000 on a provider of community-based services who returns an individual to the Montana developmental center within 90 days after accepting the individual for community-based services.

Section 5. Limitation on expenditures. For the biennium beginning July 1, 2015, expenditures for placing seriously developmentally disabled individuals in private, community-based residential facilities pursuant to Title 53, chapter 20, part 1, or in accordance with 46-14-221 or 46-14-312 may not exceed the amount appropriated in House Bill No. 2 for the Montana developmental center."

Codification: Although Ch. 444 contained a codification instruction, sections 1 through 5 were not codified because of their short duration. Sections effective May 6, 2015.

1991 Statement of Intent: The statement of intent attached to Ch. 381, L. 1991, provided: "This bill provides a new definition of seriously developmentally disabled and establishes a new administrative process as part of the commitment of seriously developmentally disabled persons to residential facilities of the state of Montana. These changes are necessary to provide a commitment standard and process that will meet the new mission that has been developed for the state-operated residential facilities.

The new definition of seriously developmentally disabled incorporates behavioral language to cover endangered and dangerous persons as well as self-help deficit language to cover current residents. The incorporation into the commitment process of an administrative screening team ensures that persons who are to be placed in a residential facility are thoroughly considered for placement in community services before a commitment may be made.

Rules are necessary to implement the administrative screening process. Rules necessary for the screening process must provide for the membership, terms, and various responsibilities of the team and the standards and procedures used by the team in making placement determinations. New rules are to be adopted to implement the changes in the definition of professional person."

Severability Clause: Section 34, Ch. 468, L. 1975, was a severability clause.

Section Not Codified: Section 38-1230, R.C.M. 1947, a temporary provision requiring evaluation of residents of certain institutions, was not codified. This section is still valid law. Citation may be made to sec. 30, Ch. 468, L. 1975.

Part Case Notes

Evidence of Serious Developmental Disability Warranting Involuntary Commitment: The District Court did not err in involuntarily committing W.M. to the Montana Developmental Center for 1 year after admitting clear and convincing evidence of serious developmental disability and in light of the unanimous opinion of witnesses who testified at the commitment hearing that W.M. could not be served in presently existing community group home settings. There was no showing that W.M.'s procedural and due process rights were violated. In re W.M., 252 M 225, 828 P2d 378, 49 St. Rep. 227 (1992).

Constitutional Requirements — Right to Treatment: Where patient was confined to mental institution without treatment for 15 years when he was neither dangerous to himself nor to others and was capable of surviving safely in freedom by himself or with help of willing and responsible family members or friends, the State violated patient's constitutional right to freedom by keeping him in mental institution against his will. O'Connor v. Donaldson, 422 US 563, 45 L Ed 2d 396, 95 S Ct 2486 (1975).

53-20-101. Purpose.

Compiler's Comments

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (1).

Case Notes

Finding That Developmentally Disabled Person Not Involuntarily Held at State Center Not Clearly Erroneous— Failure to Exhaust Administrative Remedies Precluding Judicial Review: Respondent was admitted to the Montana Developmental Center (MDC) on an emergency commitment in 1999, and the commitment was extended for 2 successive years. The MDC treatment team eventually reported that respondent had made substantial improvement and was no longer seriously developmentally disabled and recommended referral for community-based services. The state moved the District Court to adopt the recommendations, but the court did not immediately rule on the motion. Meanwhile, respondent's commitment order expired, although respondent remained at MDC, lacking any place else to go. Respondent subsequently petitioned for declaratory and injunctive relief to compel the state to immediately place respondent in a community-based service, arguing that the state's failure to do so left respondent in a de facto involuntary commitment. The District Court found that respondent was not being held involuntarily and dismissed the petition, and respondent appealed. Because respondent had failed to exhaust the administrative process, the record was insufficient for the Supreme Court to determine whether any of respondent's constitutional rights were violated as a result of the delay in community placement. However, the court noted that after the commitment order expired, respondent was free to leave MDC but chose not to, so the District Court's finding that respondent was not held involuntarily was not clearly erroneous. The District Court was affirmed. In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005).

53-20-102. Definitions.

Compiler's Comments

2015 Amendment: Chapter 444 in definition of case manager at end substituted "developmental disabilities services from the department of public health and human services" for "developmental disability services from the department"; inserted definition of census; in definition of residential facility inserted (b) regarding private community-based facility approved by the department; and made minor changes in style. Amendment effective May 6, 2015.

2013 Amendment: Chapter 68 in definition of developmental disability in (a) substituted "intellectual disability" for "mental retardation" in two places and in (b) substituted "intellectually disabled" for "mentally retarded"; and substituted "Qualified intellectual disability professional" for "Qualified mental retardation professional" as defined term. Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

2007 Amendments — Composite Section: Chapter 122 in definition of seriously developmentally disabled deleted former (c)(ii) that read: "(ii) self-help deficits so severe as to require total care"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 252 inserted definitions of available, case manager, and community treatment plan; in definition of residential facility screening team at end before "is appropriate" inserted "or imposition of a community treatment plan"; in definition of respondent at end after "disabled and" substituted "for whom the petition requests commitment to a residential facility or imposition of a community treatment plan" for "in need of developmental disability services in a residential facility"; in definition of seriously developmentally disabled in (c) after "habilitated" inserted "through voluntary use"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

2005 Amendment: Chapter 27 in definition of seriously developmentally disabled in (c) at beginning deleted "has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and who, because of those behaviors or deficits" and at end inserted "because of", inserted (c)(i) concerning imminent risk of serious harm to self or others, and inserted (c)(ii) concerning self-help deficits so severe as to require total care. Amendment effective January 1, 2006.

2003 Amendment: Chapter 575 in definition of residential facility at end deleted "and the Eastmont human services center"; and made minor changes in style. Amendment effective July 1, 2003.

Preamble: The preamble attached to Ch. 575, L. 2003, provided: "WHEREAS, the Eastmont Human Services Center has provided consistent high-quality care to the residents of the Center; and

WHEREAS, the community of Glendive has continuously supported the staff and residents of the Eastmont Human Services Center; and

WHEREAS, the lack of a need to continue the use of the Eastmont Human Services Center as a residential facility for persons with developmental disabilities does not diminish the state's admiration of the dedication of the staff and the support of the community of Glendive for the Center; and

WHEREAS, section 53-1-602(2), MCA, provides that a state institution may not be moved, discontinued, or abandoned without the consent of the Legislature, this act constitutes consent for the discontinuance of the Eastmont Human Services Center."

Transition: Section 5, Ch. 575, L. 2003, provided: "The Eastmont human services center must be closed by December 31, 2003, and be transferred to the department of corrections by that date. When the department contracts for additional group homes for the developmentally disabled, the department shall give priority to providing those homes in a community in eastern Montana in which a residential facility has been closed. It is the intent of the legislature that the department of public health and human services have access to the personal services contingency funds in House Bill No. 13 [Ch. 552, L. 2003] in order to address any severance pay and costs for reduction in force associated with the closure of Eastmont human services center."

1997 Amendment: Chapter 472 in definition of developmental disability, in first sentence, substituted "disabling" for "handicapping" and in second sentence substituted "results in the person having a substantial disability" for "constitutes a substantial handicap of the individual"; and made minor changes in style.

1995 Amendments — Composite Section: Chapter 255 in definition of community-based facilities substituted "persons with developmental disabilities" for "the developmentally disabled" and at end deleted "including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities"; inserted definition of developmental disabilities professional; substituted developmental disability for developmentally disabled as defined term; in definition of habilitation substituted "who has a developmental disability" for "who is developmentally disabled"; in definition of individual treatment planning team, at end of first sentence, substituted "resident" for "person committed to a residential facility" and in second sentence substituted "resident" for "committed person"; deleted definition of professional person that read: ""Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;
(b) has experience in the field of developmental disabilities; and

(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of corrections and human services"; in definition of qualified mental retardation professional, after "means", deleted "a person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:

(a) a licensed physician or osteopath;

(b) a registered nurse; or"; in definition of resident substituted "committed" for "admitted" and at end deleted "for a course of evaluation, treatment, or habilitation"; in definition of residential facility screening team, after "53-20-133", inserted remainder of definition concerning screening respondent to determine if commitment is appropriate; in definition of respondent, before "developmentally disabled", inserted "seriously" and at end inserted "in a residential facility"; in definition of responsible person, in two places before "developmentally disabled", inserted "seriously"; in definition of seriously developmentally disabled substituted (a) concerning developmental disability for "is developmentally disabled"; and made minor changes in style. Amendment effective March 28, 1995.

Chapter 546 in definition of professional person, in (c), substituted "department of public health and human services" for "department of social and rehabilitation services and the department of corrections and human services"; in definition of qualified mental retardation professional, in (c), substituted "department of public health and human services" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995. The amendment by Ch. 255 rendered the amendment by Ch. 546 in the definition of professional person void.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Repeal of Termination: Section 20, Ch. 255, L. 1995, repealed sec. 27, Ch. 381, L. 1991, that terminated the amendment to the definition of seriously developmentally disabled made by sec. 2, Ch. 381, L. 1991, on September 30, 1995. Repealer effective March 28, 1995.

Code Commissioner Changes: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

Pursuant to sec. 4, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Corrections and Human Services.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 381 inserted definition of individual treatment planning team; in definition of professional person, after "licensed", substituted "psychologist, licensed psychiatrist, or a person with a master's degree in psychology" for "medical doctor", inserted (a) concerning psychometric testing and evaluation, and inserted (b) concerning developmental disabilities; inserted definition of qualified mental retardation professional; in definition of residential facility, after "means", deleted reference to any residential hospital or hospital and school dealing with the developmentally disabled on an inpatient basis and deleted second and third sentences excluding group home, foster home, halfway house, correctional facility, or facility treating the mentally ill from residential facility definition; inserted definition of residential facility screening team; and substituted present definition of seriously developmentally disabled for former definition that read: ""Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community-based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health".

1985 Amendment: In definition of residential facility changed "Boulder River school and hospital" to "Montana developmental center".

1983 Amendments: Chapter 132, in definition of residential facility, substituted "Eastmont human services center" for "Eastmont training center".

Chapter 137, in definition of developmentally disabled, substituted "if the disability originated before the individual attained age 18" for "which condition" and changed plural words to singular words.

Chapter 569, in definition of professional person, inserted "licensed"; and substituted (7)(b) referencing professional persons certified under 53-20-106 for former text, which read: "a person trained in the field of developmental disabilities and certified by the department of institutions or the department of social and rehabilitation services in accordance with standards of professional licensing boards, federal regulations, and the joint commissions on accreditation of hospitals".

Case Notes

Involuntary Commitment Affirmed Given District Court Consideration of Person's Situation, Needs, and Future Placement: Following numerous violent incidents while L.S. was in a community-based group home, L.S. was committed to the Montana Developmental Center (MDC) on an emergency basis. While at MDC, L.S.'s behavior materially improved. The state subsequently petitioned for commitment at MDC for up to 1 year. Witnesses for L.S. argued that the appropriate placement would be in community-based services. The District Court found that L.S. had a developmental disability and impaired cognitive functioning and, without adequate community-based services available, posed a sufficient risk of harm to self or others to meet the statutory definition of "seriously developmentally disabled". The court committed L.S. to MDC for 1 year or until suitable placement in community-based services was available. L.S. appealed the commitment, but the Supreme Court affirmed. The District Court fully considered L.S.'s situation, needs, and future placement, and it was not an abuse of discretion to commit L.S. to MDC pending availability of community-based services. In re L.S., 2009 MT 83, 349 M 518, 204 P3d 707 (2009). See also In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005), and In re G.M., 2009 MT 59, 349 M 320, 203 P3d 818 (2009).

Clear and Convincing Evidence Standard of Proof Required in Commitment Proceeding Involving Persons With Developmental Disabilities: G.M. is a developmentally disabled man in his 30s who was repeatedly recommitted to the Montana Developmental Center for about half his life. In 2007, the state petitioned to recommit G.M. G.M. filed a prehearing motion requesting that the state be required to prove physical facts or evidence beyond a reasonable doubt and all other matters by clear and convincing evidence, but the District Court denied the motion and G.M. appealed. The Supreme Court found no legal or factual reason to conclude that the standard of proof advocated by G.M. would protect individual constitutional rights to any greater degree than the established standard requiring the state to prove grounds for commitment by clear and convincing evidence, so the court held that a standard of proof higher than clear and convincing evidence was not appropriate for commitment proceedings involving persons with development disabilities. In re G.M., 2009 MT 59, 349 M 320, 203 P3d 818 (2009), following Addington v. Tex., 441 US 418 (1979), and Heller v. Doe, 509 US 312 (1993).

Proper Consideration of Availability of Community-Based Services — No Absolute Right to Community-Based Services: In a prehearing motion during commitment proceedings, G.M. asked the District Court to hold that G.M. would not meet the definition of seriously developmentally disabled if G.M. could be safely and effectively habilitated through community-based services, whether or not those services were actually available to G.M., and that if there was no community-based facility available that would accept him, G.M. could not be committed to the Montana Developmental Center. The District Court held that while there is a statutory preference for community-based placement, there is no absolute right to such placement. G.M. appealed, but the Supreme Court affirmed. Community-based facilities are defined as facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities, and here the District Court properly considered whether those services were actually available. However, there is no absolute right to placement in a community-based facility. G.M. provided no proof of any acceptable alternative placement or of the availability of community-based services. The Supreme Court could not determine from the record whether those services were actually available to G.M. but noted that the parties stipulated that G.M. could be placed in a community-based facility at any time during the commitment, presumably if a facility became available. In re G.M., 2009 MT 59, 349 M 320, 203 P3d 818 (2009). See also In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005).

Finding That Developmentally Disabled Person Not Involuntarily Held at State Center Not Clearly Erroneous— Failure to Exhaust Administrative Remedies Precluding Judicial Review: Respondent was admitted to the Montana Developmental Center (MDC) on an emergency commitment in 1999, and the commitment was extended for 2 successive years. The MDC treatment team eventually reported that respondent had made substantial improvement and was no longer seriously developmentally disabled and recommended referral for community-based services. The state moved the District Court to adopt the recommendations, but the court did not immediately rule on the motion. Meanwhile, respondent's commitment order expired, although

respondent remained at MDC, lacking any place else to go. Respondent subsequently petitioned for declaratory and injunctive relief to compel the state to immediately place respondent in a community-based service, arguing that the state's failure to do so left respondent in a de facto involuntary commitment. The District Court found that respondent was not being held involuntarily and dismissed the petition, and respondent appealed. Because respondent had failed to exhaust the administrative process, the record was insufficient for the Supreme Court to determine whether any of respondent's constitutional rights were violated as a result of the delay in community placement. However, the court noted that after the commitment order expired, respondent was free to leave MDC but chose not to, so the District Court's finding that respondent was not held involuntarily was not clearly erroneous. The District Court was affirmed. In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005).

Finding That Individual Not Developmentally Disabled Erroneous Absent Evidence of Possible Safe Community Habilitation: Following a sexual assault on his 3-year-old niece, T.S.D. was committed to the Montana Developmental Center on an emergency petition while the state sought an adjudication for extended commitment. T.S.D.'s commitment was subsequently renewed for two 1-year periods. On hearing a third petition for commitment, the District Court concluded that T.S.D. could be safely and effectively habilitated in community-based services and thus was not seriously developmentally disabled. On appeal, the Supreme Court reversed. The District Court mischaracterized the statement from the chief executive officer of a community services organization that T.S.D. could be safely habilitated. In light of evidence from the doctor at the Montana Developmental Center, the residential facility screening team, and the qualified mental retardation professional responsible for T.S.D.'s habilitation that T.S.D. remained a threat to the safety of others and should not be placed in community services, the District Court's conclusion that T.S.D. was not seriously developmentally disabled was reversible error. In re T.S.D., 2005 MT 35, 326 M 82, 107 P3d 487 (2005).

Developmental Disability Affecting Fitness to Proceed to Trial: A developmental disability may affect a defendant in such a way as to render him unfit to proceed to trial; however, a developmental disability does not automatically mandate a finding of lack of fitness. That is for the trial court, in its discretion, to determine. St. v. Austad, 197 M 70, 641 P2d 1373, 39 St. Rep. 356 (1982).

53-20-103. Residential institution to meet standards.

Compiler's Comments

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change.

53-20-104. Powers and duties of mental disabilities board of visitors.

Compiler's Comments

2015 Amendment: Chapter 444 throughout section substituted references to Montana developmental center for references to residential facility or facility; in (2) in second sentence substituted "Montana developmental center residents" for "persons committed to a residential facility"; in (3) near end before "resident" inserted "Montana developmental center"; in (4) near beginning substituted "inspect the Montana developmental center at least annually" for "at least annually inspect every residential facility that is providing a course of residential habilitation and treatment to any person pursuant to this part"; in (8) at end substituted "Montana developmental center and its habilitation programs" for "residential facilities and habilitation programs that it has inspected"; and made minor changes in style. Amendment effective May 6, 2015.

1995 Amendments: Chapter 255 throughout section substituted "committed" for "admitted"; in (1), after "review", inserted "established"; in (6), after "resident's", substituted "commitment" for "admission"; and made minor changes in style. Amendment effective March 28, 1995.

Chapter 546 in (7), at end of first sentence, substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 349 in (8), after "governor", deleted "and shall, as provided in 5-11-210, report to the legislature"; and made minor changes in style.

1991 Amendments: Chapter 112 in (8) inserted reference to 5-11-210 and after "report to" deleted "each session of". Amendment effective March 20, 1991.

The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 381 in (2), at end of first sentence after "health", changed "education and welfare" to "and human services"; at end of (4) substituted "facility" for "institution"; in (7), near middle of first sentence after "to the", substituted "superintendent" for "professional person in charge" and in second sentence, after "from", substituted "the superintendent or the director" for "such professional person"; and made minor changes in style.

53-20-106. Certification of developmental disabilities professionals.

Compiler's Comments

1995 Amendments: Chapter 255 in (1), at beginning, inserted "A developmental disabilities professional must be certified by" and at end deleted "shall certify professional persons for purposes of this part"; and in (2), at end of first sentence, substituted "developmental disabilities professionals" for "professional persons". Amendment effective March 28, 1995.

Chapter 546 in (1) and (2) substituted "department of public health and human services" for "department of social and rehabilitation services and the department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 381 at end of (2), after "disabilities", deleted references to standards published by the accreditation council and standards published in Title XIX of the Social Security Act and other similar standards.

Statement of Intent: The statement of intent attached to SB 395 (Ch. 569, L. 1983), provided: "A statement of intent is required for SB 395 because it authorizes the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] and the Department of Institutions [now Department of Corrections] to adopt rules for the certification of professional persons. It is the intent of SB 395 to have professional persons certified by the Department of Social and Rehabilitation Services [now Department of Public Health and Human Services] and the Department of Institutions [now Department of Corrections] as qualified to provide those services.

The Legislature contemplates that certification of an individual as a professional person will be determined upon qualifications specified by rule. Those qualifications should be predicated upon education, experience, and skills. The specific qualifications will be those that are appropriate for an individual to carry out the professional person's responsibilities with respect to the developmentally disabled.

The rules should provide for the appropriate higher education degrees and the nature and degree of experience and skills that professional persons must possess. The rules should allow for varying combinations of education, experience, and skills that satisfy the professional person certification requirements. Among those degrees of higher education which are to be considered appropriate are psychology, social work, special education, or similar human service degrees.

The qualification set forth in the rules should be developed by reference to such nationally recognized standards as those of the Accreditation Council for Services for Mentally Retarded and other Developmentally Disabled persons (ACMRDD), Title XIX of the Social Security Act as amended, and federal regulations implementing that Act, and similar standards."

53-20-107. Department to compile list of qualified developmental disabilities professionals.

Compiler's Comments

1995 Amendment: Chapter 255 at beginning, after "department", inserted "of corrections and human services", after "list of" substituted "developmental disabilities professionals" for "professional persons within the region where the district court is located", and at end deleted "and who may be available to the court to act as visitors or to otherwise provide evaluation services in guardianship proceedings involving developmentally disabled persons, together with an indication of the particular competencies the professional person possesses". Amendment effective March 28, 1995.

Code Commissioner Change: Pursuant to sec. 4, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Corrections and Human Services.

53-20-110. Community treatment plan — elements — placement.

Compiler's Comments

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

Effective Date: This section is effective October 1, 2007.

53-20-112. Procedural rights — appointment of counsel.

Compiler's Comments

2017 Amendment: Chapter 358 in (3) substituted "2-15-1029" for "47-1-201". Amendment effective July 1, 2017.

Severability: Section 48, Ch. 358, L. 2017, was a severability clause.

2007 Amendment: Chapter 252 inserted (3) requiring court to assign counsel for respondent upon receipt of petition for commitment, recommitment, or emergency commitment and for indigent parents or guardian if requested; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

1997 Amendment: Chapter 490 in (1), after "commitment of", substituted "a person who suffers from a mental disorder and who requires commitment" for "the seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 255 at beginning of (1) substituted "respondent" for "person subject to emergency admittance to a residential facility or to any hearing held pursuant to this part"; in (2) substituted "respondent" for "person alleged to be seriously developmentally disabled and in need of developmental disabilities services"; in (2)(d), in two places after "professional", deleted "person"; and made minor changes in style. Amendment effective March 28, 1995.

1991 Amendment: In (1), after "facility", deleted "to examination or evaluation by a professional person" and at end inserted "as provided in 53-21-115 through 53-21-118"; in (2), before "developmentally", inserted "seriously"; and made minor changes in style.

Case Notes

Release of Sealed Involuntary Commitment Records — Redacted Records Sufficiently Protective of Personal Privacy Rights: The Montana Advocacy Program (MAP) sought to disclose redacted District Court documents related to T.L.S.'s involuntary commitment for a serious developmental disability after T.L.S. died while residing at the Montana Developmental Center. The District Court held that MAP was required to establish a compelling state interest warranting public disclosure of the sealed court documents and denied the motion to release the court file. On appeal, the Supreme Court noted that the documents were sealed under 53-21-103 but that the commitment proceedings were conducted pursuant to this part, which does not contain any provisions relating to sealing and opening court records. Therefore, 53-21-103 did not apply, and MAP was not required to establish good cause before the court record could be opened. It was not disputed that the records were subject to public inspection under the constitutional right to know, which is presumed absent a showing of individual privacy rights sufficient to override the right to know, so the District Court erred in requiring MAP to show a compelling state interest. Thus, the question was whether T.L.S.'s privacy interest clearly exceeded the merits of public disclosure. It is the party asserting individual privacy rights that carries the burden to establish that those privacy rights exceed the merits of public disclosure. MAP contended, and the Supreme Court agreed, that the merits of public disclosure were substantial in light of the need to inform the public regarding the actions of the officials and employees involved in the commitment proceedings and to effectively advocate for legislative, administrative, and judicial reforms for the protection of the developmentally disabled. The Supreme Court concluded that T.L.S.'s privacy interests were sufficiently protected by redacting personal information from the record and ordered that the redacted documents be immediately released. In re T.L.S. v. Mont. Advocacy Program, 2006 MT 262, 334 M 146, 144 P3d 818 (2006).

53-20-113. Waiver of rights.

Compiler's Comments

1995 Amendment: Chapter 255 at beginning of (1) substituted "respondent" for "person"; in (4), at beginning, substituted "respondent" for "person admitted to a residential facility for evaluation and treatment or for an extended course of habilitation"; deleted (3) that read: "(3) (a) In the case of a minor, the waiver of rights may be knowingly and intentionally made:

(i) when the minor is under the age of 12, by the parents of the minor with the concurrence of the responsible person, if any;

(ii) when the minor is over the age of 12, by the minor and his parents;

(iii) when the minor is over the age of 12 and the minor and his parents do not agree, the minor may make an effective waiver of his rights only with the advice of counsel.

(b) If the court believes that there may be a conflict of interest between a minor and his parents or guardian, the court may appoint a responsible person or guardian ad litem for the minor"; and made minor changes in style. Amendment effective March 28, 1995.

1991 Amendment: In (1), in second sentence, substituted "53-20-125" for "53-20-123"; substituted present (2) relating to waiver of rights of person admitted for evaluation and treatment for former (2) that read: "(2) In the case of a person who has been admitted to a residential facility for up to 30 days of evaluation and treatment or who, pursuant to the recommendation of a professional person, may be admitted to a residential facility for an extended course of habilitation, a waiver of rights can be knowingly and intentionally made only with the concurrence of the person's counsel, if any, his parents or guardian, and the responsible person appointed by the court, if any"; and made minor changes in style.

Case Notes

Notice in Guardianship Proceedings: Notice to a mentally retarded person is not to be regarded as either unnecessary or automatically waived. Failure to send notice to a mentally retarded minor in guardianship appointment proceedings renders the judgment void. In re the Guardianship of Evans, 179 M 438, 587 P2d 372, 35 St. Rep. 1768 (1978).

53-20-114. Appointment of responsible person.

Compiler's Comments

1995 Amendment: Chapter 255 in (1), at end, substituted "shall appoint a responsible person to protect the interests of the respondent if the court determines" for "believes"; in (1)(a), at end, substituted "the respondent and the respondent's parents or guardian" for "a person who is developmentally disabled or alleged to be developmentally disabled and his parents or guardian"; at end of (1)(b) substituted "the respondent" for "such person"; substituted (1)(c) concerning respondent's lack of parent or guardian for former text that read: "whenever there is no parent or guardian, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled"; at end of first sentence of (4), after "respondent", deleted "or patient"; and made minor changes in style. Amendment effective March 28, 1995.

53-20-116. Residential facility screening team member — testimony at hearing.

Compiler's Comments

1995 Amendment: Chapter 255 after "team" substituted "may be required to testify with regard to a determination made by the residential facility screening team" for "or the professional person who evaluated the person must be present at the hearing and subject to cross-examination"; and made minor changes in style. Amendment effective March 28, 1995.

1991 Amendment: After "part" substituted "a member of the residential facility screening team or" for "which involves consideration of the recommendation and report of a professional person" and after "who" substituted "evaluated the person must" for "made the recommendation and report shall".

53-20-118. Venue for hearing.

Compiler's Comments

2007 Amendment: Chapter 252 in (1) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

1995 Amendment: Chapter 255 at end of (1), after "resides", substituted "or in which the residential facility is located to which the respondent is or is to be committed" for "except that at the request of any party or the professional person, who must be present at the hearing, a hearing may be held in the district court for the district where the respondent is undergoing evaluation, treatment, or habilitation in a residential facility or is undergoing community-based evaluation, treatment, or habilitation"; and made minor changes in style. Amendment effective March 28, 1995.

53-20-121. Petition for involuntary treatment — contents of.

Compiler's Comments

2007 Amendment: Chapter 252 in (1) near middle and at end after "residential facility" inserted "or imposition of a community treatment plan"; inserted (2)(f) providing that petition must contain a description of relief requested; inserted (3) providing that if a petition requests imposition of a community treatment plan, a copy of the plan must be attached; substituted (4) requiring the county attorney to mail a copy of petition to certain persons and to ensure that the petition is hand-delivered to respondent for former text that read: "(3) A copy of the petition must be served to the residential facility screening team"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

1995 Amendment: Chapter 255 in (1), in two places, substituted "commitment to" for "placement in"; inserted (3) concerning sending copy of petition to screening team; and made minor changes in style. Amendment effective March 28, 1995.

1991 Amendment: In (1), before "developmentally", inserted "seriously", before "may" substituted "placement in a residential facility" for "developmental disability services", after "may" deleted former language requiring a professional person who believes another person is in need of developmental disability services to contact the parents or guardian of the person or the person himself, before "developmentally" inserted "seriously", and at end substituted "placement in a residential facility" for "developmental disability services"; in (2)(a), before "person", deleted "professional" and after "person" deleted "and any other person"; and made minor changes in style.

53-20-125. Outcome of screening — recommendation for commitment or imposition of community treatment plan — hearing.

Compiler's Comments

2015 Amendment: Chapter 444 inserted (3) authorizing screening team to recommend commitment; in (4)(f) inserted "to which the residential facility screening team has recommended commitment"; in (8)(a) at end inserted "subject to the provisions of subsection (12)"; in (8)(d) near end substituted "disabilities" for "disability"; inserted (12) regarding court commitment of a respondent; and made minor changes in style. Amendment effective May 6, 2015.

2009 Amendment: Chapter 2 in (1)(b) near middle after "residential" inserted "facility". Amendment effective October 1, 2009.

2007 Amendments — Composite Section: Chapter 34 in (3) at beginning of first sentence deleted "At the request of the respondent, the respondent's parents or guardian, or the responsible person"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 252 in (1) in introductory clause at beginning substituted "A court may commit a person" for "A person may be committed" and after "residential facility" inserted "or impose a community treatment plan"; in (1)(b) after "residential facility" inserted "or imposition of a community treatment plan"; in (2) in first sentence at beginning substituted "After" for "If as a result of" and after "screening team" deleted "concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team" and inserted third sentence requiring the screening team to provide to certain persons the social and placement information used in the team's determination; deleted former (3) that read: "(3) At the request of the respondent, the respondent's parents or guardian, or the responsible person, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111"; in (4) inserted second sentence requiring a hearing request to be made within 15 days of service of the report; inserted (7) requiring the court to enter findings of fact and to take one of several actions; in (7)(a) at beginning inserted "both the residential facility screening team"; inserted (7)(b) establishing conditions under which the court may impose a community treatment plan or order commitment to a residential facility; in (7)(c) and (7)(d) at beginning inserted "either the residential facility screening team"; in (8)(a) at beginning of introductory clause inserted "the residential facility screening team recommends commitment to a residential facility or imposition of a community treatment plan" and after "hearing" inserted "within 15 days of service of the screening team's report"; inserted (8)(a)(ii) providing that a court may order imposing a community treatment plan that meets certain conditions; inserted (8)(b) providing that a court may not impose a community treatment plan unless the residential facility screening team certifies that the services in the proposed plan meet certain conditions; deleted former (11) that read: "(11) An order for commitment must be accompanied by findings of fact"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

2005 Amendment: (Version effective July 1, 2006) Chapter 449 in (3) in first and second sentences after "shall" deleted "appoint" and inserted reference to ordering office of state public defender to assign counsel and in second sentence after "guardian" inserted reference to pending determination of indigence. Amendment effective July 1, 2006.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

1995 Amendments — Composite Section: Chapter 255 inserted (1) concerning criteria for commitment to residential facility; in (2), in first sentence after "recommends", substituted "that the respondent be committed to a residential facility for treatment and habilitation" for "treatment and habilitation in a residential facility" and at end deleted "and request that the court order the admission"; deleted former (2) that read: "(2) If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian, the court shall appoint a responsible person"; in (4) substituted "determination of the residential facility screening team" for "recommendation"; inserted (4)(d) concerning respondent's advocate; inserted (4)(e) concerning County Attorney; inserted (4)(f) concerning residential facility; in (5) inserted references to respondent's advocate and residential facility screening team and deleted introductory clause of former second sentence that read: "If a hearing is requested, the court shall mail or deliver notice of the date, time, and place of the hearing"; at beginning of (6) inserted "Notice of the hearing must be mailed or delivered"; in (8), near beginning of first sentence after "disabled", inserted "and in need of commitment to a residential facility" and after "respondent" substituted "committed" for "admitted" and in second and third sentences substituted "developmental disability" for "developmentally disabled"; near middle of (9) substituted "for the commitment of the respondent" for "authorizing the person to be admitted"; in (10), in two places, substituted "commitment" for "admission" and in two places substituted "respondent" for "person"; inserted (11) concerning order accompanied by findings of fact; inserted (12) requiring order to be provided to screening team; adjusted subsection references; and made minor changes in style. Amendment effective March 28, 1995.

Chapter 546 in (8), in second sentence, substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: Near beginning of (1) substituted "screening required by 53-20-133 the residential facility screening team" for former language relating to evaluation and treatment agreed to by parent, guardian, or person pursuant to 53-20-120 or by court order and near middle, before "shall", substituted "team" for "professional person"; in (6), after "disabled", deleted "and that available community-based services are not adequate to protect the life and physical safety of the person and others or to provide appropriate treatment and habilitation" and in second sentence, after "disabled", substituted "but not seriously developmentally disabled" for "in need of developmental disability services, and eligible for placement in community-based services and that available community-based services are adequate to protect the life and physical safety of the person and others and to provide appropriate treatment and habilitation"; and made minor changes in style.

1987 Amendment: In (3), in second sentence after "in need of developmental disability services", inserted "and eligible for placement in community-based services", at end of sentence substituted material on dismissal of petition and referral for community-based services for "order the respondent to undertake a community-based course of treatment and habilitation", and at end of last sentence substituted "petition" for "request".

Case Notes

Defendant Unfit to Stand Trial — Criminal Case Reinstated After Decade of Civil Commitment — Resumption of Case Constituted Abuse of Discretion — District Court Reversed. St. v. Mosby, 2022 MT 5, 407 Mont. 143, 502 P.3d 116.

Involuntary Commitment Affirmed Given District Court Consideration of Person's Situation, Needs, and Future Placement: Following numerous violent incidents while L.S. was in a community-based group home, L.S. was committed to the Montana Developmental Center

(MDC) on an emergency basis. While at MDC, L.S.'s behavior materially improved. The state subsequently petitioned for commitment at MDC for up to 1 year. Witnesses for L.S. argued that the appropriate placement would be in community-based services. The District Court found that L.S. had a developmental disability and impaired cognitive functioning and, without adequate community-based services available, posed a sufficient risk of harm to self or others to meet the statutory definition of "seriously developmentally disabled". The court committed L.S. to MDC for 1 year or until suitable placement in community-based services was available. L.S. appealed the commitment, but the Supreme Court affirmed. The District Court fully considered L.S.'s situation, needs, and future placement, and it was not an abuse of discretion to commit L.S. to MDC pending availability of community-based services. In re L.S., 2009 MT 83, 349 M 518, 204 P3d 707 (2009). See also In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005), and In re G.M., 2009 MT 59, 349 M 320, 203 P3d 818 (2009).

Clear and Convincing Evidence Standard of Proof Required in Commitment Proceeding Involving Persons With Developmental Disabilities: G.M. is a developmentally disabled man in his 30s who was repeatedly recommitted to the Montana Developmental Center for about half his life. In 2007, the state petitioned to recommit G.M. G.M. filed a prehearing motion requesting that the state be required to prove physical facts or evidence beyond a reasonable doubt and all other matters by clear and convincing evidence, but the District Court denied the motion and G.M. appealed. The Supreme Court found no legal or factual reason to conclude that the standard of proof advocated by G.M. would protect individual constitutional rights to any greater degree than the established standard requiring the state to prove grounds for commitment by clear and convincing evidence, so the court held that a standard of proof higher than clear and convincing evidence was not appropriate for commitment proceedings involving persons with development disabilities. In re G.M., 2009 MT 59, 349 M 320, 203 P3d 818 (2009), following Addington v. Tex., 441 US 418 (1979), and Heller v. Doe, 509 US 312 (1993).

Proper Consideration of Availability of Community-Based Services — No Absolute Right to Community-Based Services: In a prehearing motion during commitment proceedings, G.M. asked the District Court to hold that G.M. would not meet the definition of seriously developmentally disabled if G.M. could be safely and effectively habilitated through community-based services, whether or not those services were actually available to G.M., and that if there was no community-based facility available that would accept him, G.M. could not be committed to the Montana Developmental Center. The District Court held that while there is a statutory preference for community-based placement, there is no absolute right to such placement. G.M. appealed, but the Supreme Court affirmed. Community-based facilities are defined as facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities, and here the District Court properly considered whether those services were actually available. However, there is no absolute right to placement in a community-based facility. G.M. provided no proof of any acceptable alternative placement or of the availability of community-based services. The Supreme Court could not determine from the record whether those services were actually available to G.M. but noted that the parties stipulated that G.M. could be placed in a community-based facility at any time during the commitment, presumably if a facility became available. In re G.M., 2009 MT 59, 349 M 320, 203 P3d 818 (2009). See also In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005).

Error in Ordering Recommitment in Absence of Substantial Evidence That Community-Based Services Would Not Habilitate: T.P. was recommitted to the Montana Developmental Center after the District Court found that T.P. had behaviors posing an imminent risk of serious harm to herself or others that precluded community-based services. However, the evidence upon which the recommitment was based consisted only of general statements regarding physical aggression and deliberate self-harm that, without more, did not support a finding of actual or potential serious harm. Thus, the District Court improperly recommitted T.P. in the absence of substantial evidence that T.P. could not be habilitated in community-based services. In re T.P., 2008 MT 266, 345 M 152, 190 P3d 313 (2008).

Finding That Developmentally Disabled Person Not Involuntarily Held at State Center Not Clearly Erroneous— Failure to Exhaust Administrative Remedies Precluding Judicial Review: Respondent was admitted to the Montana Developmental Center (MDC) on an emergency commitment in 1999, and the commitment was extended for 2 successive years. The MDC treatment team eventually reported that respondent had made substantial improvement and was no longer seriously developmentally disabled and recommended referral for community-based services. The state moved the District Court to adopt the recommendations, but the court did not immediately rule on the motion. Meanwhile, respondent's commitment order expired, although

respondent remained at MDC, lacking any place else to go. Respondent subsequently petitioned for declaratory and injunctive relief to compel the state to immediately place respondent in a community-based service, arguing that the state's failure to do so left respondent in a de facto involuntary commitment. The District Court found that respondent was not being held involuntarily and dismissed the petition, and respondent appealed. Because respondent had failed to exhaust the administrative process, the record was insufficient for the Supreme Court to determine whether any of respondent's constitutional rights were violated as a result of the delay in community placement. However, the court noted that after the commitment order expired, respondent was free to leave MDC but chose not to, so the District Court's finding that respondent was not held involuntarily was not clearly erroneous. The District Court was affirmed. In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005).

Finding That Individual Not Developmentally Disabled Erroneous Absent Evidence of Possible Safe Community Habilitation: Following a sexual assault on his 3-year-old niece, T.S.D. was committed to the Montana Developmental Center on an emergency petition while the state sought an adjudication for extended commitment. T.S.D.'s commitment was subsequently renewed for two 1-year periods. On hearing a third petition for commitment, the District Court concluded that T.S.D. could be safely and effectively habilitated in community-based services and thus was not seriously developmentally disabled. On appeal, the Supreme Court reversed. The District Court mischaracterized the statement from the chief executive officer of a community services organization that T.S.D. could be safely habilitated. In light of evidence from the doctor at the Montana Developmental Center, the residential facility screening team, and the qualified mental retardation professional responsible for T.S.D.'s habilitation that T.S.D. remained a threat to the safety of others and should not be placed in community services, the District Court's conclusion that T.S.D. was not seriously developmentally disabled was reversible error. In re T.S.D., 2005 MT 35, 326 M 82, 107 P3d 487 (2005).

53-20-126. Maximum period of commitment or treatment plan.

Compiler's Comments

2017 Amendment: Chapter 258 in second sentence at beginning inserted exception clause; and made minor changes in style. Amendment effective May 3, 2017.

2015 Amendment: Chapter 373 substituted "may not exceed 90 days for commitment to a residential facility or 1 year for the imposition of a community treatment plan" for "may not exceed 1 year". Amendment effective October 1, 2015.

2007 Amendment: Chapter 252 in first sentence near middle after "commitment" inserted "to a residential facility or the imposition of the community treatment plan" and at end after "committed" substituted "or for which a community treatment plan is imposed" for "to the residential facility". Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

1995 Amendment: Chapter 255 deleted (1) that read: "(1) No person shall be admitted to a residential facility for longer than 30 days except on approval of the court. Whenever a person is admitted to a residential facility for longer than 30 days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person"; in first sentence, near beginning, substituted "commitment" for "admission" and near end substituted "committed" for "admitted"; and made minor changes in style. Amendment effective March 28, 1995.

Case Notes

Involuntary Commitment Affirmed Given District Court Consideration of Person's Situation, Needs, and Future Placement: Following numerous violent incidents while L.S. was in a community-based group home, L.S. was committed to the Montana Developmental Center (MDC) on an emergency basis. While at MDC, L.S.'s behavior materially improved. The state subsequently petitioned for commitment at MDC for up to 1 year. Witnesses for L.S. argued that the appropriate placement would be in community-based services. The District Court found that L.S. had a developmental disability and impaired cognitive functioning and, without adequate community-based services available, posed a sufficient risk of harm to self or others to meet the statutory definition of "seriously developmentally disabled". The court committed L.S. to MDC for 1 year or until suitable placement in community-based services was available. L.S. appealed the commitment, but the Supreme Court affirmed. The District Court fully considered L.S.'s situation, needs, and future placement, and it was not an abuse of discretion to commit L.S. to MDC pending availability of community-based services. In re L.S., 2009 MT 83, 349 M 518, 204 P3d 707 (2009). See also In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005), and In re G.M., 2009 MT 59, 349 M 320, 203 P3d 818 (2009).

53-20-127. Transfer to another facility — release to community-based alternative — hearing.

Compiler's Comments

2013 Amendment: Chapter 68 throughout section in four places substituted "qualified intellectual disability professional" for "qualified mental retardation professional". Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

1995 Amendment: Chapter 255 in (1), in two places, substituted "resident" for "person", near beginning substituted "committed" for "admitted", after "professional" substituted "responsible for the resident's habilitation" for "in charge of the resident", near end, after "others", substituted "the qualified mental retardation professional" for "or that it is in the best interests of the resident that he be transferred to another residential facility, then he", and at end deleted "or transfer the resident to the other residential facility no less than 15 days after sending"; in (2), after "release", substituted "must be sent at least 15 days prior to the date of release" for "or transfer"; inserted (2)(e) requiring notice to the resident's advocate; at end of (2)(f) substituted "commitment" for "admission" and deleted second sentence that read: "If the resident has been found unfit to proceed to trial, notice must be sent to the court that found the resident unfit to proceed to trial and to the county attorney and the attorney who represented the resident at the time the resident was found unfit to proceed to trial"; in (3), in three places after "release", deleted "or transfer"; in (4), at beginning, substituted "A resident may be transferred without the notice provided in subsection (2)" for "Nothing in this subsection (1) prevents the transfer of a", after "treatment or" deleted "emergency transfer of a resident", and after "facility" inserted "for emergency treatment"; in (5), near beginning of first sentence, substituted "committed" for "admitted", substituted "commitment" for "admission", near end, after "professional", substituted "responsible for the resident's habilitation" for "in charge of the resident", and at end deleted "or transfer the resident to the alternative if it is a residential alternative" and at beginning of second sentence deleted "transfer or" and near end substituted "resident's commitment" for "present residential alternative"; adjusted subsection references; and made minor changes in style. Amendment effective March 28, 1995.

1991 Amendment: In first sentence in (1) and in two places in (2) substituted "qualified mental retardation professional" for "professional person"; in (1), after "decides that", inserted "the person no longer requires placement in a residential facility and that"; and made minor changes in style.

53-20-128. Recommitment — extension of community treatment plan.

Compiler's Comments

2013 Amendment: Chapter 68 throughout section in three places substituted "qualified intellectual disability professional" for "qualified mental retardation professional". Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

2009 Amendment: Chapter 2 in (5)(b) after "residential" inserted "facility". Amendment effective October 1, 2009.

2007 Amendment: Chapter 252 in (1) at beginning substituted "The qualified mental retardation professional responsible for a resident's habilitation or the case manager responsible for habilitation of a person under a community treatment plan may" for "If the qualified mental retardation professional responsible for a resident's habilitation determines that the resident continues to be seriously developmentally disabled and in need of commitment to a residential facility beyond the term of the current commitment order, the qualified mental retardation professional shall", after "request" inserted "the county attorney file", and at end after "recommitment" substituted "or extension of the order imposing the community treatment plan" for "be filed"; in (2) near beginning after "recommitment" inserted "or extension" and at end after "commitment" inserted "or the expiration of the order imposing the current community treatment plan"; in (3) at beginning inserted "A petition for recommitment or extension of a community treatment plan must be accompanied by a written report containing", near middle after "professional" substituted "or case manager" for "must be presented in a written report that includes", near end after "habilitation plan" inserted "or community treatment plan", and at end substituted "respondent" for "resident"; in (4) at beginning substituted "petition must be reviewed" for "resident must be screened"; in (5) after "professional" inserted "or case manager"; substituted (6) providing that provisions of 53-20-125 apply to a petition for recommitment or extension of an order imposing a community treatment plan for former language that read: "If the residential facility screening team recommends that the resident be recommitted, the court may enter an order for recommitment without hearing unless a person notified as provided in subsection (5) requests that a hearing be held or the court determines that it would be in the best interest of the resident to hold a hearing"; deleted former (7) that read: "(7) If the court sets a hearing, the court shall provide notice to all of the persons notified pursuant to subsection (5)"; in (7) deleted first two sentences that read: "A court may order a resident's recommitment to a residential facility if the court determines that the resident continues to be seriously developmentally disabled and in need of continued commitment to the residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require commitment to a residential facility or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall refer the resident to the department of public health and human services to be considered for placement in community-based services according to 53-20-209" and in first sentence at beginning substituted "If either the court or the residential facility screening team finds that the respondent has been placed voluntarily" for "If the resident is placed"; inserted (9) providing that a court may not extend an order imposing a community treatment plan unless the residential facility screening team certifies that proposed services meet certain conditions; deleted (10) that read: "(10) At a hearing, the court may inquire concerning the suitability of continuing a resident's commitment to a residential facility"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

1995 Amendments: Chapter 255 substituted current text concerning commitment beyond term of commitment order and procedure for recommitment for former text that read: "(1) If the qualified mental retardation professional in charge of the resident determines that the admission to the residential facility should continue beyond the period specified in the court order, he shall, at least 15 days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court that issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request must be accompanied by a written report describing the habilitation plan that has been undertaken for the resident and the future habilitation plan that is anticipated by the qualified mental retardation professional.

(2) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the recommendation. The hearing must be conducted in the manner set forth in 53-20-125. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require treatment in a residential facility or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall refer the respondent to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209. If the person is placed in community-based services or if the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court may not order continuation of admission to a residential facility that does not have an individualized habilitation plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility." Amendment effective March 28, 1995.

Chapter 546 in (8) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In two places in (1) substituted "qualified mental retardation professional" for "professional person"; in third sentence of (2), after "require", substituted "treatment in a residential facility" for "residential treatment"; and made minor changes in style.

1987 Amendment: In third sentence of (2) substituted language allowing continuation of admission or transfer of a resident by court order for "If the court finds that the resident is still in need of developmental disabilities services but does not require residential treatment, it shall order an appropriate course of community-based habilitation or, if all parties are willing for the resident to participate in a community-based program of habilitation, it shall dismiss the petition" and in fourth sentence inserted "person is placed in community-based services or if the".

Case Notes

Error in Ordering Recommitment in Absence of Substantial Evidence That Community-Based Services Would Not Habilitate: T.P. was recommitted to the Montana Developmental Center after the District Court found that T.P. had behaviors posing an imminent risk of serious harm to herself or others that precluded community-based services. However, the evidence upon which the recommitment was based consisted only of general statements regarding physical aggression and deliberate self-harm that, without more, did not support a finding of actual or potential serious harm. Thus, the District Court improperly recommitted T.P. in the absence of substantial evidence that T.P. could not be habilitated in community-based services. In re T.P., 2008 MT 266, 345 M 152, 190 P3d 313 (2008).

Release of Sealed Involuntary Commitment Records — Redacted Records Sufficiently Protective of Personal Privacy Rights: The Montana Advocacy Program (MAP) sought to disclose redacted District Court documents related to T.L.S.'s involuntary commitment for a serious developmental disability after T.L.S. died while residing at the Montana Developmental Center. The District Court held that MAP was required to establish a compelling state interest warranting public disclosure of the sealed court documents and denied the motion to release the court file. On appeal, the Supreme Court noted that the documents were sealed under 53-21-103 but that the commitment proceedings were conducted pursuant to this part, which does not contain any provisions relating to sealing and opening court records. Therefore, 53-21-103 did not apply, and MAP was not required to establish good cause before the court record could be opened. It was not disputed that the records were subject to public inspection under the constitutional right to know, which is presumed absent a showing of individual privacy rights sufficient to override the right to know, so the District Court erred in requiring MAP to show a compelling state interest. Thus, the question was whether T.L.S.'s privacy interest clearly exceeded the merits of public disclosure. It is the party asserting individual privacy rights that carries the burden to establish that those privacy rights exceed the merits of public disclosure. MAP contended, and the Supreme Court agreed, that the merits of public disclosure were substantial in light of the need to inform the public regarding the actions of the officials and employees involved in the commitment proceedings and to effectively advocate for legislative, administrative, and judicial reforms for the protection of the developmentally disabled. The Supreme Court concluded that T.L.S.'s privacy interests were sufficiently protected by redacting personal information from the record and ordered that the redacted documents be immediately released. In re T.L.S. v. Mont. Advocacy Program, 2006 MT 262, 334 M 146, 144 P3d 818 (2006).

Recommitment Improper When Petition Not Timely Filed: The Department of Corrections and Human Services (now Department of Corrections) failed to comply with the filing requirement specified in this section by filing a petition for recommitment 6 months after rather than 15 days before the commitment order expired. Because the petition was not timely filed, the District Court had no authority to recommit Morlock. In re Morlock, 261 M 499, 862 P2d 415, 50 St. Rep. 1426 (1993).

53-20-129. Emergency admission and commitment.

Compiler's Comments

2015 Amendment: Chapter 444 in (1) at beginning inserted "Subject to the provisions of subsection (3)"; in (3) at end substituted "has confirmed in writing that admission of the person will not cause the census at the facility to exceed its licensed capacity and that the facility can accommodate the emergency needs of the person" for "and the department of public health and human services are given reasonable notice of the need for placement by the developmental disabilities professional responsible for emergency admission"; inserted (3)(b) prohibiting emergency admissions after 2016; and made minor changes in style. Amendment effective May 6, 2015.

2007 Amendment: Chapter 252 in (1) near middle after "residential facility" inserted "or a temporary court-ordered community treatment plan may be imposed", after "emergency basis" inserted "without notice to the person or approval by the residential facility screening team", and at end after "bodily" substituted "injury, as defined in 45-2-101" for "harm"; in (3) near beginning after "admission" inserted "to a residential facility"; in (4) near middle after "admission" inserted "to a residential facility" and at end before "resides" substituted "respondent" for "person"; inserted (5) requiring petition for imposition of an emergency community treatment plan to have written report of a case manager attached and providing that the plan meet certain conditions;

in (6) at end after "commitment" inserted "or imposition of a temporary community treatment plan"; in (7) near middle after "residential facility" inserted "or continued imposition of the temporary community treatment plan" and at end after "commitment" inserted "or continued imposition of the community treatment plan"; in (8) in first sentence after first "commitment" inserted "or continue a temporary community treatment plan", after "when" inserted "the residential facility screening team has recommended and", after second "commitment" inserted "or continued imposition of a community treatment plan", and at end after "bodily" substituted "injury, as defined in 45-2-101" for "harm" and inserted second sentence providing that treatment plan must meet certain conditions; in (9) after "commitment" inserted "or continued imposition of a temporary community treatment plan"; in (10) in three places after "facility" inserted reference to the imposition of a temporary community treatment plan and at end after "filed" deleted "before the court"; deleted former (10) that read: "(10) The residential facility screening team may recommend that the respondent under a petition for emergency commitment be committed by court order to the residential facility on an extended basis"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

1995 Amendment: Chapter 255 substituted current text concerning emergency admission and emergency commitment for former text that read: "A professional person may admit a person believed to be seriously developmentally disabled to a residential facility on an emergency basis when necessary to protect the person or others from death or serious bodily harm. A petition as set out in 53-20-121 and 53-20-125 must be filed on the next judicial day by the county attorney of the county where the person resides. If a petition is filed, the residential facility screening team shall report back to the court on the fifth judicial day following the filing of the petition. Once a petition is filed, continued detention in the residential facility may be allowed only on order of the court when necessary to protect the respondent or others from death or serious bodily harm. In no case may an emergency admission to a residential facility continue for longer than 30 days without subsequent proceedings before the court." Amendment effective March 28, 1995.

Code Commissioner Change: Pursuant to sec. 1, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Social and Rehabilitation Services.

1991 Amendment: At beginning deleted "The parents, guardian, the person himself, or a", before "developmentally" inserted "seriously", at beginning of second sentence deleted "If requested by the parents, guardian, or the person admitted on an emergency basis", after "53-20-121 and" substituted "53-20-125" for "53-20-122", and in third sentence, after "filed, the", substituted "residential facility screening team" for "professional person assigned by the court to conduct the examination and inquiry" and before "judicial day" changed "next" to "fifth"; and made minor changes in style.

Case Notes

Finding That Individual Not Developmentally Disabled Erroneous Absent Evidence of Possible Safe Community Habilitation: Following a sexual assault on his 3-year-old niece, T.S.D. was committed to the Montana Developmental Center on an emergency petition while the state sought an adjudication for extended commitment. T.S.D.'s commitment was subsequently renewed for two 1-year periods. On hearing a third petition for commitment, the District Court concluded that T.S.D. could be safely and effectively habilitated in community-based services and thus was not seriously developmentally disabled. On appeal, the Supreme Court reversed. The District Court mischaracterized the statement from the chief executive officer of a community services organization that T.S.D. could be safely habilitated. In light of evidence from the doctor at the Montana Developmental Center, the residential facility screening team, and the qualified mental retardation professional responsible for T.S.D.'s habilitation that T.S.D. remained a threat to the safety of others and should not be placed in community services, the District Court's conclusion that T.S.D. was not seriously developmentally disabled was reversible error. In re T.S.D., 2005 MT 35, 326 M 82, 107 P3d 487 (2005).

53-20-130. Patient transfers from mental health facilities.

Compiler's Comments

1995 Amendment: Chapter 255 near beginning, after "professional person", inserted "as defined in 53-21-102", near middle substituted "committed" for "admitted", and near end substituted "commitment" for "admission" and "commitments" for "admissions"; and made minor changes in style. Amendment effective March 28, 1995.

53-20-131. Placement in nonstate facility.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (1).

1991 Amendment: Deleted former (1) that read: "(1) If a person is admitted to a residential facility under the provisions of this part and is eligible for hospital care, treatment, or habilitation by an agency of the United States and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or residential facility operated by the agency and in which the person is admitted shall, with respect to the person, be vested with the same powers as the superintendent of the Montana developmental center with respect to detention, custody, transfer, and release of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so admitted and to determine the necessity for continuance of their admission"; and made minor changes in style.

1985 Amendment: In (1) changed "Boulder River school and hospital" to "Montana developmental center".

53-20-132. Court-ordered placement in community-based services prohibited except through statutory process.

Compiler's Comments

2007 Amendment: Chapter 252 in first sentence at end inserted "except by imposing a community treatment plan pursuant to this part" and in second sentence before "community-based" inserted "voluntary"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change.

1991 Amendment: At end of first sentence, after "order", deleted "except as provided in 53-20-123(4)".

Case Notes

Proper Consideration of Availability of Community-Based Services — No Absolute Right to Community-Based Services: In a prehearing motion during commitment proceedings, G.M. asked the District Court to hold that G.M. would not meet the definition of seriously developmentally disabled if G.M. could be safely and effectively habilitated through community-based services, whether or not those services were actually available to G.M., and that if there was no community-based facility available that would accept him, G.M. could not be committed to the Montana Developmental Center. The District Court held that while there is a statutory preference for community-based placement, there is no absolute right to such placement. G.M. appealed, but the Supreme Court affirmed. Community-based facilities are defined as facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities, and here the District Court properly considered whether those services were actually available. However, there is no absolute right to placement in a community-based facility. G.M. provided no proof of any acceptable alternative placement or of the availability of community-based services. The Supreme Court could not determine from the record whether those services were actually available to G.M. but noted that the parties stipulated that G.M. could be placed in a community-based facility at any time during the commitment, presumably if a facility became available. In re G.M., 2009 MT 59, 349 M 320, 203 P3d 818 (2009). See also In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005).

Constitutionality of Statute Governing Community Placement of Developmentally Disabled Individuals: Respondent attacked the constitutionality of this section on grounds that District Courts are statutorily not allowed to directly place individuals within community services following expiration of involuntary commitments, in violation of individuals' right of access to courts. The Supreme Court noted that under Art. XII, sec. 3, Mont. Const., the Legislature has enacted a statutory scheme, of which this section is a part, that designates the forms of available public assistance and that the scheme provides community-based services to the disabled through the administrative process as opposed to a direct judicial order. However, the preference for community placement over institutionalization does not create an absolute right to community placement, nor does this section preclude a person who is denied services through the administrative process from administrative appeal or judicial review. Respondent's constitutional challenge failed to recognize that the statute is only one part of the statutory scheme, and given respondent's overly narrow focus, the court concluded that this section is facially constitutional. In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005), followed in In re R.E.A., 2006 MT 12, 330 M 392, 127 P3d 517 (2006).

Finding That Individual Not Developmentally Disabled Erroneous Absent Evidence of Possible Safe Community Habilitation: Following a sexual assault on his 3-year-old niece, T.S.D. was committed to the Montana Developmental Center on an emergency petition while the state sought an adjudication for extended commitment. T.S.D.'s commitment was subsequently renewed for two 1-year periods. On hearing a third petition for commitment, the District Court concluded that T.S.D. could be safely and effectively habilitated in community-based services and thus was not seriously developmentally disabled. On appeal, the Supreme Court reversed. The District Court mischaracterized the statement from the chief executive officer of a community services organization that T.S.D. could be safely habilitated. In light of evidence from the doctor at the Montana Developmental Center, the residential facility screening team, and the qualified mental retardation professional responsible for T.S.D.'s habilitation that T.S.D. remained a threat to the safety of others and should not be placed in community services, the District Court's conclusion that T.S.D. was not seriously developmentally disabled was reversible error. In re T.S.D., 2005 MT 35, 326 M 82, 107 P3d 487 (2005).

53-20-133. Residential facility screening team — referral by court — membership — rules.

Compiler's Comments

2009 Amendment: Chapter 2 in (4) in introductory clause after "recommend" substituted "imposition of" for "commitment to". Amendment effective October 1, 2009.

2007 Amendment: Chapter 252 in (1) in two places after "facility" inserted reference to imposition of a community treatment plan and near middle after "whether" substituted "commitment to" for "placement and habilitation in"; in (2) in two places after "facility" inserted reference to imposition of a community treatment plan and near middle after "determines that" substituted "commitment to" for "placement and habilitation in"; in (3) near beginning after "determine that" substituted "commitment to" for "placement and habilitation in" and after second "facility" inserted "or imposition of a community treatment plan"; substituted (4) providing that the residential facility screening team may not recommend commitment to a community treatment plan unless the team finds that the proposed plan meets certain conditions for former text that read: "The residential facility screening team shall provide the court and the county attorney with the social and placement information relied upon by the residential facility screening team in making its determination"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

1995 Amendments: Chapter 255 in five places substituted "respondent" for "person"; in (1), near beginning, substituted "receives a petition" for "considers a person" and near middle, after "court", inserted "prior to proceeding"; in (2) inserted "53-20-128, or 53-20-129"; in (3), after "appropriate", inserted "on an extended basis"; and in (4), after "court", inserted "and the county attorney". Amendment effective March 28, 1995.

Chapter 546 in (5) substituted "department of public health and human services" for "department of social and rehabilitation services and the department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Name Change: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Case Notes

Involuntary Commitment Affirmed Given District Court Consideration of Person's Situation, Needs, and Future Placement: Following numerous violent incidents while L.S. was in a community-based group home, L.S. was committed to the Montana Developmental Center (MDC) on an emergency basis. While at MDC, L.S.'s behavior materially improved. The state subsequently petitioned for commitment at MDC for up to 1 year. Witnesses for L.S. argued that the appropriate placement would be in community-based services. The District Court found that L.S. had a developmental disability and impaired cognitive functioning and, without adequate community-based services available, posed a sufficient risk of harm to self or others to meet the statutory definition of "seriously developmentally disabled". The court committed L.S. to MDC for 1 year or until suitable placement in community-based services was available. L.S. appealed the commitment, but the Supreme Court affirmed. The District Court fully considered L.S.'s situation, needs, and future placement, and it was not an abuse of discretion to commit L.S. to MDC pending availability of community-based services. In re L.S., 2009 MT 83, 349 M 518, 204 P3d 707 (2009). See also In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005), and In re G.M., 2009 MT 59, 349 M 320, 203 P3d 818 (2009).

Clear and Convincing Evidence Standard of Proof Required in Commitment Proceeding Involving Persons With Developmental Disabilities: G.M. is a developmentally disabled man in his 30s who was repeatedly recommitted to the Montana Developmental Center for about half his life. In 2007, the state petitioned to recommit G.M. G.M. filed a prehearing motion requesting that the state be required to prove physical facts or evidence beyond a reasonable doubt and all other matters by clear and convincing evidence, but the District Court denied the motion and G.M. appealed. The Supreme Court found no legal or factual reason to conclude that the standard of proof advocated by G.M. would protect individual constitutional rights to any greater degree than the established standard requiring the state to prove grounds for commitment by clear and convincing evidence, so the court held that a standard of proof higher than clear and convincing evidence was not appropriate for commitment proceedings involving persons with development disabilities. In re G.M., 2009 MT 59, 349 M 320, 203 P3d 818 (2009), following Addington v. Tex., 441 US 418 (1979), and Heller v. Doe, 509 US 312 (1993).

Release of Sealed Involuntary Commitment Records — Redacted Records Sufficiently Protective of Personal Privacy Rights: The Montana Advocacy Program (MAP) sought to disclose redacted District Court documents related to T.L.S.'s involuntary commitment for a serious developmental disability after T.L.S. died while residing at the Montana Developmental Center. The District Court held that MAP was required to establish a compelling state interest warranting public disclosure of the sealed court documents and denied the motion to release the court file. On appeal, the Supreme Court noted that the documents were sealed under 53-21-103 but that the commitment proceedings were conducted pursuant to this part, which does not contain any provisions relating to sealing and opening court records. Therefore, 53-21-103 did not apply, and MAP was not required to establish good cause before the court record could be opened. It was not disputed that the records were subject to public inspection under the constitutional right to know, which is presumed absent a showing of individual privacy rights sufficient to override the right to know, so the District Court erred in requiring MAP to show a compelling state interest. Thus, the question was whether T.L.S.'s privacy interest clearly exceeded the merits of public disclosure. It is the party asserting individual privacy rights that carries the burden to establish that those privacy rights exceed the merits of public disclosure. MAP contended, and the Supreme Court agreed, that the merits of public disclosure were substantial in light of the need to inform the public regarding the actions of the officials and employees involved in the commitment proceedings and to effectively advocate for legislative, administrative, and judicial reforms for the protection of the developmentally disabled. The Supreme Court concluded that T.L.S.'s privacy interests were sufficiently protected by redacting personal information from the record and ordered that the redacted documents be immediately released. In re T.L.S. v. Mont. Advocacy Program, 2006 MT 262, 334 M 146, 144 P3d 818 (2006).

Finding That Developmentally Disabled Person Not Involuntarily Held at State Center Not Clearly Erroneous— Failure to Exhaust Administrative Remedies Precluding Judicial Review: Respondent was admitted to the Montana Developmental Center (MDC) on an emergency commitment in 1999, and the commitment was extended for 2 successive years. The MDC treatment team eventually reported that respondent had made substantial improvement and was no longer seriously developmentally disabled and recommended referral for community-based services. The state moved the District Court to adopt the recommendations, but the court did not immediately rule on the motion. Meanwhile, respondent's commitment order expired, although

respondent remained at MDC, lacking any place else to go. Respondent subsequently petitioned for declaratory and injunctive relief to compel the state to immediately place respondent in a community-based service, arguing that the state's failure to do so left respondent in a de facto involuntary commitment. The District Court found that respondent was not being held involuntarily and dismissed the petition, and respondent appealed. Because respondent had failed to exhaust the administrative process, the record was insufficient for the Supreme Court to determine whether any of respondent's constitutional rights were violated as a result of the delay in community placement. However, the court noted that after the commitment order expired, respondent was free to leave MDC but chose not to, so the District Court's finding that respondent was not held involuntarily was not clearly erroneous. The District Court was affirmed. In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005).

53-20-134. Court records to be kept separate — sealed — names omitted.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

53-20-140. Amendment to commitment order or treatment plan — emergency amendment.

Compiler's Comments

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

Effective Date: This section is effective October 1, 2007.

53-20-141. Denial of legal rights.

Compiler's Comments

2013 Amendment: Chapter 68 in (3) in last sentence substituted "qualified intellectual disability professional" for "qualified mental retardation professional". Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

2007 Amendment: Chapter 252 in (1) near beginning after "person" substituted "committed" for "admitted" and after "facility" inserted "or for whom a community treatment plan has been imposed"; in (2) in first sentence near beginning after "facility" inserted "or a community treatment plan is imposed for the person", after "30 days" deleted "for an extended course of habilitation", and after "ordering the" substituted "commitment or imposing the community treatment plan" for "admission", in third sentence near middle after "conclusion of the" substituted "commitment or expiration of the order imposing the community treatment plan" for "admission", and in fourth sentence after "period of the" substituted "commitment or order imposing a community treatment plan" for "admission"; in (3) in first sentence near beginning after "been" substituted "committed" for "admitted", after "facility" inserted "or for whom a community treatment plan has been imposed", after "termination of the" substituted "commitment or expiration of the order imposing the community treatment plan" for "admission", and at end after "was" substituted "committed or the community treatment plan was imposed" for "admitted", in second sentence near middle before "proceedings" deleted "admission", and at beginning of third sentence before "a written" substituted "Upon termination of any commitment or order imposing a community treatment plan under this part, the qualified mental retardation professional or case manager in charge of the person's care shall give the person" for "A person who leaves a residential facility following a period of evaluation and habilitation must be given"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 14, Ch. 252, L. 2007, was a severability clause.

1991 Amendment: Deleted former (4) that read: "(4) Any person admitted to a residential facility prior to July 1, 1975, shall enjoy all the rights and privileges of a person admitted after July 1, 1975"; and made minor changes in style.

53-20-142. Rights while in residential facility.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 35, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

2013 Amendment: Chapter 68 throughout section in four places substituted "qualified intellectual disability professional" for "qualified mental retardation professional"; in (5) substituted "degree of intellectual disability" for "degree of retardation"; and made minor changes in style. Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

1997 Amendment: Chapter 472 at end of (5) deleted "or handicaps"; and made minor changes in style.

1991 Amendment: In (3), (4), (7), and (14), substituted "the individual treatment planning team or the qualified mental retardation professional" for "a professional person"; in (6), at end of third sentence, substituted "facility" for "institution"; and made minor changes in style.

Case Notes

State's Duty to Provide Institutional Care: The state has a duty under this section, not inconsistent with the theories of negligent hiring, negligent supervision, and agency, to provide proper care for persons admitted to a residential facility, and it was error for the District Court to refuse to instruct on those theories in a case in which that statutory duty was called into question. Maguire v. St., 254 M 178, 835 P2d 755, 49 St. Rep. 688 (1992).

53-20-145. Right to be free from unnecessary or excessive medication.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: At beginning of third sentence substituted "individual treatment planning team" for "professional person in charge of the facility" and in next to last sentence, before "program", inserted "habilitation"; and made minor changes in style.

Case Notes

Involuntary Commitment and Medication — No Plain Error Found: After D.K.D. was found to be dangerous to himself and others, he was involuntarily committed under a District Court order stating that the staff at the Montana Developmental Center "shall have the authority to administer medication to D.K.D. on an involuntary basis, pursuant to their policy." The Supreme Court held that the District Court's order authorized the Center to do no more than its policies already authorized it to do and that the language of the order, although gratuitous, was not plain error under the common-law plain error doctrine. The Supreme Court would therefore not interfere with the District Court order, inasmuch as D.K.D.'s counsel failed to object to the order. In re D.K.D., 2011 MT 74, 360 Mont. 76, 250 P.3d 856.

53-20-146. Right not to be subjected to certain treatment procedures.

Compiler's Comments

2015 Amendment: Chapter 444 in (6) at end substituted "an individual designated by the department of public health and human services to order the treatment for an individual placed in a residential facility" for "the superintendent of the residential facility". Amendment effective May 6, 2015.

2013 Amendment: Chapter 68 in (2) and (4) substituted "qualified intellectual disability professional" for "qualified mental retardation professional". Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

1995 Amendment: Chapter 255 in (2), in fifth sentence, substituted "developmental disabilities professional" for "professional person" and in last sentence substituted "resident" for "person"; and made minor changes in style. Amendment effective March 28, 1995.

1991 Amendment: In (2), at beginning of fifth sentence, substituted "Use of restraints may be authorized by a physician, professional person, or a qualified mental retardation professional" for "Only a professional person may authorize the use of restraints" and in sixth sentence, after "restraints", deleted "by a professional person"; in (4), in second sentence, substituted "qualified mental retardation professional" for "professional person"; near end of (6) substituted "a physician and the superintendent" for "the professional person in charge"; and made minor changes in style.

53-20-147. Right not to be subjected to experimental research.

Compiler's Comments

1993 Amendment: Chapter 10 near end of (2) substituted "department of health and human services" for "department of health, education, and welfare"; and made minor changes in style.

53-20-148. Right to habilitation.

Compiler's Comments

2015 Amendment: Chapter 444 in (9) at beginning substituted "A residential facility" for "The superintendent of the residential facility, or the superintendent's designee"; and made minor changes in style. Amendment effective May 6, 2015.

2013 Amendment: Chapter 68 throughout section in three places substituted "qualified intellectual disability professional" for "qualified mental retardation professional"; and in (1) substituted "degree of intellectual disability" for "degree of retardation". Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

1997 Amendment: Chapter 472 in (1), at end of first sentence, substituted "disabling" for "handicapping"; and made minor changes in style.

1991 Amendment: In (4), at end of first sentence, substituted "an individual treatment planning team" for "the facility" and in second sentence, before "implemented", deleted "developed by appropriate professional persons and"; in (4)(e) substituted "professionals" for "professional persons"; in (5), in second sentence, substituted "the individual treatment planning team that" for "a professional person who"; in (5) and (10) substituted "facility" for "institution"; in two places in (6) and in (7) substituted "qualified mental retardation professional" for "professional person"; in (7), near end of second sentence after "reviewed", substituted "and revised accordingly by the individual treatment planning team" for "by an interdisciplinary team of no less than two professional persons and such resident care workers as are directly involved in his habilitation and care"; in (9), near beginning, substituted "superintendent" for "professional person in charge" and after "facility" inserted "or his designee"; at beginning of (10) inserted "Each resident", after "guardian of each resident" changed "or" to "and", in middle, before "all", inserted "and be orally informed of", after "habilitation" inserted "the rights accorded by 53-20-142, and", and deleted former second sentence requiring that resident upon admission and parent or guardian be informed of and be provided a written copy of standards; and made minor changes in style.

53-20-161. Maintenance of records.

Compiler's Comments

2015 Amendment: Chapter 444 substituted (1)(f) regarding release of resident records by a residential facility through individual designated by the department for former (1)(f), (1)(g), and (1)(h) that read: "(f) the superintendent of the residential facility or the superintendent's designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or the superintendent's designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or the superintendent's designee as custodian of a resident of that facility whenever release is required by federal or state law or department of public health and human services rules"; in (2) substituted "residential facility under subsection (1)(f)" for "superintendent or the superintendent's designee as set forth in subsection (1)(f), (1)(g), or (1)(h)" and in two places after "(1)(f)" deleted "(1)(g), or (1)(h)"; and made minor changes in style. Amendment effective May 6, 2015.

2013 Amendment: Chapter 68 in (3) in three places substituted "qualified intellectual disability professional" for "qualified mental retardation professional". Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

1995 Amendments: Chapter 255 in (2), near end of first sentence, inserted "the resident's advocate, if any"; at end of (3)(f) substituted "habilitation plan" for "program"; in (3)(j) substituted "qualified mental retardation professional" for "professional person"; in (3)(m), after "professional", deleted "professional person"; and made minor changes in style. Amendment effective March 28, 1995.

Chapter 546 in (1)(h) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: In (1), in first sentence before "persons", deleted "professional" and after "persons" deleted "to the resident care workers"; in three places in (2) substituted "facility" for "institution"; in (3)(k) substituted "qualified mental retardation professional" for "professional person"; in (3)(m) inserted "qualified mental retardation professional" and after "person" inserted "or physician"; and made minor changes in style.

53-20-162. Training for resident care workers.

Compiler's Comments

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change.

1991 Amendment: In third sentence, after "shall", substituted "receive supervision that emphasizes the protection of residents and their rights" for "be under the direct professional supervision of a professional person"; and made minor changes in style.

53-20-163. Abuse of residents prohibited.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 204 in (4)(c) substituted "on the next business day following" for "within 24 hours of"; and inserted (10) concerning rulemaking authority. Amendment effective April 8, 2015.

Chapter 444 in (2) near beginning substituted "the facility" for "each cottage and building"; in (3)(a), (3)(b), and (3)(c) inserted language concerning reportees for "the superintendent of the facility and to the department of justice"; in (4)(a) at end substituted "as required by this section" for "to the department of justice"; in (5) near beginning substituted "director of the department of public health and human services" for "residential facility" and near beginning of second sentence before "residential facility" inserted "director and the"; in (6) after "unknown source" inserted "at the Montana developmental center"; in (7) near beginning substituted "Montana developmental center" for "residential facility"; and made minor changes in style. Amendment effective May 6, 2015.

2013 Amendment: Chapter 258 in (1) substituted current language regarding mistreatment, neglect, or abuse for "Every residential facility shall prohibit mistreatment, neglect, or abuse in any form of any resident"; inserted (2) regarding written policy statement for reporting and investigating allegations; in (3) at beginning before "must be reported" substituted provision regarding allegations from unknown source for "Alleged violations", inserted "and to the department of justice", and substituted "the residential facility shall maintain" for "there must be"; inserted (3)(a) regarding reporting of each allegation and injury; in (3)(b) and (3)(c) substituted references to allegation or injury from an unknown source for "alleged violation"; in (4) substituted current language regarding reporting for "The reports must also be made to the mental disabilities board of visitors monthly. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members"; inserted (5) through (8) regarding timing, scope, and procedures used during department of justice investigation of each allegation or injury from an unknown source and referrals to the appropriate local law enforcement agency; and made minor changes in style. Amendment effective October 1, 2013.

1995 Amendment: Chapter 546 at end of (1)(b) substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 27 in (1)(b) substituted present language concerning investigation and reporting of alleged violation for "the results of the preliminary investigation are reported to the superintendent of the facility within 24 hours of the report of the incident"; and made minor changes in style.

1991 Amendment: In second sentence of (1) and in (1)(b) substituted "superintendent" for "professional person in charge"; in (2), after "monthly", deleted "and to the developmental disabilities advisory council at its next scheduled public meeting"; and made minor changes in style.

53-20-164. Resident labor.

Compiler's Comments

2013 Amendment: Chapter 68 in (3) and (4) substituted "qualified intellectual disability professional" for "qualified mental retardation professional". Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: In (3)(a) and (4)(a) substituted "the qualified mental retardation professional and the individual treatment planning team" for "a professional person"; and made minor changes in style.

53-20-165. Clothing for residents discharged or conditionally released.

Compiler's Comments

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change.

53-20-172. Dual eligibility for services.

Compiler's Comments

Effective Date: Section 5, Ch. 374, L. 2007, provided that this section is effective July 1, 2007.

53-20-173. Autism facilities grant — purpose — eligibility — rulemaking.

Compiler's Comments

Effective Date: Section 7, Ch. 748, L. 2023, provided: "[This act] is effective July 1, 2023."

Preamble: The preamble attached to Ch. 748, L. 2023, provided: "WHEREAS, during the past decade, the prevalence of autism in the United States has increased; and

WHEREAS, approximately half a million children with autism will legally become adults within the next decade; and

WHEREAS, it is the intent of the Legislature that adults with autism living in Montana have access to supportive services and housing options to meet their needs."

Administrative Rules

Title 37, chapter 34, subchapter 29, ARM Autism grant program.

53-20-174. Autism facilities special revenue account.

Compiler's Comments

Effective Date: Section 7, Ch. 748, L. 2023, provided: "[This act] is effective July 1, 2023."

Preamble: The preamble attached to Ch. 748, L. 2023, provided: "WHEREAS, during the past decade, the prevalence of autism in the United States has increased; and

WHEREAS, approximately half a million children with autism will legally become adults within the next decade; and

WHEREAS, it is the intent of the Legislature that adults with autism living in Montana have access to supportive services and housing options to meet their needs."

Part 2
Community-Based Services

Part Compiler's Comments

Severability Clause: Section 15, Ch. 325, L. 1974, was a severability clause.

Part Case Notes

Constitutionality: This part is constitutional within purview of 1972 Montana Constitution and supersedes such city ordinances that restrict use of residential areas to one-family dwellings only. State ex rel. Thelen v. Missoula, 168 M 375, 543 P2d 173 (1975).

Part Attorney General's Opinions

Authority of Developmental Disabilities Planning and Advisory Council to Set Staff Salaries: In accordance with the more recent and specific language of 53-20-206 (now repealed) and the exclusionary language of 2-15-2204 (renumbered 2-15-1869), the Developmental Disabilities Planning and Advisory Council has authority to set salaries of the Council's staff without reference to the state personnel classification plan established in 2-18-201. 44 A.G. Op. 1 (1991).

53-20-201. Short title.

Attorney General's Opinions

Special Education — Funding and Services: A school district may not establish a special education policy wholly independent of state funding. A special education program established by a district is not required to serve children in group homes within the district who are not legal residents but may do so cooperatively or by contract. 37 A.G. Op. 98 (1977).

53-20-202. Definitions.

Compiler's Comments

2019 Amendment: Chapter 394 in definition of comprehensive developmental disability system in (o) after "sociolegal services" inserted "including case management services as defined in 42 CFR 440.169"; and made minor changes in style. Amendment effective July 1, 2019.

2015 Amendment: Chapter 451 inserted definitions of legal resident, military dependent, military service, and military service member. Amendment effective May 8, 2015.

2013 Amendment: Chapter 68 in definition of developmental disabilities substituted "intellectual disability" for "mental retardation" in two places and substituted "intellectually disabled" for "mentally retarded". Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

2005 Amendment: Chapter 78 deleted definition of planning and advisory council that read: ""Planning and advisory council" or "council" means the developmental disabilities planning and advisory council created in 2-15-1869." Amendment effective March 24, 2005.

1997 Amendment: Chapter 472 in definition of developmental disabilities, near beginning, substituted "disabling" for "handicapping" and near end substituted "results in the person having a substantial disability" for "constitutes a substantial handicap of the person"; and made minor changes in style.

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (4).

Chapter 546 in definition of Department substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: At end of definition of planning and advisory council deleted reference to subsections (1), (2), (3), and (10) of 2-15-2204.

53-20-203. Responsibilities of department.

Compiler's Comments

2019 Amendment: Chapter 246 in (4) near end substituted "listed" for "referred to" and inserted subsection reference in "53-20-202"; inserted (6) concerning review of administrative rules, policies, and procedures and subsequent required actions; and made minor changes in style. Amendment effective May 2, 2019.

2017 Amendment: Chapter 265 inserted (5)(c) regarding persons residing at or released from the Montana developmental center into a community home; and made minor changes in style. Amendment effective October 1, 2017.

Applicability: Section 5, Ch. 265, L. 2017, provided: "(1) [This act] applies to individuals who are admitted into or residing at the Montana developmental center on or after October 1, 2017, or were released from the Montana developmental center on or after May 6, 2015, and placed in a community home as defined in 53-20-302.

(2) The 2-year time period for monitoring of individuals released from the Montana developmental center into a community home begins:

(a) on October 1, 2017, for individuals who were released from the Montana developmental center on or before October 1, 2017; and

(b) for individuals released after October 1, 2017, on the date of an individual's release from the Montana developmental center."

2005 Amendment: Chapter 78 in (4) at beginning after "prepare" deleted "with the assistance of the planning and advisory council"; and made minor changes in style. Amendment effective March 24, 2005.

1997 Amendments: Chapter 171 in (2), at end after "53-20-205", deleted "and 53-20-207"; deleted former (6) that read: "provide state personnel to assist regional councils provided for in 53-20-207"; and made minor changes in style.

Chapter 472 in (8) substituted "children with physical disabilities" for "physically handicapped children"; and made minor changes in style.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (1), (8), and (9) and made minor changes in grammar to conform to the changes.

1987 Amendments: Chapter 426 deleted former (5) that required the Department to provide a quarterly report to the Developmental Disabilities Planning and Advisory Council.

Chapter 609 inserted (9) requiring the Department to use funds available for special assistance to certain children if such assistance is not otherwise provided by law.

1981 Appropriations Act — Medicaid Funds — Community Services: Section 19, HB 500 (1981), provided in part: "The department is encouraged to utilize medicaid funds to support community services for the developmentally disabled where the use of such funds is cost-effective in providing services in the least restrictive environment. The department may use any savings generated from the budget for the developmentally disabled to develop additional community services.

The department of social and rehabilitation services [now department of public health and human services] shall assure that the community developmental disabilities group homes are reporting all financial transactions through a uniform accounting system including a single chart of accounts and accounting manual.

No money may be disbursed to the homes after July 1, 1982, unless the director of the department of social and rehabilitation services [now department of public health and human services] certifies to the legislative finance committee that the group homes are recording and reporting financial information uniformly.

The director shall reorganize the vocational rehabilitation and visual service programs to effect administrative economies and maintain direct benefits to clients within the appropriations herein provided. At least 15% of federal funds available for vocational rehabilitation shall be expended for the blind."

53-20-204. Rules.

Compiler's Comments

2021 Amendment: Chapter 577 in (1) at end of introductory clause inserted "including but not limited to"; inserted (1)(a) regarding training and other standards; inserted (1)(b) regarding reimbursement rates; and made minor changes in style. Amendment effective July 1, 2021.

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (2).

53-20-205. Community services.

Compiler's Comments

2019 Amendment: Chapter 394 inserted (2)(b) concerning funding for average caseloads within contracts for case management services targeted for people with developmental disabilities; and made minor changes in style. Amendment effective July 1, 2019.

2005 Amendment: Chapter 78 in (4) near end before "council" deleted "advisory"; and made minor changes in style. Amendment effective March 24, 2005.

1997 Amendment: Chapter 171 in (4), at end after "2-15-2204" (renumbered 2-15-1869), deleted "and the regional councils provided for in 53-20-207"; and made minor changes in style.

Preamble: The preamble attached to Ch. 171, L. 1997, provided: "WHEREAS, the 54th Montana Legislature enacted a bill to combine several state agencies into a new department of public health and human services; and

WHEREAS, it would better serve the needs of Montana to combine the functions and duties and limit the number of advisory councils associated with the department of public health and human services."

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (3).

53-20-208. Contributions of counties and municipalities.

Compiler's Comments

2001 Amendment: Chapter 574 in second sentence near middle after "may levy" substituted "a tax on the taxable value of all taxable property" for "a tax up to but not to exceed 1 mill on each dollar of taxable property"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 at beginning of second sentence in (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

53-20-209. Eligibility for services.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (1) and (2) and made minor changes in grammar to conform to the changes.

1985 Amendment: Near middle of (1) substituted "an evaluation to determine whether the person is developmentally disabled" for "initial intake and for diagnostic and counseling services through any comprehensive developmental disability center without reference to any other eligibility criteria"; and inserted (2) allowing the Department to provide services to certain developmentally disabled persons.

Case Notes

Constitutionality of Statute Governing Community Placement of Developmentally Disabled Individuals: Respondent attacked the constitutionality of 53-20-132 on grounds that District Courts are statutorily not allowed to directly place individuals within community services following expiration of involuntary commitments, in violation of individuals' right of access to courts. The Supreme Court noted that under Art. XII, sec. 3, Mont. Const., the Legislature has enacted a statutory scheme, of which 53-20-132 is a part, that designates the forms of available public assistance and that the scheme provides community-based services to the disabled through the administrative process as opposed to a direct judicial order. However, the preference for community placement over institutionalization does not create an absolute right to community placement, nor does 53-20-132 preclude a person who is denied services through the administrative process from administrative appeal or judicial review. Respondent's constitutional challenge failed to recognize that the statute is only one part of the statutory scheme, and given respondent's overly narrow focus, the court concluded that 53-20-132 is facially constitutional. In re T.W., 2005 MT 340, 330 M 84, 126 P3d 491 (2005), followed in In re R.E.A., 2006 MT 12, 330 M 392, 127 P3d 517 (2006).

53-20-212. Discrimination forbidden.

Compiler's Comments

Federal Law: Title VI of the Civil Rights Act of 1964, Pub. L. No. 88-352, codified at 42 U.S.C. 2000d, prohibits discrimination under federally assisted programs.

53-20-213. Departments to cooperate.

Compiler's Comments

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change.

Chapter 418 substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 substituted "department of public health and human services" for "department of corrections and human services, the department of social and rehabilitation services, the department of health and environmental sciences, the department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1987 Amendment: Inserted reference to Department of Family Services.

53-20-214. Certain transfers of funds authorized.

Compiler's Comments

2015 Amendment: Chapter 444 in introduction substituted "used" for "transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of public health and human services"; inserted (2) regarding transfer of appropriations between programs; and made minor changes in style. Amendment effective May 6, 2015.

1995 Amendment: Chapter 546 at beginning, after "Funds appropriated to the" deleted "department of corrections and human services" and near middle, after "approval of the governor to the", substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1985 Amendment: Changed "Boulder River school and hospital" to "Montana developmental center".

1983 Amendment: Near beginning of section after "institutions", substituted "Montana state hospital" for "Warm Springs state hospital, Galen state hospital".

53-20-215. Regulatory streamlining.

Compiler's Comments

Noncodified Direction to Department of Public Health and Human Services: Sec. 3, Ch. 246, L. 2019, provided: "The department of public health and human services shall complete the plan required under [section 1(3)] [53-20-215(3)] by January 1, 2020. The department shall provide a copy of the draft plan to the children, families, health, and human services interim committee for review and comment no later than November 1, 2019."

Effective Date: Section 5, Ch. 246, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 2, 2019.

53-20-216. Crisis response services — department and provider responsibilities.

Compiler's Comments

Effective Date: Section 7, Ch. 577, L. 2021, provided: "[This act] is effective July 1, 2021."

53-20-221. Liability training program and materials for respite care.

Compiler's Comments

2011 Amendment: Chapter 123 near end of (1) after "39-3-406" deleted "(1)(p)", after "39-51-204" deleted "(1)(y)", and after "39-71-401" deleted "(2)(u)". Amendment effective October 1, 2011.

Effective Date: Section 3, Ch. 281, L. 2009, provided that this section is effective April 17, 2009.

53-20-222. Respite care and employment responsibilities — liabilities.

Compiler's Comments

2011 Amendment: Chapter 123 at end of (3)(b) after "39-3-406" deleted "(1)(p)", after "39-51-204" deleted "(1)(y)", and after "39-71-401" deleted "(2)(u)". Amendment effective October 1, 2011.

Code Commissioner Correction: In (3)(b) the Code Commissioner changed "39-71-402" to "39-71-401" to correct an erroneous reference.

Effective Date: Section 3, Ch. 281, L. 2009, provided that this section is effective April 17, 2009.

53-20-223. Military dependents — eligibility and placement determinations.

Compiler's Comments

Effective Date: Section 4, Ch. 451, L. 2015, provided that this section is effective on passage and approval. Approved May 8, 2015.

53-20-224. Legislative findings — purpose.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

Applicability: Section 5, Ch. 265, L. 2017, provided: "(1) [This act] applies to individuals who are admitted into or residing at the Montana developmental center on or after October 1, 2017, or were released from the Montana developmental center on or after May 6, 2015, and placed in a community home as defined in 53-20-302.

(2) The 2-year time period for monitoring of individuals released from the Montana developmental center into a community home begins:

(a) on October 1, 2017, for individuals who were released from the Montana developmental center on or before October 1, 2017; and

(b) for individuals released after October 1, 2017, on the date of an individual's release from the Montana developmental center."

53-20-225. Department monitoring of Montana developmental center residents — report to legislature.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 92, Ch. 261, L. 2021. Amendment effective April 20, 2021.

Effective Date: This section is effective October 1, 2017.

Applicability: Section 5, Ch. 265, L. 2017, provided: "(1) [This act] applies to individuals who are admitted into or residing at the Montana developmental center on or after October 1, 2017, or were released from the Montana developmental center on or after May 6, 2015, and placed in a community home as defined in 53-20-302.

(2) The 2-year time period for monitoring of individuals released from the Montana developmental center into a community home begins:

(a) on October 1, 2017, for individuals who were released from the Montana developmental center on or before October 1, 2017; and

(b) for individuals released after October 1, 2017, on the date of an individual's release from the Montana developmental center."

Part 3
Community Homes

Part Compiler's Comments

Severability Clause: Section 8, Ch. 373, L. 1973, was a severability clause.

Part Case Notes

Constitutional Implementation: This part implements the constitutional mandate of Art. XII, sec. 3(3), Mont. Const., which requires the Legislature to "provide such economic assistance and social and rehabilitative services as may be necessary for those inhabitants who, by reason of age, infirmities, or misfortune may have a need for the aid of society", by providing care for the developmentally disabled in community homes at a local level when possible rather than in institutions. State ex rel. Child & Family Serv., Inc. v. District Court, 187 M 126, 609 P2d 245, 37 St. Rep. 143 (1980).

53-20-301. Purpose.

Compiler's Comments

1995 Amendment — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in three places and made minor changes in grammar to conform to the changes.

Case Notes

Constitutionality: This section is constitutional within purview of 1972 Montana Constitution and supersedes such city ordinances that restrict use of residential areas to one-family dwellings only. State ex rel. Thelen v. Missoula, 168 M 375, 543 P2d 173 (1975).

53-20-302. Definition of community home — limitation on number of residents.

Compiler's Comments

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in three places.

Chapter 546 near end substituted "department of public health and human services" for "department of family services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: Substituted "department of family services" for "department of social and rehabilitation services".

Case Notes

Community Home Not Prohibited by Single-Family Dwelling Covenant: Restrictive covenants in a subdivision requiring "one unit single family dwellings" does not prevent the establishment of a community home composed of five developmentally disabled individuals with full-time paid houseparents because this section defines such a home as a single housekeeping unit, and thus within the scope of the restrictive covenant. State ex rel. Child & Family Serv., Inc. v. District Court, 187 M 126, 609 P2d 245, 37 St. Rep. 143 (1980).

53-20-303. Parties authorized to establish and operate community homes.

Compiler's Comments

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (1) and (2).

Chapter 546 near end of (1) substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-20-304. Department contracts with nonprofit corporations — governmental units providing for community homes.

Compiler's Comments

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in two places in (1) and in (2).

Chapter 546 at beginning of (1) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-20-305. Local control of community homes — departmental licensing, administration, operation, health and safety standards.

Compiler's Comments

1995 Amendments — Phrase Change: Section 21, Ch. 255, L. 1995, directed the Code Commissioner to change references in the MCA to a person who is developmentally disabled or to a developmentally disabled person to a person with developmental disabilities. The change was not to be made to the phrase "seriously developmentally disabled". In this section, the Code Commissioner has made the change in (1), (2)(a), and (3).

Chapter 418 in (3)(b) substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 at end of (2)(a) and at beginning of (3) substituted "department of public health and human services" for "department of family services"; deleted (3)(b) that read: "(b) The department of health and environmental sciences shall provide advice and recommendations to the department of social and rehabilitation services and the department of family services concerning the standards for health and safety"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1987 Amendment: In (2)(a) substituted reference to Department of Family Services for reference to Department of Social and Rehabilitation Services; in (3)(a), after "department", inserted "of family services"; and in (3)(b) inserted reference to Department of Family Services.

1981 Amendment: Deleted "The director of the department of social and rehabilitation services shall adopt reasonable rules and standards to carry out the administration and purposes of this part." after "best interest of their homes."; inserted (2) requiring annual licensing of community homes and providing for a temporary license; and inserted (3) requiring the Department to adopt standards and rules and to provide advice and recommendations concerning community homes.

Statement of Intent: The statement of intent attached to SB 137 (Ch. 271, L. 1981) provided: "A statement of intent is required for this bill because it amends 53-20-305, MCA, and 53-20-307, MCA, to give the department of social and rehabilitation services [now department of public health and human services] the authority for the purposes of Title 53, chapter 20, part 3, to license community group homes and for rulemaking in relation to that licensing.

Title 53, chapter 20, part 3, provides for community homes for developmentally disabled persons. It was the intent of part 3 to provide for the regulation of community homes by the department of social and rehabilitation services [now department of public health and human services] and the department of health and environmental sciences [now department of public health and human services]. The department of social and rehabilitation services [now department of public health and human services] was given authority to adopt reasonable rules and standards to carry out the administration and purposes of part 3. The department of health and environmental sciences [now department of public health and human services] was given the authority to license community homes to insure the sanitation and safety of the residents. The authority was given the department of social and rehabilitation services [now department of public health and human services] to license community homes in order to insure the quality of services provided. The authority to adopt rules relating to that licensing was not explicitly provided. The department of social and rehabilitation services [now department of public health and human services] has had to act under implied authority in licensing community group homes and adopting rules relating to licensing.

This bill provides the department of social and rehabilitation services [now department of public health and human services] with explicit authority for the licensing of community group homes and for adopting rules relating to that licensing.

Among the areas that the rules relating to licensing will address are the following: facility acquisition, facility design, group home staffing, staff training, service goals and design, quality of services, client placement procedure, client rights and privileges, client grievance procedure, provider grievance procedure, and accounting procedures including accounting of client financial resources. Rules dealing with health and safety will be developed with the assistance of the department of health and environmental sciences [now department of public health and human services], including water and waste disposal, food service, laundry, and safety standards which are compatible with the residential character of the facility.

The physical well-being and safety of the clients [are] provided for in that the group homes are to be certified for fire and life safety by the state fire marshal [now state fire prevention and investigation program of the department of justice] who shall adopt standards and notify the department upon certification of a community home as complying with those standards."

53-20-306. Federal aid.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

53-20-307. Health and safety standards for licensing.

Compiler's Comments

2007 Amendment: Chapter 449 in (1)(a) near middle after "investigation" substituted "section" for "program"; and made minor changes in style. Amendment effective June 1, 2007.

1995 Amendments: Chapter 418 in (2)(a) substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 in (1)(b) substituted "department of public health and human services" for "department of social and rehabilitation services and the department of family services"; and in (2)(a) substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

1987 Amendment: In (1)(b) inserted reference to Department of Family Services.

1981 Amendment: Substituted the entire section requiring health and safety standards for licensing (see 1981 Session Law for text) for "The department of health and environmental sciences shall promulgate and adopt standards and rules for the licensing of community homes for the developmentally disabled and to insure the health and safety of the residents of such homes."

Part 5
State-Owned Facilities

53-20-504. Powers and duties of department of public health and human services.

Compiler's Comments

1995 Amendment: Chapter 546 at beginning substituted "department of public health and human services" for "department of corrections and human services and the department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-20-505. Disposition of facility.

Compiler's Comments

1995 Amendment: Chapter 546 at end substituted "department of public health and human services" for "department of corrections and human services or the department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1983 Amendment: Deleted reference to 53-20-503.

Part 6
Intensive Behavior Center

Part Compiler's Comments

Effective Date: Section 12(1), Ch. 258, L. 2017, provided that this part is effective on passage and approval. Approved May 3, 2017.

CHAPTER 21
MENTALLY ILL

Chapter Compiler's Comments

Legislative Policy Statement for Mental Health Investments for 2017 Biennium: Section 2, Ch. 438, L. 2015, provided: "(1) Pursuant to 53-21-101, in its treatment of the seriously mentally ill, it is the policy of the state of Montana to:

(a) provide each person who is suffering from a mental disorder and who requires commitment the care and treatment suited to the needs of the person and to ensure that the care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(b) accomplish this goal whenever possible in a community-based setting;

(c) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is suffering from a mental disorder and requires commitment; and

(d) ensure that due process of law is accorded any person coming under the provisions of this part.

(2) In order to achieve this policy, the legislature directs the department of public health and human services to meet the following objectives:

(a) to support a community-based system of care that is demonstrated through increased utilization of community-based crisis intervention services to reduce short-term admissions to the Montana state hospital;

(b) to provide and reimburse for effective prevention and treatment that enables sustainable recovery in communities, evidenced through quality assurance activities and analyses. The addictive and mental disorders division shall evaluate the delivery of recovery-focused services by providers.

(c) to improve outcomes for individuals with serious mental illness and co-occurring substance use disorders, demonstrated through data collection on individual client outcomes for recovery markers and performance measures; and

(d) to improve collaboration between community mental health providers, nursing homes, and state facilities, demonstrated through an increase in state facility discharge rates with a corresponding decrease in client recidivism to state facilities.

(3) The children, families, health, and human services interim committee shall monitor and evaluate the department's implementation of the objectives identified in this section and provide to the 65th legislature a report that outlines the status of implementation and identifies areas where continued improvement is necessary."

Chapter Administrative Rules

Title 37, chapter 66, ARM Mental health inpatient facilities.

Title 37, chapter 89, ARM Mental health services.

Chapter Case Notes

Prohibition on Waiver of Right to Counsel in Civil Commitment Proceedings — No U.S. Constitution Violations: In a civil commitment proceeding, the respondent requested to represent himself. The District Court denied the request on the basis that 53-21-119 prohibits a person from waiving the right to counsel in a civil commitment proceeding. The respondent appealed, arguing that 53-21-119 violates the sixth and fourteenth amendments to the United States Constitution. The Supreme Court affirmed, concluding that the sixth amendment does not apply to civil commitment proceedings and that the statute does not raise due process concerns because while counsel is required, a respondent still has a right to participate personally in the proceedings. In re S.M., 2017 MT 244, 389 Mont. 28, 403 P.3d 324.

Dismissal of Charges Required if Defendant's Fitness to Proceed Undetermined After Ninety Days — Civil Proceedings Mandated Upon Dismissal: Pursuant to Jackson v. Ind., 406 US 715 (1972), after only a pretrial competency hearing, it is unconstitutional to hold a person who is unfit to proceed without following civil and criminal commitment procedures provided by state law. Due process requires, at a minimum, some rational relationship between the nature and duration of commitment and its purpose. Thus, 46-14-221 requires the committing court to review a defendant's fitness to proceed within 90 days of the original commitment, and if, after 90 days, the court finds that the defendant is still unable to proceed and will not be fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed. However, dismissal does not mandate freedom for a potentially violent mentally ill individual. The statute provides that once the criminal proceeding is dismissed, the next mandatory step is to pursue civil commitment proceedings under chapter 20 or this chapter. However, an alternative procedure is available under 46-14-202, in which the court may set the time for determining fitness to proceed. St. v. Tison, 2003 MT 342, 318 M 465, 81 P3d 471 (2003), following St. v. Meeks, 2002 MT 246, 312 M 126, 58 P3d 167 (2002).

Right to Effective Assistance of Counsel for Person Subject to Involuntary Commitment Because of Mental Disorder — Strickland Test for Ineffective Assistance Inappropriate in Involuntary Commitment Proceedings: The right to counsel afforded by state law regarding the treatment of the seriously mentally ill provides a person who is subject to an involuntary commitment proceeding the right to effective assistance of counsel, which in turn provides that person the right to raise the allegation of ineffective assistance of counsel when challenging a commitment order. The test for ineffective assistance of counsel set out in Strickland v. Wash., 466 US 668 (1984), is inappropriate in involuntary commitment proceedings. However, the Strickland test simply does not go far enough to protect the liberty interests of persons involved in involuntary commitment proceedings who may or may not have broken any law but who, upon the expiration of a 90-day commitment, must indefinitely bear the badge of inferiority of a once involuntarily committed person with a proved mental disorder. Instead, upon a substantial showing of evidence to the issuing District Court or to the Supreme Court pursuant to 53-21-131 that counsel did not effectively represent the person's interests, an order of involuntary commitment should be vacated. The due process afforded individuals must serve to protect the fundamental liberty interests of dignity and integrity, and it is not only counsel, "but also courts, that are charged with the duty of safeguarding the due process rights of individuals involved at every stage of the proceedings". The Supreme Court identified five critical areas of representation that generally define the scope of effective counsel in involuntary commitment proceedings: (1) appointment of competent counsel; (2) the initial investigation; (3) the client interview; (4) the right to remain silent; and (5) counsel as an advocate and adversary. The statutory and constitutional standards must be rigorously adhered to in order to ensure the fundamental fairness of civil commitment proceedings, and it is imperative that the constitutional and legislated rights be formally and fairly balanced with the state's ultimate power to protect both the individual and the public from actual or perceived harm. In re K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001), following Conservatorship of Roulet, 590 P2d 1 (Calif. 1979), and distinguishing In re Carmody, 653 NE 2d 977 (Ill. App. Ct. 1995).

Requirement of Note That Benefit of Rights Received: The District Court is required to note in its order of involuntary commitment that persons to be committed have received the benefit of all applicable statutory and constitutional rights. In re S.J. & T.F., 231 M 353, 753 P2d 319, 45 St. Rep. 675 (1988).

Release as Rendering Case Moot: A youth committed to a 3-month treatment at Rivendell raised several procedural questions relating to his commitment, but since he had been discharged from custody by the time the case was considered, the case was dismissed on grounds of mootness. In re T.J.F., 229 M 473, 747 P2d 1356, 44 St. Rep. 2145 (1987).

Admissibility of Evidence at Hearing on Transfer of Patient for Treatment: Between an initial commitment hearing and a hearing on the question of transferring treatment, appellant filed two motions in limine, which the District Court denied. The first motion requested that the state be precluded from eliciting testimony at the transfer hearing based on an evaluation made after the commitment hearing. On the second motion, he contended that the order of commitment was final as to all events litigated at the initial hearing and that none of the earlier events should have been referred to at the transfer hearing. He argued that 53-21-101, et seq., provided no authority for using evaluations made after a final commitment hearing in a later transfer hearing. Both 53-21-130 and 53-21-182 refer to transfers to other facilities for treatment; however, neither statute restricts what evidence may be admissible at a transfer hearing. The Supreme Court found no error in the denial of the motions, holding that any evidence admissible at a final commitment hearing which is relevant to the transfer should be admissible at the transfer hearing, including the opinions of professional persons and evidence of overt acts, as described in 53-21-126. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Detention Prior to Court Finding of Serious Mental Illness — Determination by Professional Person Rather Than Peace Officer: Appellant, M.C., argued that under 53-21-129, the peace officer makes the initial decision on whether an emergency situation exists and that in this case the officer did not make that decision. M.C. also contended that the evidence was insufficient to hold him on an emergency basis. The Supreme Court held that 53-21-129 merely permits the officer to take a person into custody for an evaluation. It does not give the officer authority to decide whether the person should be placed in emergency detention; rather, the professional person determines whether the person is seriously mentally ill and should be placed in emergency detention. Once that determination is made, it constitutes sufficient evidence that the person may be detained. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Stipulation to Commitment — Montana State Hospital as Least Restrictive Environment: The appellant, M.C., argued on appeal that evidence was insufficient to warrant his transfer to Montana State Hospital. At a commitment hearing, the District Court heard evidence on M.C.'s inability to cooperate in treatment at the Billings Mental Health Center, as well as testimony from a Center doctor indicating that Montana State Hospital was the least restrictive environment in which M.C. could receive the care and supervision he needed. After the hearing, M.C. and his counsel stipulated to, and the District Court ordered, a commitment to the Billings Mental Health Center or "another mental health facility in Montana". The Supreme Court held this evidence to be sufficient to support the District Court's action in committing M.C. to the Montana State Hospital. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Constitutionality of Statute Authorizing Emergency Transfer From State Institution to Mental Health Facility: In upholding the constitutionality of 53-21-130, the Supreme Court applied the test set forth by the U.S. Supreme Court in Vitek v. Jones, 445 US 480, 63 L Ed 2d 552, 100 S Ct 1254 (1980), and found that the interests of the state outweigh the interests of the individual transferred pursuant to 53-21-130 as long as the procedural safeguards mandated by that section are followed. In re the Petition of M.C., 211 M 105, 683 P2d 956, 41 St. Rep. 1242 (1984).

Serious Mental Illness — Source of Findings — Montana State Hospital as Least Restrictive: The District Court found that C.M. was seriously mentally ill and committed her to Warm Springs State Hospital (now Montana State Hospital). C.M. appealed from the order of commitment. Three persons testified at the commitment hearing, C.M., C.M.'s mother, and a psychiatrist. The psychiatrist testified that C.M. was seriously mentally ill based on his own examination and on the observations of C.M.'s mother. The court held that a professional person may opine that a person is seriously mentally ill even though the evidence of an imminent threat of injury, required by statute, is obtained from a source other than the professional person. There was also sufficient evidence that a commitment to Warm Springs State Hospital (now Montana State Hospital) was the least restrictive form of commitment. The order of the District Court was affirmed. In re C.M., 195 M 171, 635 P2d 273, 38 St. Rep. 1768 (1981).

Defendant Sane at Time of Crime — Insane at Other Times — Nonapplicability of Chapter: Defendant, convicted of aggravated assault, contended that sentencing to prison a man suffering from severe mental illness violates 53-21-101 as well as the constitutional ban against cruel and unusual punishment. When a defendant is convicted and claims that he was suffering at the time of the crime from a mental disease or defect that rendered him incapable of conforming his conduct to the requirements of the law, the sentencing judge is to consider the relevant evidence of the defendant's disorder. If the Judge finds the defendant did not suffer mental illness at the time of the crime, he is to be sentenced according to the guidelines in Title 46, ch. 18. If the finding is to the contrary, the defendant must be sentenced to Warm Springs (now Montana State Hospital). Despite the lack of provisions in Title 46, ch. 14, for sentencing a defendant who was sane at the time of the crime but may be insane at other times, Title 53, ch. 21, does not apply to criminal defendants. The defendant's claim that he is covered by Title 53, ch. 21, is in error. Without a finding of insanity followed by sentencing to a penal institution without provision for adequate treatment, defendant has suffered no statutory or constitutional violation. St. v. Mercer, 191 M 418, 625 P2d 44, 38 St. Rep. 312 (1981). See also St. v. Spell, 2017 MT 266, 389 Mont. 172, 404 P.3d 725.

Chapter Attorney General's Opinions

Department Use of State Funds to Purchase Mental Health Services Nondiscriminatory: The Department of Institutions (now Department of Public Health and Human Services) may allocate state general fund appropriations to purchase services for certain priority populations from regional mental health centers without violating the discrimination provisions of 53-21-206 (now repealed) because the allocation procedures neither relate in any way to a patient's race, color, creed, religion, or ability to pay nor determine a patient's eligibility for mental health services. 43 A.G. Op. 64 (1990).

Commitment Procedures to Be Followed in Committing Mentally Ill Youth — Private Mental Health Facilities Not Precluded: Section 41-5-523 (renumbered 41-5-1512) does not authorize the Youth Court or the Department of Family Services [now Department of Public Health and Human Services] to commit a mentally ill or seriously mentally ill youth to a mental health treatment facility without following the commitment procedures set out in Title 53, ch. 21, part 1. There is, however, no statutory preclusion of commitment of a youth to private mental health facilities. 42 A.G. Op. 59 (1988).

State Grants to Regional Mental Health Centers — Conditions: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the state treasury and the Statewide Budget and Accounting System (SBAS). 37 A.G. Op. 127(1978).

Chapter Collateral References

Parity in Insurance Benefits for Mental Health Services and Substance Abuse, A Report Prepared for the Children, Families, Health, and Human Services Interim Committee, Mont. Leg. Serv. Div. (2006).

Part 1
Treatment of the Seriously Mentally Ill

Part Compiler's Comments

Termination: Section 18, Ch. 376, L. 1987, provided: "This act terminates July 1, 1989." The termination date was extended by sec. 1, Ch. 541, L. 1989, which amended sec. 18, Ch. 376, L. 1987, to provide: "This act terminates July 1, 1997."

Report to Fifty-First Legislature: Chapter 376, L. 1987, enacted 53-21-135 through 53-21-137 (all now terminated) and amended 53-21-102, 53-21-106, 53-21-115, 53-21-116, 53-21-120 through 53-21-123, and 53-21-126 through 53-21-128. Section 18 of Ch. 376 terminated the new sections and amendments as of July 1, 1989. Section 16 of the act provided: "The mental disabilities board of visitors shall report to the 51st legislature on the effects of this act, including the effects on the treatment and rights of the mentally ill and the seriously mentally ill and the procedures established by this act, and shall include in the report any recommendations it may have."

Section Not Codified: Section 38-1312, R.C.M. 1947, a temporary provision restoring to legal capacity certain persons judged mentally ill, was not codified. That section has not been repealed and is still valid law. Citation may be made to sec. 12, Ch. 466, L. 1975.

Part Administrative Rules

Title 37, chapter 66, ARM Mental health inpatient facilities.
Title 37, chapter 89, ARM Mental health services.
Title 37, chapter 91, ARM Certification of mental health professional persons.
Title 37, chapter 106, subchapter 17, ARM Behavioral health inpatient facilities.

Part Case Notes

Prohibition on Waiver of Right to Counsel in Civil Commitment Proceedings — No U.S. Constitution Violations: In a civil commitment proceeding, the respondent requested to represent himself. The District Court denied the request on the basis that 53-21-119 prohibits a person from waiving the right to counsel in a civil commitment proceeding. The respondent appealed, arguing that 53-21-119 violates the sixth and fourteenth amendments to the United States Constitution. The Supreme Court affirmed, concluding that the sixth amendment does not apply to civil commitment proceedings and that the statute does not raise due process concerns because while counsel is required, a respondent still has a right to participate personally in the proceedings. In re S.M., 2017 MT 244, 389 Mont. 28, 403 P.3d 324.

Ineffective Assistance of Counsel Claim in Involuntary Commitment Proceedings — Strickland Test Appropriate: An individual challenged a District Court order for her involuntary commitment to the state hospital, claiming ineffective assistance of counsel. Overruling the standard set forth in In re Mental Health of K.G.F., 2001 MT 140, 306 Mont. 1, 29 P.3d 485, for assessing counsel's effectiveness, the Supreme Court affirmed, holding that the standards enunciated in the Strickland test apply when measuring effectiveness of counsel in civil commitment proceedings. The court held that the framework under Title 53, ch. 21, guides the inquiry of whether a respondent has received effective assistance of counsel; however, the court recognized that the statutory safeguards are not exclusive. In re J.S., 2017 MT 214, 388 Mont. 397, 401 P.3d 197.

Requirement of Note That Benefit of Rights Received: The District Court is required to note in its order of involuntary commitment that persons to be committed have received the benefit of all applicable statutory and constitutional rights. In re S.J. & T.F., 231 M 353, 753 P2d 319, 45 St. Rep. 675 (1988).

Representation of Mentally Ill Person on Criminal Charges — Civil Procedural Rights Inapplicable — Summary Judgment Proper: A $30 million damage suit brought against court-appointed attorneys after defendant was found not guilty of intimidation and criminal mischief by reason of mental disease or defect was properly dismissed by summary judgment after the District Court found the attorneys had not violated defendant's rights under 53-21-115 through 53-21-119, since those statutes involve civil commitments and do not apply to criminal proceedings. Kerr v. Wilcox, 225 M 313, 731 P2d 1326, 44 St. Rep. 260 (1987).

Civil Commitment Issue Raised by Supreme Court in Criminal Action: The Supreme Court reversed Allies' conviction for deliberate homicide. In its opinion, the court noted that the case was not a civil action brought under Title 53, ch. 21, to have an individual committed to a mental institution. If it were such a civil action, the court stated that it would have found substantial credible evidence upon which to base a finding that Allies is a dangerous individual who could not safely exist in our law-abiding society. St. v. Allies, 186 M 99, 606 P2d 1043 (1979).

53-21-101. Purpose.

Compiler's Comments

1997 Amendment: Chapter 490 in (1), after "who may be", deleted "seriously mentally ill or", after "disorder" substituted "and requiring commitment the" for "such", and after "treatment" deleted "as will be"; in (3), after "person is", substituted "suffering from a mental disorder and requires commitment" for "so mentally ill as to require institutionalized care"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

Case Notes

Counsel's Failure to Obtain Independent Evaluation — No Ineffective Assistance: After being committed to the state hospital, the respondent claimed ineffective assistance of counsel based on an allegation that his counsel should have obtained an independent professional evaluation. The Supreme Court determined that counsel provided effective representation based on the services provided, including meetings with the respondent and a doctor, cross-examination of the doctor, and a deposition of the respondent the day before the hearing. In re C.R., 2012 MT 258, 367 Mont. 1, 289 P.3d 125, citing In re Mental Health of C.R.C., 2009 MT 125, 350 Mont. 211, 207 P.3d 289, and In re K.G.F., 2001 MT 140, 306 Mont. 1, 29 P.3d 485.

Acquiescence to Involuntary Commitment Without Patient's Consent — Client Refusal to Cooperate With Counsel — No Ineffective Assistance Given Counsel's Ongoing Advocacy: C.R.C. asserted that she received ineffective assistance of counsel when her attorney acquiesced to involuntary commitment of C.R.C. without her consent. The Supreme Court examined the record and found that the statutory guidelines for a waiver of C.R.C.'s rights were followed. In addition, the record revealed numerous facts to rebut the presumption that counsel was ineffective. C.R.C. refused to: (1) participate in her own defense; (2) meet with counsel; (3) attend court appearances; or (4) meet with a doctor for an independent psychological evaluation requested by counsel on C.R.C.'s behalf. The record also demonstrated that C.R.C. posed a danger to herself and others, requiring commitment. Yet even without C.R.C.'s input or cooperation, counsel continued to advocate on C.R.C.'s behalf, and counsel followed the law in waiving C.R.C.'s right to an adjudicatory hearing. Therefore, the presumption of ineffective assistance of counsel, when counsel acquiesced to involuntary commitment without C.R.C.'s consent, was rebutted by the facts of the case, and the Supreme Court declined to hold that counsel's actions were ineffective. In re Mental Health of C.R.C., 2009 MT 125, 350 M 211, 207 P3d 289 (2009). See also In re K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001), and In re Mental Health of T.J.F., 2011 MT 28, 359 Mont. 213, 248 P.3d 804.

Failure of Counsel to Obtain Expert on General Tendencies of Mentally Ill Homeless Not Considered Ineffective Assistance: A trial on respondent's involuntary commitment was required within 7 days of the request for a jury trial. Respondent's counsel failed to secure a continuance in order to attempt to locate an expert to testify on the general ability of mentally ill homeless persons to care for themselves, and respondent asserted that counsel's conduct constituted ineffective assistance. Although the strict time constraints make advocacy challenging, evidence must be limited to a respondent's own particular set of circumstances, and in this case, any testimony given by an expert on the general tendencies of the mentally ill homeless would not have rebutted the state's testimony that respondent was unable to survive on his own. Thus, counsel's failure to procure the expert did not constitute ineffective assistance. In re Mental Health of T.M., 2004 MT 221, 322 M 394, 96 P3d 1147 (2004). See also In re K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001).

53-21-102. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 28, Ch. 713, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 133 in definition of mental health professional inserted (g) including physician assistants with a clinical specialty in psychiatric mental health; in definition of professional person inserted (d) including physician assistants with a clinical specialty in psychiatric mental health; and made minor changes in style. Amendment effective October 1, 2017.

2013 Amendments — Composite Section: Chapter 68 in definition of mental disorder in (b)(iii) substituted "intellectual disability" for "mental retardation". Amendment effective October 1, 2013.

Chapter 308 in definition of emergency situation inserted (b) regarding person appearing to suffer from mental disorder; and made minor changes in style. Amendment effective October 1, 2013.

Nonapplicability: Section 21, Ch. 68, L. 2013, provided: "[This act] does not apply to the coverage, eligibility, rights, responsibilities, or definitions provided for in the affected sections of Titles 50 and 53."

2009 Amendments — Composite Section: Chapter 80 in definition of friend of respondent deleted former second through fourth sentences that read: "The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent". Amendment effective March 25, 2009.

Chapter 481 in introductory clause substituted "chapter" for "part" with regard to application of definitions. Amendment effective July 1, 2009.

2007 Amendments — Composite Section: Chapter 71 in definition of professional person inserted (c) to include a licensed psychologist; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 116 substituted definition of behavioral health inpatient facility for former definition that read: ""Behavioral health inpatient facility" means a licensed facility of 16 beds or less designated by the department that:

(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title." Amendment effective October 1, 2007.

2005 Amendment: Chapter 81 in definition of mental disorder inserted (c) concerning co-occurrence with addiction or chemical dependency. Amendment effective October 1, 2005.

2003 Amendment: Chapter 513 inserted definition of behavioral health inpatient facility; in definition of mental health facility or facility before "mental health center" inserted "a behavioral health inpatient facility"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 10, Ch. 513, L. 2003, was a severability clause.

2001 Amendments — Composite Section: Chapter 310 in definition of professional person inserted (b) relating to an advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 342 inserted definition of mental health professional; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 344 inserted definition of abuse; in definition of mental health facility or facility substituted language in first sentence that term means state hospital, Montana mental health nursing care center, or hospital, mental health center, residential treatment facility, or residential treatment center licensed or certified that provides treatment to children or adults with mental disorder for former language that read: "a public hospital or a licensed private hospital that is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department"; inserted definition of neglect; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 490 inserted definition of commitment; in definition of emergency situation, after "death or", deleted "serious" and at end substituted "suffering from a mental disorder and appears to require commitment" for "seriously mentally ill"; in definition of friend of respondent, in first sentence after "assist a", deleted "seriously mentally ill", after second "person" inserted "suffering from a mental disorder and requiring commitment", and after "alleged to be" substituted "suffering from a mental disorder and requiring commitment" for "seriously mentally ill"; in definition of mental disorder inserted (c) regarding mental retardation and (d) regarding epilepsy; in definition of respondent, at end, substituted "suffering from a mental disorder and requiring commitment" for "seriously mentally ill"; deleted definition of seriously mentally ill that read: ""Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat of injury or which has deprived the person afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury. A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because the person is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of this part"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of corrections and human services provided for in Title 2, chapter 15, part 23". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 312 in definition of mental disorder added exceptions for addiction and intoxication; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec.

1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1987 Amendment: Inserted (5) and deleted former (13), each defining friend of respondent, but (13) related only to a person who was or was alleged to be seriously mentally ill; inserted definition of mentally ill; in (14) inserted "mentally ill or"; and made minor changes in phraseology.

1983 Amendments: Chapter 361, in definition of state hospital, substituted "Montana state hospital" for "Warm Springs state hospital".

Chapter 578 in definition of professional person, after "a person", substituted "who has been certified, as provided for in 53-21-106, by the department" for "trained in the field of mental health and certified by the department in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals".

Instructions to Code Commissioner: Section 14, Ch. 547, L. 1979, provided: "All references to "responsible person" in Title 53, chapter 21, shall be changed to "friend of respondent" by the Code Commissioner."

Section Not Codified: Section 38-121, R.C.M. 1947, a section changing to "of unsound mind" all like references, was not codified in the MCA. Citation may be made to sec. 1, Ch. 376, L. 1973.

Case Notes

Involuntary Commitment Proper — Involuntary Administration of Medication — No Showing of Ineffective Counsel: The record of a 28-year-old woman with a lengthy history of mental illness showed that she was frequently noncompliant with her prescribed medications, aggressive, combative, abusive to family members, homeless, and unemployed. In an involuntary commitment hearing, the District Court concluded that the state had proven to a reasonable degree of medical certainty that she suffered from a mental disorder, that she was unable to care for herself, that the state hospital was the least restrictive treatment option, and that involuntary administration of medication was authorized as needed to facilitate treatment. On appeal, the Supreme Court affirmed, finding that the involuntary commitment was warranted and that the District Court had followed relevant statutes and correctly authorized the involuntary administration of medication. The Supreme Court also found that it could not be concluded that her counsel was ineffective because "abundant evidence" supported the District Court's findings and because counsel had attempted to provide alternate explanations for her symptoms and behavior. In re C.B., 2017 MT 83, 387 Mont. 231, 392 P.3d 598.

Failure of Defendant to Object Regarding Timing of Fitness to Proceed Report — Unclear When Statutory Commitment Begins: The defendant, who had a history of mental health issues, was charged with aggravated assault while at the Montana State Hospital. After being transferred to the Montana State Prison, the District Court ordered the defendant transferred back to the state hospital to undergo a fitness to proceed evaluation. State hospital physicians issued a report and the parties stipulated that the commitment be extended for an additional 90 days. After the extension was over, the District Court found that the defendant was fit to proceed on the aggravated assault proceeding. The defendant then objected, stating that the first report was not made within 90 days of his commitment as required in 46-14-221. The District Court agreed with the defendant and dismissed the charges. On appeal, the Supreme Court reversed, holding that while the statute is unclear as to when a commitment begins, the defendant nevertheless waived his right by failing to object after the first report was issued. St. v. Robertson, 2015 MT 341, 381 Mont. 520, 363 P.3d 427.

Inability to Appoint Friend of Respondent to Assist — Not Reversible Error: The failure of the District Court to appoint a friend of the respondent after having appointed one who was unwilling to serve and finding no one in the community who was willing to assist because of the respondent's psychosis and behavior, was not reversible error because this section requires that a person be willing to serve and the law does not require impossibilities. In re Mental Health of O.R.B., 2008 MT 301, 345 M 516, 191 P3d 482 (2008).

Clear Error in Finding That Behavior Posing Risk of Harm Precluded Community Placement — Involuntary Recommitment Reversed: The District Court held that G.M. was seriously developmentally disabled and that G.M.'s behavior could not be safely and effectively rehabilitated in community-based services because of behavior that posed an imminent risk of serious harm to G.M. or others. The court then ordered that G.M. be involuntarily recommitted to the Montana Developmental Center for no more than 1 year. G.M. appealed. The Supreme Court concluded that all evidence was properly submitted and that expert testimony was properly admitted. However, G.M.'s expert's testimony and the actual incident reports presented by the state revealed that the reports did not give an accurate picture of G.M.'s condition, in that during most of the reported incidents, G.M. was not the aggressor. In fact, the reports affirmed

G.M.'s expert's opinion that it was the group living environment that contributed significantly to G.M.'s behavioral difficulties and that placing G.M. in a community setting with fewer people would ameliorate G.M.'s aggressive tendencies. The state presented no evidence to contradict the expert's opinion that the institutional setting was probably responsible for the behaviors that kept G.M. in the institution and that individuals with worse aggressive tendencies were successfully living in community settings or to explain why G.M.'s actions would make placement in a community setting unsafe. Additionally, G.M.'s aunt's testimony regarding her personal observations of G.M.'s demeanor and self-control when not in an institutional setting confirmed the expert's opinion and tended to prove that G.M. did not pose a risk of harm and could be safely habilitated in the community. Thus, the Supreme Court held that the District Court incorrectly concluded that G.M. was seriously developmentally disabled and reversed with instructions to vacate the recommitment order. In re G.M., 2008 MT 200, 344 M 87, 186 P3d 229 (2008).

Sufficient Finding of Emergency Situation Justifying Involuntary Detainment: A Sheriff's report of about 25 incidents involving L.K.'s allegedly "extremely bizarre" behavior over a 3-day period, including at least two incidents related to threatened violence, justified the District Court's finding of an emergency situation warranting the involuntary commitment and detention at the state hospital for mental evaluation. In re Mental Health of L.K., 2008 MT 169, 343 M 366, 184 P3d 353 (2008).

Appointment of Complaining Witness as Friend of Respondent Reversible Error — Conflict of Interest — Issue Not Moot: In deciding the disposition of D.V.'s commitment proceedings, the District Court appointed D.V.'s mother as the friend of respondent, even though the mother was also the complaining witness who began the proceedings against D.V. following D.V.'s arrest for family member assault after D.V. allegedly threatened his mother. D.V. was subsequently involuntarily committed to the state mental hospital for 90 days. D.V. later appealed the District Court's order. Because D.V.'s commitment had already been served, the Supreme Court first considered whether the issue was moot. In this case, the involuntary commitment was too short to allow the issues to be fully litigated prior to D.V.'s release, and there was a reasonable expectation that D.V. could be subjected to the same action again in the future. The issues were capable of repetition while evading review, so the issue was not moot, and the Supreme Court thus considered the dispositive issue of the fairness of D.V.'s commitment proceedings. It was error for the District Court to appoint the victim of the crime that precipitated the proceedings to be the friend of respondent. The appointment was a conflict of interest and prejudiced D.V.'s right to a fair trial. The case was reversed with instructions to vacate the order of commitment. In re Mental Health of D.V., 2007 MT 351, 340 M 319, 174 P3d 503 (2007).

Cognitive Delays and Substance Abuse Not Factors to Be Used as Basis for Involuntary Commitment: Mental retardation is not a mental disorder for purposes of treatment of the seriously mentally ill, and cognitive delays may not be used for purposes of determining that because of a mental disorder, a person presents an imminent threat requiring involuntary commitment. Likewise, drug or alcohol addiction or intoxication does not constitute a mental disorder for purposes of treatment of the seriously mentally ill. Here, the District Court involuntarily committed respondent after including reference to respondent's mild mental retardation and polysubstance abuse in the finding that respondent suffered from a mental illness. That inclusion, when overlaid onto the court's subsequent findings and absent sufficient evidence, did not meet the statutory requirements for involuntary commitment, and the Supreme Court reversed the commitment order. In re A.K., 2006 MT 166, 332 M 511, 139 P3d 849 (2006).

Res Judicata Inapplicable to Involuntary Commitment Hearing — Criterion of "Seriously Mentally Ill" Only Issue: L.B. was examined by a professional person and determined to suffer from a serious mental disorder (see 1997 amendment) that required treatment. Following presentation of the professional's testimony at a hearing for involuntary commitment, the District Court held that the testimony was too speculative and ordered L.B. released. After the hearing, L.B. was detained by the Sheriff's office for a short time in an attempt to find a place for him, rather than just sending him out onto the streets. During his detention, L.B. was examined by a second professional person who determined that L.B. should be involuntarily committed to the state hospital for immediate treatment, and a second petition for commitment was filed that same day. The District Court subsequently determined that L.B.'s mental illness deprived him of the ability to protect his life or health and transferred him to the state hospital for treatment. L.B. argued that the doctrine of res judicata barred consideration of the second petition. However, the District Court expressly prohibited the introduction of evidence relating to the time period prior to the first hearing; therefore, the issues were not the same in the second hearing, nor could the first order releasing L.B. be considered final and subject to res judicata.

The question of whether an individual is seriously mentally ill may be brought at any time as long as the necessary statutory criteria are met. A finding at one time that an individual does not suffer from a serious mental illness (see 1997 amendment) is not intended to be a final and irrevocable decision on the individual's mental health. In re Mental Health of L.C.B., 253 M 1, 830 P2d 1299, 49 St. Rep. 290 (1992).

Standard of Proof for Involuntary Commitment — Finding of Seriously Mentally Ill Upheld: The parents of G.P. filed a request with the Yellowstone County Attorney to have their son involuntarily committed. G.P. was evaluated by a psychiatrist who testified at the commitment hearing that G.P. was "beyond a reasonable doubt seriously mentally ill as defined in section 53-21-102, MCA" (see 1997 amendment). G.P. was committed and, on appeal, challenged the District Court finding that he was seriously mentally ill, rather than only mentally ill, claiming that there was no proof of overt acts. The Supreme Court held that overt acts are only necessary to prove serious mental illness based on "self-inflicted injury or injury to others or the imminent threat thereof" but not necessary to prove serious mental illness based on a respondent "suffering from a mental disorder . . . which has deprived the person afflicted of the ability to protect his life or health" as provided under this section. The Supreme Court noted that the psychiatrist testified that G.P. suffered from auditory hallucinations that directed him to do things that he could not control, that G.P.'s roommate testified that G.P. refused to take his medicine and denied that he needed medicine, and that G.P.'s parents testified that G.P. ate very little. The Supreme Court found that this evidence satisfied the standard in 53-21-126(2) because it indicated that G.P.'s illness was interrupting his cognitive process and causing delusional thinking, which condition rendered him unable to protect his own life or health. In re G.P., 246 M 195, 806 P2d 3, 47 St. Rep. 1840 (1990), followed in In re R.F., 2013 MT 59, 369 Mont. 236, 296 P.3d 1189.

Adequate Medical Care Not Basis for Disregarding Due Process: The medical center, in which the respondent was placed by the officers who picked her up, did not follow proper procedure, and the respondent was held without authority for 5 days before her competency hearing. The Supreme Court held that providing adequate medical care is not a basis for disregarding the due process and statutory rights of a person charged with being seriously mentally ill (see 1997 amendment). The court went on to admonish the medical center, the County Attorney's office, and the county family services department for their failure to comply with the due process rights of the respondent. Mental Health of E.P., 241 M 316, 787 P2d 322, 47 St. Rep. 297 (1990).

Finding of Mental Illness Supported by Overwhelming Evidence: The lower court found that the evidence demonstrated that the respondent was totally unable to take care of herself. The Supreme Court stated that after reviewing the record, it found that there was overwhelming evidence to support the lower court's finding. Mental Health of E.P., 241 M 316, 787 P2d 322, 47 St. Rep. 297 (1990).

"Seriously Mentally Ill" — Supporting Evidence:

Patient, appealing the order for his involuntary commitment to the state mental hospital, suffered from chronic paranoid schizophrenia that caused him to become angry and hostile when his delusions were challenged. Evidence showed he owned and carried weapons. There was sufficient evidence on which the court could base a finding of serious mental illness (see 1997 amendment). The statute does not require a court to wait until a person actually uses a weapon against another person before finding him seriously mentally ill. In re Mental Health of R.J.W., 226 M 419, 736 P2d 110, 44 St. Rep. 770 (1987).

Sufficient evidence supported an order of involuntary commitment when evidence presented at trial indicated the following: (1) respondent had exhibited violent behavior in the past; (2) his sister felt threatened by him on an occasion when he entered her home and demanded the keys to her car; (3) for no apparent reason, respondent entered the home of a family whom he did not know; and (4) a psychologist testified that respondent lacked ability to care for himself and posed a threat to others. In re D.B., 218 M 467, 709 P2d 161, 42 St. Rep. 1747 (1985).

A man who was hospitalized when police found him driving his car around in circles in a field and spouting "religious ideation", who told a nurse that he felt "like killing anybody and anyone in sight", who refused to take his prescribed medication, and who had been hospitalized five times previously when he refused medication was "seriously mentally ill" within the meaning of this statute (see 1997 amendment). There was sufficient evidence that commitment to Montana State Hospital at Warm Springs was the least restrictive form of commitment. The order of the District Court was affirmed. In re J.B., 217 M 504, 705 P2d 598, 42 St. Rep. 1335 (1985).

A woman who jumped out of a moving car with the intent to kill herself was "seriously mentally ill" within the meaning of this section (see 1997 amendment). In re the Mental Health of A.G., 208 M 366, 677 P2d 592, 41 St. Rep. 406 (1984).

There was sufficient evidence to support the conclusion that respondent was "seriously mentally ill" (see 1997 amendment) beyond a reasonable doubt, and respondent failed to overcome the burden of providing proof to the contrary; hence, extended detention was warranted. In re Sonsteng, 175 M 307, 573 P2d 1149 (1977); In re Miller, 175 M 318, 573 P2d 1155 (1977), followed in In re B.D., 2015 MT 339, 381 Mont. 505, 362 P.3d 636.

Suicidal Threats Constituting Emergency Situation: Threats to kill oneself as well as others, angry and abusive conduct toward others, a state of depression lasting a period of a week, and evidence of a previous suicide attempt 2 months earlier clearly indicated an emergency situation warranting detention under 53-21-129. Reiser v. Prunty, 224 M 1, 727 P2d 538, 43 St. Rep. 1967 (1986).

Detention Prior to Court Finding of Serious Mental Illness — Determination by Professional Person Rather Than Peace Officer: Appellant, M.C., argued that under 53-21-129, the peace officer makes the initial decision on whether an emergency situation exists and that in this case the officer did not make that decision. M.C. also contended that the evidence was insufficient to hold him on an emergency basis. The Supreme Court held that 53-21-129 merely permits the officer to take a person into custody for an evaluation. It does not give the officer authority to decide whether the person should be placed in emergency detention; rather, the professional person determines whether the person is seriously mentally ill (see 1997 amendment) and should be placed in emergency detention. Once that determination is made, it constitutes sufficient evidence that the person may be detained. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Stipulation to Commitment — Montana State Hospital as Least Restrictive Environment: The appellant, M.C., argued on appeal that evidence was insufficient to warrant his transfer to Montana State Hospital. At a commitment hearing, the District Court heard evidence on M.C.'s inability to cooperate in treatment at the Billings Mental Health Center, as well as testimony from a Center doctor indicating that Montana State Hospital was the least restrictive environment in which M.C. could receive the care and supervision he needed. After the hearing, M.C. and his counsel stipulated to, and the District Court ordered, a commitment to the Billings Mental Health Center or "another mental health facility in Montana". The Supreme Court held this evidence to be sufficient to support the District Court's action in committing M.C. to the Montana State Hospital. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Certified Professional's Testimony — Sufficient to Support Finding of Mental Disorder: J.M.'s cousin requested the Yellowstone County Attorney to petition that J.M. be declared seriously mentally ill (see 1997 amendment) and be committed to a mental health facility. Pursuant to 53-21-122, the District Court appointed a certified mental health professional to evaluate J.M. J.M. was uncooperative in responding to questions from the certified professional. Because of J.M.'s uncooperative attitude, the professional observed J.M. on only two occasions and relied on reports from other people concerning J.M. At the commitment hearing, the professional testified that J.M. was seriously mentally ill (see 1997 amendment) and set forth the data for making the diagnosis, the characteristics of J.M.'s particular disorder, and the effect of the disorder on J.M. The testimony was sufficient to establish that J.M. was suffering from a mental disorder. In re J.M., 217 M 300, 704 P2d 1037, 42 St. Rep. 1212 (1985).

Commitment Procedural Safeguards Ignored: The State failed to follow the commitment procedural safeguards in handling Shennum's commitment. The record does not evidence the existence of an emergency situation sufficient to invoke 53-21-129. Shennum was not advised of his constitutional rights before a medical examination incorrectly obtained under a purported emergency situation. Absent an emergency, it was the duty of the County Attorney to proceed in accordance with 53-21-121 through 53-21-126 in order to commit Shennum as a seriously mentally ill (see 1997 amendment) person. Several of the procedural protections contained in those sections were ignored. Therefore, the initial commitment was reversed with guidelines for the State to proceed properly in further commitment proceedings. In re Shennum, 210 M 442, 684 P2d 1073, 41 St. Rep. 1148 (1984).

Evidence Insufficient for Involuntary Commitment: Testimony at trial did not clearly and convincingly establish that respondent, due to his mental condition, was unable to protect his life or health at the time of the trial. Therefore, the evidence that respondent was "seriously mentally ill" within the meaning of 53-21-102 (see 1997 amendment) was insufficient as a matter of law, and the District Court commitment order was vacated. In re R.T., 204 M 493, 665 P2d 789, 40 St. Rep. 1025 (1983).

Serious Mental Illness — Source of Findings — Montana State Hospital as Least Restrictive: The District Court found that C.M. was seriously mentally ill and committed her to Warm Springs

State Hospital (now Montana State Hospital). C.M. appealed from the order of commitment. Three persons testified at the commitment hearing, C.M., C.M.'s mother, and a psychiatrist. The psychiatrist testified that C.M. was seriously mentally ill (see 1997 amendment) based on his own examination and on the observations of C.M.'s mother. The court held that a professional person may opine that a person is seriously mentally ill (see 1997 amendment) even though the evidence of an imminent threat of injury, required by statute, is obtained from a source other than the professional person. There was also sufficient evidence that a commitment to Warm Springs State Hospital (now Montana State Hospital) was the least restrictive form of commitment. The order of the District Court was affirmed. In re C.M., 195 M 171, 635 P2d 273, 38 St. Rep. 1768 (1981).

Requirements to Support Finding of Serious Mental Illness: Appellant appeals from a commitment order based on a finding that he is seriously mentally ill (see 1997 amendment). Such a finding requires the state to show (1) a mental disorder; and (2) that the mental disorder has resulted in self-inflicted injury, injury to others, or an "imminent threat thereof". In light of the difficulty of predicting that a given mental state is likely to result in future antisocial conduct, it is necessary to require the commission of some overt act. When this is coupled with psychiatric evaluation, the court will then be in a better position to assess the likelihood of the individual committing similar acts. The law requires only proof beyond a reasonable doubt that the threat of future injury presently exists and that the threat is imminent, that is, impending, likely to occur at any moment. The record showed that appellant caused several disturbances at the hotel where he stayed and then at the hospital. The record supported the finding that the appellant posed an "imminent threat of injury to others" and met the definition of "seriously mentally ill" in the statute (see 1997 amendment). In re F.B., 189 M 229, 615 P2d 867, 37 St. Rep. 1442 (1980), followed in In re Mental Health of A.S.B., 2008 MT 82, 342 M 169, 180 P3d 625 (2008). See also Reiser v. Prunty, 224 M 1, 727 P2d 538, 43 St. Rep. 1967 (1986), and In re S.L., 2014 MT 317, 377 Mont. 223, 339 P.3d 73.

Reversal of Conviction as Creating Emergency Situation: The Supreme Court reversed a deliberate homicide conviction and ordered a new trial. The court noted that if the State decides that further prosecution is not possible, then an "emergency situation" would exist under 53-21-129 and in such event ordered the State to detain the defendant and to conduct an emergency evaluation. St. v. Allies, 186 M 99, 606 P2d 1043 (1979).

Determination of Mental Illness — Overt Act: A person who has spent a substantial portion of the last 20 years in institutions and who has a history of threatening others was found to be "seriously mentally ill", as defined by statute (see 1997 amendment). The statute requires an overt act and, while every threat cannot be considered an overt act, the testimony and circumstances of this case indicated that the appellant's threat fulfilled the requirement. In re Goedert, 180 M 484, 591 P2d 222, 36 St. Rep. 393 (1979).

Psychologist/Patient Privilege — Exception: The court properly permitted testimony of respondent's institutional psychologist and psychiatrist, in spite of the psychologist/patient and physician/patient privileges because mental health professionals on the hospital staff qualify as "neutral factfinders". In re Sonsteng, 175 M 307, 573 P2d 1149 (1977); In re Miller, 175 M 318, 573 P2d 1155 (1977).

53-21-103. Court records to be kept separate.

Case Notes

Release of Sealed Involuntary Commitment Records — Redacted Records Sufficiently Protective of Personal Privacy Rights: The Montana Advocacy Program (MAP) sought to disclose redacted District Court documents related to T.L.S.'s involuntary commitment for a serious developmental disability after T.L.S. died while residing at the Montana Developmental Center. The District Court held that MAP was required to establish a compelling state interest warranting public disclosure of the sealed court documents and denied the motion to release the court file. On appeal, the Supreme Court noted that the documents were sealed under this section but that the commitment proceedings were conducted pursuant to Title 53, ch. 20, part 1, which does not contain any provisions relating to sealing and opening court records. Therefore, this section did not apply, and MAP was not required to establish good cause before the court record could be opened. It was not disputed that the records were subject to public inspection under the constitutional right to know, which is presumed absent a showing of individual privacy rights sufficient to override the right to know, so the District Court erred in requiring MAP to show a compelling state interest. Thus, the question was whether T.L.S.'s privacy interest clearly exceeded the merits of public disclosure. It is the party asserting individual privacy rights that carries the burden to establish that those privacy rights exceed the merits of public disclosure. MAP contended, and the Supreme Court agreed, that the merits of public disclosure were substantial in light of the need to inform the public regarding the actions of the officials and employees involved in the commitment proceedings and to effectively advocate for legislative, administrative, and judicial reforms for the protection of the developmentally disabled. The Supreme Court concluded that T.L.S.'s privacy interests were sufficiently protected by redacting personal information from the record and ordered that the redacted documents be immediately released. In re T.L.S. v. Mont. Advocacy Program, 2006 MT 262, 334 M 146, 144 P3d 818 (2006).

53-21-104. Powers and duties of mental disabilities board of visitors.

Compiler's Comments

2003 Amendment: Chapter 602 substituted (7)(b) concerning written response including facility's point of view for former (7)(b) that read: "(b) The professional person in charge of the facility shall submit a written response to the board within 10 working days that includes a specific plan to implement corrective action"; and substituted (7)(c) concerning mutually agreed upon resolution for former (7)(c) that read: "(c) If the problem is not appropriately resolved to the satisfaction of the board within 15 working days of the written notice provided for in subsection (7)(a), the board shall notify the next of kin or guardian of any person involved, the friend of respondent appointed by the court for any person involved, the district court that has jurisdiction over the facility, and the governor." Amendment effective October 1, 2003.

Saving Clause: Section 18, Ch. 602, L. 2003, was a saving clause.

2001 Amendments — Composite Section: Chapter 342 in (9)(b) substituted reference to 53-21-127(6) for reference to 53-21-127(2); and made minor changes in style. Amendment effective October 1, 2001.

Chapter 344 in (1) after "facility" inserted "in Montana" and after "humane" substituted "is consistent with established clinical and other professional standards" for "and decent"; in (2) at end of first sentence substituted reference to United States department of health and human services for reference to United States department of health, education, and welfare and in second sentence near beginning before "experimental research project" inserted "activity considered to be an"; in (3) in first sentence after "shall" deleted "at least annually" and deleted former second, third, and fourth sentences that read: "The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility"; inserted (3)(b) requiring board to annually establish mental health facilities inspection schedule; inserted (3)(c) prohibiting waiver or preclusion of inspection authority and authorizing board's independent inspection prerogative; inserted (3)(d) requiring written report of facility inspection with recommendations for necessary improvements; inserted (3)(e) requiring draft of written report within 30 calendar days of inspection to professional person in charge of inspected facility for review prior to publication; inserted (3)(f) requiring person in charge of facility to provide written response to board report within 30 days of receipt and requiring response to each recommendation to include either plan for implementing recommendation or rationale for nonimplementation; inserted (3)(g) requiring board to include inspected facility's written response in board's written report; inserted (3)(h) requiring board in subsequent inspections to assess facility's implementation of recommendations; inserted (3)(i) requiring board to report in writing to department director and governor determination that facility has not implemented recommendations or provided rationale for nonimplementation; in (4)(a) substituted "by applying a sampling process during a scheduled inspection of a mental health facility, shall ensure that a treatment plan and a discharge plan exists" for "shall annually insure that a treatment plan exists"; in (4)(b) after "shall" substituted language requiring review of treatment and treatment procedures involving behavior control or any type of mechanical restraints, seclusion or isolation, time out, or other physical control procedure for former language that read: "inquire concerning all use of restraints, isolation, or other extraordinary measures"; inserted (4)(c) requiring board to ensure that use of treatment procedures is clinically justified, monitored by medical doctor and other mental health professionals, and implemented only upon failure of less restrictive measures and to the least extent necessary to protect affected individual and others; inserted (4)(d) authorizing board to inquire about and ensure existence and implementation of treatment and discharge plans independent of facility inspection schedule; in (5), (7), (7)(c), and (9)(b) substituted reference to person for reference to patient; in (5) near beginning substituted "person who is receiving or who has received treatment" for "patient" and near end substituted "person's admission" for "patient's commitment"; in (6) at end of first sentence substituted "state hospital" for "institution"; in (7) after "findings" substituted "in writing" for "at once" and after "department" deleted "and if appropriate, after waiting a reasonable time for a response from the professional person"; inserted (7)(b) requiring person in charge of facility to submit written response with plan for corrective action to board within 10 working days; in (7)(c) inserted introductory clause regarding if problem is not appropriately resolved to board satisfaction within 15 working days of written notice, substituted "board shall" for "board may", and at end inserted "and the governor"; inserted (8) requiring board to publish mental health facility inspection standards; in (9)(a) after "inspected" inserted "since the last annual report"; in (9)(b) at beginning inserted "occurrences of the administration of" and substituted "against the wishes of persons receiving treatment" for "involuntarily administered to patients"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 434 inserted (8)(b) requiring Board to report annually to Governor on medications involuntarily administered to patients in mental health facilities and on review procedure effectiveness; and made minor changes in style.

1993 Amendment: Chapter 349 in (8), after "governor", deleted "and shall, as provided in 5-11-210, report to the legislature"; and made minor changes in style.

1991 Amendment: In (8) inserted reference to 5-11-210 and after "report to" deleted "each session of". Amendment effective March 20, 1991.

53-21-105. Certification of professional persons required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

53-21-106. Certification of professional persons.

Compiler's Comments

1995 Amendment: Chapter 546 in version effective July 1, 1997, in (1) substituted "53-21-102" for "53-21-102(10)(b)". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1987 Amendment: In (1) changed reference to subsection (10)(b) of 53-21-102 to reference to subsection (12)(b); and at end of (2) deleted "as defined in 53-21-102(10)(b)".

Statement of Intent: The statement of intent attached to SB 214 (Ch. 578, L. 1983) provided: "The Department of Institutions [now Department of Public Health and Human Services] is requesting legislation that will give it rulemaking authority for the certification of professional persons in the mental health field. The Department of Institutions [now Department of Corrections] is requesting that it be given authority to adopt rules imposing requirements on who shall be considered a professional person in the field of mental health. The Department is required to adopt such rules and it is contemplated that they should address the provisions of [section 3] [53-21-106] of SB 214."

Case Notes

Right to Effective Assistance of Counsel for Person Subject to Involuntary Commitment Because of Mental Disorder — Strickland Test for Ineffective Assistance Inappropriate in Involuntary Commitment Proceedings: The right to counsel afforded by state law regarding the treatment of the seriously mentally ill provides a person who is subject to an involuntary commitment proceeding the right to effective assistance of counsel, which in turn provides that person the right to raise the allegation of ineffective assistance of counsel when challenging a commitment order. The test for ineffective assistance of counsel set out in Strickland v. Wash., 466 US 668 (1984), is inappropriate in involuntary commitment proceedings. However, the Strickland test simply does not go far enough to protect the liberty interests of persons involved in involuntary commitment proceedings who may or may not have broken any law but who, upon the expiration of a 90-day commitment, must indefinitely bear the badge of inferiority of a once involuntarily committed person with a proved mental disorder. Instead, upon a substantial showing of evidence to the issuing District Court or to the Supreme Court pursuant to 53-21-131 that counsel did not effectively represent the person's interests, an order of involuntary commitment should be vacated. The due process afforded individuals must serve to protect the fundamental liberty interests of dignity and integrity, and it is not only counsel, "but also courts, that are charged with the duty of safeguarding the due process rights of individuals involved at every stage of the proceedings". The Supreme Court identified five critical areas of representation that generally define the scope of effective counsel in involuntary commitment proceedings: (1) appointment of competent counsel; (2) the initial investigation; (3) the client interview; (4) the right to remain silent; and (5) counsel as an advocate and adversary. The statutory and constitutional standards must be rigorously adhered to in order to ensure the fundamental fairness of civil commitment proceedings, and it is imperative that the constitutional and legislated rights be formally and fairly balanced with the state's ultimate power to protect both the individual and the public from actual or perceived harm. In re K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001), following Conservatorship of Roulet, 590 P2d 1 (Calif. 1979), and distinguishing In re Carmody, 653 NE 2d 977 (Ill. App. Ct. 1995).

53-21-107. Abuse and neglect of persons admitted to mental health facility prohibited — reporting — investigations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 776, L. 2023. Amendment effective June 8, 2023.

Effective Date: Section 4, Ch. 776, L. 2023, provided: "[This act] is effective on passage and approval." Approved June 8, 2023, the date that the house and senate overrode the governor's veto.

Effective Date: This section is effective October 1, 2001.

53-21-111. Voluntary admission — content of admission form — requirements for valid admission.

Compiler's Comments

1999 Amendment: Chapter 247 at end of first sentence in (1)(b) after "facility" deleted "and approved by the department" and deleted former second sentence that read: "An application is not valid unless it is approved by a professional person and a copy is given to the person being voluntarily admitted"; inserted (1)(b)(i) through (1)(b)(iii) outlining explanations form must include; in (1)(c) near middle after "this part" deleted "including the right to release"; inserted (4) outlining requirements for valid voluntary admission; and made minor changes in style. Amendment effective April 5, 1999.

1995 Amendment: Chapter 590 in (2), in second and third sentences after "from", substituted "the department or the department's designee" for "a community mental health center"; and made minor changes in style.

1985 Amendment: In (2), at beginning of second sentence inserted "The professional person must then obtain confirmation from a community mental health center", and at end of second sentence, after "treatment", deleted "except such certification is not necessary if the applicant obtains certification from the regional mental health director of his mental health region that the applicant is financially unable to receive evaluation and treatment from the facilities available to the mental health region", and inserted last sentence of (2) requiring establishment of a confirmation procedure.

Statement of Intent: The statement of intent attached to Ch. 603, L. 1985, provided: "A statement of intent is required for this bill because it contains a delegation of authority, as defined in 5-4-403 [now repealed], providing the department of institutions [now department of corrections] statutory authorization to adopt rules to implement the provisions of the bill requiring confirmation that adequate treatment and evaluation are unavailable in the community.

The legislature contemplates that the department's rules will define the confirmation process in such a way as to provide adequate screening of voluntary admissions to the state hospital without creating an undue delay in meeting the needs of patients.

Specifically, the department should adopt rules that will address:

(1) adoption of a procedure requiring a written statement signed by an authorized person from the community mental health center either before or at the time the confirmation is obtained;

(2) the qualifications of community mental health staff who may confirm voluntary admissions;

(3) the procedure to be used in receiving confirmation from a community mental health center;

(4) the information about the patient and his treatment needs that must be communicated to the community mental health center by the professional person seeking confirmation;

(5) the method used by the mental health center to document the confirmation provided; and

(6) any other reasonable consideration not inconsistent with the purpose of this bill."

Attorney General's Opinions

Involuntary Commitment: A person subject to court jurisdiction under a petition for involuntary mental commitment may not avoid the involuntary procedure solely by making an application for voluntary admission. 37 A.G. Op. 106 (1978).

County Financial Responsibility for Indigents: A county is financially responsible for a voluntary commitment proceeding of an indigent person. 36 A.G. Op. 98 (1976).

53-21-112. Voluntary admission of minors.

Compiler's Comments

2017 Amendment: Chapter 358 in (4) in last sentence substituted "2-15-1029" for "47-1-201". Amendment effective July 1, 2017.

Severability: Section 48, Ch. 358, L. 2017, was a severability clause.

2005 Amendment: (Version effective July 1, 2006) Chapter 449 in (4) in last sentence at beginning deleted "Counsel must be appointed for the minor" and at end after "proceedings" inserted requirement that court order office of state public defender to assign counsel for minor; and made minor changes in style. Amendment effective July 1, 2006.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

1997 Amendment: Chapter 490 in (1), after "law", substituted "a parent or guardian of a minor" for "a minor who is 16 years of age or older", after "consent to" deleted "receive", and after "rendered" inserted "to the minor"; in (1)(a), after "facility", deleted "that is not a state institution"; in (1)(b), after "licensed", inserted "in this state" and after "or" deleted "psychology"; inserted (1)(c) regarding a licensed mental health professional; inserted (2) allowing a minor to consent to certain mental health services; in (4), in second sentence after "admitted", substituted "with consent of the minor's parent or guardian has" for "shall have" and after "5 days of" substituted "a request by the parent or guardian" for "his request", substituted third sentence regarding the right of a minor to request release for former third sentence that read: "The minor himself may make such request", and in fourth sentence, after "consented to by the", substituted "parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age" for "minor patient and his counsel"; deleted former (4) that read: "(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the application for admission shall be treated as a petition for involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1986 Amendment: At end of (2) in second version deleted "or the Montana youth treatment center".

1983 Amendment: At end of (1)(a) inserted "that is not a state institution"; and at end of (2) changed "or the state hospital" to "but not to the state hospital or the Montana youth treatment center".

Attorney General's Opinions

Commitment Procedures to Be Followed in Committing Mentally Ill Youth — Private Mental Health Facilities Not Precluded: Section 41-5-523 (renumbered 41-5-1512) does not authorize the Youth Court or the Department of Family Services (now Department of Public Health and Human Services) to commit a mentally ill or seriously mentally ill (see 1997 amendment to 53-21-102) youth to a mental health treatment facility without following the commitment procedures set out in Title 53, ch. 21, part 1. There is, however, no statutory preclusion of commitment of a youth to private mental health facilities. 42 A.G. Op. 59 (1988).

County Financial Responsibility for Indigents: A county is financially responsible for a voluntary commitment proceeding of an indigent person. 36 A.G. Op. 98 (1976).

53-21-113. Costs of committing a patient already voluntarily admitted — transportation costs for voluntary admission.

Compiler's Comments

2001 Amendment: Chapter 571 in (2) in first sentence near middle after "must be provided by the" substituted "local office of public assistance located in the county" for "welfare department of the county" and in second sentence near middle after "with respect to the person, the" substituted "local office of public assistance" for "welfare department"; and made minor changes in style. Amendment effective July 1, 2001.

Attorney General's Opinions

Extent of State Assumption: After state assumption pursuant to 53-2-811 (now repealed), the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) is not responsible for the expenses associated with transfer of seriously mentally ill (see 1997 amendment to 53-21-102) patients involuntarily committed to the Montana State Hospital. The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) is not responsible by virtue of state assumption for those duties that do not statutorily attach to county welfare departments. (See 2001 amendment.) The Legislature has allocated the costs of involuntary commitment proceedings to the county of residence, and the county welfare departments have no statutorily mandated involvement in those proceedings. 40 A.G. Op. 73 (1984).

County Financial Responsibility for Indigents: A county is financially responsible for a voluntary commitment proceeding of an indigent person. 36 A.G. Op. 98 (1976).

53-21-114. Notice of rights to be given.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: In (1), in three places after reference to detention, deleted reference to examination.

1983 Amendment: In (1), after "shall", inserted "at the time of detention or examination"; inserted last sentence of (1) requiring that an involuntarily detained person be informed in writing of his rights within 3 days of detention; and in (2), after "advised", inserted "in writing".

Case Notes

Immediate Notice Requirements Inapplicable When Person Detained on Emergency Basis: After being detained on an emergency basis, L.K. was advised of her due process rights the next day. On appeal, L.K. asserted that the provisions of 53-21-114 required that she be advised of her constitutional rights at the time of detainment, and that failure to do so violated due process. The Supreme Court disagreed. Emergency mental health commitments are treated differently from other mental health commitments, and the immediate notice of constitutional rights is not required when a person is detained in an emergency situation pursuant to 53-21-129. L.K. was advised of her constitutional rights in a reasonably timely manner, and due process was satisfied. In re Mental Health of L.K., 2008 MT 169, 343 M 366, 184 P3d 353 (2008), distinguishing In re Shennum, 210 M 442, 684 P2d 1073 (1984).

Patient Not Informed of Right to Refuse Medication — Waiver: A patient argued that the District Court erred in not finding a physician and hospital in violation of this section and 53-21-115 because she was not notified of her right to refuse medication. The Supreme Court held that under 53-21-119 she waived her right to refuse medication by requesting it or at least by not objecting to it and that failure to notify her of her right to refuse did not result in any actionable injury to her. Reiser v. Prunty, 224 M 1, 727 P2d 538, 43 St. Rep. 1967 (1986).

Commitment of Ward — Due Process Rights — Notice, Hearing, and Counsel: District Court order committing ward to Montana State Hospital for a 72-hour evaluation upon a request made by the ward's guardian was reversed where ward was not given notice of the impending commitment, an attorney, or a hearing prior to the commitment. The ward's statutory and constitutional due process rights were violated. Two days after the first order the County Attorney, at guardian's request, filed a petition for a 90-day commitment. The guardian consented and waived ward's rights to notice, counsel, and hearing prior to commitment. The petition was granted, which also violated ward's statutory and constitutional rights to due process. He had the right to notice, hearing, and counsel, and only the person to be committed, or if he is unable, his attorney and guardian acting in concert, may waive those rights. The ward had no attorney at the time of the guardian's waiver. In re Simons, 215 M 463, 698 P2d 850, 42 St. Rep. 544 (1985).

Attorney General's Opinions

Duty of Mental Health Professional to Inform Involuntarily Committed Patient of Rights: A certified professional person has knowledge of a detainee's rights and the law requiring notice of those rights. Therefore, a mental health professional examining a person under a petition for involuntary commitment must determine whether the person has been informed of his rights and, if not, inform him of those rights. 43 A.G. Op. 64 (1990).

53-21-115. Procedural rights.

Compiler's Comments

1997 Amendment: Chapter 490 inserted (3) regarding the right to know; inserted (12) regarding the right to voluntarily take medications; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1987 Amendment: Inserted (2) establishing the right to know the names and addresses of witnesses in advance of hearing.

Case Notes

Failure to Object to Testimony Presented by Someone Other Than Court-Appointed Professional Person — No Ineffective Assistance: After being involuntarily committed, the appellant claimed she had received ineffective assistance of counsel because her counsel failed to object to testimony presented by someone other than the court-appointed professional person. The District Court appointed a doctor to be the appellant's professional person, to evaluate her and file a report with the court. Instead, the appellant was evaluated by a nurse practitioner who filed a report with the District Court on behalf of the doctor. The nurse practitioner also testified at the appellant's commitment hearing, noting that her report was based on daily meetings with the appellant after the appellant's initial hearing in the District Court. The Supreme Court noted that the appellant did not contend that the nurse practitioner was unqualified to act as a professional person and also noted that the appellant's counsel capably cross-examined the witnesses at the hearing, eliciting testimony that was favorable to the appellant. The Supreme Court concluded that the record as a whole demonstrated that the appellant's counsel vigorously represented the appellant's wishes at the commitment hearing. In re S.H., 2016 MT 137, 383 Mont. 497, 374 P.3d 693.

Respondent Not Required to Attend Commitment Hearing to Waive Right to Be Present — Record to Show Respondent Was Capable and Waiver Was Knowing and Intentional: A person who is the subject of a petition for involuntary commitment may waive the statutory right to be present at any hearing. However, the record must show that the absent person is capable of waiving his rights and that the person made an intentional and knowing waiver of the right to be present at a hearing. Because the record did not show that the respondent was capable of waiving her rights, the Supreme Court reversed her commitment to the Montana State Hospital. In re P.A.C., 2013 MT 84, 369 Mont. 407, 298 P.3d 1166. See also In re R.W.K., 2013 MT 54, 369 Mont. 193, 297 P.3d 318, holding that the respondent's attorney provided an effective waiver of the respondent's rights on behalf of the respondent and noting that the record reflected that the respondent was capable of waiving his rights and did so intentionally and knowingly.

Counsel's Failure to Obtain Independent Evaluation — No Ineffective Assistance: After being committed to the state hospital, the respondent claimed ineffective assistance of counsel based on an allegation that his counsel should have obtained an independent professional evaluation. The Supreme Court determined that counsel provided effective representation based on the services provided, including meetings with the respondent and a doctor, cross-examination of the doctor, and a deposition of the respondent the day before the hearing. In re C.R., 2012 MT 258, 367 Mont. 1, 289 P.3d 125, citing In re Mental Health of C.R.C., 2009 MT 125, 350 Mont. 211, 207 P.3d 289, and In re K.G.F., 2001 MT 140, 306 Mont. 1, 29 P.3d 485.

Security Hearing — Exception to Right to Be Present at Any Hearing Regarding Involuntary Commitment: T.J.F. was not present at the security hearing held by the District Court to determine whether T.J.F. should be required to appear in full restraints during a bench trial. The District Court did not violate T.J.F.'s right to be present at the security hearing because a security hearing is simply an administrative proceeding to ensure the orderly conduct of the bench trial pursuant to 3-1-111. In re Mental Health of T.J.F., 2011 MT 28, 359 Mont. 213, 248 P.3d 804.

Administration of Medication During Emergency Detention Not Violative of Right to Be Free of Medication Prior to Initial Appearance: L.R. was held in emergency detention based on an inability to make reasonable and safe decisions for herself and was involuntarily medicated because of aggressive, intrusive, and volatile behavior on the day of the initial appearance on the state's petition for involuntary commitment. L.R. contended that the involuntary medication violated the right to refuse medication 24 hours before the initial appearance under 53-21-115. The state contended that under 53-21-129 the medication was properly administered because an emergency situation existed. The Supreme Court noted that an inconsistency existed between the statutes but concluded that the specific directive in 53-21-129 allowing for involuntary medication in emergency situations controlled the general statutory directive concerning a medication-free initial appearance in 53-21-115. Thus, even though L.R. was involuntarily medicated within 24 hours of the initial appearance, because an emergency situation existed and the medications were administered before the next business day, L.R.'s right to a medication-free hearing was not violated. In re Mental Health of L.R., 2010 MT 76, 356 Mont. 20, 231 P.3d 594.

Acquiescence to Involuntary Commitment Without Patient's Consent — Client Refusal to Cooperate With Counsel — No Ineffective Assistance Given Counsel's Ongoing Advocacy: C.R.C. asserted that she received ineffective assistance of counsel when her attorney acquiesced to involuntary commitment of C.R.C. without her consent. The Supreme Court examined the record and found that the statutory guidelines for a waiver of C.R.C.'s rights were followed. In addition, the record revealed numerous facts to rebut the presumption that counsel was ineffective. C.R.C. refused to: (1) participate in her own defense; (2) meet with counsel; (3) attend court appearances; or (4) meet with a doctor for an independent psychological evaluation requested by counsel on C.R.C.'s behalf. The record also demonstrated that C.R.C. posed a danger to herself and others, requiring commitment. Yet even without C.R.C.'s input or cooperation, counsel continued to advocate on C.R.C.'s behalf, and counsel followed the law in waiving C.R.C.'s right to an adjudicatory hearing. Therefore, the presumption of ineffective assistance of counsel, when counsel acquiesced to involuntary commitment without C.R.C.'s consent, was rebutted by the facts of the case, and the Supreme Court declined to hold that counsel's actions were ineffective. In re Mental Health of C.R.C., 2009 MT 125, 350 M 211, 207 P3d 289 (2009). See also In re K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001), and In re Mental Health of T.J.F., 2011 MT 28, 359 Mont. 213, 248 P.3d 804.

Right to Be Present and Offer Evidence — Not Applicable to Probable Cause at Initial Appearance: E.T. underwent a mental health evaluation, and based upon the results, the County Attorney filed an involuntary commitment upon which the District Court determined that there was probable cause to support a commitment and detention pending E.T.'s initial appearance. At the initial appearance, E.T. objected to the District Court's finding of probable cause and requested a hearing on the probable cause. The court noted the objection but refused to hold a hearing at the initial appearance and stated E.T. would be able to present evidence and testimony at the hearing held pursuant to 53-21-126. E.T. appealed the District Court's refusal. The Supreme Court held that, based upon legislative history that allows the person subject to commitment adequate time to prepare for a hearing, the procedural rights provided under 53-21-115 do not apply to an initial appearance under 53-21-122. In addition, a person subject to immediate detention has the right to immediately contest a probable cause finding that results in an immediate detention pursuant to a hearing under 53-21-124. In re Mental Health of E.T., 2008 MT 299, 345 M 497, 191 P3d 470 (2008).

Muting of Respondent's Microphone at Commitment Hearing in Order to Prevent Disruptive Behavior Not Violative of Right to Be Heard: When L.K. did not respond to the District Court's warning to abstain from disrupting emergency commitment proceedings conducted via two-way electronic audio-video communication from the state hospital, the court muted L.K.'s microphone until permission was granted for L.K. to speak. On appeal, L.K. asserted that muting the microphone violated her right to be heard at the hearing. The Supreme Court disagreed. Although a person who is involuntarily detained has the right to be present, to offer evidence, to present witnesses, and to receive assistance of counsel, the person does not have the right to disrupt proceedings. In this case, the District Court afforded L.K. due process by consistently giving L.K. the opportunity to conform her behavior to the requirements of an orderly hearing, to hear witness testimony and observe the entire proceeding, and to consult with counsel at any time. In re Mental Health of L.K., 2008 MT 169, 343 M 366, 184 P3d 353 (2008).

Failure of District Court to Make Detailed Findings of Fact to Support Involuntary Commitment — Reversible Error: A hearing on a petition for involuntary commitment is not merely a pro forma requirement but an opportunity for both the petitioner and respondent to present evidence upon which a trial court can make required findings and enter appropriate orders. As petitioner, the state bears the burden of proving any physical facts or evidence beyond a reasonable doubt, the respondent's mental disorder to a reasonable medical certainty, and other matters by clear and convincing evidence. In ordering commitment, the trial court must make a detailed statement of facts upon which it found respondent to be suffering from a mental disorder requiring commitment. In this case, the issue was whether the trial court's findings met statutory requirements, which the Supreme Court reviewed de novo. The trial court merely recited the testimony of a health care professional, noted that it was consistent with another professional's findings, and ordered commitment. This was not the detailed statement of facts required under 53-21-127, and the Supreme Court reversed and remanded with instructions to vacate the commitment order. In re Mental Health of E.P.B., 2007 MT 224, 339 M 107, 168 P3d 662 (2007). See also In re L.L.A., 2011 MT 285, 362 Mont. 464, 267 P.3d 1 (reversing involuntary commitment where findings of fact contained seven brief findings of facts and did not comply with 53-21-127(8)(a)).

Denial of Motion for Continuance on Day of Trial in Order to Obtain Different Counsel Not Error: The District Court denied respondent's request on the day of trial to obtain private counsel, which respondent contended was an abuse of discretion. Respondent stated that he had no confidence in his appointed counsel because counsel did not obtain a second independent psychiatric evaluation. The Supreme Court noted that there must be a good cause and a compelling reason when a respondent seeks to dismiss counsel on the day of trial, which did not exist in this case. Respondent actually agreed with the first evaluation, and there was no other evidence that counsel did not advocate for respondent to the best of his ability. Further, respondent's indigency made it unlikely that private counsel could be retained. Thus, the District Court did not abuse its discretion in denying respondent's motion for a continuance in order to obtain different counsel. In re Mental Health of T.M., 2004 MT 221, 322 M 394, 96 P3d 1147 (2004).

Failure of Counsel to Obtain Expert on General Tendencies of Mentally Ill Homeless Not Considered Ineffective Assistance: A trial on respondent's involuntary commitment was required within 7 days of the request for a jury trial. Respondent's counsel failed to secure a continuance in order to attempt to locate an expert to testify on the general ability of mentally ill homeless persons to care for themselves, and respondent asserted that counsel's conduct constituted ineffective assistance. Although the strict time constraints make advocacy challenging, evidence must be limited to a respondent's own particular set of circumstances, and in this case, any testimony given by an expert on the general tendencies of the mentally ill homeless would not have rebutted the state's testimony that respondent was unable to survive on his own. Thus, counsel's failure to procure the expert did not constitute ineffective assistance. In re Mental Health of T.M., 2004 MT 221, 322 M 394, 96 P3d 1147 (2004). See also In re K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001).

Right to Effective Assistance of Counsel for Person Subject to Involuntary Commitment Because of Mental Disorder — Strickland Test for Ineffective Assistance Inappropriate in Involuntary Commitment Proceedings: The right to counsel afforded by state law regarding the treatment of the seriously mentally ill provides a person who is subject to an involuntary commitment proceeding the right to effective assistance of counsel, which in turn provides that person the right to raise the allegation of ineffective assistance of counsel when challenging a commitment order. The test for ineffective assistance of counsel set out in Strickland v. Wash., 466 US 668 (1984), is inappropriate in involuntary commitment proceedings. However, the Strickland test simply does not go far enough to protect the liberty interests of persons involved in involuntary commitment proceedings who may or may not have broken any law but who, upon the expiration of a 90-day commitment, must indefinitely bear the badge of inferiority of a once involuntarily committed person with a proved mental disorder. Instead, upon a substantial showing of evidence to the issuing District Court or to the Supreme Court pursuant to 53-21-131 that counsel did not effectively represent the person's interests, an order of involuntary commitment should be vacated. The due process afforded individuals must serve to protect the fundamental liberty interests of dignity and integrity, and it is not only counsel, "but also courts, that are charged with the duty of safeguarding the due process rights of individuals involved at every stage of the proceedings". The Supreme Court identified five critical areas of representation that generally define the scope of effective counsel in involuntary commitment proceedings: (1) appointment of competent counsel; (2) the initial investigation; (3) the client interview; (4) the right to remain silent; and (5) counsel as an advocate and adversary. The statutory and constitutional standards must be rigorously adhered to in order to ensure the fundamental fairness of civil commitment proceedings, and it is imperative that the constitutional and legislated rights be formally and fairly balanced with the state's ultimate power to protect both the individual and the public from actual or perceived harm. In re K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001), following Conservatorship of Roulet, 590 P2d 1 (Calif. 1979), and distinguishing In re Carmody, 653 NE 2d 977 (Ill. App. Ct. 1995).

Medical Rights Not Absolute — Restrictions Proper When Based on Necessity for Treatment, Evaluation, and Care: G.J.P. claimed numerous violations of his procedural and constitutional rights regarding the provision of his medical care after being confined for his manic episodes, including claims that: (1) a medical professional lacked knowledge of the requisite facts to make a request for commitment; (2) a mental evaluation was improperly conducted; (3) he was improperly secluded in isolation and restrained; (4) he was denied medical care for broken ribs; (5) he was denied the right of telephone communications; and (6) he was administered medication within 24 hours before his initial hearing on a motion for commitment, despite his objections. The Supreme Court recognized the rights of patients to receive proper medical care but noted that none of the rights are absolute. G.J.P. did not demonstrate any restrictions on his rights other than those necessary for his treatment, evaluation, and care or establish that reversal of his commitment would be a proper remedy for a denial or restriction of his rights. In re G.J.P., 266 M 370, 880 P2d 1311, 51 St. Rep. 847 (1994).

Lawful Detention Not Violative of Right to Vote: The constitutional right to vote may not be considered to be denied under this section when an emergency detention is lawfully justified. Reiser v. Prunty, 224 M 1, 727 P2d 538, 43 St. Rep. 1967 (1986).

Patient Not Informed of Right to Refuse Medication — Waiver: A patient argued that the District Court erred in not finding a physician and hospital in violation of 53-21-114 and this section because she was not notified of her right to refuse medication. The Supreme Court held that under 53-21-119 she waived her right to refuse medication by requesting it or at least by not objecting to it and that failure to notify her of her right to refuse did not result in any actionable injury to her. Reiser v. Prunty, 224 M 1, 727 P2d 538, 43 St. Rep. 1967 (1986).

Commitment of Ward — Due Process Rights — Notice, Hearing, and Counsel: District Court order committing ward to Montana State Hospital for a 72-hour evaluation upon a request made by the ward's guardian was reversed where ward was not given notice of the impending commitment, an attorney, or a hearing prior to the commitment. The ward's statutory and constitutional due process rights were violated. Two days after the first order the County Attorney, at guardian's request, filed a petition for a 90-day commitment. The guardian consented and waived ward's rights to notice, counsel, and hearing prior to commitment. The petition was granted, which also violated ward's statutory and constitutional rights to due process. He had the right to notice, hearing, and counsel, and only the person to be committed, or if he is unable, his attorney and guardian acting in concert, may waive those rights. The ward had no attorney at the time of the guardian's waiver. In re Simons, 215 M 463, 698 P2d 850, 42 St. Rep. 544 (1985).

Attorney General's Opinions

Commitment Procedures to Be Followed in Committing Mentally Ill Youth — Private Mental Health Facilities Not Precluded: Section 41-5-523 (renumbered 41-5-1512) does not authorize the Youth Court or the Department of Family Services (now Department of Public Health and Human Services) to commit a mentally ill or seriously mentally ill (see 1997 amendment to 53-21-102) youth to a mental health treatment facility without following the commitment procedures set out in Title 53, ch. 21, part 1. There is, however, no statutory preclusion of commitment of a youth to private mental health facilities. 42 A.G. Op. 59 (1988).

53-21-116. Right to be present at hearing or trial — assignment of counsel.

Compiler's Comments

2017 Amendment: Chapter 358 in last sentence substituted "2-15-1029" for "47-1-201". Amendment effective July 1, 2017.

Severability: Section 48, Ch. 358, L. 2017, was a severability clause.

2005 Amendment: (Version effective July 1, 2006) Chapter 449 in first sentence after "present" inserted reference to right to counsel and in second sentence after "indigent" inserted "or if in the court's discretion assignment of counsel is in the best interest of justice", after "shall" deleted "appoint" and inserted reference to ordering office of state public defender to assign counsel, and at end after "both" deleted "and the counsel must be compensated pursuant to 3-5-901(1)(f)"; and made minor changes in style. Amendment effective July 1, 2006.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

2003 Amendment: Chapter 583 in second sentence at beginning substituted "is indigent" for "has no attorney" and at end substituted "pursuant to 3-5-901(1)(f)" for "from the public funds of the county where the respondent resides"; and made minor changes in style. Amendment effective July 1, 2003.

1997 Amendment: Chapter 490 in first sentence, after "alleged to be", substituted "suffering from a mental disorder and requiring commitment" for "seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1987 Amendment: In first sentence inserted "mentally ill or".

Case Notes

Respondent Not Required to Attend Commitment Hearing to Waive Right to Be Present — Record to Show Respondent Was Capable and Waiver Was Knowing and Intentional: A person who is the subject of a petition for involuntary commitment may waive the statutory right to be present at any hearing. However, the record must show that the absent person is capable of waiving his rights and that the person made an intentional and knowing waiver of the right to be present at a hearing. Because the record did not show that the respondent was capable of waiving her rights, the Supreme Court reversed her commitment to the Montana State Hospital. In re P.A.C., 2013 MT 84, 369 Mont. 407, 298 P.3d 1166. See also In re R.W.K., 2013 MT 54, 369 Mont. 193, 297 P.3d 318, holding that the respondent's attorney provided an effective waiver of the respondent's rights on behalf of the respondent and noting that the record reflected that the respondent was capable of waiving his rights and did so intentionally and knowingly.

Commitment Hearing Via Videoconference Without Individual's Presence Improper Absent Waiver of Right to Be Present: The District Court conducted a videoconference commitment hearing to determine whether L.K. should be involuntarily committed to the state hospital for a mental disorder. The court concluded that L.K. should be committed for 90 days, and L.K. appealed on grounds that use of a videoconference was improper and that because the hearing was conducted outside L.K.'s presence after she voluntarily left the conference, her statutory right to be present at the hearing was violated. The Supreme Court first concluded that the District Court was not precluded from holding the hearing via videoconference, as allowed under 53-21-140, because L.K. made no objection. However, even though L.K. voluntarily left the videoconference and had the right to return and participate at any time before the hearing concluded, there was nothing in the record to indicate that L.K. waived the right to be physically present at the hearing under the criteria in 53-21-119. Absent compliance with the waiver requirements, the District Court could not conduct the hearing in L.K.'s absence so the commitment order was reversed. In re Mental Health of L.K., 2009 MT 366, 353 M 246, 219 P3d 1263 (2009).

Muting of Respondent's Microphone at Commitment Hearing in Order to Prevent Disruptive Behavior Not Violative of Right to Be Heard: When L.K. did not respond to the District Court's warning to abstain from disrupting emergency commitment proceedings conducted via two-way electronic audio-video communication from the state hospital, the court muted L.K.'s microphone until permission was granted for L.K. to speak. On appeal, L.K. asserted that muting the microphone violated her right to be heard at the hearing. The Supreme Court disagreed. Although a person who is involuntarily detained has the right to be present, to offer evidence, to present witnesses, and to receive assistance of counsel, the person does not have the right to disrupt proceedings. In this case, the District Court afforded L.K. due process by consistently giving L.K. the opportunity to conform her behavior to the requirements of an orderly hearing, to hear witness testimony and observe the entire proceeding, and to consult with counsel at any time. In re Mental Health of L.K., 2008 MT 169, 343 M 366, 184 P3d 353 (2008).

Respondent Allowed to Remain in Court Following Outbursts During Voir Dire — No Prejudice: Respondent's counsel was concerned that respondent might be unruly during an involuntary commitment trial, which might prejudice respondent to the jury, and informed the court that respondent might have to be removed from the courtroom. At the beginning of voir dire, respondent made several relatively innocuous outbursts, and respondent's counsel requested that respondent be removed. The court was concerned with violating respondent's fundamental right to be present and explained the situation to respondent, who agreed not to be disruptive and made no further outbursts. On appeal, the Supreme Court held that respondent's behavior during voir dire was not so prejudicial that the jury could not objectively consider the evidence and that the District Court did not abuse its discretion in allowing respondent to remain in the courtroom. In re Mental Health of T.M., 2004 MT 221, 322 M 394, 96 P3d 1147 (2004).

Dismissing Appointed Attorney and Retaining Own Attorney — County Not Responsible for Attorney Fees: The trial court properly rejected a claim for payment of an attorney retained by a person alleged to be seriously mentally ill (see 1997 amendment) after such person dismissed her court-appointed attorney and retained her own counsel. In re Mental Health of H.C., 218 M 386, 708 P2d 1007, 42 St. Rep. 1675 (1985).

Commitment of Ward — Due Process Rights — Notice, Hearing, and Counsel: District Court order committing ward to Montana State Hospital for a 72-hour evaluation upon a request made by the ward's guardian was reversed where ward was not given notice of the impending commitment, an attorney, or a hearing prior to the commitment. The ward's statutory and constitutional due process rights were violated. Two days after the first order the County Attorney, at guardian's request, filed a petition for a 90-day commitment. The guardian consented and waived ward's rights to notice, counsel, and hearing prior to commitment. The petition was granted, which also violated ward's statutory and constitutional rights to due process. He had the right to notice, hearing, and counsel, and only the person to be committed, or if he is unable, his attorney and guardian acting in concert, may waive those rights. The ward had no attorney at the time of the guardian's waiver. In re Simons, 215 M 463, 698 P2d 850, 42 St. Rep. 544 (1985).

53-21-117. Right to representation by own attorney.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Case Notes

Denial of Motion for Continuance on Day of Trial in Order to Obtain Different Counsel Not Error: The District Court denied respondent's request on the day of trial to obtain private counsel, which respondent contended was an abuse of discretion. Respondent stated that he had no confidence in his appointed counsel because counsel did not obtain a second independent psychiatric evaluation. The Supreme Court noted that there must be a good cause and a compelling reason when a respondent seeks to dismiss counsel on the day of trial, which did not exist in this case. Respondent actually agreed with the first evaluation, and there was no other evidence that counsel did not advocate for respondent to the best of his ability. Further, respondent's indigency made it unlikely that private counsel could be retained. Thus, the District Court did not abuse its discretion in denying respondent's motion for a continuance in order to obtain different counsel. In re Mental Health of T.M., 2004 MT 221, 322 M 394, 96 P3d 1147 (2004).

Dismissing Appointed Attorney and Retaining Own Attorney — County Not Responsible for Attorney Fees: The trial court properly rejected a claim for payment of an attorney retained by a person alleged to be seriously mentally ill (see 1997 amendment to 53-21-102) after such person dismissed her court-appointed attorney and retained her own counsel. In re Mental Health of H.C., 218 M 386, 708 P2d 1007, 42 St. Rep. 1675 (1985).

Commitment of Ward — Due Process Rights — Notice, Hearing, and Counsel: District Court order committing ward to Montana State Hospital for a 72-hour evaluation upon a request made by the ward's guardian was reversed where ward was not given notice of the impending commitment, an attorney, or a hearing prior to the commitment. The ward's statutory and constitutional due process rights were violated. Two days after the first order the County Attorney, at guardian's request, filed a petition for a 90-day commitment. The guardian consented and waived ward's rights to notice, counsel, and hearing prior to commitment. The petition was granted, which also violated ward's statutory and constitutional rights to due process. He had the right to notice, hearing, and counsel, and only the person to be committed, or if he is unable, his attorney and guardian acting in concert, may waive those rights. The ward had no attorney at the time of the guardian's waiver. In re Simons, 215 M 463, 698 P2d 850, 42 St. Rep. 544 (1985).

53-21-118. Right to examination by professional person of own choosing.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Case Notes

Respondent Not Entitled to Continually Delay Involuntary Commitment Hearing Due to Inability to Obtain Evaluation: A respondent is entitled to reasonable choice of an available professional person but not to continual delay to search for a favorable evaluator. In re N.A., 2013 MT 255, 371 Mont. 531, 309 P.3d 27.

Failure to Obtain Prior Approval for Expert Witness — County Not Responsible for Payment: The trial court properly rejected a claim for the payment of a professional expert witness hired by a person alleged to be seriously mentally ill (see 1997 amendment to 53-21-102) because such person failed to obtain prior approval of the court. Thus, payment of the witness' compensation by the county was precluded. In re Mental Health of H.C., 218 M 386, 708 P2d 1007, 42 St. Rep. 1675 (1985).

53-21-119. Waiver of rights.

Compiler's Comments

2013 Amendment: Chapter 308 in (1) in first sentence after "respondent" inserted "if a friend of respondent is appointed"; inserted (2)(b) regarding waiver of respondent's presence at hearing; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Counsel Not Authorized to Unilaterally Waive Person's Right to Appear in Person at Commitment Hearing. In re J.D.L., 2023 MT 64, 412 Mont. 25, 526 P.3d 1096.

No Advisement of Rights During Commitment Process: The respondent was not present at his initial commitment hearing and was not advised of his rights at the subsequent hearing. He challenged his involuntary commitment. The Supreme Court reviewed for plain error then reversed, stating that had the respondent been advised of his rights, then much of the error could have been cured, but that the respondent never had a proper introduction to the commitment process, prejudicing his substantial rights and compromising the integrity of the process. In re F.S., 2021 MT 262, 406 Mont. 1, 496 P.3d 958.

Hearing to Stipulate to Extension of Commitment — Conformance With 53-21-119 Not Required: After a petition to extend his initial commitment had been filed, the respondent requested a hearing to put his stipulation to the extension on the record. Afterward, the respondent appealed the extension, arguing that the District Court had not complied with the provisions of 53-21-119. The Supreme Court held that the provisions of 53-21-119 did not apply because the respondent had not requested a hearing on the petition to extend but, rather, had requested a hearing to stipulate to the extension. In re B.A.F., 2019 MT 57, 395 Mont. 98, 436 P.3d 718.

Waiver of Rights Made Knowingly — Commitment Hearing Not Required — No Due Process Violation: The state sought the involuntary commitment of the respondent after she tried to kill herself. After an initial hearing, the respondent's attorney filed a waiver of rights that she had signed. The District Court approved the waiver and ordered her commitment without holding a hearing. The respondent appealed to the Supreme Court, arguing that the District Court had violated her statutory and due process rights by not holding a hearing on her commitment. The Supreme Court disagreed and affirmed the order of commitment, holding that a District Court does not have to hold a commitment hearing when there is evidence that the waiver of rights was made intentionally and knowingly. In re S.D., 2018 MT 176, 392 Mont. 116, 422 P.3d 122.

Prohibition on Waiver of Right to Counsel in Civil Commitment Proceedings — No U.S. Constitution Violations: In a civil commitment proceeding, the respondent requested to represent himself. The District Court denied the request on the basis that 53-21-119 prohibits a person from waiving the right to counsel in a civil commitment proceeding. The respondent appealed, arguing that 53-21-119 violates the sixth and fourteenth amendments to the United States Constitution. The Supreme Court affirmed, concluding that the sixth amendment does not apply to civil commitment proceedings and that the statute does not raise due process concerns because while counsel is required, a respondent still has a right to participate personally in the proceedings. In re S.M., 2017 MT 244, 389 Mont. 28, 403 P.3d 324.

Commitment Proceeding Failed to Establish Knowing Waiver of Procedural Rights: In a court proceeding to commit an individual with a history of schizoaffective disorder, the individual's counsel stated the parties were supportive of the commitment resolution. The District Court then announced its findings that the individual had a mental disorder requiring community commitment. The individual subsequently appealed, arguing that the court did not obtain a waiver of his procedural rights required under 53-21-119. The Supreme Court remanded, holding that no evidence was presented and no record was made establishing a knowing and intentional waiver of the individual's procedural rights. In re N.A., 2014 MT 257, 376 Mont. 379, 334 P.3d 915.

Record of Intentional and Knowing Waiver — Involuntary Commitment: The Supreme Court reversed an involuntary commitment that was stipulated to by the prospective ward, finding that although the District Court advised the ward of his rights, the ward read a statement of those rights before the hearing, and the ward indicated he had no questions, neither the ward nor his attorney represented that the ward understood his rights, understood the nature of the proceedings, or had the capacity to knowingly and intentionally waive procedural rights. Because the District Court did not make an affirmative determination on the record concerning the prospective ward's comprehension and intentional waiver of his procedural rights, the ward's statutory and due process rights were violated. In re A.M., 2014 MT 221, 376 Mont. 226, 332 P.3d 263.

Participation by Respondent in Involuntary Commitment Proceeding — Attorney Not Reduced to Standby Counsel: Not all client participation transforms effective counsel into standby counsel. In this case, counsel exercised control over all facets of the proceeding, including the questioning of witnesses, and cannot be considered standby counsel. In re N.A., 2013 MT 255, 371 Mont. 531, 309 P.3d 27.

Respondent Not Required to Attend Commitment Hearing to Waive Right to Be Present — Record to Show Respondent Was Capable and Waiver Was Knowing and Intentional: A person who is the subject of a petition for involuntary commitment may waive the statutory right to be present at any hearing. However, the record must show that the absent person is capable of waiving his rights and that the person made an intentional and knowing waiver of the right to be present at a hearing. Because the record did not show that the respondent was capable of waiving her rights, the Supreme Court reversed her commitment to the Montana State Hospital. In re P.A.C., 2013 MT 84, 369 Mont. 407, 298 P.3d 1166. See also In re R.W.K., 2013 MT 54, 369 Mont. 193, 297 P.3d 318, holding that the respondent's attorney provided an effective waiver of the respondent's rights on behalf of the respondent and noting that the record reflected that the respondent was capable of waiving his rights and did so intentionally and knowingly.

Reliance on Counsel's Representations for Waiver of Rights for Involuntary Commitment Appropriate: The District Court did not violate the respondent's statutory due process rights by failing to obtain a personal waiver of rights directly through questioning when the respondent attended and was represented by counsel and by a friend of respondent at the involuntary commitment hearing. Under the circumstances, the representation to the District Court by the respondent's counsel was sufficient to support the civil commitment under 53-21-119. In re R.W.K., 2013 MT 54, 369 Mont. 193, 297 P.3d 318.

Counsel's Failure to Obtain Independent Evaluation — No Ineffective Assistance: After being committed to the state hospital, the respondent claimed ineffective assistance of counsel based on an allegation that his counsel should have obtained an independent professional evaluation. The Supreme Court determined that counsel provided effective representation based on the services provided, including meetings with the respondent and a doctor, cross-examination of the doctor, and a deposition of the respondent the day before the hearing. In re C.R., 2012 MT 258, 367 Mont. 1, 289 P.3d 125, citing In re Mental Health of C.R.C., 2009 MT 125, 350 Mont. 211, 207 P.3d 289, and In re K.G.F., 2001 MT 140, 306 Mont. 1, 29 P.3d 485.

Involuntary Commitment Order Invalid — Improper Waiver of Jury Trial at Commitment Hearing: The District Court's order that L.K.-S. be involuntarily committed violated L.K.-S.'s right to a jury trial because there was a lack of the detailed factual findings supported by evidence on the record that are necessary to each procedural waiver requirement under 53-21-119. In re Mental Health of L.K.-S., 2011 MT 21,359 Mont. 191, 247 P.3d 1100.

Commitment Hearing Via Videoconference Without Individual's Presence Improper Absent Waiver of Right to Be Present: The District Court conducted a videoconference commitment hearing to determine whether L.K. should be involuntarily committed to the state hospital for a mental disorder. The court concluded that L.K. should be committed for 90 days, and L.K. appealed on grounds that use of a videoconference was improper and that because the hearing was conducted outside L.K.'s presence after she voluntarily left the conference, her statutory right to be present at the hearing was violated. The Supreme Court first concluded that the District Court was not precluded from holding the hearing via videoconference, as allowed under 53-21-140, because L.K. made no objection. However, even though L.K. voluntarily left the videoconference and had the right to return and participate at any time before the hearing concluded, there was nothing in the record to indicate that L.K. waived the right to be physically present at the hearing under the criteria in 53-21-119. Absent compliance with the waiver requirements, the District Court could not conduct the hearing in L.K.'s absence so the commitment order was reversed. In re Mental Health of L.K., 2009 MT 366, 353 M 246, 219 P3d 1263 (2009).

Acquiescence to Involuntary Commitment Without Patient's Consent — Client Refusal to Cooperate With Counsel — No Ineffective Assistance Given Counsel's Ongoing Advocacy: C.R.C. asserted that she received ineffective assistance of counsel when her attorney acquiesced to involuntary commitment of C.R.C. without her consent. The Supreme Court examined the record and found that the statutory guidelines for a waiver of C.R.C.'s rights were followed. In addition, the record revealed numerous facts to rebut the presumption that counsel was ineffective. C.R.C. refused to: (1) participate in her own defense; (2) meet with counsel; (3) attend court appearances; or (4) meet with a doctor for an independent psychological evaluation requested by counsel on C.R.C.'s behalf. The record also demonstrated that C.R.C. posed a danger to herself and others, requiring commitment. Yet even without C.R.C.'s input or cooperation, counsel continued to advocate on C.R.C.'s behalf, and counsel followed the law in waiving C.R.C.'s right to an adjudicatory hearing. Therefore, the presumption of ineffective assistance of counsel, when counsel acquiesced to involuntary commitment without C.R.C.'s consent, was rebutted by the facts of the case, and the Supreme Court declined to hold that counsel's actions were ineffective. In re Mental Health of C.R.C., 2009 MT 125, 350 M 211, 207 P3d 289 (2009). See also In re

K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001), and In re Mental Health of T.J.F., 2011 MT 28, 359 Mont. 213, 248 P.3d 804.

Appointment of Complaining Witness as Friend of Respondent Reversible Error — Conflict of Interest — Issue Not Moot: In deciding the disposition of D.V.'s commitment proceedings, the District Court appointed D.V.'s mother as the friend of respondent, even though the mother was also the complaining witness who began the proceedings against D.V. following D.V.'s arrest for family member assault after D.V. allegedly threatened his mother. D.V. was subsequently involuntarily committed to the state mental hospital for 90 days. D.V. later appealed the District Court's order. Because D.V.'s commitment had already been served, the Supreme Court first considered whether the issue was moot. In this case, the involuntary commitment was too short to allow the issues to be fully litigated prior to D.V.'s release, and there was a reasonable expectation that D.V. could be subjected to the same action again in the future. The issues were capable of repetition while evading review, so the issue was not moot, and the Supreme Court thus considered the dispositive issue of the fairness of D.V.'s commitment proceedings. It was error for the District Court to appoint the victim of the crime that precipitated the proceedings to be the friend of respondent. The appointment was a conflict of interest and prejudiced D.V.'s right to a fair trial. The case was reversed with instructions to vacate the order of commitment. In re Mental Health of D.V., 2007 MT 351, 340 M 319, 174 P3d 503 (2007).

Respondent Allowed to Remain in Court Following Outbursts During Voir Dire — No Prejudice: Respondent's counsel was concerned that respondent might be unruly during an involuntary commitment trial, which might prejudice respondent to the jury, and informed the court that respondent might have to be removed from the courtroom. At the beginning of voir dire, respondent made several relatively innocuous outbursts, and respondent's counsel requested that respondent be removed. The court was concerned with violating respondent's fundamental right to be present and explained the situation to respondent, who agreed not to be disruptive and made no further outbursts. On appeal, the Supreme Court held that respondent's behavior during voir dire was not so prejudicial that the jury could not objectively consider the evidence and that the District Court did not abuse its discretion in allowing respondent to remain in the courtroom. In re Mental Health of T.M., 2004 MT 221, 322 M 394, 96 P3d 1147 (2004).

Right to Effective Assistance of Counsel for Person Subject to Involuntary Commitment Because of Mental Disorder — Strickland Test for Ineffective Assistance Inappropriate in Involuntary Commitment Proceedings: The right to counsel afforded by state law regarding the treatment of the seriously mentally ill provides a person who is subject to an involuntary commitment proceeding the right to effective assistance of counsel, which in turn provides that person the right to raise the allegation of ineffective assistance of counsel when challenging a commitment order. The test for ineffective assistance of counsel set out in Strickland v. Wash., 466 US 668 (1984), is inappropriate in involuntary commitment proceedings. However, the Strickland test simply does not go far enough to protect the liberty interests of persons involved in involuntary commitment proceedings who may or may not have broken any law but who, upon the expiration of a 90-day commitment, must indefinitely bear the badge of inferiority of a once involuntarily committed person with a proved mental disorder. Instead, upon a substantial showing of evidence to the issuing District Court or to the Supreme Court pursuant to 53-21-131 that counsel did not effectively represent the person's interests, an order of involuntary commitment should be vacated. The due process afforded individuals must serve to protect the fundamental liberty interests of dignity and integrity, and it is not only counsel, "but also courts, that are charged with the duty of safeguarding the due process rights of individuals involved at every stage of the proceedings". The Supreme Court identified five critical areas of representation that generally define the scope of effective counsel in involuntary commitment proceedings: (1) appointment of competent counsel; (2) the initial investigation; (3) the client interview; (4) the right to remain silent; and (5) counsel as an advocate and adversary. The statutory and constitutional standards must be rigorously adhered to in order to ensure the fundamental fairness of civil commitment proceedings, and it is imperative that the constitutional and legislated rights be formally and fairly balanced with the state's ultimate power to protect both the individual and the public from actual or perceived harm. In re K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001), following Conservatorship of Roulet, 590 P2d 1 (Calif. 1979), and distinguishing In re Carmody, 653 NE 2d 977 (Ill. App. Ct. 1995).

Termination of Parental Rights — Appointment of Guardian for Incompetent Parent or Waiver of Right to Appear Required: Where mother was under order of commitment and was confined at Montana State Hospital at time of entry of order terminating her parental rights, the Supreme Court reversed and remanded on ground that she was incompetent and either a guardian ad litem should have been appointed for her under former Rule 17(c), M.R.Civ.P. (now superseded), or a waiver of her right to appear under subsection (2) of this section should have been entered. The fact that she was represented by appointed counsel does not meet the requirements of former Rule 17(c). Custody of R.A.D., 231 M 143, 753 P2d 862, 44 St. Rep. 2018 (1987). Opinion withdrawn but issue affirmed in Custody of R.A.D. & J.D., 231 M 143, 753 P2d 862, 45 St. Rep. 496 (1988).

Patient Not Informed of Right to Refuse Medication — Waiver: A patient argued that the District Court erred in not finding a physician and hospital in violation of 53-21-114 and 53-21-115 because she was not notified of her right to refuse medication. The Supreme Court held that under this section she waived her right to refuse medication by requesting it or at least by not objecting to it and that failure to notify her of her right to refuse did not result in any actionable injury to her. Reiser v. Prunty, 224 M 1, 727 P2d 538, 43 St. Rep. 1967 (1986).

Commitment of Ward — Due Process Rights — Notice, Hearing, and Counsel: District Court order committing ward to Montana State Hospital for a 72-hour evaluation upon a request made by the ward's guardian was reversed where ward was not given notice of the impending commitment, an attorney, or a hearing prior to the commitment. The ward's statutory and constitutional due process rights were violated. Two days after the first order the County Attorney, at guardian's request, filed a petition for a 90-day commitment. The guardian consented and waived ward's rights to notice, counsel, and hearing prior to commitment. The petition was granted, which also violated ward's statutory and constitutional rights to due process. He had the right to notice, hearing, and counsel, and only the person to be committed, or if he is unable, his attorney and guardian acting in concert, may waive those rights. The ward had no attorney at the time of the guardian's waiver. In re Simons, 215 M 463, 698 P2d 850, 42 St. Rep. 544 (1985).

53-21-120. Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited.

Compiler's Comments

2003 Amendment: Chapter 513 in (2) in middle of second sentence inserted "subject to the provisions in 53-21-193" and after "hospital" inserted "or a behavioral health inpatient facility"; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 10, Ch. 513, L. 2003, was a severability clause.

1991 Amendment: At beginning of (3) deleted "Except as provided in 53-21-124"; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (3) substituted language prohibiting person from being detained in jail or other correctional facility except as provided in 53-21-124 for language stating circumstances under which person may be detained (see 1987 MCA for former text).

1987 Amendment: Inserted (5) disallowing a detention order when a petition has been filed under 53-21-121(1)(b); and inserted (6) disallowing involuntary commitment or detention of certain persons absent serious mental illness.

Case Notes

No Error in Instruction Quoting Statute Verbatim: Joshua Lloyd suffered a seizure after being transferred to the Kalispell Regional Hospital's security room. His personal representative sued the hospital and others. During trial, the District Court instructed the jury on negligence per se by quoting mental health statutes verbatim to the jury. The Supreme Court said that giving jury instructions by quoting directly from the statutes may not be the best practice, but noted that the instructions proposed by opposing counsel were also direct quotations of mental health statutes. Given that situation, the Supreme Court held that there was no error in giving jury instructions in the form of direct quotations from the statutes. Buhr v. Flathead County, 268 M 223, 886 P2d 381, 51 St. Rep. 1258 (1994).

Hospital's Failure to Agree in Writing to Detainment — No Negligence: The provisions of this section that no person may be detained unless the hospital or mental health facility agrees in writing to admission does not create a basis of liability but is intended to aid in proof that the patient was in fact admitted. When the hospital did not deny admitting the patient, a prima facie case of negligence could not be made. Reiser v. Prunty, 224 M 1, 727 P2d 538, 43 St. Rep. 1967 (1986).

Weight Given Professional Decision as to Least Restrictive Environment: By its very nature, the concept of a least restrictive environment involves medical connotations outside the scope of knowledge of the layperson and is a judgment that can only be made by an expert who has considered all facts of the case in light of what would be reasonable in similar circumstances. Absent evidence that a patient was placed in other than the least restrictive environment, her lay observations were insufficient to defeat District Court award of summary judgment to the attending physician and the hospital. Reiser v. Prunty, 224 M 1, 727 P2d 538, 43 St. Rep. 1967 (1986).

Stipulation to Commitment — Montana State Hospital as Least Restrictive Environment: The appellant, M.C., argued on appeal that evidence was insufficient to warrant his transfer to Montana State Hospital. At a commitment hearing, the District Court heard evidence on M.C.'s inability to cooperate in treatment at the Billings Mental Health Center, as well as testimony from a Center doctor indicating that Montana State Hospital was the least restrictive environment in which M.C. could receive the care and supervision he needed. After the hearing, M.C. and his counsel stipulated to, and the District Court ordered, a commitment to the Billings Mental Health Center or "another mental health facility in Montana". The Supreme Court held this evidence to be sufficient to support the District Court's action in committing M.C. to the Montana State Hospital. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Serious Mental Illness — Source of Findings — Montana State Hospital as Least Restrictive: The District Court found that C.M. was seriously mentally ill (see 1997 amendment to 53-21-102) and committed her to Warm Springs State Hospital (now Montana State Hospital). C.M. appealed from the order of commitment. Three persons testified at the commitment hearing, C.M., C.M.'s mother, and a psychiatrist. The psychiatrist testified that C.M. was seriously mentally ill based on his own examination and on the observations of C.M.'s mother. The court held that a professional person may opine that a person is seriously mentally ill (see 1997 amendment to 53-21-102) even though the evidence of an imminent threat of injury, required by statute, is obtained from a source other than the professional person. There was also sufficient evidence that a commitment to Warm Springs State Hospital (now Montana State Hospital) was the least restrictive form of commitment. The order of the District Court was affirmed. In re C.M., 195 M 171, 635 P2d 273, 38 St. Rep. 1768 (1981).

53-21-121. Petition for commitment — contents of — notice of.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 36, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

2003 Amendment: Chapter 165 inserted (2)(i) concerning name and address of mental health facility proposed for commitment; in (3) near middle of third sentence after "mailed" inserted "or sent by a facsimile transmission" and at end inserted reference to director of department, director's designee, and mental health facility; and made minor changes in style. Amendment effective March 28, 2003.

2001 Amendment: Chapter 342 in (2)(c) inserted "including a report by a mental health professional if any" and substituted reference to 53-21-127 for reference to 53-21-127(2). Amendment effective October 1, 2001.

1997 Amendment: Chapter 490 in (1), near middle after "any person", inserted "having direct knowledge of the facts" and at end substituted "suffering from a mental disorder and who requires commitment pursuant to this chapter" for "seriously mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 3 months"; in (2)(c), at end after "mental", substituted "disorder, a statement of the disposition sought pursuant to 53-21-127(2), and the need for commitment" for "illness"; in (3) inserted second sentence regarding counsel's explanation of the petition and proceedings; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1987 Amendment: In (1), in introductory clause, inserted "having direct knowledge of the facts"; inserted (1)(b) to provide for filing of a petition, upon written request, for temporary commitment of an allegedly mentally ill person; and made minor changes in phraseology.

Case Notes

Statute Permissive After 2009 Amendments — Friend of Respondent Not Required: The respondent claimed that his statutory and constitutional rights were violated when the District Court and the County Attorney failed to offer a court-appointed friend prior to his commitment to the state hospital. The Supreme Court determined that the language in 53-21-121 regarding a court-appointed friend is permissive based on amendments by the 2009 Legislature, and therefore there was no manifest miscarriage of justice and the integrity of the proceeding was not compromised. In re C.R., 2012 MT 258, 367 Mont. 1, 289 P.3d 125.

No Causal Connection Between Cognitive Disorder and Alleged Criminal Activity — Commitment Order Unwarranted: D.M.S. was charged with two felony DUIs and was the primary suspect in a felony arson investigation involving five vehicle fires. Following a competency evaluation, the District Court adjudicated D.M.S. unfit to proceed in the criminal cases because of the mental disease or defect of cognitive disorder not otherwise specified (NOS), combined with alcohol abuse, borderline intellectual functioning, and antisocial personality disorder. The charges were subsequently dismissed, and the County Attorney immediately filed a petition to commit D.M.S. to the state hospital. After detention and evaluation of D.M.S. at the state hospital, the doctor who conducted the evaluation concluded that D.M.S. did not meet the criteria for commitment. D.M.S. moved to dismiss the petition, but the motion was denied and the case went to trial. The jury found that D.M.S. would be a danger if untreated, and the District Court ordered a 90-day commitment. After the commitment was served, D.M.S. appealed the commitment order. The state did not present any evidence indicating that because of the cognitive disorder NOS, as opposed to alcoholism or antisocial behavior, D.M.S. caused injury or posed a threat of injury to self or others. Therefore, the evidence did not establish a causal connection between the cognitive disorder NOS and the behavior described in the reports or alleged by law enforcement officers. Absent a causal connection, even when viewed in a light most favorable to the state, a rational trier of fact could not have found D.M.S. in need of commitment to the state hospital. The Supreme Court reversed the commitment order and remanded for further proceedings. In re D.M.S., 2009 MT 41, 349 M 257, 203 P3d 776 (2009), following In re Mental Health of A.K., 2006 MT 166, 332 M 511, 139 P3d 849 (2006), and followed in In re Mental Health of M.C.D., 2010 MT 15, 355 Mont. 97, 225 P.3d 1214.

Pending Appeal Not Divesting District Court of Jurisdiction Over Subsequent Petitions Filed Under Same Cause Number: The District Court Uniform Caseload Filing Standards are intended solely for recordkeeping purposes within the office of the Clerk of Court, and nothing in the standards suggests that a respondent's pending appeal of a single commitment order divests a District Court of subject matter jurisdiction over any subsequent petitions filed under the same cause number. An appeal to the Supreme Court divests the District Court of jurisdiction over only the order or judgment from which the appeal is taken. In re G.M., 2007 MT 100, 337 M 116, 157 P3d 687 (2007). See also McCormick v. McCormick, 168 M 136, 541 P2d 765 (1975).

Proper Finding of Mental Disorder — Remand for Determination of Least Restrictive Environment: Respondent expressed suicidal thoughts, mood disorder, and paranoia. Following evaluation, respondent was found to suffer from a mental disorder and was involuntarily committed to the state hospital for up to 3 months. Respondent appealed. The Supreme Court held that the state met its burden of proving that respondent required commitment because he suffered from a mental illness and because his recent and relevant overt acts and omissions posed an imminent threat of self-inflicted injury or injury to others. However, the court remanded because the District Court did not address with detailed findings of fact whether commitment to the state hospital represented the least restrictive environment needed to permit effective treatment and to protect respondent as required in 53-21-127. In re Mental Health of D.S., 2005 MT 152, 327 M 391, 114 P3d 264 (2005).

Statutory Requirements Not Adhered to by Medical Center: A woman was brought by police to the medical center because the officers believed that she was seriously mentally ill (see 1997 amendment). Although the center extended good medical coverage, it held the woman for 5 days rather than 1 before petitioning the District Court to commit her. The lower court found that the evidence demonstrated that the respondent was totally unable to take care of herself. The Supreme Court stated that after reviewing the record, it found that there was overwhelming evidence to support the lower court's finding. The Supreme Court stated that although the case was moot in that the woman had been subsequently released, the medical center had not met the statutory guidelines. The court cautioned that proper procedures should be established to protect the due process rights of the mentally ill. Mental Health of E.P., 241 M 316, 787 P2d 322, 47 St. Rep. 297 (1990).

Evidence of Past Violent Behavior — Admissible in Commitment Proceeding: It was not error, in an involuntary commitment proceeding, to admit evidence of violent behavior by respondent even though the behavior had occurred several years before this proceeding and the incidents were not set forth as allegations in the petition. In re D.B., 218 M 467, 709 P2d 161, 42 St. Rep. 1747 (1985).

Commitment Procedural Safeguards Ignored: The State failed to follow the commitment procedural safeguards in handling Shennum's commitment. The record does not evidence the existence of an emergency situation sufficient to invoke 53-21-129. Shennum was not advised of his constitutional rights before a medical examination incorrectly obtained under a purported emergency situation. Absent an emergency, it was the duty of the County Attorney to proceed in accordance with 53-21-121 through 53-21-126 in order to commit Shennum as a seriously mentally ill person. Several of the procedural protections contained in those sections were ignored. Therefore, the initial commitment was reversed with guidelines for the State to proceed properly in further commitment proceedings. In re Shennum, 210 M 442, 684 P2d 1073, 41 St. Rep. 1148 (1984), followed in In re Mental Health of R.M., 270 M 40, 889 P2d 1201, 52 St. Rep. 68 (1995).

"Seriously Mentally Ill" — Supporting Evidence: There was sufficient evidence to support the conclusion that respondent was "seriously mentally ill", as defined in 53-21-102 (see 1997 amendment), beyond a reasonable doubt, and respondent failed to overcome the burden of providing proof to the contrary; hence, extended detention was warranted. In re Sonsteng, 175 M 307, 573 P2d 1149 (1977); In re Miller, 175 M 318, 573 P2d 1155 (1977).

Attorney General's Opinions

Returning Patients to Montana State Hospital — Financial Responsibility: A Sheriff who returns a patient to Warm Springs (now Montana State Hospital) pursuant to 7-32-2144 when the patient has been subjected to an involuntary civil or a criminal commitment is entitled to reimbursement for his costs from the applicable county for a person committed pursuant to 46-14-221 and 46-14-222 or the institution to which the person is committed when committed pursuant to 46-14-301, 53-21-121, 53-21-124, and 53-21-127. 37 A.G. Op. 129 (1978).

Involuntary Commitment: A person subject to court jurisdiction under a petition for involuntary mental commitment may not avoid the involuntary procedure solely by making an application for voluntary admission. 37 A.G. Op. 106 (1978).

53-21-122. Petition for commitment — filing of — initial hearing on.

Compiler's Comments

2017 Amendments — Composite Section: Chapter 358 in (2)(a) and (3) substituted "2-15-1029" for "47-1-201". Amendment effective July 1, 2017.

Chapter 402 in (2)(a) near middle and in (3) near end after "53-21-1206" inserted "or to a category D assisted living facility as provided in 50-5-224". Amendment effective October 1, 2017.

Severability: Section 48, Ch. 358, L. 2017, was a severability clause.

2009 Amendments — Composite Section: Chapter 80 in (2)(a) in fifth sentence near beginning after "person" deleted "and a friend of respondent"; substituted (2)(b) concerning friend of respondent for "The desires of the respondent must be taken into consideration in the appointment of the friend of respondent"; and made minor changes in style. Amendment effective March 25, 2009.

Chapter 481 in (2) and (3) near middle inserted requirement that professional person conducting an exam of respondent under 53-21-123 will provide in report a recommendation regarding respondent's diversion from involuntary commitment to short-term inpatient treatment. Amendment effective July 1, 2009.

2005 Amendment: (Version effective July 1, 2006) Chapter 449 in (2) in first sentence at beginning deleted "If a judge is available", in second sentence after "probable cause" inserted reference to respondent without private counsel present and language authorizing judge to order office of state public defender to assign counsel and after "counsel" deleted "must be immediately appointed", and in last sentence at end after "respondent" deleted "and in the confirmation of the appointment of the attorney"; in (3) in first sentence after "county" inserted "in person", deleted former second and third sentences that read: "If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause, the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent", inserted second sentence regarding telephone orders, including order requiring assignment of counsel, in third sentence near beginning before "order" inserted reference to judge through clerk of court, after "order" deleted "must also direct", after "contents of the" deleted "clerk's", and at end after "copy" inserted "of the order", in fourth sentence substituted "assignment" for "appointment" and after "counsel" inserted reference to hiring private counsel pursuant to 53-21-116 and 53-21-117, and deleted former last sentence that read: "The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present"; and made minor changes in style. Amendment effective July 1, 2006.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

1997 Amendment: Chapter 490 in (2), in fifth sentence, and in (3), in third sentence, after "petition", substituted "that may not be on the same day as the initial appearance and that" for "which"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1987 Amendment: Outlined subsection (2); and in (2)(b)(ii)(B), at beginning, inserted "appoint".

Case Notes

No Plain Error — Failure to Advise Respondent of Rights — No Substantial Prejudice or Deprivation of Liberty Interest: During an initial hearing on the state's petition for commitment, the respondent interrupted while the court was attempting to advise him of his rights and then left the room. It was established that the respondent's counsel had not yet advised him of his rights, although a written copy was attached to the petition, which had been provided to him and he claimed to have reviewed. After a contested hearing, the District Court committed the respondent to the state hospital. Subsequently, the respondent argued that the District Court erred by failing to advise him of his constitutional and statutory rights during his initial appearance. The Supreme Court found that although the respondent specifically disclaimed that he was seeking plain error review, plain error review was the proper method to consider unpreserved error from an involuntary commitment proceeding. However, the court declined to exercise plain error review under the circumstances, finding that the respondent did not establish that the error resulted in a manifest miscarriage of justice that left unsettled the question of the fundamental fairness of the trial or proceedings or compromised the integrity of the judicial process. In re B.H., 2018 MT 282, 393 Mont. 352, 430 P.3d 1006.

Involuntary Commitment Proper — Involuntary Administration of Medication — No Showing of Ineffective Counsel: The record of a 28-year-old woman with a lengthy history of mental illness showed that she was frequently noncompliant with her prescribed medications, aggressive, combative, abusive to family members, homeless, and unemployed. In an involuntary commitment hearing, the District Court concluded that the state had proven to a reasonable degree of medical certainty that she suffered from a mental disorder, that she was unable to care for herself, that the state hospital was the least restrictive treatment option, and that involuntary administration of medication was authorized as needed to facilitate treatment. On appeal, the Supreme Court affirmed, finding that the involuntary commitment was warranted and that the District Court had followed relevant statutes and correctly authorized the involuntary administration of medication. The Supreme Court also found that it could not be concluded that her counsel was ineffective because "abundant evidence" supported the District Court's findings and because counsel had attempted to provide alternate explanations for her symptoms and behavior. In re C.B., 2017 MT 83, 387 Mont. 231, 392 P.3d 598.

Statute Permissive After 2009 Amendments — Friend of Respondent Not Required: The respondent claimed that his statutory and constitutional rights were violated when the District Court and the County Attorney failed to offer a court-appointed friend prior to his commitment to the state hospital. The Supreme Court determined that the language in 53-21-121 regarding a court-appointed friend is permissive based on amendments by the 2009 Legislature, and therefore there was no manifest miscarriage of justice and the integrity of the proceeding was not compromised. In re C.R., 2012 MT 258, 367 Mont. 1, 289 P.3d 125.

Involuntary Commitment — Failure to Appoint Friend of Respondent Reversible Error: In an involuntary commitment case, the District Court made no serious attempt to appoint a friend of respondent for the individual and committed the individual to the state mental hospital. The individual appealed. Because the case involved a substantial liberty interest and failure to review the error would compromise the integrity of the judicial process, the Supreme Court reviewed the case under the plain error doctrine and remanded. The District Court essentially ignored the statutory requirement in 53-21-122 to appoint a friend of respondent, constituting reversible error. In re Mental Health of J.D.L., 2008 MT 445, 348 M 1, 199 P3d 805 (2008), followed in In re Mental Health of A.S.F., 2008 MT 450, 348 M 45, 199 P3d 808 (2008).

Inability to Appoint Friend of Respondent to Assist — Not Reversible Error: The failure of the District Court to appoint a friend of the respondent after having appointed one who was unwilling to serve and finding no one in the community who was willing to assist because of the respondent's psychosis and behavior, was not reversible error because this section requires that a person be willing to serve and the law does not require impossibilities. In re Mental Health of O.R.B., 2008 MT 301, 345 M 516, 191 P3d 482 (2008).

Right to Be Present and Offer Evidence — Not Applicable to Probable Cause at Initial Appearance: E.T. underwent a mental health evaluation, and based upon the results, the County Attorney filed an involuntary commitment upon which the District Court determined that there was probable cause to support a commitment and detention pending E.T.'s initial appearance. At the initial appearance, E.T. objected to the District Court's finding of probable cause and requested a hearing on the probable cause. The court noted the objection but refused to hold a hearing at the initial appearance and stated E.T. would be able to present evidence and testimony at the hearing held pursuant to 53-21-126. E.T. appealed the District Court's refusal. The Supreme Court held that, based upon legislative history that allows the person subject to commitment adequate time to prepare for a hearing, the procedural rights provided under 53-21-115 do not apply to an initial appearance under 53-21-122. In addition, a person subject to immediate detention has the right to immediately contest a probable cause finding that results in an immediate detention pursuant to a hearing under 53-21-124. In re Mental Health of E.T., 2008 MT 299, 345 M 497, 191 P3d 470 (2008).

Denial of Motion for Continuance on Day of Trial in Order to Obtain Different Counsel Not Error: The District Court denied respondent's request on the day of trial to obtain private counsel, which respondent contended was an abuse of discretion. Respondent stated that he had no confidence in his appointed counsel because counsel did not obtain a second independent psychiatric evaluation. The Supreme Court noted that there must be a good cause and a compelling reason when a respondent seeks to dismiss counsel on the day of trial, which did not exist in this case. Respondent actually agreed with the first evaluation, and there was no other evidence that counsel did not advocate for respondent to the best of his ability. Further, respondent's indigency made it unlikely that private counsel could be retained. Thus, the District Court did not abuse its discretion in denying respondent's motion for a continuance in order to obtain different counsel. In re Mental Health of T.M., 2004 MT 221, 322 M 394, 96 P3d 1147 (2004).

Failure to Appoint Professional Person in Strict Accordance With Statute — Reliance Upon Report of Professional Person Held Insufficient: Lewis and Clark County petitioned the District Court for the involuntary civil commitment of R.M., alleging that R.M. was seriously mentally ill, as defined in 53-21-102 (see 1997 amendment). Attached to the petition was a "present mental status" report by Frazer. The District Court conducted an immediate hearing at which Frazer testified, but no other witnesses were called. Citing In re Shennum, 210 M 442, 684 P2d 1073 (1984), and In re S.J., 231 M 353, 753 P2d 319 (1988), the Supreme Court held that the procedural requirements of the civil commitment statutes must be strictly adhered to. The Supreme Court held that it made no difference that the "present mental status" report was prepared by a professional person; the District Court did not appoint a professional person, so that person could not examine R.M. following the person's appointment and then prepare a lawful report. The Supreme Court refused to indulge the state's attempted distinctions concerning compliance with the "heart" of the commitment requirements. In re Mental Health of R.M., 270 M 40, 889 P2d 1201, 52 St. Rep. 68 (1995).

Certified Professional's Testimony — Sufficient to Support Finding of Mental Disorder: J.M.'s cousin requested the Yellowstone County Attorney to petition that J.M. be declared seriously mentally ill, as defined in 53-21-102 (see 1997 amendment), and be committed to a mental health facility. Pursuant to 53-21-122, the District Court appointed a certified mental health professional to evaluate J.M. J.M. was uncooperative in responding to questions from the certified professional. Because of J.M.'s uncooperative attitude, the professional observed J.M. on only two occasions and relied on reports from other people concerning J.M. At the commitment hearing, the professional testified that J.M. was seriously mentally ill, as defined in 53-21-102 (see 1997 amendment), and set forth the data for making the diagnosis, the characteristics of J.M.'s particular disorder, and the effect of the disorder on J.M. The testimony was sufficient to establish that J.M. was suffering from a mental disorder. In re J.M., 217 M 300, 704 P2d 1037, 42 St. Rep. 1212 (1985).

Involuntary Commitment — Appointment of Two Professionals — One May Testify: The lower court appointed two psychiatrists—one to examine G.S. and one to present those findings at the commitment hearing since the examining doctor would be unavailable. The Supreme Court held that the lower court did not err in allowing the second psychiatrist to offer an opinion on the subject's mental condition without formally examining the patient, but relying, instead, on the first doctor's report. Of critical importance is the fact that the doctor who ultimately did diagnose G.S.'s mental condition was available for cross-examination. The critical requirement of professional justification was satisfied. Rule 703, Montana Rules of Evidence, clearly provides that one doctor can state his expert opinion based on another doctor's report. Section 46-14-213(1) does not apply since the Montana Rules of Civil Procedure apply to involuntary commitment procedures. In re G.S., 215 M 384, 698 P2d 406, 42 St. Rep. 451 (1985).

Commitment Procedural Safeguards Ignored: The State failed to follow the commitment procedural safeguards in handling Shennum's commitment. The record does not evidence the existence of an emergency situation sufficient to invoke 53-21-129. Shennum was not advised of his constitutional rights before a medical examination incorrectly obtained under a purported emergency situation. Absent an emergency, it was the duty of the County Attorney to proceed in accordance with 53-21-121 through 53-21-126 in order to commit Shennum as a seriously mentally ill person. Several of the procedural protections contained in those sections were ignored. Therefore, the initial commitment was reversed with guidelines for the State to proceed properly in further commitment proceedings. In re Shennum, 210 M 442, 684 P2d 1073, 41 St. Rep. 1148 (1984), followed in In re Mental Health of R.M., 270 M 40, 889 P2d 1201, 52 St. Rep. 68 (1995).

"Seriously Mentally Ill" — Supporting Evidence: There was sufficient evidence to support the conclusion that respondent was "seriously mentally ill", as defined in 53-21-102 (see 1997 amendment), beyond a reasonable doubt, and respondent failed to overcome the burden of providing proof to the contrary; hence, extended detention was warranted. In re Sonsteng, 175 M 307, 573 P2d 1149 (1977); In re Miller, 175 M 318, 573 P2d 1155 (1977).

53-21-123. Examination of respondent following initial hearing — recommendation of professional person.

Compiler's Comments

2017 Amendment: Chapter 402 inserted (2)(a)(ii) regarding evaluation for eligibility as resident in category D assisted living facility; in (3)(b) after "treatment" inserted "or an option for living in a category D assisted living facility"; and made minor changes in style. Amendment effective October 1, 2017.

2009 Amendment: Chapter 481 inserted (2)(a) regarding recommendations in report; inserted (3)(b) regarding suspension of commitment hearing; and made minor changes in style. Amendment effective July 1, 2009.

2001 Amendment: Chapter 342 in (1) at end substituted reference to 53-21-127 for reference to 53-21-127(2). Amendment effective October 1, 2001.

1997 Amendment: Chapter 490 in (1) inserted fourth sentence requiring that the written report contain a statement of the professional person's recommendations to the court; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1987 Amendment: In (2)(a), near beginning, inserted "if he has been detained".

Case Notes

Failure to Object to Testimony Presented by Someone Other Than Court-Appointed Professional Person — No Ineffective Assistance: After being involuntarily committed, the appellant claimed she had received ineffective assistance of counsel because her counsel failed to object to testimony presented by someone other than the court-appointed professional person. The District Court appointed a doctor to be the appellant's professional person, to evaluate her and file a report with the court. Instead, the appellant was evaluated by a nurse practitioner who filed a report with the District Court on behalf of the doctor. The nurse practitioner also testified at the appellant's commitment hearing, noting that her report was based on daily meetings with the appellant after the appellant's initial hearing in the District Court. The Supreme Court noted that the appellant did not contend that the nurse practitioner was unqualified to act as a professional person and also noted that the appellant's counsel capably cross-examined the witnesses at the hearing, eliciting testimony that was favorable to the appellant. The Supreme Court concluded that the record as a whole demonstrated that the appellant's counsel vigorously represented the appellant's wishes at the commitment hearing. In re S.H., 2016 MT 137, 383 Mont. 497, 374 P.3d 693.

Failure to Issue Written Report — No Prejudice to Respondent — No Plain Error: The respondent appealed her commitment to the state hospital, alleging for the first time on appeal that her due process rights were violated because the person who performed her mental health evaluation did not issue a written report as required under 53-21-123. Although the Supreme Court concluded that the failure to issue a written report implicated a fundamental right, it affirmed the District Court's decision, finding that the failure had not prejudiced the respondent's ability to defend against the allegations in the petition or by the person who performed her mental health evaluation. In re M.K.S., 2015 MT 146, 379 Mont. 293, 350 P.3d 27.

Failure to File Report Not Fatal When Findings and Conclusions Provided in Testimony: Respondent's procedural due process rights were not implicated when the court was given ample opportunity to hear a professional person's report in the form of testimony. In addition, the respondent's own evaluator who attended the examination that was the subject of the report advised the respondent's attorney that he would not testify because he agreed with the findings contained in the report. In re N.A., 2013 MT 255, 371 Mont. 531, 309 P.3d 27.

Commitment Recommendation Report Lacked Recommendation for Disposition — De Minimis Error: Although the report of the professional person recommending commitment did not include his recommendation for disposition as required by this section, the error was de minimis because the detailed testimony of the professional person, both at the probable cause hearing and at the commitment hearing, satisfied statutory requirements and gave notice to O.R.B. In re Mental Health of O.R.B., 2008 MT 301, 345 M 516, 191 P3d 482 (2008).

Right to Be Present and Offer Evidence — Not Applicable to Probable Cause at Initial Appearance: E.T. underwent a mental health evaluation, and based upon the results, the County Attorney filed an involuntary commitment upon which the District Court determined that there was probable cause to support a commitment and detention pending E.T.'s initial appearance. At the initial appearance, E.T. objected to the District Court's finding of probable cause and requested a hearing on the probable cause. The court noted the objection but refused to hold a hearing at the initial appearance and stated E.T. would be able to present evidence and testimony at the hearing held pursuant to 53-21-126. E.T. appealed the District Court's refusal. The Supreme Court held that, based upon legislative history that allows the person subject to commitment adequate time to prepare for a hearing, the procedural rights provided under 53-21-115 do not apply to an initial appearance under 53-21-122. In addition, a person subject to immediate detention has the right to immediately contest a probable cause finding that results in an immediate detention pursuant to a hearing under 53-21-124. In re Mental Health of E.T., 2008 MT 299, 345 M 497, 191 P3d 470 (2008).

Proper Finding of Mental Disorder — Remand for Determination of Least Restrictive Environment: Respondent expressed suicidal thoughts, mood disorder, and paranoia. Following evaluation, respondent was found to suffer from a mental disorder and was involuntarily committed to the state hospital for up to 3 months. Respondent appealed. The Supreme Court held that the state met its burden of proving that respondent required commitment because he suffered from a mental illness and because his recent and relevant overt acts and omissions posed an imminent threat of self-inflicted injury or injury to others. However, the court remanded because the District Court did not address with detailed findings of fact whether commitment to the state hospital represented the least restrictive environment needed to permit effective treatment and to protect respondent as required in 53-21-127. In re Mental Health of D.S., 2005 MT 152, 327 M 391, 114 P3d 264 (2005).

Failure to Present Statutorily Required Evidence — Involuntary Commitment Based on Hearsay Reversed: The only state witness at D.L.T.'s commitment trial was a psychologist who testified regarding matters reported by D.L.T.'s husband and parents, another doctor, and a City Court Judge. Under 53-21-126, the state is also required to present evidence of recent overt acts or omissions separate from a professional person's testimony. Here, the only evidence of D.L.T.'s acts or omissions leading to injury or imminent threat of injury was the hearsay statements of persons not present at the hearing. The laws regarding involuntary commitment must be strictly followed. Because the state failed to introduce the statutorily required evidence, the criteria for involuntary commitment were not met, and the Supreme Court reversed. In re Mental Health of D.L.T., 2003 MT 46, 314 M 297, 67 P3d 189 (2003).

Specific Procedural Safeguards Imposed by Statute to Be Followed: The County Attorney filed a petition alleging that respondent was seriously mentally ill (see 1997 amendment to 53-21-102). At or immediately following the initial appearance, the court issued an order directing that a hearing be held 5 minutes after the initial appearance, stated that a hospital employee's mental evaluation report (done before the initial appearance) was sufficient to satisfy the requirements of this section, and ordered that respondent be involuntarily committed to the state hospital. On appeal, the Supreme Court reversed. The District Court erred when it failed to comply with the specific requirements of this section concerning appointment of and examination by a professional person before commitment proceedings continue. In re Mental Health of D.H., 270 M 480, 893 P2d 330, 52 St. Rep. 294 (1995).

Failure to Appoint Professional Person in Strict Accordance With Statute — Reliance Upon Report of Professional Person Held Insufficient: Lewis and Clark County petitioned the District Court for the involuntary civil commitment of R.M., alleging that R.M. was seriously mentally ill (see 1997 amendment to 53-21-102). Attached to the petition was a "present mental status" report by Frazer. The District Court conducted an immediate hearing at which Frazer testified, but no other witnesses were called. Citing In re Shennum, 210 M 442, 684 P2d 1073 (1984), and In re S.J., 231 M 353, 753 P2d 319 (1988), the Supreme Court held that the procedural requirements of the civil commitment statutes must be strictly adhered to. The Supreme Court held that it made no difference that the "present mental status" report was prepared by a professional person; the District Court did not appoint a professional person, so that person could not examine R.M. following the person's appointment and then prepare a lawful report. The Supreme Court refused to indulge the state's attempted distinctions concerning compliance with the "heart" of the commitment requirements. In re Mental Health of R.M., 270 M 40, 889 P2d 1201, 52 St. Rep. 68 (1995).

Commitment Procedural Safeguards Ignored: The State failed to follow the commitment procedural safeguards in handling Shennum's commitment. The record does not evidence the existence of an emergency situation sufficient to invoke 53-21-129. Shennum was not advised of his constitutional rights before a medical examination incorrectly obtained under a purported emergency situation. Absent an emergency, it was the duty of the County Attorney to proceed in accordance with 53-21-121 through 53-21-126 in order to commit Shennum as a seriously mentally ill (see 1997 amendment to 53-21-102) person. Several of the procedural protections contained in those sections were ignored. Therefore, the initial commitment was reversed with guidelines for the State to proceed properly in further commitment proceedings. In re Shennum, 210 M 442, 684 P2d 1073, 41 St. Rep. 1148 (1984), followed in In re Mental Health of R.M., 270 M 40, 889 P2d 1201, 52 St. Rep. 68 (1995).

53-21-124. Detention of respondent pending hearing or trial — jail prohibited.

Compiler's Comments

2001 Amendment: Chapter 342 in (3) at end of first sentence inserted "which may not depend on the respondent's ability to pay, and the respondent must be informed of this right"; and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendments: Chapter 312 in (2) of temporary version, in third sentence after "regional", deleted "central" and in three places substituted reference to community mental health center for reference to mental health facility. Amendment effective July 1, 1991.

Chapter 636 in (2) deleted second through sixth sentences authorizing detention of respondent in jail or correctional facility if no mental health facility is available, requiring immediate notification of jail detention and need for mental health facility placement, and requiring identification of appropriate placement, report on status of placement to jail or correctional facility within every 12-hour period, and prompt notification of court and transfer of respondent to mental health facility when reasonably practical; inserted (4) prohibiting detention of respondent in jail or correctional facility pending hearing or trial to determine issue of commitment; and made minor changes in style. Amendment effective July 1, 1993.

1989 Amendment: In (2) inserted second through sixth sentences stating circumstances and procedure under which respondent may be detained (see 1989 Session Law for text); in (3), at beginning, inserted "If the respondent is detained"; and made minor changes in form.

Case Notes

Right to Be Present and Offer Evidence — Not Applicable to Probable Cause at Initial Appearance: E.T. underwent a mental health evaluation, and based upon the results, the County Attorney filed an involuntary commitment upon which the District Court determined that there was probable cause to support a commitment and detention pending E.T.'s initial appearance. At the initial appearance, E.T. objected to the District Court's finding of probable cause and requested a hearing on the probable cause. The court noted the objection but refused to hold a hearing at the initial appearance and stated E.T. would be able to present evidence and testimony at the hearing held pursuant to 53-21-126. E.T. appealed the District Court's refusal. The Supreme Court held that, based upon legislative history that allows the person subject to commitment adequate time to prepare for a hearing, the procedural rights provided under 53-21-115 do not apply to an initial appearance under 53-21-122. In addition, a person subject to immediate detention has the right to immediately contest a probable cause finding that results in an immediate detention pursuant to a hearing under 53-21-124. In re Mental Health of E.T., 2008 MT 299, 345 M 497, 191 P3d 470 (2008).

Commitment Procedural Safeguards Ignored: The State failed to follow the commitment procedural safeguards in handling Shennum's commitment. The record does not evidence the existence of an emergency situation sufficient to invoke 53-21-129. Shennum was not advised of his constitutional rights before a medical examination incorrectly obtained under a purported emergency situation. Absent an emergency, it was the duty of the County Attorney to proceed in accordance with 53-21-121 through 53-21-126 in order to commit Shennum as a seriously mentally ill (see 1997 amendment to 53-21-102) person. Several of the procedural protections contained in those sections were ignored. Therefore, the initial commitment was reversed with guidelines for the State to proceed properly in further commitment proceedings. In re Shennum, 210 M 442, 684 P2d 1073, 41 St. Rep. 1148 (1984).

Attorney General's Opinions

County Liability for Costs of Precommitment Services: Subject to the limitations in 53-21-132(2), the county of residence is financially responsible for costs incurred in connection with the detention and precommitment custody of persons taken into protective custody pursuant to 53-21-129 or this section. 46 A.G. Op. 18 (1996).

Returning Patients to Montana State Hospital — Financial Responsibility: A Sheriff who returns a patient to Warm Springs (now Montana State Hospital) pursuant to 7-32-2144 when the patient has been subjected to an involuntary civil or a criminal commitment is entitled to reimbursement for his costs from the applicable county for a person committed pursuant to 46-14-221 and 46-14-222 or the institution to which the person is committed when committed pursuant to 46-14-301, 53-21-121, 53-21-124, and 53-21-127. 37 A.G. Op. 129 (1978).

53-21-125. Request for jury trial.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Respondent's Failure to Timely Request Jury Trial — Denial Proper: When the respondent had notice of the right to a jury trial and ample opportunity to request a jury trial and failed to make a request until after the state had completed its case, denial of the request was proper. In re N.A., 2013 MT 255, 371 Mont. 531, 309 P.3d 27.

Commitment Procedural Safeguards Ignored: The State failed to follow the commitment procedural safeguards in handling Shennum's commitment. The record does not evidence the existence of an emergency situation sufficient to invoke 53-21-129. Shennum was not advised of his constitutional rights before a medical examination incorrectly obtained under a purported emergency situation. Absent an emergency, it was the duty of the County Attorney to proceed in accordance with 53-21-121 through 53-21-126 in order to commit Shennum as a seriously mentally ill (see 1997 amendment to 53-21-102) person. Several of the procedural protections contained in those sections were ignored. Therefore, the initial commitment was reversed with guidelines for the State to proceed properly in further commitment proceedings. In re Shennum, 210 M 442, 684 P2d 1073, 41 St. Rep. 1148 (1984).

53-21-126. Trial or hearing on petition.

Compiler's Comments

2023 Amendments — Composite Section: (Both versions) Section 1, Ch. 757, L. 2023, in (3) inserted second sentence concerning the use of two-way electronic audio-video communication. Amendment effective May 22, 2023.

(Version effective July 1, 2025) Section 1, Ch. 777, L. 2023, in (1)(d)(i)(B) at beginning deleted "will"; inserted (7) concerning commitment of an individual with a primary diagnosis of Alzheimer's disease, other forms of dementia, or traumatic brain injury; and made minor changes in style. Amendment effective July 1, 2025.

2005 Amendment: Chapter 81 inserted (6) concerning primary diagnosis of mental disorder for individual with co-occurring chemical dependency who may satisfy criteria for commitment. Amendment effective October 1, 2005.

2001 Amendment: Chapter 342 in (1) in middle of fifth sentence inserted "and the appropriate disposition under 53-21-127". Amendment effective October 1, 2001.

1997 Amendment: Chapter 490 in (1), at end of second sentence, substituted "suffering from a mental disorder and requires commitment" for "seriously mentally ill within the meaning set forth in this part" and inserted third through fifth sentences and (1)(a) through (1)(d) regarding court considerations that must be made in determining whether commitment is required; in (2), in third sentence after "acts", inserted "or omissions"; in (3), at end of third sentence, substituted "suffering from a mental disorder and requires commitment" for "seriously mentally ill"; in (4), in first sentence after "respondent is", substituted "suffering from a mental disorder and requires commitment" for "seriously mentally ill"; substituted (4)(a) through (4)(d) regarding sufficient testimony for former (4)(a) and (4)(b) that read: "(a) the respondent is suffering from a mental disorder; and

(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or has deprived the person afflicted of the ability to protect his life or health"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1987 Amendment: In (1), in second sentence, inserted "mentally ill or"; and in (4), in first sentence, inserted "mentally ill or" and substituted second sentence requiring receipt of testimony from a professional person on each element of the definition of mentally ill or seriously mentally ill for "This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent is suffering from a mental disorder; and

(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or has deprived the person afflicted of the ability to protect his life or health."

Case Notes

Inability to Remain Safe in Community — Order for Involuntary Commitment Proper: The District Court ordered the involuntary commitment of a woman with insomnia and bipolar disorder. The record reflected the woman's inability to recognize the symptoms of her illness, a refusal to take medication for bipolar disorder, and the unqualified opinion of a licensed clinical professional counselor that the woman was unable to remain safe in the community. On appeal, the Supreme Court reviewed findings of fact for clear error and conclusions of law for correctness. Comparing to other involuntary commitment cases, the court explained that the woman's situation did not present as clear a case for commitment but that a review of the record did not firmly convince the court of a mistake. Thus, the Supreme Court affirmed, finding that the evidence was sufficient to sustain the District Court's conclusion that the woman was unable to provide for her basic health and safety needs. In re Mental Health of W.K., 2020 MT 71, 399 Mont. 337, 460 P.3d 917.

Involuntary Commitment Proper — Involuntary Administration of Medication — No Showing of Ineffective Counsel: The record of a 28-year-old woman with a lengthy history of mental illness showed that she was frequently noncompliant with her prescribed medications, aggressive, combative, abusive to family members, homeless, and unemployed. In an involuntary commitment hearing, the District Court concluded that the state had proven to a reasonable degree of medical certainty that she suffered from a mental disorder, that she was unable to care for herself, that the state hospital was the least restrictive treatment option, and that involuntary administration of medication was authorized as needed to facilitate treatment. On appeal, the Supreme Court affirmed, finding that the involuntary commitment was warranted and that the District Court had followed relevant statutes and correctly authorized the involuntary administration of medication. The Supreme Court also found that it could not be concluded that her counsel was ineffective because "abundant evidence" supported the District Court's findings and because counsel had attempted to provide alternate explanations for her symptoms and behavior. In re C.B., 2017 MT 83, 387 Mont. 231, 392 P.3d 598.

Sparse Findings Sufficient to Show No Improvement — Recommitment Order Proper: The individual, a 75-year-old man suffering from paranoid schizophrenia, was recommitted to a mental health nursing home. The individual had previously been committed on a number of occasions, had a pattern of medication noncompliance, and regularly hallucinated. On appeal, the individual argued that the District Court's findings of facts and conclusions of law did not address the criteria under 53-21-126. The Supreme Court disagreed and affirmed, noting that although the written order was lacking, when considered with the District Court's oral findings and the individual's mental health assessment, the order was sufficient to support a conclusion that the individual's mental health had not improved and that his recommitment was necessary. In re D.L.B., 2017 MT 1, 386 Mont. 180, 389 P.3d 227.

Appellant Unable to Provide for Basic Need of Shelter — Eviction Based on Mental Disorder: The District Court correctly determined that the appellant was unable to provide for her basic need of shelter because of her mental disorder and that the requirements of this section were therefore satisfied. The appellant was evicted because of problems she was having with her neighbors that were a result of her mental disorder. There was substantial evidence to support the District Court's conclusion that the appellant's bipolar disorder and history of conflict with neighbors prevented the appellant from obtaining and securing housing. In re R.H., 2016 MT 329, 385 Mont. 530, 385 P.3d 556.

Imminent Threat of Injury Supported by Substantial Credible Evidence — Involuntary Commitment Required: In granting the state's petition for involuntary commitment under 53-21-126, the District Court did not err when substantial credible evidence showed that the individual posed an imminent threat of harm to herself or others and that, if left untreated, her condition would continue to deteriorate. The defendant waived appellate review of her objections to the mental health professionals' diagnoses by failing to object during the proceedings. In re C.V., 2016 MT 307, 385 Mont. 429, 384 P.3d 1048.

Physical Altercation Night Before Commitment Hearing — Sufficient Evidence of Imminent Risk of Injury to Others: The District Court found that the appellant posed an imminent risk of injury to others because the appellant was involved in a physical altercation with another patient the night before her commitment hearing. The appellant had pushed the other patient away from her and tried to take her down after the other patient tried to hug the appellant. The Supreme Court concluded that this physical altercation provided the District Court with sufficient evidence of an overt act by the appellant and that the altercation was sufficiently recent in time to be material and relevant to the appellant's condition at the time of her involuntary commitment hearing. In re S.H., 2016 MT 137, 383 Mont. 497, 374 P.3d 693.

Conflicts With Neighbors and Interest in Acquiring Firearm Constituted Threat Requiring Involuntary Commitment — Court's Failure to Cite Statutory Subsection Not Grounds for Reversal: The appellant exhibited paranoid and combative behavior after suffering a head injury. Eventually, he was involuntarily committed under 53-21-126 after not taking medication, having confrontations with his neighbors, and attempting to acquire a firearm. The District Court committed the appellant, stating that he posed a danger to himself and others. On appeal, the appellant argued that the judge did not cite the specific subsection of the statute, that the state failed to meet its burden of proving the necessity of the confinement, and that his interest in acquiring a firearm did not amount to a real threat. The Supreme Court disagreed with the appellant, holding that while the District Court is encouraged to cite the specific subsection of the statute it nevertheless implicitly used the language of the statute, that the state proved he posed a threat to himself and others, and that interest in acquiring a firearm constituted a threat under the statute. In re B.D., 2015 MT 339, 381 Mont. 505, 362 P.3d 636.

District Court's Failure to Provide Detailed Factual Statement Cured in Second Order — Civil Commitment: The state filed a civil commitment case against the appellant. The District Court issued an order committing the appellant; however, it failed to provide a detailed statement of the facts supporting its conclusion. The District Court subsequently issued a second order, which contained additional findings. On appeal, the Supreme Court affirmed, holding that while the first order failed to comply with statutory requirements, nothing prohibited the District Court from issuing the second order that provided detailed factual findings. In re M.P.-L., 2015 MT 338, 381 Mont. 496, 362 P.3d 627.

Finding of Imminent Threat of Harm Based on Respondent's Statements — Not Clearly Erroneous: The respondent was involuntarily committed after the District Court concluded that he was a danger to himself and others based on his recent behavior. On appeal, the respondent argued that the District Court's finding was clearly erroneous because the state had not offered evidence of overt acts to prove that he posed an imminent threat of injury. However, during his mental health examination, the respondent had mentioned several times the use of a machete on people. The Supreme Court affirmed, concluding that these statements about the machete were sufficient for the District Court to find that the respondent posed an imminent threat of injury. In re E.A.L., 2015 MT 203, 380 Mont. 129, 353 P.3d 1186.

No Separate Disposition Hearing Required After Finding of Mental Illness: Immediately after concluding that the respondent suffered from a mental disorder, the judge proceeded to a posttrial disposition hearing. The respondent argued that this section requires a judge to hold two separate hearings. On appeal, the Supreme Court affirmed, agreeing that nothing in 53-21-127 precludes a court from holding the disposition hearing immediately after making a finding that the respondent suffers from a mental illness. In re S.L., 2014 MT 317, 377 Mont. 223, 339 P.3d 73.

Counsel's Failure to Obtain Independent Evaluation — No Ineffective Assistance: After being committed to the state hospital, the respondent claimed ineffective assistance of counsel based on an allegation that his counsel should have obtained an independent professional evaluation. The Supreme Court determined that counsel provided effective representation based on the services provided, including meetings with the respondent and a doctor, cross-examination of the doctor, and a deposition of the respondent the day before the hearing. In re C.R., 2012 MT 258, 367 Mont.

1, 289 P.3d 125, citing In re Mental Health of C.R.C., 2009 MT 125, 350 Mont. 211, 207 P.3d 289, and In re K.G.F., 2001 MT 140, 306 Mont. 1, 29 P.3d 485.

Respondent's Testimony Unreliable — Commitment Order and Administration of Medication Warranted: The District Court ordered involuntary commitment and the involuntary administration of medication after receiving testimony from a doctor, the respondent, and a relative of the respondent. On appeal, the respondent argued that his testimony was sufficient to create reasonable doubt, but the Supreme Court disagreed and affirmed, concluding that the respondent's testimony was unreliable. The District Court correctly determined that the respondent suffered from a mental disorder and that one of the criteria for commitment under 53-21-126 was met. In re C.R., 2012 MT 258, 367 Mont. 1, 289 P.3d 125.

No Evidence That Substance Abuse Caused Conduct That Was Basis for Determination of Mental Illness: The District Court, in concluding that T.J.F. met the statutory criteria for involuntary commitment, did not err by failing to consider T.J.F.'s substance abuse. While there was evidence that T.J.F. used drugs occasionally, there was no evidence in the record that T.J.F. was addicted to drugs or that T.J.F. was using drugs at the time T.J.F. was fleeing from police, running in and out of traffic, causing drivers to slam on their brakes, and punching a patrol car. Expert testimony on the record demonstrated that T.J.F.'s mental disorder caused T.J.F. to exhibit behaviors that put him and others in the community at risk of harm. In re Mental Health of T.J.F., 2011 MT 28, 359 Mont. 213, 248 P.3d 804.

Sufficient Detailed Findings to Support Involuntary Commitment: L.R. asserted that the evidence supporting the District Court's conclusion that she was unable to provide for her needs was not clear and convincing. The Supreme Court disagreed. The District Court found that L.R. suffered from mental illness, identified as a bipolar disorder in an acute manic phase, and that the mental illness was serious because it rendered L.R. unable to make rational decisions or to care for or protect herself. The court also found that L.R. was paranoid, had grandiose thoughts, showed extreme religious ideation, and was suspicious of those trying to help her. These findings were sufficiently detailed to support commitment and provided clear and convincing evidence that L.R. should be committed because of an inability to provide for her own basic needs. In re Mental Health of L.R., 2010 MT 76, 356 Mont. 20, 231 P.3d 594, distinguishing In re E.P.B., 2007 MT 224, 339 Mont. 107, 168 P.3d 662. See also In re S.M., 2014 MT 309, 377 Mont. 133, 339 P.3d 23, In re S.G.R., 2016 MT 70, 383 Mont. 74, 368 P.3d 1180, and In re S.H., 2016 MT 137, 383 Mont. 497, 374 P.3d 693.

Acquiescence to Involuntary Commitment Without Patient's Consent — Client Refusal to Cooperate With Counsel — No Ineffective Assistance Given Counsel's Ongoing Advocacy: C.R.C. asserted that she received ineffective assistance of counsel when her attorney acquiesced to involuntary commitment of C.R.C. without her consent. The Supreme Court examined the record and found that the statutory guidelines for a waiver of C.R.C.'s rights were followed. In addition, the record revealed numerous facts to rebut the presumption that counsel was ineffective. C.R.C. refused to: (1) participate in her own defense; (2) meet with counsel; (3) attend court appearances; or (4) meet with a doctor for an independent psychological evaluation requested by counsel on C.R.C.'s behalf. The record also demonstrated that C.R.C. posed a danger to herself and others, requiring commitment. Yet even without C.R.C.'s input or cooperation, counsel continued to advocate on C.R.C.'s behalf, and counsel followed the law in waiving C.R.C.'s right to an adjudicatory hearing. Therefore, the presumption of ineffective assistance of counsel, when counsel acquiesced to involuntary commitment without C.R.C.'s consent, was rebutted by the facts of the case, and the Supreme Court declined to hold that counsel's actions were ineffective. In re Mental Health of C.R.C., 2009 MT 125, 350 M 211, 207 P3d 289 (2009). See also In re K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001), and In re Mental Health of T.J.F., 2011 MT 28, 359 Mont. 213, 248 P.3d 804.

No Causal Connection Between Cognitive Disorder and Alleged Criminal Activity — Commitment Order Unwarranted: D.M.S. was charged with two felony DUIs and was the primary suspect in a felony arson investigation involving five vehicle fires. Following a competency evaluation, the District Court adjudicated D.M.S. unfit to proceed in the criminal cases because of the mental disease or defect of cognitive disorder not otherwise specified (NOS), combined with alcohol abuse, borderline intellectual functioning, and antisocial personality disorder. The charges were subsequently dismissed, and the County Attorney immediately filed a petition to commit D.M.S. to the state hospital. After detention and evaluation of D.M.S. at the state hospital, the doctor who conducted the evaluation concluded that D.M.S. did not meet the criteria for commitment. D.M.S. moved to dismiss the petition, but the motion was denied and the case went to trial. The jury found that D.M.S. would be a danger if untreated, and the District Court ordered a 90-day commitment. After the commitment was served, D.M.S. appealed the commitment order. The state did not present any evidence indicating that because of the cognitive disorder NOS, as opposed to alcoholism or antisocial behavior, D.M.S. caused injury or posed a threat of injury to self or others. Therefore, the evidence did not establish a causal connection between the cognitive disorder NOS and the behavior described in the reports or alleged by law enforcement officers. Absent a causal connection, even when viewed in a light most favorable to the state, a rational trier of fact could not have found D.M.S. in need of commitment to the state hospital. The Supreme Court reversed the commitment order and remanded for further proceedings. In re D.M.S., 2009 MT 41, 349 M 257, 203 P3d 776 (2009), following In re Mental Health of A.K., 2006 MT 166, 332 M 511, 139 P3d 849 (2006), and followed in In re Mental Health of M.C.D., 2010 MT 15, 355 Mont. 97, 225 P.3d 1214.

Findings on Section Criteria — Not All Criteria Need Be Met: O.R.B. contended that two findings made under this section were clearly erroneous as descriptions of potential dangers, rather than imminent dangers, but the Supreme Court stated that commitment is justified if any of the criteria under this section are met, which does not require findings as requested by O.R.B. In re Mental Health of O.R.B., 2008 MT 301, 345 M 516, 191 P3d 482 (2008).

Right to Be Present and Offer Evidence — Not Applicable to Probable Cause at Initial Appearance: E.T. underwent a mental health evaluation, and based upon the results, the County Attorney filed an involuntary commitment upon which the District Court determined that there was probable cause to support a commitment and detention pending E.T.'s initial appearance. At the initial appearance, E.T. objected to the District Court's finding of probable cause and requested a hearing on the probable cause. The court noted the objection but refused to hold a hearing at the initial appearance and stated E.T. would be able to present evidence and testimony at the hearing held pursuant to 53-21-126. E.T. appealed the District Court's refusal. The Supreme Court held that, based upon legislative history that allows the person subject to commitment adequate time to prepare for a hearing, the procedural rights provided under 53-21-115 do not apply to an initial appearance under 53-21-122. In addition, a person subject to immediate detention has the right to immediately contest a probable cause finding that results in an immediate detention pursuant to a hearing under 53-21-124. In re Mental Health of E.T., 2008 MT 299, 345 M 497, 191 P3d 470 (2008).

Clear Error in Finding That Behavior Posing Risk of Harm Precluded Community Placement — Involuntary Recommitment Reversed: The District Court held that G.M. was seriously developmentally disabled and that G.M.'s behavior could not be safely and effectively rehabilitated in community-based services because of behavior that posed an imminent risk of serious harm to G.M. or others. The court then ordered that G.M. be involuntarily recommitted to the Montana Developmental Center for no more than 1 year. G.M. appealed. The Supreme Court concluded that all evidence was properly submitted and that expert testimony was properly admitted. However, G.M.'s expert's testimony and the actual incident reports presented by the state revealed that the reports did not give an accurate picture of G.M.'s condition, in that during most of the reported incidents, G.M. was not the aggressor. In fact, the reports affirmed G.M.'s expert's opinion that it was the group living environment that contributed significantly to G.M.'s behavioral difficulties and that placing G.M. in a community setting with fewer people would ameliorate G.M.'s aggressive tendencies. The state presented no evidence to contradict the expert's opinion that the institutional setting was probably responsible for the behaviors that kept G.M. in the institution and that individuals with worse aggressive tendencies were successfully living in community settings or to explain why G.M.'s actions would make placement in a community setting unsafe. Additionally, G.M.'s aunt's testimony regarding her personal observations of G.M.'s demeanor and self-control when not in an institutional setting confirmed the expert's opinion and tended to prove that G.M. did not pose a risk of harm and could be safely habilitated in the community. Thus, the Supreme Court held that the District Court incorrectly concluded that G.M. was seriously developmentally disabled and reversed with instructions to vacate the recommitment order. In re G.M., 2008 MT 200, 344 M 87, 186 P3d 229 (2008).

Attachment and Incorporation of Hearsay Report Into Commitment Order Rendered Harmless by Nonhearsay Testimony: A.S.B. asserted that the District Court erred in attaching and incorporating the report of an examining professional that contained inadmissible hearsay. The Supreme Court agreed that the District Court erred, but in light of the fact that information in the report was adequately supported by the hearing testimony of the same professional as well as two other professionals and a police officer, the error was harmless. In re Mental Health of A.S.B., 2008 MT 82, 342 M 169, 180 P3d 625 (2008). See also In re E.A.L., 2015 MT 203, 380 Mont. 129, 353 P.3d 1186.

Constitutionality of Deterioration Standard in Involuntary Commitment Cases Not Raised in District Court — Substantial Rights Not Sufficiently Affected to Warrant Review: A.S.B. contended on appeal that the deterioration standard set out in this section is unconstitutional because it purports to allow involuntary commitment based on the mere possibility that an individual's condition may worsen to a point at which the person poses a threat of harm to self or others and that the speculative nature of the standard was not a constitutionally adequate purpose for the confinement. However, A.S.B. did not raise the constitutional issue in District Court, and the Supreme Court held that the alleged error did not affect A.S.B.'s substantial rights sufficiently to warrant review. In re Mental Health of A.S.B., 2008 MT 82, 342 M 169, 180 P3d 625 (2008).

Sufficient Evidence That Untreated Mental Condition Posed Threat of Harm — Involuntary Commitment Affirmed: A.S.B. argued that there was insufficient evidence to support the District Court's finding by clear and convincing evidence that A.S.B.'s mental condition, if left untreated, would deteriorate to a point at which A.S.B. would pose a threat to himself or others. The Supreme Court disagreed. Three examining professionals testified that A.S.B. was likely to hurt somebody if he was not treated for paranoid schizophrenia, so the state met the requirement of proving that A.S.B.'s condition would predictably result in deterioration if untreated, thereby threatening the well-being of himself or others. In re Mental Health of A.S.B., 2008 MT 82, 342 M 169, 180 P3d 625 (2008).

Failure of District Court to Make Detailed Findings of Fact to Support Involuntary Commitment — Reversible Error: A hearing on a petition for involuntary commitment is not merely a pro forma requirement but an opportunity for both the petitioner and respondent to present evidence upon which a trial court can make required findings and enter appropriate orders. As petitioner, the state bears the burden of proving any physical facts or evidence beyond a reasonable doubt, the respondent's mental disorder to a reasonable medical certainty, and other matters by clear and convincing evidence. In ordering commitment, the trial court must make a detailed statement of facts upon which it found respondent to be suffering from a mental disorder requiring commitment. In this case, the issue was whether the trial court's findings met statutory requirements, which the Supreme Court reviewed de novo. The trial court merely recited the testimony of a health care professional, noted that it was consistent with another professional's findings, and ordered commitment. This was not the detailed statement of facts required under 53-21-127, and the Supreme Court reversed and remanded with instructions to vacate the commitment order. In re Mental Health of E.P.B., 2007 MT 224, 339 M 107, 168 P3d 662 (2007). See also In re L.L.A., 2011 MT 285, 362 Mont. 464, 267 P.3d 1 (reversing involuntary commitment where findings of fact contained seven brief findings of facts and did not comply with 53-21-127(8)(a)).

Cognitive Delays and Substance Abuse Not Factors to Be Used as Basis for Involuntary Commitment: Mental retardation is not a mental disorder for purposes of treatment of the seriously mentally ill, and cognitive delays may not be used for purposes of determining that because of a mental disorder, a person presents an imminent threat requiring involuntary commitment. Likewise, drug or alcohol addiction or intoxication does not constitute a mental disorder for purposes of treatment of the seriously mentally ill. Here, the District Court involuntarily committed respondent after including reference to respondent's mild mental retardation and polysubstance abuse in the finding that respondent suffered from a mental illness. That inclusion, when overlaid onto the court's subsequent findings and absent sufficient evidence, did not meet the statutory requirements for involuntary commitment, and the Supreme Court reversed the commitment order. In re A.K., 2006 MT 166, 332 M 511, 139 P3d 849 (2006).

Proper Finding of Mental Disorder — Remand for Determination of Least Restrictive Environment: Respondent expressed suicidal thoughts, mood disorder, and paranoia. Following evaluation, respondent was found to suffer from a mental disorder and was involuntarily committed to the state hospital for up to 3 months. Respondent appealed. The Supreme Court held that the state met its burden of proving that respondent required commitment because he suffered from a mental illness and because his recent and relevant overt acts and omissions posed an imminent threat of self-inflicted injury or injury to others. However, the court remanded because the District Court did not address with detailed findings of fact whether commitment to the state hospital represented the least restrictive environment needed to permit effective treatment and to protect respondent as required in 53-21-127. In re Mental Health of D.S., 2005 MT 152, 327 M 391, 114 P3d 264 (2005).

Failure to Present Statutorily Required Evidence — Involuntary Commitment Based on Hearsay Reversed: The only state witness at D.L.T.'s commitment trial was a psychologist who testified regarding matters reported by D.L.T.'s husband and parents, another doctor, and a City

Court Judge. Under this section, the state is also required to present evidence of recent overt acts or omissions separate from a professional person's testimony. Here, the only evidence of D.L.T.'s acts or omissions leading to injury or imminent threat of injury was the hearsay statements of persons not present at the hearing. The laws regarding involuntary commitment must be strictly followed. Because the state failed to introduce the statutorily required evidence, the criteria for involuntary commitment were not met, and the Supreme Court reversed. In re Mental Health of D.L.T., 2003 MT 46, 314 M 297, 67 P3d 189 (2003).

Erroneous Reliance on Inadmissible Hearsay Evidence to Support Commitment — Harmless Error Doctrine Inapplicable: The District Court involuntarily committed T.J.D., with the commitment suspended on the condition that T.J.D. immediately begin participation in mental health treatment, after finding that T.J.D. had engaged in continuing behavior that threatened others and endangered the community, that the behavior was consistent with mental illness, and that there was no evidence that the behavior would change. T.J.D. appealed on grounds that the court relied on inadmissible hearsay in a doctor's report to support the commitment. The Supreme Court agreed and reversed. The doctor was the only witness at the commitment hearing, and the doctor's report was the only evidence in the record. Hearsay statements in the report that were allegedly made by T.J.D.'s boyfriend were the only evidence that the court could have relied on to find an imminent threat of injury. The only other evidence was acts that occurred in 1983 and 1997, and could not be considered imminent to support a commitment in 2000, because the acts were not sufficiently recent in time as to be material and relevant to T.J.D.'s present condition. The Supreme Court also declined to apply the harmless error doctrine, which the state argued should apply because the commitment was suspended on conditions, and T.J.D. suffered no harmful effect from the commitment. Although the commitment was suspended, T.J.D.'s liberty was still restricted by the conditions, and the stigma involved in a civil commitment remained; thus, the error was not harmless. In re Mental Health of T.J.D., 2002 MT 24, 308 M 222, 41 P3d 323 (2002).

Verbal Threat as Constituting Overt Act: E.M., a 57-year-old woman, was committed to a mental institution mainly on the basis of verbal threats on her part that she was going to get a gun and kill her neighbor and herself. The Supreme Court held that a verbal threat could constitute an overt act of an imminent threat of injury to herself or another, which is the statutory requirement to trigger commitment of a disturbed person. In re Mental Health of E.M., 265 M 211, 875 P2d 355, 51 St. Rep. 487 (1994), followed in In re D.D., 277 M 164, 920 P2d 973, 53 St. Rep. 587 (1996).

Exclusionary Rule Inapplicable to Civil Involuntary Commitment Hearing: L.B. was examined by a professional person and determined to suffer from a serious mental disorder that required treatment. Following presentation of the professional's testimony at a hearing for involuntary commitment, the District Court held that the testimony was too speculative and ordered L.B. released. After the hearing, L.B. was detained by the Sheriff's office for a short time in an attempt to find a place for him, rather than just sending him out onto the streets. During his detention, L.B. was examined by a second professional person who determined that L.B. should be involuntarily committed to the state hospital for immediate treatment, and a second petition for commitment was filed that same day. The District Court subsequently determined that L.B.'s mental illness deprived him of the ability to protect his life or health and transferred him to the state hospital for treatment. L.B. argued that all evidence obtained after the order for release should be suppressed under the exclusionary rule because such proceedings may result in a massive curtailment of liberty for the person committed. However, noting the civil nature of commitment proceedings, the Supreme Court declined to apply the criminal law exclusionary rule because to suppress relevant evidence would defeat the purpose of the proceeding, which is to secure the appropriate treatment for those who need it and are unable to obtain it because of their mental condition. In re Mental Health of L.C.B., 253 M 1, 830 P2d 1299, 49 St. Rep. 290 (1992).

Res Judicata Inapplicable to Involuntary Commitment Hearing: L.B. was examined by a professional person and determined to suffer from a serious mental disorder that required treatment. Following presentation of the professional's testimony at a hearing for involuntary commitment, the District Court held that the testimony was too speculative and ordered L.B. released. After the hearing, L.B. was detained by the Sheriff's office for a short time in an attempt to find a place for him, rather than just sending him out onto the streets. During his detention, L.B. was examined by a second professional person who determined that L.B. should be involuntarily committed to the state hospital for immediate treatment, and a second petition for commitment was filed that same day. The District Court subsequently determined that L.B.'s mental illness deprived him of the ability to protect his life or health and transferred him to the state hospital for treatment. L.B. argued that the doctrine of res judicata barred consideration of the second petition. However, the District Court expressly prohibited the introduction of evidence relating to the time period prior to the first hearing; therefore, the issues were not the same in the second hearing, nor could the first order releasing L.B. be considered final and subject to res judicata. The question of whether an individual is seriously mentally ill may be brought at any time as long as the necessary statutory criteria are met. A finding at one time that an individual does not suffer from a serious mental illness is not intended to be a final and irrevocable decision on the individual's mental health. In re Mental Health of L.C.B., 253 M 1, 830 P2d 1299, 49 St. Rep. 290 (1992).

Standard of Proof:

The parents of G.P. filed a request with the Yellowstone County Attorney to have their son involuntarily committed. G.P. was evaluated by a psychiatrist who testified at the commitment hearing that G.P. was "beyond a reasonable doubt seriously mentally ill as defined in section 53-21-102, MCA" (see 1997 amendment). G.P. was committed and, on appeal, challenged the District Court finding that he was seriously mentally ill, rather than only mentally ill, claiming that there was no proof of overt acts. The Supreme Court held that overt acts are only necessary to prove serious mental illness based on "self-inflicted injury or injury to others or the imminent threat thereof" but not necessary to prove serious mental illness based on a respondent "suffering from a mental disorder . . . which has deprived the person afflicted of the ability to protect his life or health" as provided under 53-21-102. The Supreme Court noted that the psychiatrist testified that G.P. suffered from auditory hallucinations that directed him to do things that he could not control, that G.P.'s roommate testified that G.P. refused to take his medicine and denied that he needed medicine, and that G.P.'s parents testified that G.P. ate very little. The Supreme Court found that this evidence satisfied the standard in subsection (2) of this section because it indicated that G.P.'s illness was interrupting his cognitive process and causing delusional thinking, which condition rendered him unable to protect his own life or health. In re G.P., 246 M 195, 806 P2d 3, 47 St. Rep. 1840 (1990), followed in In re Mental Health of L.C.B., 253 M 1, 830 P2d 1299, 49 St. Rep. 290 (1992), and In re R.F., 2013 MT 59, 369 Mont. 236, 296 P.3d 1189.

Patient, appealing the order for his involuntary commitment to the state mental hospital, suffered from chronic paranoid schizophrenia that caused him to become angry and hostile when his delusions were challenged. Evidence showed he owned and carried weapons. There was sufficient evidence on which the court could base a finding of serious mental illness (see 1997 amendment). The statute does not require a court to wait until a person actually uses a weapon against another person before finding him seriously mentally ill. In re Mental Health of R.J.W., 226 M 419, 736 P2d 110, 44 St. Rep. 770 (1987).

Proof that appellant made verbal threats about feeling like "killing anybody and anyone in sight", refused to take medication, and had had five previous hospitalizations precipitated by refusal to take medication was sufficient to meet the standard of proof required by this section. In re J.B., 217 M 504, 705 P2d 598, 42 St. Rep. 1335 (1985).

Proof that appellant jumped out of a moving car with the intent to kill herself was sufficient to meet the standard of proof required by this section. In re the Mental Health of A.G., 208 M 366, 677 P2d 592, 41 St. Rep. 406 (1984).

Order Extending Involuntary Commitment Proper — Threat of Physical Injury: It was not error for the District Court to extend the involuntary commitment of a seriously mentally ill patient in light of sufficient evidence that she had made suicidal and homicidal threats, was considered an imminent threat of physical injury to herself or others, and needed institutional supervision to ensure continuation of her medical therapeutic intervention program. Threats made within 4 months were sufficiently recent in time to be material and relevant as to patient's present condition. In re M.J.P., 226 M 183, 734 P2d 689, 44 St. Rep. 572 (1987).

Sufficient Evidence of Mental Condition — Lapse of Time Between Overt Acts and Commitment Hearing: D.R.S. contended that the state failed to show "overt acts, sufficiently recent in time as to be material and relevant" to his condition at the time of a commitment hearing. He claimed the acts allegedly committed almost 2 ½ years prior to the hearing did not satisfy the requirement of a recent overt act. The Supreme Court noted that the time lapse between the overt acts and the hearing was due to his serious mental illness (see 1997 amendment). Evidence showed that his condition remained as it was at the time of the overt acts and that he would be imminently dangerous within 2 months of leaving the supervised hospital setting. In affirming the order of commitment, the court found that these circumstances were such that the time lapse did not preclude relying on the overt acts as evidence of D.R.S.'s mental condition. In re Mental Health of D.R.S., 221 M 245, 718 P2d 335, 43 St. Rep. 783 (1986).

Admissibility of Evidence at Hearing on Transfer of Patient for Treatment: Between an initial commitment hearing and a hearing on the question of transferring treatment, appellant filed two motions in limine, which the District Court denied. The first motion requested that the state be precluded from eliciting testimony at the transfer hearing based on an evaluation made after the commitment hearing. On the second motion, he contended that the order of commitment was final as to all events litigated at the initial hearing and that none of the earlier events should have been referred to at the transfer hearing. He argued that 53-21-101, et seq., provided no authority for using evaluations made after a final commitment hearing in a later transfer hearing. Both 53-21-130 and 53-21-182 refer to transfers to other facilities for treatment; however, neither statute restricts what evidence may be admissible at a transfer hearing. The Supreme Court found no error in the denial of the motions, holding that any evidence admissible at a final commitment hearing which is relevant to the transfer should be admissible at the transfer hearing, including the opinions of professional persons and evidence of overt acts, as described in 53-21-126. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Detention Prior to Court Finding of Serious Mental Illness — Determination by Professional Person Rather Than Peace Officer: Appellant, M.C., argued that under 53-21-129, the peace officer makes the initial decision on whether an emergency situation exists and that in this case the officer did not make that decision. M.C. also contended that the evidence was insufficient to hold him on an emergency basis. The Supreme Court held that 53-21-129 merely permits the officer to take a person into custody for an evaluation. It does not give the officer authority to decide whether the person should be placed in emergency detention; rather, the professional person determines whether the person is seriously mentally ill (see 1997 amendment) and should be placed in emergency detention. Once that determination is made, it constitutes sufficient evidence that the person may be detained. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Stipulation to Commitment — Montana State Hospital as Least Restrictive Environment: The appellant, M.C., argued on appeal that evidence was insufficient to warrant his transfer to Montana State Hospital. At a commitment hearing, the District Court heard evidence on M.C.'s inability to cooperate in treatment at the Billings Mental Health Center, as well as testimony from a Center doctor indicating that Montana State Hospital was the least restrictive environment in which M.C. could receive the care and supervision he needed. After the hearing, M.C. and his counsel stipulated to, and the District Court ordered, a commitment to the Billings Mental Health Center or "another mental health facility in Montana". The Supreme Court held this evidence to be sufficient to support the District Court's action in committing M.C. to the Montana State Hospital. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Evidence of Past Violent Behavior — Admissible in Commitment Proceeding: It was not error, in an involuntary commitment proceeding, to admit evidence of violent behavior by respondent even though the behavior had occurred several years before this proceeding and the incidents were not set forth as allegations in the petition. In re D.B., 218 M 467, 709 P2d 161, 42 St. Rep. 1747 (1985).

Certified Professional's Testimony — Sufficient to Support Finding of Mental Disorder: J.M.'s cousin requested the Yellowstone County Attorney to petition that J.M. be declared seriously mentally ill (see 1997 amendment) and be committed to a mental health facility. Pursuant to 53-21-122, the District Court appointed a certified mental health professional to evaluate J.M. J.M. was uncooperative in responding to questions from the certified professional. Because of J.M.'s uncooperative attitude, the professional observed J.M. on only two occasions and relied on reports from other people concerning J.M. At the commitment hearing, the professional testified that J.M. was seriously mentally ill and set forth the data for making the diagnosis, the characteristics of J.M.'s particular disorder, and the effect of the disorder on J.M. The testimony was sufficient to establish that J.M. was suffering from a mental disorder. In re J.M., 217 M 300, 704 P2d 1037, 42 St. Rep. 1212 (1985).

Involuntary Commitment — Appointment of Two Professionals — One May Testify: The lower court appointed two psychiatrists—one to examine G.S. and one to present those findings at the commitment hearing since the examining doctor would be unavailable. The Supreme Court held that the lower court did not err in allowing the second psychiatrist to offer an opinion on the subject's mental condition without formally examining the patient, but relying, instead, on the first doctor's report. Of critical importance is the fact that the doctor who ultimately did diagnose G.S.'s mental condition was available for cross-examination. The critical requirement of professional justification was satisfied. Rule 703, Montana Rules of Evidence, clearly provides that one doctor can state his expert opinion based on another doctor's report. Section 46-14-213(1) does not apply since the Montana Rules of Civil Procedure apply to involuntary commitment procedures. In re G.S., 215 M 384, 698 P2d 406, 42 St. Rep. 451 (1985).

Substantial Evidence to Support Order of Commitment — Scope of Review: The Supreme Court found substantial evidence to support the lower court's order of commitment. The oral testimony of Dr. Hughes, various medical reports submitted by the psychiatrists, and hospital records were relied upon by the judge. Appellant expressly asked the Supreme Court to review the weight of Dr. Hughes' testimony. That is not the role of an appellate court. The trier of fact makes findings, and the Supreme Court will not disturb them unless shown to be clearly erroneous. In re G.S., 215 M 384, 698 P2d 406, 42 St. Rep. 451 (1985). See also In re B.O.T., 2015 MT 40, 378 Mont. 198, 342 P.3d 981.

Commitment Procedural Safeguards Ignored: The State failed to follow the commitment procedural safeguards in handling Shennum's commitment. The record does not evidence the existence of an emergency situation sufficient to invoke 53-21-129. Shennum was not advised of his constitutional rights before a medical examination incorrectly obtained under a purported emergency situation. Absent an emergency, it was the duty of the County Attorney to proceed in accordance with 53-21-121 through 53-21-126 in order to commit Shennum as a seriously mentally ill person. Several of the procedural protections contained in those sections were ignored. Therefore, the initial commitment was reversed with guidelines for the State to proceed properly in further commitment proceedings. In re Shennum, 210 M 442, 684 P2d 1073, 41 St. Rep. 1148 (1984).

Evidence Insufficient for Involuntary Commitment: Testimony at trial did not clearly and convincingly establish that respondent, due to his mental condition, was unable to protect his life or health at the time of the trial. Therefore, the evidence that respondent was "seriously mentally ill" within the meaning of 53-21-102 (see 1997 amendment) was insufficient as a matter of law, and the District Court commitment order was vacated. In re R.T., 204 M 493, 665 P2d 789, 40 St. Rep. 1025 (1983).

Serious Mental Illness — Source of Findings — Montana State Hospital as Least Restrictive: The District Court found that C.M. was seriously mentally ill (see 1997 amendment) and committed her to Warm Springs State Hospital (now Montana State Hospital). C.M. appealed from the order of commitment. Three persons testified at the commitment hearing, C.M., C.M.'s mother, and a psychiatrist. The psychiatrist testified that C.M. was seriously mentally ill (see 1997 amendment) based on his own examination and on the observations of C.M.'s mother. The court held that a professional person may opine that a person is seriously mentally ill (see 1997 amendment) even though the evidence of an imminent threat of injury, required by statute, is obtained from a source other than the professional person. There was also sufficient evidence that a commitment to Warm Springs State Hospital (now Montana State Hospital) was the least restrictive form of commitment. The order of the District Court was affirmed. In re C.M., 195 M 171, 635 P2d 273, 38 St. Rep. 1768 (1981). See also In re J.M., 217 M 300, 704 P2d 1037, 42 St. Rep. 1212 (1985).

Constitutionality — Burden of Persuasion Not Met: Where, following a brief interview with a mental health counselor-therapist, the appellant was found to be seriously mentally ill (see 1997 amendment) "to a reasonable medical certainty" and was committed to a state mental hospital, the Supreme Court found that 53-21-126 did not alter the standard of proof of clear and convincing evidence of mental disorder required for involuntary commitment in Addington v. Addington, 441 US 418 (1979). The court found that 53-21-126 merely creates a standard for the medical witness testimony at commitment proceedings, which must, when considered with all other evidence in the case, show by clear and convincing evidence that a mental disorder exists. Because the District Court had erred in its finding that the legal standard was met by the evidence presented, the Supreme Court reversed the decision of the District Court. In re N.B., 190 M 319, 620 P2d 1228, 37 St. Rep. 2031 (1980).

Requirements to Support Finding of Serious Mental Illness: Appellant appeals from a commitment order based on a finding that he is seriously mentally ill (see 1997 amendment). Such a finding requires the state to show (1) a mental disorder; and (2) that the mental disorder has resulted in self-inflicted injury, injury to others, or an "imminent threat thereof". In light of the difficulty of predicting that a given mental state is likely to result in future antisocial conduct, it is necessary to require the commission of some overt act. When this is coupled with psychiatric evaluation, the court will then be in a better position to assess the likelihood of the individual committing similar acts. The law requires only proof beyond a reasonable doubt that the threat of future injury presently exists and that the threat is imminent, that is, impending, likely to occur at any moment. The record showed that appellant caused several disturbances at the hotel where he stayed and then at the hospital. The record supported the finding that the appellant posed an "imminent threat of injury to others" and met the definition of "seriously mentally ill" (see 1997 amendment) in the statute. In re F.B., 189 M 229, 615 P2d 867, 37 St. Rep. 1442 (1980), followed in In re D.D., 277 M 164, 920 P2d 973, 53 St. Rep. 587 (1996), and In re Mental Health of A.S.B., 2008 MT 82, 342 M 169, 180 P3d 625 (2008).

Determination of Mental Illness — Overt Act: A person who has spent a substantial portion of the last 20 years in institutions and who has a history of threatening others was found to be "seriously mentally ill", as defined in 53-21-102 (see 1997 amendment). The statute requires an overt act and, while every threat cannot be considered an overt act, the testimony and circumstances of this case indicated that the appellant's threat fulfilled the requirement. In re Goedert, 180 M 484, 591 P2d 222, 36 St. Rep. 393 (1979).

"Seriously Mentally Ill" — Supporting Evidence: There was sufficient evidence to support the conclusion that respondent was "seriously mentally ill", as defined in 53-21-102 (see 1997 amendment), beyond a reasonable doubt, and respondent failed to overcome the burden of providing proof to the contrary; hence, extended detention was warranted. In re Sonsteng, 175 M 307, 573 P2d 1149 (1977); In re Miller, 175 M 318, 573 P2d 1155 (1977).

53-21-127. Posttrial disposition.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 777, L. 2023. Amendment effective July 1, 2025.

2017 Amendment: Chapter 402 in (3)(b) substituted "community facility, which may include a category D assisted living facility, or a community program" for "community facility or program"; in (7) in middle after "community facility" inserted "which may include a category D assisted living facility"; inserted (8)(h) regarding court's findings if order provides for evaluation to determine eligibility for entering category D assisted living facility; and made minor changes in style. Amendment effective October 1, 2017.

2003 Amendments — Composite Section: Chapter 163 in (3)(b) near end after "requirements" inserted "or conditions as provided in 53-21-149"; in (3)(b)(i) reduced commitment period from 6 months to 3 months; inserted (3)(b)(ii) concerning providing for a 6-month community commitment if certain conditions are met; in (4) at beginning in exception clause substituted "(3)(b)(ii)" for "(3)(b)"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 513 in (3)(a) at beginning inserted "subject to the provisions of 53-21-193"; and in (3)(a) and (7) after "hospital" inserted references to a behavioral health inpatient facility. Amendment effective July 1, 2003.

Chapter 554 inserted (3)(c) relating to commitment to the Montana mental health nursing care center; in (7) at end inserted reference to the Montana mental health nursing care center; inserted (8)(g) relating to commitment to the Montana mental health nursing care center; and made minor changes in style. Amendment effective October 1, 2003.

Severability: Section 10, Ch. 513, L. 2003, was a severability clause.

2001 Amendment: Chapter 342 in (3) inserted "and pursuant to the provisions in subsection (7)"; in (3)(b) substituted "or to any appropriate course of treatment, which may include housing or residential requirements" for "or course of treatment" and at end increased commitment time from 3 months to 6 months; deleted former (2)(a)(iii) through (2)(a)(v) that read: "(iii) order the respondent to be placed in the care and custody of a relative or guardian or some other appropriate place other than an institution;

(iv) order outpatient therapy; or

(v) make some other appropriate order for treatment"; in (4) at beginning inserted exception clause and substituted "this section" for "this subsection"; in (7) in second sentence inserted "or program or an appropriate course of treatment as provided in subsection (3)(b)"; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 490 in (1), after "respondent is not", substituted "suffering from a mental disorder or does not require commitment" for "seriously mentally ill"; in(2)(a), in first sentence after "respondent is", substituted "suffering from a mental disorder and requires commitment" for "seriously mentally ill"; in (2)(a)(i), after "respondent to", substituted "the state hospital" for "a facility"; inserted (2)(a)(ii) regarding commitment to a community facility or program for up to 3 months; in (2)(b), after "custody", inserted "or course of treatment"; in (2)(c), in first sentence after first "alternatives", inserted "in subsection (2)(a)", deleted former second sentence that read: "The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable", in second and third sentences, after "facility", inserted "or a physician designated by the court", at end of fourth sentence, after "facility", inserted "or program", and deleted last sentence that read: "The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary"; inserted (2)(d) and (2)(e) regarding required findings related to commitment; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 434 in (2)(c), in both versions, inserted third through ninth sentences outlining procedure for involuntarily administering medication to patient at mental health facility and at end of last sentence inserted "and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary"; and made minor changes in style.

Code Commissioner Change: Pursuant to sec. 4, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Corrections and Human Services.

1987 Amendment: In (1), near beginning, inserted "mentally ill or"; in (2)(a), near beginning, inserted "in a proceeding under 53-21-121(1)(a)"; inserted (3) establishing conditions on an order of temporary treatment; and inserted (4) outlining required court actions regarding findings of fact, naming of the responsible facility, and legal enforcement of medication requirements.

Case Notes

District Court Order Lacked Required Findings — Remand to Enter Amended Recommitment Order in Compliance With Statutory Requirements: When the District Court's order for involuntary recommitment lacked express detailed findings as required by statute, lacked bases for implied findings, and contained only a prefatory summary of the evidence and bench findings on the record, the Supreme Court remanded the order to the District Court to enter an amended recommitment order including the required findings. In re D.L.B., 2017 MT 106, 387 Mont. 323, 394 P.3d 169.

Involuntary Commitment Proper — Involuntary Administration of Medication — No Showing of Ineffective Counsel: The record of a 28-year-old woman with a lengthy history of mental illness showed that she was frequently noncompliant with her prescribed medications, aggressive, combative, abusive to family members, homeless, and unemployed. In an involuntary commitment hearing, the District Court concluded that the state had proven to a reasonable degree of medical certainty that she suffered from a mental disorder, that she was unable to care for herself, that the state hospital was the least restrictive treatment option, and that involuntary administration of medication was authorized as needed to facilitate treatment. On appeal, the Supreme Court affirmed, finding that the involuntary commitment was warranted and that the District Court had followed relevant statutes and correctly authorized the involuntary administration of medication. The Supreme Court also found that it could not be concluded that her counsel was ineffective because "abundant evidence" supported the District Court's findings and because counsel had attempted to provide alternate explanations for her symptoms and behavior. In re C.B., 2017 MT 83, 387 Mont. 231, 392 P.3d 598.

Plain Language of Statute Applied — Enhanced Protection Against Forced Medication — District Court Reversed Because Appellant Never Refused to Take Medication: The District Court erred in authorizing involuntary medication. The appellant had never refused to take her medication, and a finding or general understanding that an individual with bipolar disorder may at some undisclosed future point in time decide not to take medications is insufficient to satisfy the plain language of the statute requiring that involuntary medication is necessary. The Legislature sought to enhance protection against forced medication of the mentally ill by enacting 53-21-145, specifically declaring that patients have the right to be free from unnecessary or excessive medication. A finding and conclusion that in the future a person may become noncompliant is insufficient to meet this statutory requirement. In re R.H., 2016 MT 329, 385 Mont. 530, 385 P.3d 556, distinguished in In re C.B., 2017 MT 83, 387 Mont. 231, 392 P.3d 598, to the extent that unlike C.B., R.H. had no history of medication noncompliance.

Imminent Threat of Injury Supported by Substantial Credible Evidence — Involuntary Commitment Required: In granting the state's petition for involuntary commitment under 53-21-126, the District Court did not err when substantial credible evidence showed that the individual posed an imminent threat of harm to herself or others and that, if left untreated, her condition would continue to deteriorate. The defendant waived appellate review of her objections to the mental health professionals' diagnoses by failing to object during the proceedings. In re C.V., 2016 MT 307, 385 Mont. 429, 384 P.3d 1048.

Conflicts With Neighbors and Interest in Acquiring Firearm Constituted Threat Requiring Involuntary Commitment — Court's Failure to Cite Statutory Subsection Not Grounds for Reversal: The appellant exhibited paranoid and combative behavior after suffering a head injury. Eventually, he was involuntarily committed under 53-21-126 after not taking medication, having confrontations with his neighbors, and attempting to acquire a firearm. The District Court committed the appellant, stating that he posed a danger to himself and others. On appeal, the appellant argued that the judge did not cite the specific subsection of the statute, that the state failed to meet its burden of proving the necessity of the confinement, and that his interest in acquiring a firearm did not amount to a real threat. The Supreme Court disagreed with the appellant, holding that while the District Court is encouraged to cite the specific subsection of the statute it nevertheless implicitly used the language of the statute, that the state proved he posed a threat to himself and others, and that interest in acquiring a firearm constituted a threat under the statute. In re B.D., 2015 MT 339, 381 Mont. 505, 362 P.3d 636.

District Court's Failure to Provide Detailed Factual Statement Cured in Second Order — Civil Commitment: The state filed a civil commitment case against the appellant. The District Court issued an order committing the appellant; however, it failed to provide a detailed statement of the facts supporting its conclusion. The District Court subsequently issued a second order, which contained additional findings. On appeal, the Supreme Court affirmed, holding that while the first order failed to comply with statutory requirements, nothing prohibited the District Court from issuing the second order that provided detailed factual findings. In re M.P.-L., 2015 MT 338, 381 Mont. 496, 362 P.3d 627.

No Separate Disposition Hearing Required After Finding of Mental Illness: Immediately after concluding that the respondent suffered from a mental disorder, the judge proceeded to a posttrial disposition hearing. The respondent argued that this section requires a judge to hold two separate hearings. On appeal, the Supreme Court affirmed, agreeing that nothing in 53-21-127 precludes a court from holding the disposition hearing immediately after making a finding that the respondent suffers from a mental illness. In re S.L., 2014 MT 317, 377 Mont. 223, 339 P.3d 73.

Detailed Statement of Facts — No Application to Involuntary Medication: Following a 2-day trial, a jury concluded by special verdict form that L.A. was suffering from a mental disorder and required involuntary medication. L.A. claimed that the special verdict form did not satisfy the requirement that the District Court make a detailed statement of facts supporting an order of involuntary medication. The Supreme Court concluded that the statute requiring a detailed order does not apply to involuntary medication. In re L.A., 2013 MT 327, 372 Mont. 368, 313 P.3d 115.

Jury Verdict for Involuntary Commitment — Detailed Statement of Facts Unnecessary When Court Findings Support Reasoning to Commit: Following a 2-day trial, a jury concluded by special verdict form that L.A. was suffering from a mental disorder and was an imminent threat to herself. L.A. appealed her involuntary commitment, claiming that the special verdict form did not satisfy the requirement that the District Court make a detailed statement of facts supporting an order of commitment. The Supreme Court concluded that when a jury finds for commitment, the requirement for a District Court to provide a detailed statement of facts in its posttrial disposition order is unworkable because the judge is not privy to the jury's reasoning. Here, the Supreme Court concluded that the special verdict form, along with the additional findings by the judge, satisfied the statute. In re L.A., 2013 MT 327, 372 Mont. 368, 313 P.3d 115.

Valid Order Authorizing Involuntary Medication: Counsel for the respondent alleged the District Court's order of commitment was insufficient to allow the respondent his medication to be involuntarily administered, but the District Court's directive that the respondent "shall take such medication . . . both at the state hospital and, also, during community outpatient treatment" was sufficient to authorize involuntary medication when the District Court's other findings made clear the necessity for the involuntary medication to protect the respondent. In re R.W.K., 2013 MT 54, 369 Mont. 193, 297 P.3d 318.

Respondent's Testimony Unreliable — Commitment Order and Administration of Medication Warranted: The District Court ordered involuntary commitment and the involuntary administration of medication after receiving testimony from a doctor, the respondent, and a relative of the respondent. On appeal, the respondent argued that his testimony was sufficient to create reasonable doubt, but the Supreme Court disagreed and affirmed, concluding that the respondent's testimony was unreliable. The District Court correctly determined that the respondent suffered from a mental disorder and that one of the criteria for commitment under 53-21-126 was met. In re C.R., 2012 MT 258, 367 Mont. 1, 289 P.3d 125.

No Evidence That Substance Abuse Caused Conduct That Was Basis for Determination of Mental Illness: The District Court, in concluding that T.J.F. met the statutory criteria for involuntary commitment, did not err by failing to consider T.J.F.'s substance abuse. While there was evidence that T.J.F. used drugs occasionally, there was no evidence in the record that T.J.F. was addicted to drugs or that T.J.F. was using drugs at the time T.J.F. was fleeing from police, running in and out of traffic, causing drivers to slam on their brakes, and punching a patrol car. Expert testimony on the record demonstrated that T.J.F.'s mental disorder caused T.J.F. to exhibit behaviors that put him and others in the community at risk of harm. In re Mental Health of T.J.F., 2011 MT 28, 359 Mont. 213, 248 P.3d 804.

Sufficient Detailed Findings to Support Involuntary Commitment: L.R. asserted that the evidence supporting the District Court's conclusion that she was unable to provide for her needs was not clear and convincing. The Supreme Court disagreed. The District Court found that L.R. suffered from mental illness, identified as a bipolar disorder in an acute manic phase, and that the mental illness was serious because it rendered L.R. unable to make rational decisions or to care for or protect herself. The court also found that L.R. was paranoid, had grandiose thoughts, showed extreme religious ideation, and was suspicious of those trying to help her. These findings were sufficiently detailed to support commitment and provided clear and convincing evidence that L.R. should be committed because of an inability to provide for her own basic needs. In re Mental Health of L.R., 2010 MT 76, 356 Mont. 20, 231 P.3d 594, distinguishing In re E.P.B., 2007 MT 224, 339 Mont. 107, 168 P.3d 662. See also In re S.G.R., 2016 MT 70, 383 Mont. 74, 368 P.3d 1180.

Findings Sufficiently Detailed — Written and Oral: O.R.B. contended that the District Court made generalized findings of fact, but the Supreme Court reviewing the order and transcript determined that the District Court provided an impressive amount of detail satisfying the requirements of this section. In re Mental Health of O.R.B., 2008 MT 301, 345 M 516, 191 P3d 482 (2008). See also In re Ward Revocable Trust, 2011 MT 308, 363 Mont. 72, 265 P.3d 1260.

Failure of District Court to Make Detailed Findings of Fact to Support Involuntary Commitment — Reversible Error: A hearing on a petition for involuntary commitment is not merely a pro forma requirement but an opportunity for both the petitioner and respondent to present evidence upon which a trial court can make required findings and enter appropriate orders. As petitioner, the state bears the burden of proving any physical facts or evidence beyond a reasonable doubt, the respondent's mental disorder to a reasonable medical certainty, and other matters by clear and convincing evidence. In ordering commitment, the trial court must make a detailed statement of facts upon which it found respondent to be suffering from a mental disorder requiring commitment. In this case, the issue was whether the trial court's findings met statutory requirements, which the Supreme Court reviewed de novo. The trial court merely recited the testimony of a health care professional, noted that it was consistent with another professional's findings, and ordered commitment. This was not the detailed statement of facts required under this section, and the Supreme Court reversed and remanded with instructions to vacate the commitment order. In re Mental Health of E.P.B., 2007 MT 224, 339 M 107, 168 P3d 662 (2007). See also In re L.L.A., 2011 MT 285, 362 Mont. 464, 267 P.3d 1, reversing involuntary commitment where findings of fact contained seven brief findings of facts and did not comply with 53-21-127(8)(a), In re C.C., 2016 MT 174, 384 Mont. 135, 376 P.3d 105, declining to expand the doctrine of implied facts to an order that had been prepared prior to the hearing and did not contain any detailed facts or testimony in it, and In re K.P., 2017 MT 68, 387 Mont. 121, 391 P.3d 749, holding that a bare-bones conclusory oral commitment order violated the factual findings requirements of this section and that it could not be supplemented by a written order entered after the individual had already been committed for 30 days.

Failure of District Court to Provide Detailed Facts Supporting Commitment Order — Commitment Order Reversed: Because the statutes governing involuntary commitment are critically important because of the calamitous effect of a commitment, trial courts must strictly comply with the relevant statutes, including the requirement to provide a detailed statement of facts supporting an order of commitment. Here, failure of a trial court to provide the required statement of facts warranted reversal of a commitment order. In re G.M., 2007 MT 100, 337 M 116, 157 P3d 687 (2007), following In re A.K., 2006 MT 166, 332 M 511, 139 P3d 849 (2006).

Cognitive Delays and Substance Abuse Not Factors to Be Used as Basis for Involuntary Commitment: Mental retardation is not a mental disorder for purposes of treatment of the seriously mentally ill, and cognitive delays may not be used for purposes of determining that because of a mental disorder, a person presents an imminent threat requiring involuntary commitment. Likewise, drug or alcohol addiction or intoxication does not constitute a mental disorder for purposes of treatment of the seriously mentally ill. Here, the District Court involuntarily committed respondent after including reference to respondent's mild mental retardation and polysubstance abuse in the finding that respondent suffered from a mental illness. That inclusion, when overlaid onto the court's subsequent findings and absent sufficient evidence, did not meet the statutory requirements for involuntary commitment, and the Supreme Court reversed the commitment order. In re A.K., 2006 MT 166, 332 M 511, 139 P3d 849 (2006).

Proper Finding of Mental Disorder — Remand for Determination of Least Restrictive Environment: Respondent expressed suicidal thoughts, mood disorder, and paranoia. Following evaluation, respondent was found to suffer from a mental disorder and was involuntarily committed to the state hospital for up to 3 months. Respondent appealed. The Supreme Court held that the state met its burden of proving that respondent required commitment because he suffered from a mental illness and because his recent and relevant overt acts and omissions posed an imminent threat of self-inflicted injury or injury to others. However, the court remanded because the District Court did not address with detailed findings of fact whether commitment to the state hospital represented the least restrictive environment needed to permit effective treatment and to protect respondent as required in this section. In re Mental Health of D.S., 2005 MT 152, 327 M 391, 114 P3d 264 (2005).

Findings Required as Prerequisite for Involuntary Medication Order — Due Process and Right to Privacy — Common Law Superseded: S.C. was ordered by the District Court to undergo involuntary medication to treat her schizophrenia and appealed to the Supreme Court, claiming that the District Court violated her common-law right to refuse medication and her right to privacy and due process. S.C. also claimed that the District Court did not make the statutorily required finding stating the reason why involuntary medication was chosen by the District Court from among other alternatives available. The Supreme Court affirmed the District Court, holding that: (1) because there was a statutory scheme for ordering involuntary medication, there was no common-law right in Montana to refuse medication; (2) S.C.'s premise, that she had been unlawfully declared incompetent, was a false premise in that the statutory scheme required a finding of a mental disorder rather than incompetency and that S.C. had not particularly shown how the Montana commitment statutes were unconstitutional; and (3) it was clear from the detailed findings of the District Court that the court believed that involuntary medication was the most appropriate and least restrictive alternative. The Supreme Court also relied on the doctrine of implied findings to hold that the District Court had made all of the findings necessary to invoke the remedy of involuntary medication. In re Mental Health of S.C., 2000 MT 370, 303 M 444, 15 P3d 861, 57 St. Rep. 1584 (2000).

Requirement of Note That Benefit of Rights Received: The District Court is required to note in its order of involuntary commitment that persons to be committed have received the benefit of all applicable statutory and constitutional rights. In re S.J. & T.F., 231 M 353, 753 P2d 319, 45 St. Rep. 675 (1988).

Lack of Detailed Statement Harmless Error: Patient appealed the order for his involuntary commitment to the state mental hospital, claiming the findings under this section were not adequate. The findings of fact that lead to the conclusion the patient was seriously mentally ill (see 1997 amendment) did not contain a detailed statement of facts as contemplated by the statute, but given the detail in the record as a whole, this was harmless error. In re Mental Health of R.J.W., 226 M 419, 736 P2d 110, 44 St. Rep. 770 (1987), followed in In re D.D., 277 M 164, 920 P2d 973, 53 St. Rep. 587 (1996).

Conditional Release Based on Patient's Cooperation Proper: It was not error for the District Court to recommit a patient to Montana State Hospital for 6 months, with conditional release to a local mental health program within that time based on the patient's cooperation in taking prescribed medication, participating in counseling, and fulfilling other conditions necessary to prevent a relapse. In re M.J.P., 226 M 183, 734 P2d 689, 44 St. Rep. 572 (1987).

Stipulation to Commitment — Montana State Hospital as Least Restrictive Environment: The appellant, M.C., argued on appeal that evidence was insufficient to warrant his transfer to Montana State Hospital. At a commitment hearing, the District Court heard evidence on M.C.'s inability to cooperate in treatment at the Billings Mental Health Center, as well as testimony from a Center doctor indicating that Montana State Hospital was the least restrictive environment in which M.C. could receive the care and supervision he needed. After the hearing, M.C. and his counsel stipulated to, and the District Court ordered, a commitment to the Billings Mental

Health Center or "another mental health facility in Montana". The Supreme Court held this evidence to be sufficient to support the District Court's action in committing M.C. to the Montana State Hospital. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Evidence Insufficient for Involuntary Commitment:

Sufficient evidence supported an order of involuntary commitment when evidence presented at trial indicated the following: (1) respondent had exhibited violent behavior in the past; (2) his sister felt threatened by him on an occasion when he entered her home and demanded the keys to her car; (3) for no apparent reason, respondent entered the home of a family whom he did not know; and (4) a psychologist testified that respondent lacked ability to care for himself and posed a threat to others. In re D.B., 218 M 467, 709 P2d 161, 42 St. Rep. 1747 (1985).

Testimony at trial did not clearly and convincingly establish that respondent, due to his mental condition, was unable to protect his life or health at the time of the trial. Therefore, the evidence that respondent was "seriously mentally ill" within the meaning of 53-21-102 (see 1997 amendment) was insufficient as a matter of law, and the District Court commitment order was vacated. In re R.T., 204 M 493, 665 P2d 789, 40 St. Rep. 1025 (1983).

Serious Mental Illness — Source of Findings — Montana State Hospital as Least Restrictive: The District Court found that C.M. was seriously mentally ill and committed her to Warm Springs State Hospital (now Montana State Hospital). C.M. appealed from the order of commitment. Three persons testified at the commitment hearing, C.M., C.M.'s mother, and a psychiatrist. The psychiatrist testified that C.M. was seriously mentally ill based on his own examination and on the observations of C.M.'s mother. The court held that a professional person may opine that a person is seriously mentally ill (see 1997 amendment) even though the evidence of an imminent threat of injury, required by statute, is obtained from a source other than the professional person. There was also sufficient evidence that a commitment to Warm Springs State Hospital (now Montana State Hospital) was the least restrictive form of commitment. The order of the District Court was affirmed. In re C.M., 195 M 171, 635 P2d 273, 38 St. Rep. 1768 (1981).

Commitment to State Hospital: Montana law requires that, in determining the treatment to be provided to a person adjudged seriously mentally ill (see 1997 amendment), the court choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. Court findings, based largely on the testimony of two psychologists and one psychiatrist, were found to have been based on adequate consideration of alternatives in the case of a diagnosed paranoid schizophrenic with a 20-year history of mental health problems. In re Goedert, 180 M 484, 591 P2d 222, 36 St. Rep. 393 (1979).

"Seriously Mentally Ill" — Supporting Evidence: There was sufficient evidence to support the conclusion that respondent was "seriously mentally ill", as defined in 53-21-102 (see 1997 amendment), beyond a reasonable doubt, and respondent failed to overcome the burden of providing proof to the contrary; hence, extended detention was warranted. In re Sonsteng, 175 M 307, 573 P2d 1149 (1977); In re Miller, 175 M 318, 573 P2d 1155 (1977).

Disagreement by Physicians: Where medical jurors disagreed as to necessity of commitment of petitioner in mental institution, order of commitment issued by District Court was void and of no effect. Application of Bushman, 153 M 422, 458 P2d 81 (1969).

Fairness of Inquisition: Petitioner who was committed to state hospital was not deprived of his constitutional rights where it appeared that District Judge and court attendants went to hospital to advise him of hearing date and his privilege to have counsel, his mother was present at the hearing, which was held in the hospital, and everything was done by the court to see that petitioner's rights were protected and no advantage was taken of him. Petition of Kolocotronis, 145 M 564, 402 P2d 977 (1965).

Attorney General's Opinions

Commitment Procedures to Be Followed in Committing Mentally Ill Youth — Private Mental Health Facilities Not Precluded: Section 41-5-523 (renumbered 41-5-1512) does not authorize the Youth Court or the Department of Family Services (now Department of Public Health and Human Services) to commit a mentally ill or seriously mentally ill (see 1997 amendment) youth to a mental health treatment facility without following the commitment procedures set out in Title 53, ch. 21, part 1. There is, however, no statutory preclusion of commitment of a youth to private mental health facilities. 42 A.G. Op. 59 (1988).

Returning Patients to Montana State Hospital — Financial Responsibility: A Sheriff who returns a patient to Warm Springs (now Montana State Hospital) pursuant to 7-32-2144 when the patient has been subjected to an involuntary civil or a criminal commitment is entitled to reimbursement for his costs from the applicable county for a person committed pursuant to

46-14-221 and 46-14-222 or the institution to which the person is committed when committed pursuant to 46-14-301, 53-21-121, 53-21-124, and 53-21-127. 37 A.G. Op. 129 (1978).

53-21-128. Petition for extension of commitment period.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 513 in (1)(a) in first sentence after "hospital" inserted "a behavioral health inpatient facility"; in (1)(b) in second sentence after "10 days" inserted "not including Saturdays, Sundays, and holidays", inserted third sentence providing that previous commitment is considered extended until hearing is held when hearing requested less than 10 days prior to termination of previous commitment authority, and inserted fourth sentence requiring notice of hearing to include notice of extension; in (1)(d) at end of second sentence deleted reference to subsection (3) of 53-21-127 and in third sentence after "order" inserted "extending the commitment period" and after "6 months" inserted "and may not commit the patient to a behavioral health inpatient facility"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 554 in (1)(a) near beginning inserted reference to the Montana mental health nursing care center. Amendment effective October 1, 2003.

Severability: Section 10, Ch. 513, L. 2003, was a severability clause.

2001 Amendment: Chapter 342 in (1)(a) after "commitment" inserted "to the state hospital or the period of commitment to a community facility or program or a course of treatment" and substituted reference to 53-21-127 for reference to 53-21-127(2); in (1)(d) in second sentence after "commitment" deleted "custody in relatives, outpatient therapy, or other order" and substituted reference to 53-21-127(3) for reference to 53-21-127(2); inserted (2) authorizing respondent to request that treating provider petition district court for extension of commitment order prior to end of period of commitment to community facility, program, or course of treatment, requiring written report and evaluation to accompany petition, and requiring extension procedure to follow outlined statutorily required procedure; in (3) in first sentence inserted "under subsection (1) or (2)"; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 490 throughout section substituted "commitment" and "committed" for "detention" and "detained"; in (1)(d), in first sentence after "patient not", substituted "to be suffering from a mental disorder and requiring commitment" for "seriously mentally ill" and in second sentence, after "suffer from", substituted "a mental disorder and to require commitment" for "serious mental illness"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1987 Amendments: Chapter 376 in temporary version in (1) inserted introductory clause; in (1)(a), after "3-month period", deleted "of detention provided for in 53-21-127(2)"; inserted (2) outlining the procedure required to extend a period of temporary treatment; in (3), near beginning, inserted "of the period of detention provided for in 53-21-127(2)"; and inserted (4) providing that a period of temporary treatment may be extended only once. Amendments terminate July 1, 1997.

Chapter 434 in first sentence of (1)(a) substituted "may petition the district court in the county where the patient is detained" for "may petition the court" and at end of sentence inserted "unless otherwise ordered by the original committing court".

Case Notes

Recommitment Challenged De Novo for Lack of Postpetition Mental Health Evaluation — Burden Under Plain Error Doctrine Not Met: The respondent, who was involuntarily committed to the Montana Mental Health Nursing Care Center, argued the District Court erred when it recommitted him without a postpetition mental health evaluation by a court-appointed professional person. The respondent did not raise this argument in District Court, so the Supreme Court reviewed his unpreserved claim under the plain error doctrine. The Supreme Court first found a fundamental right is at stake because commitment implicates the respondent's liberty. The Supreme Court proceeded to its second inquiry, weighing the risk of depriving an individual's liberty against the probable value of the procedure in question. The Supreme Court explained that as the District Court based its decision on 3 years of records, a mental health evaluation prepared shortly before the case, testimony of the person who prepared that evaluation, and evidence of the respondent's mental health issues during the months preceding the case, the absence of a postpetition evaluation did not substantially prejudice him and stated that the court had ample grounds on which to determine that recommitment was necessary. In re B.A.F., 2021 MT 257, 405 Mont. 525, 496 P.3d 554.

Hearing to Stipulate to Extension of Commitment — Conformance With 53-21-119 Not Required: After a petition to extend his initial commitment had been filed, the respondent requested a hearing to put his stipulation to the extension on the record. Afterward, the respondent appealed the extension, arguing that the District Court had not complied with the provisions of 53-21-119. The Supreme Court held that the provisions of 53-21-119 did not apply because the respondent had not requested a hearing on the petition to extend but, rather, had requested a hearing to stipulate to the extension. In re B.A.F., 2019 MT 57, 395 Mont. 98, 436 P.3d 718.

District Court Order Lacked Required Findings — Remand to Enter Amended Recommitment Order in Compliance With Statutory Requirements: When the District Court's order for involuntary recommitment lacked express detailed findings as required by statute, lacked bases for implied findings, and contained only a prefatory summary of the evidence and bench findings on the record, the Supreme Court remanded the order to the District Court to enter an amended recommitment order including the required findings. In re D.L.B., 2017 MT 106, 387 Mont. 323, 394 P.3d 169.

Sparse Findings Sufficient to Show No Improvement — Recommitment Order Proper: The individual, a 75-year-old man suffering from paranoid schizophrenia, was recommitted to a mental health nursing home. The individual had previously been committed on a number of occasions, had a pattern of medication noncompliance, and regularly hallucinated. On appeal, the individual argued that the District Court's findings of facts and conclusions of law did not address the criteria under 53-21-126. The Supreme Court disagreed and affirmed, noting that although the written order was lacking, when considered with the District Court's oral findings and the individual's mental health assessment, the order was sufficient to support a conclusion that the individual's mental health had not improved and that his recommitment was necessary. In re D.L.B., 2017 MT 1, 386 Mont. 180, 389 P.3d 227.

Appellant Allowed to Be Returned to State Hospital If Did Not Comply With Discharge Recommendations After 90-Day Commitment — Due Process Violation: The District Court erred by allowing the individual to be immediately taken back to the Montana State Hospital to continue treatment if she did not comply with discharge recommendations after the 90-day commitment period. Allowing this recommitment violated 53-21-128, which provides due process safeguards for extending the commitment period, including notice and a hearing. In re C.V., 2016 MT 307, 385 Mont. 429, 384 P.3d 1048.

Appeal of Extension of Commitment — Bare-Boned Order Proper — Doctrine of Implied Findings: After a District Court extended his involuntary committal by 6 months, the appellant, a 76-year-old man with a lengthy history of severe alcoholism, appealed the extension, claiming that the order was not supported by substantial evidence and did not satisfy the statutory requirements for commitment. The Supreme Court disagreed and affirmed, noting that although the findings in the order were "bare-boned," the order was "minimally sufficient" under the doctrine of applied findings because the evidence in the record demonstrated that the appellant was a danger to himself. In re S.G.R., 2016 MT 70, 383 Mont. 74, 368 P.3d 1180. However, see In re C.C., 2016 MT 174, 384 Mont. 135, 376 P.3d 105, in which the Supreme Court declined to expand the doctrine of implied facts to an order that had been prepared prior to the hearing and that did not contain any detailed facts or testimony in it.

Clear Error in Finding That Behavior Posing Risk of Harm Precluded Community Placement — Involuntary Recommitment Reversed: The District Court held that G.M. was seriously developmentally disabled and that G.M.'s behavior could not be safely and effectively rehabilitated in community-based services because of behavior that posed an imminent risk of serious harm to G.M. or others. The court then ordered that G.M. be involuntarily recommitted to the Montana Developmental Center for no more than 1 year. G.M. appealed. The Supreme Court concluded that all evidence was properly submitted and that expert testimony was properly admitted. However, G.M.'s expert's testimony and the actual incident reports presented by the state revealed that the reports did not give an accurate picture of G.M.'s condition, in that during most of the reported incidents, G.M. was not the aggressor. In fact, the reports affirmed G.M.'s expert's opinion that it was the group living environment that contributed significantly to G.M.'s behavioral difficulties and that placing G.M. in a community setting with fewer people would ameliorate G.M.'s aggressive tendencies. The state presented no evidence to contradict the expert's opinion that the institutional setting was probably responsible for the behaviors that kept G.M. in the institution and that individuals with worse aggressive tendencies were successfully living in community settings or to explain why G.M.'s actions would make placement in a community setting unsafe. Additionally, G.M.'s aunt's testimony regarding her personal observations of G.M.'s demeanor and self-control when not in an institutional setting confirmed the expert's opinion and tended to prove that G.M. did not pose a risk of harm and could be safely habilitated in the community. Thus, the Supreme Court held that the District Court incorrectly concluded that G.M. was seriously developmentally disabled and reversed with instructions to vacate the recommitment order. In re G.M., 2008 MT 200, 344 M 87, 186 P3d 229 (2008).

Claim of Failure to Rule on Petition for Conservatorship Unfounded: Through counsel, G.J.P. filed a petition asking the District Court, in the alternative, to: (1) direct counsel how to proceed to protect G.J.P.'s assets, legal practice, and clients; (2) appoint a conservator of his estate; or (3) enter other appropriate orders for the protection of G.J.P.'s assets and clients. In response, the court entered an order authorizing counsel to secure G.J.P.'s mail. G.J.P. was discharged from the state hospital 12 days later. The allegation that there was a failure to rule on the petition was thus unfounded. The court did not err in granting the alternative motion. In re G.J.P., 266 M 370, 880 P2d 1311, 51 St. Rep. 847 (1994).

Objection to Continued Detainment Properly Denied — Statutory Checks on Restraint Provisions: Following an emergency confinement, the District Court continued the confinement pending a commitment hearing 5 days later. G.J.P. contended that his objection to continued detainment, made at his initial appearance before the court, should have been granted. It was not error for the court to allow continued confinement based on probable cause established by documents attached to the petition for involuntary commitment and on G.J.P.'s own testimony at the initial hearing. The judgments of the County Attorney and the District Court are built-in checks upon the discretion of a professional person to restrain a person for more than 1 day. In re G.J.P., 266 M 370, 880 P2d 1311, 51 St. Rep. 847 (1994).

Order Extending Involuntary Commitment Proper — Threat of Physical Injury: It was not error for the District Court to extend the involuntary commitment of a seriously mentally ill (see 1997 amendment) patient in light of sufficient evidence that she had made suicidal and homicidal threats, was considered an imminent threat of physical injury to herself or others, and needed institutional supervision to ensure continuation of her medical therapeutic intervention program. Threats made within 4 months were sufficiently recent in time to be material and relevant as to patient's present condition. In re M.J.P., 226 M 183, 734 P2d 689, 44 St. Rep. 572 (1987).

"Seriously Mentally Ill" — Supporting Evidence: There was sufficient evidence to support the conclusion that respondent was "seriously mentally ill", as defined in 53-21-102 (see 1997 amendment), beyond a reasonable doubt, and respondent failed to overcome the burden of providing proof to the contrary; hence, extended detention was warranted. In re Sonsteng, 175 M 307, 573 P2d 1149 (1977); In re Miller, 175 M 318, 573 P2d 1155 (1977).

Written Report of Professional Person — Admissibility: The court properly permitted, over objection, a written report of a professional person concerning the mental and physical condition of a patient to become a part of the record in a petition for extended detention of respondent because its sole purpose was to furnish reasonable grounds for initiation of the legal proceeding. In re Sonsteng, 175 M 307, 573 P2d 1149 (1977); In re Miller, 175 M 318, 573 P2d 1155 (1977).

53-21-129. Emergency situation — petition — detention.

Compiler's Comments

2013 Amendment: Chapter 308 in (1) near beginning after "situation" inserted "as defined in 53-21-102" and after "others" inserted "or who appears to have a mental disorder and to be substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety"; in (2) in first sentence after "others" deleted "because of a mental disorder" and after "situation" inserted "as defined in 53-21-102". Amendment effective October 1, 2013.

2007 Amendment: Chapter 116 in (4) in second sentence near beginning substituted "professional person" for "Montana state hospital" and near middle after "detention" substituted "and a bed is available, the county attorney" for "it". Amendment effective October 1, 2007.

2003 Amendment: Chapter 513 in (3) in second sentence after "hospital" inserted "or to a behavioral health inpatient facility, subject to 53-21-193 and subsection (4) of this section"; in (4) in two places in first sentence after "hospital" inserted references to a behavioral health inpatient facility and inserted second sentence requiring Montana state hospital to direct person to appropriate facility for emergency detention upon determination that behavioral health inpatient facility is appropriate facility; and made minor changes in style. Amendment effective July 1, 2003.

Severability: Section 10, Ch. 513, L. 2003, was a severability clause.

1997 Amendment: Chapter 490 in (1), after "appears to", substituted "have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others" for "be seriously mentally ill and as a result of serious mental illness to be a danger to others or to himself"; in (2), in first sentence after "detained", substituted "is a danger to the person or to others because of a mental disorder" for "appears to be seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1983 Amendment: After first sentence of (3) inserted remainder of (3) providing for emergency detention at the state hospital upon proper certification; and inserted (4) requiring that the state hospital be notified and state that a bed is available.

Case Notes

Administration of Medication During Emergency Detention Not Violative of Right to Be Free of Medication Prior to Initial Appearance: L.R. was held in emergency detention based on an inability to make reasonable and safe decisions for herself and was involuntarily medicated because of aggressive, intrusive, and volatile behavior on the day of the initial appearance on the state's petition for involuntary commitment. L.R. contended that the involuntary medication violated the right to refuse medication 24 hours before the initial appearance under 53-21-115. The state contended that under 53-21-129 the medication was properly administered because an emergency situation existed. The Supreme Court noted that an inconsistency existed between the statutes but concluded that the specific directive in 53-21-129 allowing for involuntary medication in emergency situations controlled the general statutory directive concerning a medication-free initial appearance in 53-21-115. Thus, even though L.R. was involuntarily medicated within 24 hours of the initial appearance, because an emergency situation existed and the medications were administered before the next business day, L.R.'s right to a medication-free hearing was not violated. In re Mental Health of L.R., 2010 MT 76, 356 Mont. 20, 231 P.3d 594

Immediate Notice Requirements Inapplicable When Person Detained on Emergency Basis: After being detained on an emergency basis, L.K. was advised of her due process rights the next day. On appeal, L.K. asserted that the provisions of 53-21-114 required that she be advised of her constitutional rights at the time of detainment, and that failure to do so violated due process. The Supreme Court disagreed. Emergency mental health commitments are treated differently from other mental health commitments, and the immediate notice of constitutional rights is not required when a person is detained in an emergency situation pursuant to 53-21-129. L.K. was advised of her constitutional rights in a reasonably timely manner, and due process was satisfied. In re Mental Health of L.K., 2008 MT 169, 343 M 366, 184 P3d 353 (2008), distinguishing In re Shennum, 210 M 442, 684 P2d 1073 (1984).

Sufficient Finding of Emergency Situation Justifying Involuntary Detainment: A Sheriff's report of about 25 incidents involving L.K.'s allegedly "extremely bizarre" behavior over a 3-day period, including at least two incidents related to threatened violence, justified the District Court's finding of an emergency situation warranting the involuntary commitment and detention at the state hospital for mental evaluation. In re Mental Health of L.K., 2008 MT 169, 343 M 366, 184 P3d 353 (2008).

No Error in Instruction Quoting Statute Verbatim: Joshua Lloyd suffered a seizure after being transferred to the Kalispell Regional Hospital's security room. His personal representative sued the hospital and others. During trial, the District Court instructed the jury on negligence per se by quoting mental health statutes verbatim to the jury. The Supreme Court said that giving jury instructions by quoting directly from the statutes may not be the best practice, but noted that the instructions proposed by opposing counsel were also direct quotations of mental health statutes. Given that situation, the Supreme Court held that there was no error in giving jury instructions in the form of direct quotations from the statutes. Buhr v. Flathead County, 268 M 223, 886 P2d 381, 51 St. Rep. 1258 (1994).

No Negligence Per Se by Mental Health Cooperative Evaluation at Variance With Statute — Jury Verdict Supported by Substantial Evidence: Joshua died after suffering a seizure while in the custody of the Sheriff in a soft cell. Buhr, his personal representative, sued the county, the Sheriff, and others. Testimony at trial showed that despite the implication in subsection (2) of this section that Joshua be examined by a professional person, he was instead examined by Russell, who was not a professional person. Testimony showed that Russell then consulted with Harris, who was a professional person. Based upon the consultation, Harris agreed that Joshua needed to be placed in an emergency mental health hold status. The Supreme Court noted that although conflicting evidence may have been presented as to whether this procedure violated the statute, the evidence was presented to the jury based upon an appropriate instruction to which there was no objection. The Supreme Court held that the jury's verdict finding no negligence was supported by substantial evidence. Buhr v. Flathead County, 268 M 223, 886 P2d 381, 51 St. Rep. 1258 (1994).

Medical Rights Not Absolute — Restrictions Proper When Based on Necessity for Treatment, Evaluation, and Care: G.J.P. claimed numerous violations of his procedural and constitutional rights regarding the provision of his medical care after being confined for his manic episodes, including claims that: (1) a medical professional lacked knowledge of the requisite facts to make a request for commitment; (2) a mental evaluation was improperly conducted; (3) he was improperly secluded in isolation and restrained; (4) he was denied medical care for broken ribs; (5) he was denied the right of telephone communications; and (6) he was administered medication within 24 hours before his initial hearing on a motion for commitment, despite his objections. The Supreme Court recognized the rights of patients to receive proper medical care but noted that none of the rights are absolute. G.J.P. did not demonstrate any restrictions on his rights other than those necessary for his treatment, evaluation, and care or establish that reversal of his commitment would be a proper remedy for a denial or restriction of his rights. In re G.J.P., 266 M 370, 880 P2d 1311, 51 St. Rep. 847 (1994).

Objection to Continued Detainment Properly Denied — Statutory Checks on Restraint Provisions: Following an emergency confinement, the District Court continued the confinement pending a commitment hearing 5 days later. G.J.P. contended that his objection to continued detainment, made at his initial appearance before the court, should have been granted. It was not error for the court to allow continued confinement based on probable cause established by documents attached to the petition for involuntary commitment and on G.J.P.'s own testimony at the initial hearing. The judgments of the County Attorney and the District Court are built-in checks upon the discretion of a professional person to restrain a person for more than 1 day. In re G.J.P., 266 M 370, 880 P2d 1311, 51 St. Rep. 847 (1994).

Probable Cause Found for Taking Into Custody — Peace Officers Immune From Liability: Maag had suffered for several weeks from the effects of mixing toxic chemicals, including poor logic, slurred speech, and lack of coordination. At the request of his family, relatives, and friends, he was taken into custody by peace officers and brought to a hospital for observation at the request of a physician. After his release by the hospital the following day, Maag sued the peace officers in federal court, claiming violation of his fourth amendment rights. Defendants' motion for summary judgment was denied by the District Court. The court of appeals held that the standard for deciding whether Maag's constitutional rights had been violated was whether there was probable cause for the defendants to take him into custody. The court held that the officers had clear authority under this section and under the facts, including both the requests to arrest Maag and the officers' own observations of his conduct. The court found the defendants immune and awarded them attorney fees. Maag v. Wessler, 944 F2d 654 (9th Cir. 1991).

Adequate Medical Care Not Basis for Disregarding Due Process: The medical center, in which the respondent was placed by the officers who picked her up, did not follow proper procedure, and the respondent was held without authority for 5 days before her competency hearing. The Supreme Court held that providing adequate medical care is not a basis for disregarding the due process and statutory rights of a person charged with being seriously mentally ill (see 1997 amendment). The court went on to admonish the medical center, the County Attorney's office, and the county family services department for their failure to comply with the due process rights of the respondent. Mental Health of E.P., 241 M 316, 787 P2d 322, 47 St. Rep. 297 (1990).

Statutory Requirements Not Adhered to by Medical Center: A woman was brought by police to the medical center because the officers believed that she was seriously mentally ill (see 1997 amendment). Although the center extended good medical coverage, it held the woman for 5 days rather than 1 before petitioning the District Court to commit her. The lower court found that the evidence demonstrated that the respondent was totally unable to take care of herself. The Supreme Court stated that after reviewing the record, it found that there was overwhelming evidence to support the lower court's finding. The Supreme Court stated that although the case was moot in that the woman had been subsequently released, the medical center had not met the statutory guidelines. The court cautioned that proper procedures should be established to protect the due process rights of the mentally ill. Mental Health of E.P., 241 M 316, 787 P2d 322, 47 St. Rep. 297 (1990).

Suicidal Threats Constituting Emergency Situation: Threats to kill oneself as well as others, angry and abusive conduct toward others, a state of depression lasting a period of a week, and evidence of a previous suicide attempt 2 months earlier clearly indicated an emergency situation warranting detention under this section. Reiser v. Prunty, 224 M 1, 727 P2d 538, 43 St. Rep. 1967 (1986).

Detention Prior to Court Finding of Serious Mental Illness — Determination by Professional Person Rather Than Peace Officer: Appellant, M.C., argued that under 53-21-129, the peace officer makes the initial decision on whether an emergency situation exists and that in this case the officer did not make that decision. M.C. also contended that the evidence was insufficient to hold him on an emergency basis. The Supreme Court held that 53-21-129 merely permits the officer to take a person into custody for an evaluation. It does not give the officer authority to decide whether the person should be placed in emergency detention; rather, the professional person determines whether the person is seriously mentally ill (see 1997 amendment) and should be placed in emergency detention. Once that determination is made, it constitutes sufficient evidence that the person may be detained. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Commitment Procedural Safeguards Ignored: The State failed to follow the commitment procedural safeguards in handling Shennum's commitment. The record does not evidence the existence of an emergency situation sufficient to invoke 53-21-129. Shennum was not advised of his constitutional rights before a medical examination incorrectly obtained under a purported emergency situation. Absent an emergency, it was the duty of the County Attorney to proceed in accordance with 53-21-121 through 53-21-126 in order to commit Shennum as a seriously mentally ill person. Several of the procedural protections contained in those sections were ignored. Therefore, the initial commitment was reversed with guidelines for the State to proceed properly in further commitment proceedings. In re Shennum, 210 M 442, 684 P2d 1073, 41 St. Rep. 1148 (1984), distinguished in In re G.J.P., 266 M 370, 880 P2d 1311, 51 St. Rep. 847 (1994), because G.J.P. was detained at the request of a professional person and because at the time of appeal, G.J.P. was no longer detained as the result of the court proceeding.

Reversal of Conviction as Creating Emergency Situation: The Supreme Court reversed a deliberate homicide conviction and ordered a new trial. The court noted that if the State decides that further prosecution is not possible, then an "emergency situation" would exist under 53-21-129 and in such event ordered the State to detain the defendant and to conduct an emergency evaluation. St. v. Allies, 186 M 99, 606 P2d 1043 (1979).

Attorney General's Opinions

County Liability for Costs of Precommitment Services: Subject to the limitations in 53-21-132(2), the county of residence is financially responsible for costs incurred in connection with the detention and precommitment custody of persons taken into protective custody pursuant to 53-21-124 or this section. 46 A.G. Op. 18 (1996).

Detainment in Emergency Situation During Business Hours: Nothing in this section indicates that a person may not be detained during business hours. In an emergency situation, a person may be detained at any time and treated until the next regular business day, at which time he must be released or proceedings must be initiated pursuant to 53-21-121. 43 A.G. Op. 5 (1989).

53-21-130. Transfer or commitment to mental health facility from other institutions.

Compiler's Comments

1999 Amendment: Chapter 247 inserted (2) authorizing person in custody to be transferred to mental health facility and providing procedures relating to transfer; and made minor changes in style. Amendment effective April 5, 1999.

Case Notes

Admissibility of Evidence at Hearing on Transfer of Patient for Treatment: Between an initial commitment hearing and a hearing on the question of transferring treatment, appellant filed two motions in limine, which the District Court denied. The first motion requested that the state be precluded from eliciting testimony at the transfer hearing based on an evaluation made after the commitment hearing. On the second motion, he contended that the order of commitment was final as to all events litigated at the initial hearing and that none of the earlier events should have been referred to at the transfer hearing. He argued that 53-21-101, et seq., provided no authority for using evaluations made after a final commitment hearing in a later transfer hearing. Both 53-21-130 and 53-21-182 refer to transfers to other facilities for treatment; however, neither statute restricts what evidence may be admissible at a transfer hearing. The Supreme Court found no error in the denial of the motions, holding that any evidence admissible at a final commitment hearing which is relevant to the transfer should be admissible at the transfer hearing, including the opinions of professional persons and evidence of overt acts, as described in 53-21-126. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

Constitutionality: In upholding the constitutionality of this section, the Supreme Court applied the test set forth by the U.S. Supreme Court in Vitek v. Jones, 445 US 480, 63 L Ed 2d 552, 100 S Ct 1254 (1980), and found that the interests of the state outweigh the interests of the individual transferred pursuant to this section as long as the procedural safeguards mandated by the section are followed. In re the Petition of M.C., 211 M 105, 683 P2d 956, 41 St. Rep. 1242 (1984).

Issuance of Writ of Habeas Corpus to Juvenile Transferred From Correctional Institution to Mental Health Facility: The Supreme Court upheld issuance of a Writ of Habeas Corpus when a juvenile was transferred under this section from a juvenile correctional institution to a mental health facility and the record did not indicate that petitioner's transfer was caused by an emergency or that petitioner was afforded any due process protection upon expiration of the 10-day period specified in this section. In re the Petition of M.C., 211 M 105, 683 P2d 956, 41 St. Rep. 1242 (1984).

53-21-131. Appeal procedure.

Compiler's Comments

1983 Amendment: Near middle of section after "civil cases" inserted "except that the appeal may be taken at any time within 90 days of actual service of the written notice of the right to appeal required by 53-21-114 or within 90 days after discharge, whichever is later".

Case Notes

Right to Effective Assistance of Counsel for Person Subject to Involuntary Commitment Because of Mental Disorder — Strickland Test for Ineffective Assistance Inappropriate in Involuntary Commitment Proceedings: The right to counsel afforded by state law regarding the treatment of the seriously mentally ill provides a person who is subject to an involuntary commitment proceeding the right to effective assistance of counsel, which in turn provides that person the right to raise the allegation of ineffective assistance of counsel when challenging a commitment order. The test for ineffective assistance of counsel set out in Strickland v. Wash., 466 US 668 (1984), is inappropriate in involuntary commitment proceedings. However, the Strickland test simply does not go far enough to protect the liberty interests of persons involved in involuntary commitment proceedings who may or may not have broken any law but who, upon the expiration of a 90-day commitment, must indefinitely bear the badge of inferiority of a once involuntarily committed person with a proved mental disorder. Instead, upon a substantial showing of evidence to the issuing District Court or to the Supreme Court pursuant to this section that counsel did not effectively represent the person's interests, an order of involuntary commitment should be vacated. The due process afforded individuals must serve to protect the fundamental liberty interests of dignity and integrity, and it is not only counsel, "but also courts, that are charged with the duty of safeguarding the due process rights of individuals involved at every stage of the proceedings". The Supreme Court identified five critical areas of representation that generally define the scope of effective counsel in involuntary commitment proceedings: (1) appointment of competent counsel; (2) the initial investigation; (3) the client interview; (4) the right to remain silent; and (5) counsel as an advocate and adversary. The statutory and constitutional standards must be rigorously adhered to in order to ensure the fundamental fairness of civil commitment proceedings, and it is imperative that the constitutional and legislated rights be formally and fairly balanced with the state's ultimate power to protect both the individual and the public from actual or perceived harm. In re K.G.F., 2001 MT 140, 306 M 1, 29 P3d 485 (2001), following Conservatorship of Roulet, 590 P2d 1 (Calif. 1979), and distinguishing In re Carmody, 653 NE 2d 977 (Ill. App. Ct. 1995).

No State Duty to Appeal Recommitment Order: In a recommitment hearing, the judge determined the defendant to be a danger to himself but issued an order, not appealed by the state, under which the defendant was released from the Montana State Hospital and conditionally released into the community. After defendant subsequently committed murder, the victim's parents filed suit, alleging that the state was negligent in failing to appeal the judge's release order. The Supreme Court affirmed the District Court's dismissal, holding that under this section, the state had no mandatory duty to appeal the release order. King v. St., 259 M 393, 856 P2d 954, 50 St. Rep. 848 (1993).

Standard of Review of Involuntary Commitment — Clearly Erroneous Findings Required — Test: A District Court must find by clear and convincing evidence that an individual is seriously mentally ill (see 1997 amendment to 53-21-102) prior to ordering the involuntary commitment of that individual. On appeal, the Supreme Court will not disturb the finding unless it is clearly erroneous. The three-part test for whether a finding is clearly erroneous, as set out in Interstate Prod. Credit Ass'n v. DeSaye, 250 M 320, 820 P2d 1285, 48 St. Rep. 986 (1991), is: (1) the court will review the record to see if the finding is supported by substantial evidence; (2) if the finding is supported by substantial evidence, the court will determine whether the trial court has misapprehended the effect of the evidence; and (3) if substantial evidence exists and the effect of the evidence has not been misapprehended, the Supreme Court may still find clear error if a review of the record leaves the court with the definite and firm conviction that a mistake has been committed. In re Mental Health of L.C.B., 253 M 1, 830 P2d 1299, 49 St. Rep. 290 (1992).

Commitment of Ward — Due Process Rights — Notice, Hearing, and Counsel: District Court order committing ward to Montana State Hospital for a 72-hour evaluation upon a request made by the ward's guardian was reversed where ward was not given notice of the impending commitment, an attorney, or a hearing prior to the commitment. The ward's statutory and constitutional due process rights were violated. Two days after the first order the County Attorney, at guardian's request, filed a petition for a 90-day commitment. The guardian consented and waived ward's rights to notice, counsel, and hearing prior to commitment. The petition was granted, which also violated ward's statutory and constitutional rights to due process. He had the right to notice, hearing, and counsel, and only the person to be committed, or if he is unable, his attorney and guardian acting in concert, may waive those rights. The ward had no attorney at the time of the guardian's waiver. In re Simons, 215 M 463, 698 P2d 850, 42 St. Rep. 544 (1985).

Evidence Insufficient for Involuntary Commitment: Testimony at trial did not clearly and convincingly establish that respondent, due to his mental condition, was unable to protect his life or health at the time of the trial. Therefore, the evidence that respondent was "seriously mentally ill" within the meaning of 53-21-102 (see 1997 amendment) was insufficient as a matter of law, and the District Court commitment order was vacated. In re R.T., 204 M 493, 665 P2d 789, 40 St. Rep. 1025 (1983).

53-21-132. Cost of examination and commitment.

Compiler's Comments

2009 Amendment: Chapter 388 in (1)(a) at beginning inserted exception clause; inserted (1)(b) regarding payment of transportation costs; in (1)(c) at beginning after "sheriff" inserted "transporting persons pursuant to 7-32-2144"; and made minor changes in style. Amendment effective July 1, 2009, and terminates June 30, 2011.

2005 Amendment: Chapter 480 in (1) in first sentence near beginning inserted "psychiatric" and at end substituted "pursuant to subsection (2)(a)" for "by the county in which the person resides at the time that the person is committed"; in (2)(a) at beginning substituted "The costs of precommitment psychiatric detention, precommitment psychiatric examination, and precommitment psychiatric treatment" for "The county of residence shall also pay all precommitment expenses, including transportation to a mental health facility, incurred in connection with the detention, examination, and precommitment custody" and at end inserted "must be billed to the following entities in the listed order of priority"; inserted (2)(a)(i) through (2)(a)(iii) listing the respondent, parent or guardian of a respondent who is a minor, or the respondent's insurer, a public assistance program, and the respondent's county; and made minor changes in style. Amendment effective July 1, 2005.

Precommitment Cost Study and Report: Section 2, Ch. 480, L. 2005, provided: "The department of public health and human services shall work with county attorneys and county commissioners to ascertain the actual precommitment costs of involuntary commitments and present that information and any findings and recommendations to the 2007 legislature through an appropriate interim committee."

2003 Amendment: Chapter 583 in (2) at end of first sentence inserted "and any cost associated with testimony during an involuntary commitment proceeding by a professional person acting pursuant to 53-21-123". Amendment effective July 1, 2003.

2001 Amendment: Chapter 212 in (2) inserted third and fourth sentences requiring resident county to pay for precommitment costs for two-way electronic audio-video communication and requiring state to pay costs of two-way electronic audio-video communication for patient committed to state hospital. Amendment effective October 1, 2001.

1997 Amendment: Chapter 490 in (1), in first sentence after "cost of", substituted "precommitment examination, detention, treatment" for "the examination, committal", after "who is" substituted "suffering from a mental disorder and who requires commitment" for "seriously mentally ill", and at end substituted "committed" for "adjudged to be seriously mentally ill" and in second sentence, after "taking a", substituted "committed person" for "person who is seriously mentally ill"; in (2) inserted second sentence clarifying that the county of residence is not required to pay treatment and custody costs after the respondent is committed; inserted (3) requiring the adult respondent or parent or guardian to pay treatment and custody costs, except to the extent that public mental health program funds are available; inserted (4) providing that a community service provider is not required to treat a committed person without compensation; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

Case Notes

County Not Liable for Treatment of Physical Disorders Not Related to Commitment: This section does not require a county to pay expenses incurred in the hospital at the committed person's request for treatment of physical disorders that were not related to the treatment due as a result of the commitment. In re Mental Health of H.C., 218 M 386, 708 P2d 1007, 42 St. Rep. 1675 (1985).

Attorney General's Opinions

County Liability for Costs of Precommitment Services: Subject to the limitations in subsection (2) of this section, the county of residence is financially responsible for costs incurred in connection with the detention and precommitment custody of persons taken into protective custody pursuant to 53-21-124 or 53-21-129. 46 A.G. Op. 18 (1996).

53-21-133. Transfer to nonstate facilities.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Clear Error in Finding That Behavior Posing Risk of Harm Precluded Community Placement — Involuntary Recommitment Reversed: The District Court held that G.M. was seriously developmentally disabled and that G.M.'s behavior could not be safely and effectively rehabilitated in community-based services because of behavior that posed an imminent risk of serious harm to G.M. or others. The court then ordered that G.M. be involuntarily recommitted to the Montana Developmental Center for no more than 1 year. G.M. appealed. The Supreme Court concluded that all evidence was properly submitted and that expert testimony was properly admitted. However, G.M.'s expert's testimony and the actual incident reports presented by the state revealed that the reports did not give an accurate picture of G.M.'s condition, in that during most of the reported incidents, G.M. was not the aggressor. In fact, the reports affirmed G.M.'s expert's opinion that it was the group living environment that contributed significantly to G.M.'s behavioral difficulties and that placing G.M. in a community setting with fewer people would ameliorate G.M.'s aggressive tendencies. The state presented no evidence to contradict the expert's opinion that the institutional setting was probably responsible for the behaviors that kept G.M. in the institution and that individuals with worse aggressive tendencies were successfully living in community settings or to explain why G.M.'s actions would make placement in a community setting unsafe. Additionally, G.M.'s aunt's testimony regarding her personal observations of G.M.'s demeanor and self-control when not in an institutional setting confirmed the expert's opinion and tended to prove that G.M. did not pose a risk of harm and could be safely habilitated in the community. Thus, the Supreme Court held that the District Court incorrectly concluded that G.M. was seriously developmentally disabled and reversed with instructions to vacate the recommitment order. In re G.M., 2008 MT 200, 344 M 87, 186 P3d 229 (2008).

53-21-134. Receipt of nonresident person suffering from a mental disorder pending return to home state.

Compiler's Comments

1999 Amendment: Chapter 247 in middle of first sentence substituted "committed to" for "received into" and at end substituted "pursuant to this part" for "for a period not to exceed 30 days pending return to the state of the person's residence"; and inserted second sentence requiring state hospital to make effort to return nonresident to state of residence. Amendment effective April 5, 1999.

1997 Amendment: Chapter 490 near beginning, after "person who is", substituted "suffering from a mental disorder and in need of commitment" for "seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

53-21-140. Use of two-way electronic audio-video communication.

Compiler's Comments

2009 Amendment: Chapter 42 substituted (5) concerning restrictions on two-way electronic audio-video communication for former (5) that read: "If a respondent or patient, the respondent's or patient's counsel, or the professional person object to two-way electronic audio-video communication in lieu of a hearing in person, the court may not allow a two-way electronic audio-video communication". Amendment effective October 1, 2009.

Effective Date: This section is effective October 1, 2001.

Case Notes

Commitment After Confrontation Clause Objection to Use of Videoconference Technology for Witness at Commitment Hearing — Reversible Error: The state petitioned to have the respondent involuntarily committed after she made certain suicidal statements. At an evidentiary commitment hearing, the state informed her of its intent to call a social worker to testify by videoconference. The respondent objected on confrontation clause grounds but indicated that if the District Court wished to proceed, she would not seek to continue the hearing. Despite the state's assertion that the respondent waived the objection and acquiesced to the use of the videoconference by failing to seek a continuance, the District Court's discretion in allowing the videoconference terminated when she objected, and the District Court committed reversible error when it allowed the testimony over the respondent's objection, violating the plain and unambiguous language of 53-21-140. In re N.A., 2021 MT 228, 405 Mont. 277, 495 P.3d 45. See also In re S.E., 2022 MT 205, 410 Mont. 345, 519 P.3d 11.

Commitment Hearing Via Videoconference Without Individual's Presence Improper Absent Waiver of Right to Be Present: The District Court conducted a videoconference commitment hearing to determine whether L.K. should be involuntarily committed to the state hospital for a mental disorder. The court concluded that L.K. should be committed for 90 days, and L.K. appealed on grounds that use of a videoconference was improper and that because the hearing was conducted outside L.K.'s presence after she voluntarily left the conference, her statutory right to be present at the hearing was violated. The Supreme Court first concluded that the District Court was not precluded from holding the hearing via videoconference, as allowed under 53-21-140, because L.K. made no objection. However, even though L.K. voluntarily left the videoconference and had the right to return and participate at any time before the hearing concluded, there was nothing in the record to indicate that L.K. waived the right to be physically present at the hearing under the criteria in 53-21-119. Absent compliance with the waiver requirements, the District Court could not conduct the hearing in L.K.'s absence so the commitment order was reversed. In re Mental Health of L.K., 2009 MT 366, 353 M 246, 219 P3d 1263 (2009).

53-21-141. Civil and legal rights of person committed.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: In (2) inserted last sentence relating to guardian or representative of person admitted to receive mental health services.

Case Notes

Competency in Criminal Matter Not Determinative in Civil Matter: The Department of Social and Rehabilitation Services (now Department of Public Health and Human Services) filed a petition in District Court alleging that J. H. was a youth in need of care. The boy, his mother, and a social worker all testified that the father sexually abused the boy. The youth was found to be an abused and neglected child. The father claimed that since he was declared unfit to proceed in a collateral criminal action he was also unfit to proceed in the civil action. The Supreme Court found nothing in the record to indicate the father was declared unfit to proceed in anything except the criminal action. He had the burden of proving his incompetence. With no affirmative showing of incompetence to proceed in the civil action, the court presumed the father competent. In re J.H., 196 M 482, 640 P2d 445, 39 St. Rep. 267 (1982).

53-21-142. Rights of persons admitted to facility.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 37, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: In (2) inserted second sentence, (2)(a), and (2)(b) requiring certain conditions and setting for appropriate treatment and related services; in (3), in first sentence after "reasonable access to", substituted "telephone communications, including the right to converse with others privately" for "private telephone communications as patients at any public hospitals"; and inserted (14), (15), (16), and (17) relating to patient's rights, rights of patient's legal representative, access to advocacy services, and disclaimers, respectively.

Case Notes

Medical Rights Not Absolute — Restrictions Proper When Based on Necessity for Treatment, Evaluation, and Care: G.J.P. claimed numerous violations of his procedural and constitutional rights regarding the provision of his medical care after being confined for his manic episodes, including claims that: (1) a medical professional lacked knowledge of the requisite facts to make a request for commitment; (2) a mental evaluation was improperly conducted; (3) he was improperly secluded in isolation and restrained; (4) he was denied medical care for broken ribs; (5) he was denied the right of telephone communications; and (6) he was administered medication within 24 hours before his initial hearing on a motion for commitment, despite his objections. The Supreme Court recognized the rights of patients to receive proper medical care but noted that none of the rights are absolute. G.J.P. did not demonstrate any restrictions on his rights other than those necessary for his treatment, evaluation, and care or establish that reversal of his commitment would be a proper remedy for a denial or restriction of his rights. In re G.J.P., 266 M 370, 880 P2d 1311, 51 St. Rep. 847 (1994).

53-21-144. Rights concerning photographs.

Compiler's Comments

1997 Amendment: Chapter 490 in (1), in first sentence after "photographed", substituted "for the clinical or" for "upon admission for identification and the", in second sentence, at end, deleted "and shall not be released by the facility except pursuant to court order", and inserted third and fourth sentences regarding release of photographs; in (2), at end, inserted "or without a court order"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1991 Amendment: In (2), after "without consent of", inserted "the patient or, if applicable" and after "legal guardian" deleted "or the friend of respondent appointed by the court".

53-21-145. Right to be free from unnecessary or excessive medication.

Compiler's Comments

2001 Amendment: Chapter 310 throughout section inserted references to an advanced practice registered nurse with a clinical speciality in psychiatric mental health nursing; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendments: Chapter 418 at beginning of sixth sentence substituted "department of public health" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Chapter 546 at beginning of sixth sentence substituted "department of public health and human services" for "department of health and environmental sciences"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1987 Amendment: Near middle substituted sentence requiring Department of Health and Environmental Sciences to adopt rules governing attending physician review of drug regimen of each patient for sentence that read: "At least weekly, an attending physician shall review the drug regimen of each patient under his care."

Case Notes

Plain Language of Statute Applied — Enhanced Protection Against Forced Medication — District Court Reversed Because Appellant Never Refused to Take Medication: The District Court erred in authorizing involuntary medication. The appellant had never refused to take her medication, and a finding or general understanding that an individual with bipolar disorder may at some undisclosed future point in time decide not to take medications is insufficient to satisfy the plain language of the statute requiring that involuntary medication is necessary. The Legislature sought to enhance protection against forced medication of the mentally ill by enacting 53-21-145, specifically declaring that patients have the right to be free from unnecessary or excessive medication. A finding and conclusion that in the future a person may become noncompliant is insufficient to meet this statutory requirement. In re R.H., 2016 MT 329, 385 Mont. 530, 385 P.3d 556, distinguished in In re C.B., 2017 MT 83, 387 Mont. 231, 392 P.3d 598, to the extent that unlike C.B., R.H. had no history of medication noncompliance.

53-21-146. Right to be free from physical restraint and isolation.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Inserted last sentence limiting use of physical restraint.

Case Notes

Applicability to Transportation — No Right to Be Transported to State Hospital Without Handcuffs: At a hearing for involuntary commitment, the District Court found an individual to be substantially unable to provide for his own basic health and safety needs and ordered him to be involuntarily committed to the state hospital. Counsel for the individual requested that the individual not be handcuffed in the sheriff's vehicle during the drive. The District Court denied the request and the individual appealed, asserting a violation of 53-21-146. The Supreme Court found the statute inapplicable because it does not contemplate transportation of seriously mentally ill individuals by the state. In re J.J., 2018 MT 184, 392 Mont. 192, 422 P.3d 629.

Statute Inapplicable to Persons Detained Under Emergency Provisions: Joshua Lloyd suffered a seizure after being transferred to the Kalispell Regional Hospital's security room for purposes of emergency detention. His personal representative sued the hospital and others. During trial, the District Court instructed the jury on negligence per se by refusing to give a jury instruction assuming applicability of this section to Joshua's detention. Citing Reiser v. Prunty, 224 M 1, 727 P2d 538 (1986), the Supreme Court held that the intent of the statute is to protect patients committed by the court for treatment. Joshua was not committed for treatment but was placed in a soft cell pursuant to 53-21-129 for emergency detention. Because the legal duties under this section were not applicable, the District Court did not err in refusing to instruct the jury on those duties. Buhr v. Flathead County, 268 M 223, 886 P2d 381, 51 St. Rep. 1258 (1994).

Medical Rights Not Absolute — Restrictions Proper When Based on Necessity for Treatment, Evaluation, and Care: G.J.P. claimed numerous violations of his procedural and constitutional rights regarding the provision of his medical care after being confined for his manic episodes, including claims that: (1) a medical professional lacked knowledge of the requisite facts to make a request for commitment; (2) a mental evaluation was improperly conducted; (3) he was improperly secluded in isolation and restrained; (4) he was denied medical care for broken ribs; (5) he was denied the right of telephone communications; and (6) he was administered medication within 24 hours before his initial hearing on a motion for commitment, despite his objections. The Supreme Court recognized the rights of patients to receive proper medical care but noted that none of the rights are absolute. G.J.P. did not demonstrate any restrictions on his rights other than those necessary for his treatment, evaluation, and care or establish that reversal of his commitment would be a proper remedy for a denial or restriction of his rights. In re G.J.P., 266 M 370, 880 P2d 1311, 51 St. Rep. 847 (1994).

Inapplicability to Emergency Detention Statutes: This section is not intended to afford protections to people held under the emergency detention statutes. Rather, it is intended to protect patients committed by the court for treatment for any period of time. In a case where a person was detained prior to a court determination of serious mental illness, the statutory restrictions of this section were inapplicable. Reiser v. Prunty, 224 M 1, 727 P2d 538, 43 St. Rep. 1967 (1986).

53-21-147. Right not to be subjected to experimental research.

Compiler's Comments

1993 Amendment: Chapter 10 near end of (2) substituted "department of health and human services" for "department of health, education, and welfare"; and made minor changes in style.

1991 Amendment: Inserted (3) granting patient certain rights concerning experimental treatment.

53-21-148. Right not to be subjected to hazardous treatment.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

53-21-149. Conditions of treatment in community facility, program, or course of treatment.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

53-21-150. Treatment plan — provider choice.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

53-21-151. Notification of noncompliance as condition for treatment plan — response.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

53-21-152. Department funding responsibility.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

53-21-162. Establishment of patient treatment plan — patient's rights.

Compiler's Comments

2009 Amendment: Chapter 481 in (1) at end after "facility" inserted exception clause; in (2) at end of second sentence inserted exception clause; and made minor changes in style. Amendment effective July 1, 2009.

1993 Amendment: Chapter 293 in (2)(b), at end, substituted "hospitalization" for "commitment"; in (2)(c), after "a description of", deleted "intermediate and long-range"; in (2)(d), after "achieving these", deleted "intermediate and long-range"; in (2)(e), at end, substituted "for attaining each treatment goal" for "and a description of proposed staff involvement with the patient in order to attain these treatment goals"; in (2)(f), after "conditions", deleted "and criteria for discharge"; deleted former (3) through (5) concerning content of treatment plan, supervision of treatment plan, and review of plan (see 1993 Session Law for text); inserted (3) concerning development, implementation, and supervision of plan by professional person; inserted (4) concerning reevaluation and revision of treatment plan; in (6) and (7) substituted "subsection (5)(c)" for "subsection (6)(c)"; and made minor changes in style.

1991 Amendment: Inserted (6), (7), and (8) granting patient certain rights relative to treatment plan.

Report to Legislature Required: Section 10, Ch. 579, L. 1991, required the Department of Institutions (now Department of Corrections) to submit a report to the 53rd Legislature concerning implementation of subsections (6)(c) through (8).

53-21-163. Examination following commitment.

Compiler's Comments

2017 Amendment: Chapter 207 near middle after "must be released immediately" inserted "without further order of the court". Amendment effective October 1, 2017.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

53-21-165. Records to be maintained.

Compiler's Comments

2001 Amendment: Chapter 310 in (9) after "prescribing physician" inserted "or advanced practice registered nurse"; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendments: Chapter 418 at end of first sentence substituted "department of public health" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Chapter 546 at end of first sentence substituted "department of public health and human services" for "department of health and environmental sciences". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clauses: Section 503, Ch. 418, L. 1995, and sec. 571, Ch. 546, L. 1995, were saving clauses.

1993 Amendment: Chapter 293 in (7), near middle, inserted "required under 53-21-162(4)" and at end substituted "includes recommendations for appropriate modification of the treatment plan" for "directs whatever modifications are necessary"; in (8) substituted "discharge plan" for "aftercare plan"; in (10), before "summary", deleted "detailed"; deleted former (11) and (12) that read: "(11) a detailed summary, on at least a weekly basis, by a professional person involved in the patient's treatment, of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan"; inserted (11) concerning documentation of implementation; inserted (12) concerning documentation of patient treatment; inserted (13) concerning chronological documentation of clinical course; inserted (14) relating to changes in patient condition; in (18) substituted "the determination made" for "his findings"; and made minor changes in style.

1987 Amendment: At end of first sentence, after "facility", inserted "for the length of time required by rules established by the department of health and environmental sciences" and at beginning of second sentence inserted "All records kept by the mental health facility".

53-21-166. Records to be confidential — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 776, L. 2023. Amendment effective June 8, 2023.

Effective Date: Section 4, Ch. 776, L. 2023, provided: "[This act] is effective on passage and approval." Approved June 8, 2023, the date that the house and senate overrode the governor's veto.

2001 Amendment: Chapter 544 in (2) at end of first sentence deleted "such designation shall be valid in lieu of the designation by the recipient"; inserted (8) concerning disclosure to mental health ombudsman; and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendment: Inserted language at end of first sentence maintaining confidentiality of information following discharge.

1987 Amendment: In introductory paragraph, at beginning of last sentence, substituted exception clause referring to Title 50, chapter 16, part 5, for "Such"; and in (1) substituted "professionals" for "professional persons".

53-21-167. Patient labor.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

53-21-168. Statement of rights to be furnished and posted.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

53-21-169. Protection and advocacy system — designation and authority.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 776, L. 2023. Amendment effective June 8, 2023.

Effective Date: Section 4, Ch. 776, L. 2023, provided: "[This act] is effective on passage and approval." Approved June 8, 2023, the date that the house and senate overrode the governor's veto.

53-21-180. Discharge plan.

Compiler's Comments

1999 Amendment: Chapter 247 inserted (5) requiring individual discharge plan to include referrals for financial assistance needed by patient upon discharge; and made minor changes in style. Amendment effective April 5, 1999.

53-21-181. Discharge during or at end of initial commitment period — patient's right to referral.

Compiler's Comments

2017 Amendments — Composite Section: Chapter 207 in (1)(a) inserted "without further order of the court"; and in (2) inserted last sentence regarding failure to comply. Amendment effective October 1, 2017.

Chapter 402 in (1)(b) in middle inserted "whose commitment was to a facility other than a category D assisted living facility"; inserted (1)(c) concerning continued residency of a patient committed to category D assisted living facility; and made minor changes in style. Amendment effective October 1, 2017.

2001 Amendment: Chapter 342 throughout (1) substituted reference to period of commitment for reference to 3-month period and in first sentence substituted reference to 53-21-127 for reference to 53-21-127(2); and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendment: Inserted (2) granting patient right of referral upon discharge.

53-21-182. Court-ordered release to alternative placement or treatment.

Compiler's Comments

1997 Amendment: Chapter 490 near middle inserted "a third party responsible for payment for the care of the patient"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

Case Notes

Admissibility of Evidence at Hearing on Transfer of Patient for Treatment: Between an initial commitment hearing and a hearing on the question of transferring treatment, appellant filed two motions in limine, which the District Court denied. The first motion requested that the state be precluded from eliciting testimony at the transfer hearing based on an evaluation made after the commitment hearing. On the second motion, he contended that the order of commitment was final as to all events litigated at the initial hearing and that none of the earlier events should have been referred to at the transfer hearing. He argued that 53-21-101, et seq., provided no authority for using evaluations made after a final commitment hearing in a later transfer hearing. Both 53-21-130 and 53-21-182 refer to transfers to other facilities for treatment; however, neither statute restricts what evidence may be admissible at a transfer hearing. The Supreme Court found no error in the denial of the motions, holding that any evidence admissible at a final commitment hearing which is relevant to the transfer should be admissible at the transfer hearing, including the opinions of professional persons and evidence of overt acts, as described in 53-21-126. In re M.C., 220 M 437, 716 P2d 203, 43 St. Rep. 508 (1986).

53-21-183. Release conditioned on receipt of outpatient care.

Compiler's Comments

2017 Amendment: Chapter 207 in (3) inserted last sentence regarding failure to comply. Amendment effective October 1, 2017.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: In (1) near end of first sentence, inserted exception clause referring to 53-21-198; deleted former (3) and (4) that read: "(3) If the mental health facility designated to provide outpatient care determines that a conditionally released person is failing to adhere to the terms and conditions of his release and because of that failure has become a substantial danger to himself or other persons, then, upon notification by the mental health facility designated to provide outpatient care or on his own motion, the professional person in charge of the patient's case may order that the conditionally released person be apprehended and returned to the facility from which he was conditionally released. The professional person in charge of the patient's case may modify or rescind the order at any time. The professional person shall mail or deliver notice to the person detained, his attorney, if any, his guardian or conservator, if any, his next of kin, if known, and the friend of respondent appointed by the court. The sheriff of the county where the mental health facility is located and from which the patient is being transferred has the duty of transporting a patient under the provisions of this section.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the professional person in charge of the patient's case on the same basis set forth therein without the professional person requiring or ordering the apprehension and detention of the conditionally released person"; and inserted (4) exempting this section and 53-21-195 through 53-21-198 from applying to a temporary release for the purposes of a home visit not exceeding 30 days.

53-21-186. Support of patient conditionally released.

Compiler's Comments

2003 Amendment: Chapter 114 in second sentence near beginning substituted "transfers to" for "devolves upon"; in third sentence at beginning substituted "local office of public assistance in the county" for "public welfare officials of the county"; and made minor changes in style. Amendment effective October 1, 2003.

Attorney General's Opinions

Release Discretionary: The release of a mental patient pursuant to 38-506, R.C.M. 1947 (now 53-21-186, MCA), was within the official discretion of the superintendent of the Montana State Hospital, and no liability could be imposed on him for wrongful acts committed by an incompetent while on convalescent leave. 28 A.G. Op. 33 (1959).

53-21-187. Clothing for patients discharged or conditionally released.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

53-21-193. Commitment to behavioral health inpatient facilities — preference — voluntary treatment.

Compiler's Comments

2007 Amendment: Chapter 116 in (1) in first sentence near middle substituted "professional person shall inform the county attorney who shall inform the person" for "Montana state hospital shall direct the person"; inserted (5) concerning admission for voluntary treatment; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 10, Ch. 513, L. 2003, was a severability clause.

Effective Date: Section 11, Ch. 513, L. 2003, provided: "[This act] is effective July 1, 2003."

53-21-194. Department licensure of behavioral health inpatient facilities — rulemaking authority — transfer criteria.

Compiler's Comments

2007 Amendment: Chapter 116 in (1) near beginning substituted "license" for "contract with one or more" and at end inserted "or to persons seeking treatment voluntarily"; in (2)(a) substituted "qualifications for licensure" for "number, geographic distribution, capacity, and qualifications"; inserted (3) concerning rules for licensure; in (5) near beginning after "courts" inserted "and professional persons"; and made minor changes in style. Amendment effective October 1, 2007.

Severability: Section 10, Ch. 513, L. 2003, was a severability clause.

Effective Date: Section 11, Ch. 513, L. 2003, provided: "[This act] is effective July 1, 2003."

53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities — petition.

Compiler's Comments

1997 Amendment: Chapter 490 in (3)(c), near middle after "court to be", substituted "suffering from a mental disorder and requiring commitment" for "seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

53-21-197. Hearing on rehospitalization petition — revocation of conditional release.

Compiler's Comments

1997 Amendment: Chapter 490 in (1)(a), near middle after "court to be", substituted "suffering from a mental disorder and requiring commitment" for "seriously mentally ill"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

53-21-198. Extension of conditions of release — hearing.

Compiler's Comments

2017 Amendment: Chapter 402 in (1) at beginning inserted "Subject to the provisions of subsection (1)(b)"; inserted (1)(b) providing that 2-year limit does not apply to patient who was diverted from the Montana state hospital or the Montana mental health nursing care center to a category D assisted living facility; in (5) at end of first sentence inserted exception clause; in (6) at end inserted "subject to the exception in subsection (1)(b)"; and made minor changes in style. Amendment effective October 1, 2017.

1997 Amendment: Chapter 490 in (1)(b), at end of first sentence, substituted "patient" for "person"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

Case Notes

District Court Without Authority to Extend Involuntary Treatment Plan: The District Court improperly granted the state's second and third petitions to extend the respondent's involuntary treatment plan when the state filed its first petition to extend the involuntary treatment plan 5 days after the respondent's original 90-day commitment period had expired. The expiration of the 90-day statutory commitment period left the District Court without power to take further action. In re S.C., 2013 MT 140, 370 Mont. 289, 302 P.3d 88.

53-21-199. Option for diversion from involuntary commitment to Montana state hospital.

Compiler's Comments

Effective Date: This section is effective October 1, 2017.

Part 4

Community-Based Nursing Homes

Montana Mental Health Nursing Care Center

Part Administrative Rules

Title 37, chapter 66, subchapter 1, ARM Admission policy for mental health inpatient facilities.

53-21-401. Legislative intent.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 777, L. 2023. Amendment effective June 9, 2023, the date that the house and senate overrode the governor's veto.

1983 Amendment: In (1) substituted "Montana state hospital" for "Warm Springs state hospital" in two places.

53-21-402. Powers and duties of department of public health and human services.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 777, L. 2023. Amendment effective June 9, 2023, the date that the house and senate overrode the governor's veto, and subsections (5) and (6) terminate June 30, 2025.

1995 Amendment: Chapter 546 at beginning substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1983 Amendment: In (4) substituted "Montana state hospital" for "Warm Springs state hospital".

Statement of Intent: In regard to the rulemaking authority under 53-21-402 and admissions to the Center under 53-21-411, the statement of intent attached to SB 209 (Ch. 231, L. 1983), which enacted the second subsection of 53-21-411 relating to admissions, provided in part:

"Criteria that would be considered under the rulemaking authority include:

(a) consideration of person's age,

(b) consideration of person's mental and physical status, specifically as it relates to mild psychiatric impairments, senility, and other organic symptoms,

(c) consideration of ability of Center for the Aged [now Montana Mental Health Nursing Care Center] to meet with person's needs,

(d) consideration of person's sex as relates to availability of appropriate living space,

(e) consideration of person's ability to ambulate without special devices or physical assistance,

(f) voluntary admissions.

Specifically this rulemaking authority should give the Department the ability to adopt rules indicating:

(a) the type of medical and mental illnesses involved;

(b) the evaluation and diagnosis process of mental health professionals and physicians;

(c) standards for determining the programs that will be provided for residents at the Center for the Aged [now Montana Mental Health Nursing Care Center];

(d) specific criteria relative to transfers necessary to other facilities and discharge criteria, if any, from the institution, if needed.

It is the intention that these rules make it very clear that acute psychiatric problems are not to be used for admission to the Center for the Aged [now Montana Mental Health Nursing Care Center]."

The arrangement and designation of the last six paragraphs above, relating to what the rulemaking authority should "specifically" give, were supplied by the compiler.

53-21-403. Placement of individuals with Alzheimer's disease, other forms of dementia, or traumatic brain injury — direction to department.

Compiler's Comments

Effective Date: Section 12, Ch. 777, L. 2023, provided that this section is effective on passage and approval. Approved June 9, 2023, the date that the house and senate overrode the governor's veto.

53-21-404. Transition review committee — membership — meetings — reimbursement.

Compiler's Comments

Effective Date: Section 12, Ch. 777, L. 2023, provided that this section is effective on passage and approval. Approved June 9, 2023, the date that the house and senate overrode the governor's veto.

Termination: Section 13, Ch. 777, L. 2023, provided: "[Sections 4(5), 4(6), 6, and 7] [53-21-402(5) and (6), 53-21-404, and 53-21-405] terminate June 30, 2025."

53-21-405. Transition review committee duties — reporting requirement.

Compiler's Comments

Effective Date: Section 12, Ch. 777, L. 2023, provided that this section is effective on passage and approval. Approved June 9, 2023, the date that the house and senate overrode the governor's veto.

Termination: Section 13, Ch. 777, L. 2023, provided: "[Sections 4(5), 4(6), 6, and 7] [53-21-402(5) and (6), 53-21-404, and 53-21-405] terminate June 30, 2025."

53-21-406. Certain transfers of funds authorized.

Compiler's Comments

Effective Date: Section 12, Ch. 777, L. 2023, provided that this section is effective on passage and approval. Approved June 9, 2023, the date that the house and senate overrode the governor's veto.

53-21-407. Limitation on expenditures.

Compiler's Comments

Effective Date: Section 12, Ch. 777, L. 2023, provided that this section is effective on passage and approval. Approved June 9, 2023, the date that the house and senate overrode the governor's veto.

53-21-411. Location and function of Montana mental health nursing care center.

Compiler's Comments

1995 Amendments: Chapter 94 in (1) and (2) substituted "Montana mental health nursing care center" for "Montana center for the aged"; in second sentence of (1), after "persons", substituted "with mental disorders who require nursing care" for "55 years of age or older"; in (2), after "53-21-102", deleted "associated with the aging process"; at beginning of (3) deleted "Admissions to the center are voluntary" and after "procedures" inserted "consistent with 53-21-414 and subsections (1) and (2) of this section"; and made minor changes in style.

Chapter 546 in (3) substituted "department of public health and human services" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1985 Amendment: In middle of (2) substituted "a mental disorder, as defined in 53-21-102" for "mild psychiatric impairments"; and inserted (3) requiring voluntary admissions only and granting rulemaking authority.

1983 Amendments: Chapter 231, in (1), substituted "persons 55 years of age or older. Priority must be given to patients referred from Warm Springs state hospital or Galen state hospital" for "persons who have been admitted to Warm Springs state hospital and subsequently transferred to the center"; and inserted (2) explaining appropriate admissions.

Chapter 361, sec. 23, substituted "persons who have been admitted to Montana state hospital" for "persons who have been admitted to Warm Springs state hospital". Section 27 of Ch. 361 authorized the Code Commissioner to change, in material enacted by the 48th Legislature, any references to "Warm Springs state hospital" or "Galen state hospital" to "Montana state hospital". Therefore, in preparation of the composite of this section, the Code Commissioner changed "Warm Springs state hospital or Galen state hospital", as inserted by Ch. 231, to "the Montana state hospital", as authorized by Ch. 361.

Statements of Intent: The statement of intent attached to Ch. 243, L. 1985, provided: "This bill requires a statement of intent because section 1 grants rulemaking authority to the department of institutions [now department of public health and human services] to adopt rules regarding the admission, treatment, and discharge of residents of the Montana center for the aged [now Montana mental health nursing care center].

It is contemplated that rules relating to admission are to address the following:

(1) the medical condition of applicant;
(2) the mental condition of applicant; and
(3) the comprehensiveness of recent medical and mental evaluation of an applicant.

It is intended that rules relating to treatment are to describe aspects of the center's program, including:

(1) services offered by the center; and
(2) the availability of medical support.

Rules relating to discharge are to include a requirement that residents must be discharged upon the request of the resident or his legal guardian, and they must include specific grounds for the discharge of a resident against his will. Such grounds must include whether the resident:

(1) can function independently; or
(2) requires more intensive medical or mental health services."

See 1983 statement of intent compiler's comment under 53-21-402.

53-21-413. Discharge and transfer of patients.

Compiler's Comments

1995 Amendments: Chapter 94 near beginning of first sentence of (1) substituted "Montana mental health nursing care center" for "center" and deleted former second sentence that read: "However, no patient may be detained at the center without the consent of the patient or his guardian" and inserted second sentence that read: "Rules adopted by the department governing discharge from the center must be consistent with 53-21-111, 53-21-181, and 53-21-183"; inserted (2) concerning transfer to the Montana State Hospital; and made minor changes in style.

Chapter 546 in (1) substituted "department of public health and human services" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1985 Amendment: Substituted entire text regarding discharge of patients (see 1985 Session Law for text) for "Upon the request of the superintendent of the center, the department of institutions may authorize the discharge or release on convalescent status of a patient residing at the center under the same restrictions provided by law for the discharge and release on convalescent status of patients of the state hospital."

1983 Amendment: Substituted "department of institutions" for "superintendent of the state hospital".

53-21-414. Admissions to mental health nursing care center.

Compiler's Comments

2003 Amendment: Chapter 554 in (1) at end inserted "and by involuntary commitment pursuant to 53-21-127(3)(c)". Amendment effective October 1, 2003.

Code Commissioner Change: Pursuant to sec. 4, Ch. 546, L. 1995, the Code Commissioner substituted Department of Public Health and Human Services for Department of Corrections and Human Services.

Part 5
Youth Treatment

Part Compiler's Comments

1986 Amendment — Effective Date: Section 15, Ch. 14, Sp. L. June 1986, provided for the repeal of sections 53-21-164, 53-21-501, 53-21-502, and 53-21-505, effective on the date the deed of sale of the Montana Youth Treatment Center from the Board of Land Commissioners is delivered to a buyer. (Deed delivered January 1, 1987.)

Preamble: The preamble to Ch. 14, Sp. L. June 1986, stated: "WHEREAS, it is the desire of the State of Montana to provide effective treatment for appropriate seriously mentally ill adolescents in inpatient hospital settings; and

WHEREAS, the State of Montana desires to sell the Montana Youth Treatment Center to a private health care provider specializing in adolescent psychiatric treatment; and

WHEREAS, there are many nationally known groups that have shown interest in the purchase of the Montana Youth Treatment Center and all such groups should have a chance to submit a proposal to purchase.

THEREFORE, when an appropriate buyer can be found to offer quality care for Montana youth, the State of Montana will discontinue the state operation of the Montana Youth Treatment Center and hereby authorizes the Board of Land Commissioners to sell the facility as provided in this act."

Applicability — Youth Treatment Center Law: Section 17, Ch. 363, L. 1983, provided: "This act shall apply 30 days after the governor declares that the Montana youth treatment center is ready for occupancy."

On March 29, 1985, the Governor issued a proclamation that stated in part: "NOW, THEREFORE, I, TED SCHWINDEN, Governor of the State of Montana, pursuant to Section 17, Chapter 363, Montana Session Laws of 1983, do hereby declare the Montana Youth Treatment Center ready for occupancy."

53-21-506. No commitment to Montana state hospital.

Compiler's Comments

1997 Amendment: Chapter 550 substituted "unless an information has been filed in district court" for "unless such individual is transferred to district court"; and made minor changes in style. Amendment effective July 1, 1997.

Saving Clause: Section 79, Ch. 550, L. 1997, was a saving clause.

Severability: Section 80, Ch. 550, L. 1997, was a severability clause.

1987 Amendment: Inserted (2) providing for temporary admission to Montana State Hospital, under certain conditions, of persons between ages 12 and 18.

1985 Amendment: Substituted language allowing commitment of persons less than 18 years old only if transferred to District Court pursuant to 41-5-206 for "No one under 18 years of age may be voluntarily admitted or committed by a court to Montana state hospital".

1983 Amendment: Substituted "Montana state hospital" for "Warm Springs state hospital".

Attorney General's Opinions

Commitment Procedures to Be Followed in Committing Mentally Ill Youth — Private Mental Health Facilities Not Precluded: Section 41-5-523 (renumbered 41-5-1512) does not authorize the Youth Court or the Department of Family Services (now Department of Public Health and Human Services) to commit a mentally ill or seriously mentally ill youth (see 1997 amendment to 53-21-102) to a mental health treatment facility without following the commitment procedures set out in Title 53, ch. 21, part 1. There is, however, no statutory preclusion of commitment of a youth to private mental health facilities. 42 A.G. Op. 59 (1988).

53-21-508. Monitoring of children's mental health outcomes — report.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 93, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2019 Amendment: Chapter 385 in (1) at beginning substituted "Each September and March, the department shall measure factors, specific to a point in time, for children" for "The department shall monitor the status of children" and near end substituted "health system to determine the effect of the services on the likelihood the children will" for "health system each fiscal year to determine whether, after receiving services, the children are able to"; in (2) before "remain at home" deleted "return to or"; deleted former (2)(a) that read: "(a) whether a child remained in the home while receiving services or returned to the home after receiving out-of-home services;"; in

(2)(a) at end inserted "including the level and type of care and whether the treatment is provided in state or out of state"; in (2)(b) substituted current text for former text that read: "the number of children who were placed in or left a foster care or correctional setting; deleted former (2)(d) that read: "(d) the number and types of home and community-based services that children received"; in (3) substituted "monitor" for "work with schools to monitor, to the extent possible"; in (3)(a) substituted "enrolled in and attending school" for "who did not return to or dropped out of school"; in (3)(b) substituted "advanced" for "did not advance" and at end inserted "from the previous school year"; in (4) after "shall" substituted current text for former text that read: "work with the juvenile justice system to monitor, to the extent possible, the following factors related to whether a child receiving targeted case management services has remained out of trouble after receiving mental health services"; inserted (4)(b) regarding the number of children screened for substance use disorders by the current case management provider; in (4)(c) after "children" substituted "involved, formally or informally, with" for "referred to"; in (4)(d) after "children" substituted "in care or treatment related to suicide risk" for "who completed suicide"; and made minor changes in style. Amendment effective July 1, 2019.

Effective Date: Section 4, Ch. 334, L. 2017, provided: "[This act] is effective July 1, 2017."

Part 6
Montana State Hospital

Part Compiler's Comments

Severance Benefits for Certain State Hospital Employees: Section 1, Ch. 489, L. 1999, provided: "Severance benefits for certain state hospital employees. The department of public health and human services shall provide severance benefits to Montana state hospital employees who are involuntarily terminated due to a reduction in force during the biennium ending June 30, 2001. Pursuant to 2-18-622, the department shall enter into written agreements with collective bargaining units of affected employees to negotiate benefits." Effective April 27, 1999.

Preamble: The preamble attached to Ch. 546, L. 1991, provided: "WHEREAS, the Montana State Hospital, located at Galen and at Warm Springs, has served the citizens of Montana for nearly 100 years; and

WHEREAS, for nearly 100 years, the functions that the Montana State Hospital has performed have changed; and

WHEREAS, the 1990s and the next century suggest that the role of the Montana State Hospital will continue to change; and

WHEREAS, the current staff members at the Montana State Hospital are representative of past and future staffs of the hospital in their commitment to quality work and their adaptability to changing needs; and

WHEREAS, the physical plant and the dedicated staff stand ready to be employed in their current and changing roles for the benefit of Montana and its citizens for now and for years to come."

Study Committee: Section 1, Ch. 546, L. 1992, provided: "Committee on Montana state hospital — composition — duties. (1) There is a committee on the Montana state hospital, located at Galen and at Warm Springs.

(2) The committee is composed of the following 15 members:

(a) four members of the senate, to be appointed by the committee on committees, of which no more than two may be of the same political party;

(b) four members of the house of representatives, to be appointed by the speaker, of which no more than two may be of the same political party;

(c) one primary or secondary consumer from the Montana mental health community, to be appointed by the Montana mental health association;

(d) one member who is knowledgeable about and represents the Montana chemical dependency community, to be appointed by the governor;

(e) one member who represents and is a member of the Galen task force, to be appointed by the Galen task force;

(f) the director of the department of institutions or a designee;

(g) the superintendent of the Montana state hospital or a designee;

(h) the director of the department of social and rehabilitation services [now department of public health and human services] or a designee; and

(i) the governor's coordinator of aging or a designee.

(3) (a) The members listed in subsection (2) must be appointed on or before June 1, 1991.

(b) A vacancy on the committee must be filled in the same manner as the original appointment.

(c) Appointments to the committee terminate January 1, 1993.

(4) The members of the committee shall elect a chairman and vice chairman from the members of the committee.

(5) Members of the committee are entitled to compensation in the manner provided for members of an advisory council, pursuant to 2-15-122(5).

(6) The purpose of the committee is, generally, to study the past uses of the Montana state hospital and, without limitation, possible uses for the physical plant and staff resources currently available at the Montana state hospital. Among other relevant subjects, the committee shall:

(a) examine the current use of all facilities at the Montana state hospital;

(b) compile and analyze information on client caseloads, staffing levels and patterns, training, rehabilitation, maintenance, occupancy, and client and facility needs;

(c) conduct an inquiry into potential future uses of the physical plant and staff resources of the Montana state hospital, including a determination of the role that the Montana state hospital will play as the institutional anchor for Montana's mental health system;

(d) examine such areas of public interest relative to the Montana state hospital and the future of Montanans as the committee may choose to address; and

(e) study other states' experiences with state mental health facilities.

(7) (a) The committee may request the assistance of the staffs of the legislative council, the office of the legislative auditor, the office of the legislative fiscal analyst, the department of institutions, or any other agency that may have information relative to the Montana state hospital.

(b) The legislative council shall provide administrative support to the committee.

(8) The committee shall conclude its business by October 1, 1992, and deliver to the 53rd legislature a report that must include the findings and conclusions of the study and a detailed listing of all of the options identified by the committee for the current and continued use of the Montana state hospital. The report may contain consensus recommendations of the committee." Effective April 22, 1991.

Part Administrative Rules

Title 37, chapter 66, subchapter 2, ARM Documentation for admission to Montana State Hospital.

Title 37, chapter 66, subchapter 3, ARM Voluntary admissions to Montana State Hospital.

Part Case Notes

Operation of State Hospital a Governmental Rather Than Proprietary Function: Because the establishment of a state institution for the insane was constitutionally mandated under the 1889 Montana Constitution and was not discretionary, operation of the Montana State Hospital as a nonprofit venture is a governmental rather than proprietary function that does not preempt the defense of sovereign immunity for actions prior to 1973. Murphy v. St., 248 M 82, 809 P2d 16, 48 St. Rep. 335 (1991).

53-21-601. Location and primary function of hospital.

Compiler's Comments

1999 Amendment: Chapter 247 in (2)(b) and (2)(c) substituted "Montana state hospital" for "the Warm Springs facility"; in middle of (2)(b) after "services" inserted "including those services necessary for transition to community care"; and made minor changes in style. Amendment effective April 5, 1999.

1995 Amendment: Chapter 546 in (2)(a) substituted "department of public health and human services" for "department of corrections and human services"; and deleted (4) that read: "(4) The department shall prepare a report to the 54th legislature that:

(a) describes current and projected future use of the Montana state hospital; and

(b) describes progress toward, and additional steps required for achievement of, accreditation by the joint commission on accreditation of healthcare organizations." Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments: Chapter 67 inserted (2)(b) and (2)(c) clarifying the role and mission of the Warm Springs facility.

Chapter 579 in (1), at beginning, substituted "facility providing mental health care services at Warm Springs" for "agency providing comprehensive health care services at Galen and Warm Springs"; deleted (1)(b) through (1)(f) requiring the facility to provide services for drug and alcohol dependents, institutional residents, or clients of the Department's community and residential programs who require acute hospital care or nursing care, persons who require treatment for tuberculosis and silicosis, and, contingent upon space and funds, those with pulmonary diseases and other medical or organic disorders; in (2) substituted "The Montana state hospital is a" for "The campus facility at Warm Springs, Montana, is the component designated as the"; deleted former (3) stating that the designated Galen facilities are the Department's residential and treatment facilities for chemical dependents; inserted (3) requiring the Department to adopt rules to manage the state hospital patient population to ensure emergency access to services, protect the public, provide active treatment, implement effective discharge planning, and ensure access to appropriate community-based services; deleted former (4) stating that Galen is designated for the care and treatment of medical and organic disorders; and inserted (4) requiring the Department to report certain matters to the 54th Legislature. Amendment effective April 28, 1993.

Preamble: The preamble attached to Ch. 67, L. 1993, provided: "WHEREAS, the 52nd Legislature created a study committee to determine the role of the Montana State Hospital at Warm Springs and Galen; and

WHEREAS, the Committee on the Montana State Hospital unanimously recommends that the state support a comprehensive system of care for the mentally ill that emphasizes treatment in the least restrictive environment within a continuum of publicly and privately provided services; and

WHEREAS, the Committee on the Montana State Hospital further recommends that the role of the Montana State Hospital at Warm Springs be to provide intensive inpatient psychiatric care and treatment for persons with severe mental illness, with the goal of returning these patients to the community when feasible."

1993 Statement of Intent: The statement of intent attached to Ch. 579, L. 1993, provided: "A statement of intent is required for this bill because it authorizes the department of corrections and human services [now department of corrections] to adopt rules concerning the granting of good time to inmates when the population of an institution reaches capacity and providing that individuals within the corrections system pay for services. It is the intent of the legislature that rules adopted by the department to grant good time to inmates when the capacity of an institution is exceeded be primarily based upon proximity to parole eligibility or discharge but also take into consideration factors such as behavior, attitude, and criminal history.

The rules adopted to manage the Montana state hospital population must take into account the facilities, the personnel available at the hospital, emergency access to services, public and individual safety, active treatment of patients, discharge planning of patients, and access to community-based services. The department is directed to involve consumers, family members of consumers, mental health advocates, mental health providers, law enforcement officials, and other governmental officials in the development of the administrative rules authorized by this bill."

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1983 Amendment: In (1) lead-in to (1)(a), substituted language specifying the agency providing comprehensive health care services for: "The institution located at Galen is the Galen state hospital and as its primary function provides:"; inserted (1)(a) providing for care and treatment of the mentally ill; inserted (1)(b) providing care for persons with chemical dependency; inserted (1)(c) to provide acute hospital care for certain persons; in (1)(e), substituted "detoxification of those persons who seek relief from the disabling effects of alcohol and other chemical substances" for: "detoxification, diagnosis, treatment, and referral for those persons who seek relief from the illness of alcoholism."; inserted (1)(f) allowing treatment of pulmonary diseases and other disorders; deleted former (2) that read: "If there are space and funds available, the hospital shall also treat the following:

(a) emphysema, bronchiectasis, carcinoma of the lung, and other diseases of the lung pertaining to pulmonary disorders;

(b) geriatric and senile patients afflicted with pulmonary disorders and patients who are residents of another state institution, as defined in 53-1-101(4)."; inserted (2) designating Warm Springs as the mental health facility for treatment of the mentally ill; inserted (3) designating Galen as the facility for treatment of the chemically dependent; and inserted (4) designating Galen as the facility for treatment of medical and organic disorders.

Collateral References

Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Program, Title 42, ch. 60, U.S.C.

53-21-603. Chemical dependency treatment center.

Compiler's Comments

1995 Amendment: Chapter 165 in (2), near end, inserted "inpatient".

1993 Amendment: Chapter 579 in (1), in first sentence, substituted "a Montana chemical dependency treatment center" for "an alcoholic treatment center located at the Montana state hospital" and substituted second sentence stating that the center is the approved public treatment facility for former sentence providing that admittance and discharge procedures are the same for alcoholics as for ill persons; deleted former (2) containing definitions of alcoholism and alcoholic that read: "As used in this section: (a) "alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health, interpersonal relations, or economic functioning or to an extent which endangers the public health, welfare, or safety;

(b) an "alcoholic" is a person suffering from the illness of alcoholism"; and in (2), at beginning, substituted "Montana chemical dependency" for "alcoholic", after "provide" substituted "detoxification" for "care", and at end substituted "alcoholism or other chemical dependency" for "the illness of alcoholism or the complications thereof". Amendment effective April 28, 1993.

1983 Amendment: In (1) substituted "Montana state hospital" for "Galen state hospital".

1981 Amendment: Substituted "alcoholic treatment" for "alcoholism services" in (1) and (3); substituted "treatment" for "arrestment" in (3); combined former subsection (3)(a) with (3) after "center shall"; deleted former subsections (3)(b) through (3)(f) relating to other duties of the alcoholic treatment center (see 1979 MCA for text).

Administrative Rules

Title 37, chapter 27, ARM Chemical dependency programs.

Attorney General's Opinions

Voluntary Admission: Persons afflicted with alcoholism can be voluntarily admitted to the state hospital without approval of a District Judge. 33 A.G. Op. 2 (1969).

Part 7
Mental Health Managed Care

Part Compiler's Comments

Preamble: The preamble attached to Ch. 577, L. 1999, provided: "WHEREAS, the Legislature is firmly committed to a managed care system for the delivery of public mental health services in an efficient and cost-effective manner and to ensuring access to services and quality of care; and

WHEREAS, in order for mental health managed care to be successful, care management must be carefully monitored and any contract for services must be enforced; and

WHEREAS, the state, service providers, and service recipients and their families must work cooperatively to ensure that the public mental health delivery system is successful; and

WHEREAS, the Legislature is committed to a transition from the existing contract to a competitive procurement of mental health managed care services."

Effective Date: Section 17, Ch. 577, L. 1999, provided: "[This act] is effective on passage and approval." Approved May 6, 1999.

53-21-701. Mental health managed care allowed — contract.

Compiler's Comments

2011 Amendment: Chapter 351 in (1) in second sentence in two places substituted "managed health care entity" for "managed care community network"; in (3) in first sentence after "health care entity" deleted "as defined in 53-6-702" and in second sentence inserted "Title 33, chapter 31, and". Amendment effective May 6, 2011.

Retroactive Applicability: Section 14, Ch. 351, L. 2011, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to February 1, 2011."

2001 Amendment: Chapter 466 in (1) deleted former first sentence that read: "The department of public health and human services shall incrementally develop managed care systems for recipients of public mental health services", in first sentence after "department" inserted "of public health and human services", after "recipients" inserted "as provided in 53-6-116", and at end after "persons" substituted "in households not eligible for medicaid with family income that does not exceed 160% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department" for "as specified in 53-6-131(10)", deleted former third sentence that read: "The department may contract for the provision of these services by means of a fixed monetary or capitated amount per recipient", and in second sentence after "department shall" inserted "determine whether or not a potential contractor that will serve medicaid enrollees is a managed care community network, as defined in 53-6-702, prior to entering into a contract and shall" and after "contractor that" substituted "qualifies as a managed care community network complies" for "assumes risk is required to comply"; in (2) near middle of first sentence after "receipt of" inserted "comprehensive" and deleted former third sentence that read: "The managed care system shall review and determine the appropriate level of services on an individual basis in order to ensure that access to care, quality of care, and the cost of the program are maintained"; in (3) near beginning of first sentence after "contracts with" substituted "a managed health care entity, as defined in 53-6-702" for "managed care entities", in second sentence near middle after "providing" inserted "and making payment for" and at end inserted "if the contractor has complied with Title 53, chapter 6, part 7", and inserted fourth sentence requiring that any contract for delivery of mental health care services that includes hospitalization or physician services include a provision that the successful bidder enter an agreement regarding the Montana state hospital and the Montana mental health nursing care center and that includes financial incentives for the development and use of community-based services; deleted former (4) through (6) that read: "(4) The department may establish eligibility requirements, resource and income standards, premiums, fees, and copayments. Eligible individuals may not have a family income that exceeds the amount established pursuant to 53-6-131(10).

(5) The department shall establish the amount, scope, and duration of services to be provided under the program. The services to be provided and eligibility requirements may be more limited than those in the medicaid program under chapter 6.

(6) (a) The department shall form an advisory council, to be known as the mental health oversight advisory council, that is not subject to 2-15-122 to provide input to the department in the development and management of any public mental health system. The advisory council membership must include:

(i) one-half of the members as consumers of mental health services, including persons with serious mental illnesses who are receiving public mental health services, other recipients of mental health services, former recipients of public mental health services, and immediate family members of recipients of mental health services; and

(ii) advocates for consumers or family members of consumers, members of the public at large, providers of mental health services, legislators, department representatives, and a representative of the commissioner of insurance.

(b) The advisory council under this section may be administered so as to fulfill any federal advisory council requirements to obtain federal funds for this program.

(c) Geographic representation must be considered when appointing members to the advisory council in order to provide as wide a representation as possible.

(d) The advisory council shall provide a summary of each meeting and a copy of any recommendations made to the department to the legislative finance committee and any other designated appropriate legislative interim committee. The department shall provide the same committees with the department's rationale for not accepting or implementing any recommendation of the advisory council"; in (4) inserted fourth sentence requiring that a contract performance evaluation include a section concerning contract enforcement; and made minor changes in style. Amendment effective October 1, 2001.

53-21-702. Mental health care system — eligibility — services — advisory council.

Compiler's Comments

2013 Amendment: Chapter 120 deleted former (4)(d) that read: "(d) The advisory council shall provide a summary of each meeting and a copy of any recommendations made to the department to the legislative finance committee and any other designated appropriate legislative interim committee. The department shall provide the same committees with the department's rationale for not accepting or implementing any recommendation of the advisory council." Amendment effective July 1, 2013.

2001 Amendment: Chapter 466 in (1) near middle of first sentence after "mental health" deleted "managed" and after "care from" deleted "current" and in second sentence substituted "The public mental health care system shall" for "A system of mental health managed care must include the following elements"; in (1)(a) at end after "services" deleted "in order to provide contract compliance monitoring"; deleted former (1)(b) that read: "(b) a fixed monetary or capitated payment mechanism"; in (1)(b) at end substituted "subsection (4)" for "53-21-701(6)"; in (1)(c) substituted "provide level-of-care appeals that are understandable and accessible" for "provisions for appeal at the local level"; deleted former (1)(e) through (1)(k) that read: "(e) a requirement that each contractor that assumes any financial risk shall comply with the provisions of Title 53, chapter 6, part 7, for the medicaid portion of the program;

(f) provisions that require documentation of evidence of the ability to provide services through an adequate provider network, as provided for in Title 33, chapter 36, and to comply with rules, regulations, and contract requirements;

(g) a provision that, prior to final award of a contract, a successful bidder that serves adults shall enter into a contract with the Montana state hospital and the Montana mental health nursing care center that is consistent with 53-1-402, 53-1-413, and 90-7-312 and that includes financial incentives for the development and use of community-based services, rather than the use of the state institutional services;

(h) the services that must be provided for medicaid-eligible individuals;

(i) a provision to allow a spenddown by individuals to become eligible for medicaid;

(j) the services, which may include a pharmacy benefit, that must be provided to nonmedicaid-eligible individuals whose income levels are below 200% of the federal poverty level as provided for in 53-6-131(10);

(k) a provision that allows implementation of a specific sliding scale for premiums or copayments by nonmedicaid-eligible individuals taking into account income and percentage of poverty level"; in (1)(d) at beginning substituted "provide a system for tracking" for "a provision for"; deleted former (1)(m) that read: "(m) requirements to ensure that the mental health managed care system will be operated in a cost-effective manner"; inserted (2) regarding the establishment of resource and income standards of eligibility for mental health services; in (3) inserted first sentence requiring establishment of the amount, scope, and duration of services and inserted third sentence allowing services to nonmedicaid-eligible individuals to include a pharmacy benefit; deleted former (3) and (4) that read: "(3) The department shall contract with an independent professional consulting firm that is knowledgeable and experienced in developing managed mental health care systems. The department shall require, as part of the contract, that the consulting firm make regular reports to the legislative finance committee and any other appropriate legislative interim committee. Reports must be made at least every 6 months and must include information about the development and implementation of the new mental health managed care system.

(4) The term of a mental health managed care contract may not be more than 5 years. The department may implement care-managed fee-for-service reimbursement to provide mental health services as otherwise permitted by law during the transition from a single statewide contract for mental health managed care"; inserted (4) providing for the mental health oversight advisory council; and made minor changes in style. Amendment effective October 1, 2001.

Part 10
Service Area Authorities

Part Compiler's Comments

Policy Directive on Transition to Service Area Authorities: Section 9, Ch. 602, L. 2003, provided: "(1) The department shall develop a plan by January 31, 2004, for the transition to the administration of the delivery of public mental health services by service area authorities. If the provisions of the plan requiring federal approval, as provided in [section 15] [not codified], are approved, the department shall implement the plan beginning July 1, 2004, or upon approval of the federal waivers. The plan must address delivery of mental health services for both the child and adult mental health systems. It is expected that service area authorities will be implemented statewide over a 4-year period.

(2) By June 1, 2004, the department shall define the role of the existing community mental health centers, which must be licensed mental health centers, as a part of the transition plan. If the role includes any special designation, the department shall define the special designation and the reasons for any special designation.

(3) The department shall report on the transition plan to the children, families, health, and human services interim committee at each committee meeting and provide the transition plan to the committee by January 31, 2004."

Agreements With Federal Government Pertaining to Medicaid Funding of Services — Legislative Intent: Section 15, Ch. 602, L. 2003, provided: "(1) The department of public health and human services is directed to pursue agreements with the United States department of health and human services, as provided for in Title XIX of the federal Social Security Act, 42 U.S.C. 1396, et seq., and implementing regulations, for the provision of increased medicaid funding for mental health services and for more flexible administration of mental health services funded with medicaid money. Agreements may be for waivers, demonstrations, or other programs as allowed for in Title XIX and its implementing regulations governing the provision of medicaid funding to the states.

(2) If the department of public health and human services is unable to obtain the federal medicaid waivers necessary to obtain federal matching funds to administer the medicaid program for mental health services as provided in Title 53, chapter 6, and [sections 1 through 8] [this part], then the legislature intends that the department shall identify the sections of [this act] that are contrary to federal law in its transition plan as required under [section 9] [not codified] and that the department shall present recommendations for an alternative plan and suggested legislation to the 2005 legislature for consideration."

Saving Clause: Section 18, Ch. 602, L. 2003, was a saving clause.

Effective Dates: Section 19, Ch. 602, L. 2003, provided: "(1) Except as provided in subsection (2), [this act] is effective October 1, 2003.

(2) [Sections 2, 6, 10, and 16(2)] [53-21-1001, version effective July 1, 2005, 53-21-1010, amendments to 19-3-108, and repeal of 53-21-201 and 53-21-204] are effective July 1, 2005."

53-21-1001. Definitions.

Compiler's Comments

2009 Amendment: Chapter 481 deleted definition of department that read: ""Department" means the department of public health and human services as provided for in 2-15-2201"; and made minor changes in style. Amendment effective July 1, 2009.

2005 Amendment: Chapter 553 in (5) after "to" substituted "collaborate" for "contract" and after "oversight" deleted "and administration"; and made minor changes in style. Amendment effective October 1, 2005.

53-21-1002. Duties of department.

Compiler's Comments

2017 Amendment: Chapter 81 in (9) after "Title 52, chapter 2, part 3" deleted "and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers"; and made minor changes in style. Amendment effective July 1, 2017.

2005 Amendment: Chapter 553 in (9) inserted reference to Title 52, chapter 2, part 3; in (10) after "to" substituted "collaborate with" for "assist", after "in the" substituted "planning and oversight" for "coordination and delivery", and after "services" inserted "in a service area"; and made minor changes in style. Amendment effective October 1, 2005.

53-21-1006. Service area authorities — leadership committees — boards — plans.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 200 inserted (5)(i) requiring the service area authority board to take into consideration the policies, plans, and budget developed by the children's system of care planning committee; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 553 in (3) inserted last sentence requiring majority of board to be consumers or family members of consumers of mental health services; in (4) deleted former second sentence that read: "Upon incorporation, the board may enter into contracts with the department to carry out the comprehensive plan for mental health for that service area"; in (5)(a) after "shall" substituted "collaborate with the department for purposes of planning and oversight of mental health services" for "define the operation and management" and after "area" deleted "mental health system"; in (5)(a)(viii) after "information" deleted "system"; inserted (5)(b) requiring review and monitoring of crisis intervention programs; deleted former (5)(d) that read: "(d) shall prepare and submit a plan and budget proposal to support mental health services for children and adults within the service area, including proposals within existing allocations and specifically outlining any new funding proposals, to the department and to each county in the service area"; inserted (5)(e) allowing contracts with service areas for planning and oversight; in (5)(g) at beginning substituted "may" for "shall"; deleted former (6) that read: "(6) The department shall review the plan and budget proposal provided for in subsection (5)(d) and assess the readiness of the service area authority to assume each duty provided in subsection (5)(a). The department shall certify that the service area authority is capable of assuming the duty before contracting with the service area authority for that duty and may provide for a gradual assumption of the duties by a service area authority within the department's 4-year transition plan, subject to approval of the federal waivers as provided for in section 15, Chapter 602, Laws of 2003"; and made minor changes in style. Amendment effective October 1, 2005.

53-21-1007. Mental health services contracts.

Compiler's Comments

2005 Amendment: Chapter 553 deleted former (2)(b) that read: "(b) through contract with service area authorities who may contract with or develop cooperative arrangements with other agencies of government, private or public agencies, private professional persons, hospitals, or licensed mental health centers for the provision of services"; in (4) after "shall" deleted "make efforts to" and at end after "department" deleted "or contracted with a service area authority by the department"; in (5) near beginning of first sentence after "department" deleted "or a service area authority" and in last sentence at beginning deleted "Except for the department's ability to contract solely with service area authorities"; and made minor changes in style. Amendment effective October 1, 2005.

53-21-1010. County commissioners — community mental health centers — licensed mental health centers.

Compiler's Comments

2005 Amendment: Chapter 453 in (4) at end deleted "in addition to all other taxes allowed by law to be levied on that property". Amendment effective July 1, 2005.

53-21-1013. Purpose.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

Part 11

Suicide Prevention Program

Part Compiler's Comments

Preamble: The preamble attached to Ch. 471, L. 2007, provided: "WHEREAS, the State of Montana has, according to 2003 federal data, the second highest rate of suicide in the nation, which is almost twice the national rate; and

WHEREAS, those Montanans completing suicides include children, adolescents, adults, and the elderly and residents of urban, rural, and frontier areas; and

WHEREAS, the vast majority of individuals that complete suicide suffer from a diagnosed or undiagnosed mental illness that prevents them from making a "rational" choice to end their life; and

WHEREAS, Montana's high rate of suicide is attributable to the complex interaction of many factors, including but not limited to lack of access to both crisis mental health services and noncrisis mental health care, including psychosocial interventions, effective supports and medication, and the barriers that often prevent youth and adults from seeking treatment because of stigma, myths, and misunderstandings about mental illnesses; and

WHEREAS, past statewide efforts to reduce suicide have lacked sufficient cohesiveness and resources to be effective."

Effective Date: Section 6, Ch. 471, L. 2007, provided: "[This act] is effective July 1, 2007."

53-21-1101. Suicide prevention officer — duties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 405, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 87 in (1) at end of first sentence substituted "the division responsible for administering adult mental health services" for "the office of the director of the department" and inserted last sentence requiring that the program be informed by the best available evidence; in (2)(a) near beginning substituted "for both children and adults by all divisions within the department" for "by the department, including activities in the addictive and mental disorders division, the health resources division, and the public health and safety division" and at end after "university system" inserted "and other stakeholders"; in (2)(b) after "plan" inserted "in accordance with 53-21-1102"; in (2)(c) in middle substituted "activities based on the best available evidence" for "evidence-based activities"; in (2)(c)(i) near beginning substituted "communication campaigns" for "public awareness campaigns" and in middle after "address" substituted "their mental health" for "mental health problems"; in (2)(c)(ii) after "organizations" substituted "communication and training" for "a public awareness program"; in (2)(c)(iv) after "mental illnesses" inserted "as well as actions, based on the best available evidence, to take during and after a crisis"; in (2)(c)(v) at beginning inserted "identifying and using available resources, which may include"; inserted (2)(c)(vi) concerning a lifespan approach to suicide prevention; inserted (2)(c)(vii) regarding program data and health outcomes; and made minor changes in style. Amendment effective March 26, 2021.

2017 Amendment: Chapter 233 in (1) after "suicide prevention program" deleted "by January 1, 2008. The program must be"; in (2)(b) inserted "ethnic groups, and occupations"; in (2)(c) inserted "evidence-based"; in (2)(c)(i) inserted "aimed at normalizing the need for all Montanans to address mental health problems", after "free media" inserted "including digital and social media", and after "mental health advocacy groups" inserted "veteran groups"; in (2)(c)(v) substituted current text relating to providing grants to entities for "providing grants to communities or other government, nonprofit, or tribal entities to start new or sustain existing suicide prevention activities"; and made minor changes in style. Amendment effective July 1, 2017.

53-21-1102. Suicide reduction plan.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 87 in (3)(a) substituted current text requiring submission of the plan to the children, families, health, and human services interim committee and to the legislature for former text that read: "the appropriate interim committee of the legislature"; and made minor changes in style. Amendment effective March 26, 2021.

Chapter 365 inserted (2)(b) requiring an assessment of risk factors and protective factors; in (2)(c) at end inserted "including activities directed at active duty members, reserve members, and guard members of the uniformed services and veterans"; in (2)(d) near end inserted "active duty members, reserve members, and guard members of the uniformed services and"; and made minor changes in style. Amendment effective April 30, 2021.

2013 Amendment: Chapter 353 in (2)(e) substituted "including but not limited to statistics from and recommendations by the Montana suicide review team and information from" for "as well as". Amendment effective July 1, 2013, and terminates June 30, 2016.

53-21-1111. Suicide prevention grants.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 181, L. 2023. Amendment effective April 19, 2023.

Effective Date: Section 8, Ch. 233, L. 2017, provided: "[This act] is effective July 1, 2017."

Part 12

Jail Diversion and Crisis Intervention

Part Administrative Rules

Title 37, chapter 89, subchapter 10, ARM Grants to counties.

53-21-1201. Diversion of certain persons suffering from mental disorders from detention center.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 513 in (1)(c) at beginning inserted "subject to 53-21-193 and subsection (3) of this section" and after "facility" inserted "a behavioral health inpatient facility"; inserted (3) requiring facility to be notified and accept transfer of patient based on admission criteria before transfer; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 561 in (4) after "loitering" deleted "vagrancy"; and made minor changes in style. Amendment effective May 5, 2003.

Chapter 602 in (2)(b) at end substituted "qualified mental health care provider as arranged by the county" for "community mental health center, as defined in 53-21-201". Amendment effective October 1, 2003.

Severability: Section 10, Ch. 513, L. 2003, was a severability clause.

Saving Clause: Section 18, Ch. 602, L. 2003, was a saving clause.

1999 Amendment: Chapter 247 in (1) and (2) substituted "detention center" for "jail"; and made minor changes in style. Amendment effective April 5, 1999.

1997 Amendment: Chapter 490 in (1), near end after "appear to be", substituted "suffering from mental disorders and who require commitment" for "seriously mentally ill"; in (2), in introductory clause after "inmate is", substituted "suffering from a mental disorder and requires commitment" for "seriously mentally ill"; in (2)(c), at end, substituted "suffering from a mental disorder and who require commitment" for "seriously mentally ill"; and in (4), near end after "screening for", substituted "a mental disorder and the need for commitment" for "serious mental illness". Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 546 in (2)(b) substituted "53-21-201" for "53-21-212". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 312 inserted (4) allowing an intoxicated person to be detained in jail until intoxication is reduced to the point that screening for mental illness can be performed. Amendment effective July 1, 1993.

Development of County Plans for Alternatives to Placement in Jail of Seriously Mentally Ill: Section 6, Ch. 636, L. 1991, provided: "No later than January 1, 1993, each county, with the assistance of the department of institutions [now department of public health and human services] and local agencies, shall establish a plan for the development and implementation of appropriate services to persons awaiting commitment hearings. The plan must include appropriate alternatives to jail for the detention of mentally ill persons pending a commitment hearing or trial and must be developed with the advice of consumers, family members of consumers, and mental illness advocacy groups. The following agencies and individuals shall assist the counties in establishing and implementing the plans:

(1) mental health centers licensed under Title 50, chapter 5, part 2;
(2) hospitals licensed under Title 50, chapter 5, part 2;
(3) law enforcement agencies;
(4) physicians licensed under Title 37, chapter 3;
(5) psychologists licensed under Title 37, chapter 17;
(6) social workers licensed under Title 37, chapter 22;
(7) professional counselors licensed under Title 37, chapter 23; and
(8) professional persons certified under Title 53, chapter 21, part 1." Effective April 25, 1991, and terminates July 1, 1993.

Effective Date: Section 8, Ch. 636, L. 1991, provided that this section is effective July 1, 1993.

53-21-1202. Crisis intervention programs — rulemaking authority.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 29, Ch. 713, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 219 in (2) near middle inserted "and federally recognized tribal governments" and before "plans" deleted "county". Amendment effective July 1, 2017.

2015 Amendment: Chapter 207 in (1) after "appropriations" inserted "for the purposes of this part"; and inserted (4) regarding adoption of rules to implement certain statutes. Amendment effective July 1, 2015.

2005 Amendment: Chapter 530 in (3)(a) substituted "53-6-101(4)(j)" for "53-6-101(3)(j)"; and in (3)(b) substituted "53-6-101(4)(n)" for "53-6-101(3)(n)". Amendment effective October 1, 2005.

1997 Amendment: Chapter 490 in (1), in second sentence after "care of", substituted "persons suffering from a mental disorder and requiring commitment" for "seriously mentally ill persons". Amendment effective July 1, 1997.

Saving Clause: Section 40, Ch. 490, L. 1997, was a saving clause.

1995 Amendment: Chapter 546 in (3) substituted "department may provide" for "department may enter into an interagency agreement with the department of social and rehabilitation services to provide". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Development of County Plans for Alternatives to Placement in Jail of Seriously Mentally Ill: Section 6, Ch. 636, L. 1991, provided: "No later than January 1, 1993, each county, with the assistance of the department of institutions [now department of public health and human services] and local agencies, shall establish a plan for the development and implementation of appropriate services to persons awaiting commitment hearings. The plan must include appropriate alternatives to jail for the detention of mentally ill persons pending a commitment hearing or trial and must be developed with the advice of consumers, family members of consumers, and mental illness advocacy groups. The following agencies and individuals shall assist the counties in establishing and implementing the plans:

(1) mental health centers licensed under Title 50, chapter 5, part 2;
(2) hospitals licensed under Title 50, chapter 5, part 2;
(3) law enforcement agencies;
(4) physicians licensed under Title 37, chapter 3;
(5) psychologists licensed under Title 37, chapter 17;
(6) social workers licensed under Title 37, chapter 22;
(7) professional counselors licensed under Title 37, chapter 23; and
(8) professional persons certified under Title 53, chapter 21, part 1." Effective April 25, 1991, and terminates July 1, 1993.

Effective Date: Section 8, Ch. 636, L. 1991, provided that this section is effective July 1, 1993.

53-21-1203. State matching fund grants for county and tribal government crisis intervention, jail diversion, precommitment, and short-term inpatient treatment costs.

Compiler's Comments

2017 Amendment: Chapter 219 in (1) after "July 1 of each" substituted "new biennium" for "year" and after "eligible county" inserted "or federally recognized tribal government"; in (2) in first sentence before "plan" deleted "county or multicounty", in second sentence after "historical" deleted "county" and substituted "high-use applicant" for "high-use county", and in third sentence after "admissions by" substituted "applicant region" for "county" and near end substituted "of the applicant region" for "of each county"; in (3) after "county" inserted "or federally recognized tribal government"; in (3)(a) substituted "applicant" for "county"; in (3)(b) near beginning substituted "tribal, or regional" for "or multicounty"; in (3)(d) substituted "applicant" for "county"; in (3)(e) near beginning after "information on" deleted "county"; in (4)(a) at beginning deleted "For the biennium beginning July 1, 2015" and after "this section" deleted "that exceeds the amount appropriated for this purpose in fiscal year 2015"; in (4)(b) in first sentence substituted "If money from the appropriation remains after grants have been allocated as provided in subsection (4)(a), the department shall provide continued support of projects funded in the previous biennium with state matching fund grants if a county or tribal government requests" for "For the biennium beginning July 1, 2015, the department shall, at a minimum, maintain the level of state matching funds provided to counties that received matching funds in fiscal year 2015 if the counties request", inserted second sentence concerning allocation of funds, and deleted former last sentence that read: "If a county requests additional matching funds for continued funding of services provided through use of matching funds in previous years, the department shall consider whether the service is experiencing increased demand or use as provided in subsection (4)(a)(iii) and is eligible for increased funding"; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendments — Composite Section: Chapter 207 deleted former (4) that read: "(4) The department shall adopt rules by August 1, 2011, to implement the provisions of this section." Amendment effective July 1, 2015.

Chapter 403 inserted (4) concerning purpose of money appropriated in excess of fiscal year 2015 appropriations and matching funds requirement; in former (4) after "rules" deleted "August 1, 2011" (rendered void by Ch. 207); and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendment: Chapter 232 in (2) in last sentence in 2 places substituted "admissions" for "commitments"; and in (4) substituted "August 1, 2011" for "August 1, 2009". Amendment effective April 20, 2011.

Preamble: The preamble attached to Ch. 479, L. 2009, provided: "WHEREAS, the 2007 Legislature passed House Joint Resolution No. 26, requesting an interim legislative study to examine diversion of mentally ill adults from the justice system, and House Joint Resolution No. 50, requesting a study to examine county precommitment costs related to involuntary commitment proceedings; and

WHEREAS, these studies were assigned to the Law and Justice Interim Committee; and

WHEREAS, after 14 months of testimony and examination of data and information from all stakeholders, the Law and Justice Interim Committee identified crisis intervention and jail diversion to be the most critical need and the most effective way to divert mentally ill individuals from the criminal justice system and recommends this bill as part of a package of bills to address this need; and

WHEREAS, the lack of local crisis intervention and jail diversion alternatives means counties must rely on the Montana State Hospital for emergency and court-ordered detention and evaluation, which increases county costs, strains the Montana State Hospital, and diverts resources from community-based services; and

WHEREAS, sections 53-21-138 and 53-21-139 [renumbered 53-21-1201 and 53-21-1202], MCA, originally enacted by the 1991 Legislature, provide a solid statutory framework for diversion of mentally ill adults from the justice system but do not provide state funding; and

WHEREAS, state matching funds granted to counties based on certain criteria, including the commitment of county and other local funds, is an appropriate way to share costs and provide incentives for local resources to be spent on community-based treatment capacity rather than on jail capacity or on transportation to and capacity in the Montana State Hospital; and

WHEREAS, crisis intervention team training and collaboration between local law enforcement officers, mental health professionals, and private corporations can offer creative solutions that should be encouraged and sustained; and

WHEREAS, counties should be encouraged to participate in a county self-insurance pool to help pay for unpredictable and sometimes financially catastrophic precommitment costs."

Report Required: Section 2, Ch. 479, L. 2009, provided: "(1) Implementation of the grant program established in [section 1] [53-21-1203] may be conducted in phases. However, it is the legislature's intent that the grant program be fully implemented by no later than September 1, 2009.

(2) Upon request, the department shall report to the law and justice interim committee established in 5-5-226 on the implementation status of [section 1] [53-21-1203]."

Effective Dates: Section 5(1), Ch. 479, L. 2009, provided that subsections (1) through (3) are effective July 1, 2009.

Section 5(2), Ch. 479, L. 2009, provided that subsection (4) is effective on passage and approval. Chapter 479, L. 2009, was enacted into law without the governor's signature on May 9, 2009.

53-21-1204. Department to contract for detention beds.

Compiler's Comments

2017 Amendment: Chapter 219 in (2) before "strategic plans" deleted "county". Amendment effective July 1, 2017.

2015 Amendment: Chapter 207 deleted former (5) that read: "(5) The department shall adopt rules to implement this section." Amendment effective July 1, 2015.

Preamble: The preamble attached to Ch. 480, L. 2009, provided: "WHEREAS, the 2007 Legislature passed House Joint Resolution No. 26, requesting an interim legislative study to examine diversion of mentally ill adults from the justice system, and House Joint Resolution No. 50, requesting an interim legislative study to examine county precommitment costs related to involuntary commitment proceedings; and

WHEREAS, these studies were assigned to the Law and Justice Interim Committee; and

WHEREAS, this bill is one in a package of bills recommended by the Law and Justice Interim Committee to address diversion of mentally ill adults from the justice system to appropriate treatment; and

WHEREAS, the Law and Justice Interim Committee found that one of the biggest challenges to diverting mentally ill individuals from the justice system is a lack of community-based mental health treatment beds; and

WHEREAS, 63% of admissions to the Montana State Hospital, whose daily census routinely exceeds its licensed capacity of 189, are for emergency and court-ordered detention and evaluation; and

WHEREAS, 38% of emergency and court-ordered admissions to the Montana State Hospital do not result in commitments; and

WHEREAS, it is preferable for these psychiatric services to be provided locally and without fiscal pressure driving treatment decisions or decisions about whether to file an involuntary commitment petition; and

WHEREAS, the costs for local hospitals to provide psychiatric treatment services is very high and counties help pay some of these costs only after an involuntary commitment petition has been filed and only in an amount that would have been paid by a public assistance program; and

WHEREAS, these high unrecoverable costs can deter hospitals from providing community-based psychiatric treatment beds; and

WHEREAS, current involuntary commitment laws and funding mechanisms create tensions between mental health professionals concerned about the medical necessity for treatment, hospitals concerned that county funding is available only after an involuntary commitment petition is filed, county attorneys concerned that medical necessity is not necessarily legal sufficiency for an involuntary commitment petition, and county commissioners concerned about county costs after a commitment petition is filed; and

WHEREAS, some mental health facilities may be able to provide inpatient psychiatric services at lower cost by providing services in a nonhospital mental health facility or through a telepsychiatry linkage with a psychiatric unit at a community hospital or with the Montana State Hospital; and

WHEREAS, by contracting with private providers for dedicated local or regional psychiatric treatment beds at rates that would help subsidize county funding and reduce the risks to private providers, the state can become a partner in fostering creative local solutions that reduce emergency admissions to the Montana State Hospital."

Report Required: Section 2, Ch. 480, L. 2009, provided: "(1) The provisions of [section 1] [53-21-1204] may be implemented in phases. However, it is the legislature's intent that contracted beds be operational in at least one service area by no later than July 1, 2010, and that full implementation be completed by no later than July 1, 2011.

(2) Upon request, the department shall report to the law and justice interim committee established in 5-5-226 on the implementation status of contracting under [section 1] [53-21-1204]."

Effective Dates: Section 5(1), Ch. 480, L. 2009, provided that subsections (1) through (4) are effective July 1, 2009.

Section 5(2), Ch. 480, L. 2009, provided that subsection (5) is effective on passage and approval. Chapter 480, L. 2009, was enacted into law without the governor's signature on May 9, 2009.

53-21-1205. Short-term inpatient treatment — process — placement — length — conditions for proceeding with commitment hearing.

Compiler's Comments

Effective Date: Section 10, Ch. 481, L. 2009, provided that this section is effective July 1, 2009.

Report Required: Section 8, Ch. 481, L. 2009, provided: "Upon request, the department shall report to the law and justice interim committee established in 5-5-226 on the use of the short-term inpatient treatment process established in [sections 5 and 6] [53-21-1205 and 53-21-1206]."

53-21-1206. Treatment and discharge plan — safety — rights.

Compiler's Comments

Effective Date: Section 10, Ch. 481, L. 2009, provided that this section is effective July 1, 2009.

Report Required: Section 8, Ch. 481, L. 2009, provided: "Upon request, the department shall report to the law and justice interim committee established in 5-5-226 on the use of the short-term inpatient treatment process established in [sections 5 and 6] [53-21-1205 and 53-21-1206]."

53-21-1207. Mental health services special revenue account.

Compiler's Comments

2021 Amendment: Chapter 576 in (2)(a) after "the account" deleted "as provided in 50-46-345". Amendment effective January 1, 2022.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

Effective Date: Section 7, Ch. 297, L. 2019, provided: "[This act] is effective July 1, 2019."

Part 13

Mental Health Care Advance Directives

Part Compiler's Comments

Effective Date: This part is effective October 1, 2011.

Part 14

Crisis Stabilization Services

Part Compiler's Comments

Effective Date: Section 7, Ch. 201, L. 2013, provided: "[This act] is effective July 1, 2013."

CHAPTER 22
INTERSTATE COMPACT ON MENTAL HEALTH

Part 1
General Provisions

53-22-101. Enactment of compact.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

53-22-102. Compact administrator.

Compiler's Comments

1995 Amendment: Chapter 546 at beginning substituted "The director of the department of public health and human services is" for "The director of the department of corrections and human services, hereafter called "the director", shall be"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-22-104. Annual budget.

Compiler's Comments

2009 Amendment: Chapter 10 at end deleted "and the legislature shall appropriate sums necessary for carrying out the purposes of the compact"; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment: Chapter 546 at beginning substituted "department of public health and human services" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-22-105. Court review.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 24
ALCOHOLISM AND DRUG DEPENDENCE

Chapter Administrative Rules

Title 37, chapter 27, ARM Chemical dependency programs.

Chapter Attorney General's Opinions

Local Government Authority to Provide Alcohol and Drug Abuse Treatment Services: The city of Billings and Yellowstone County proposed to purchase and renovate a building for use by a nonprofit corporation providing treatment for alcohol and drug-related problems. The city proposed to issue industrial revenue bonds (IRB) to fund a portion of the project, and the county sought a grant from the Montana Coal Board. Under the proposal, title to the building would vest in the nonprofit corporation once the IRB's have been retired. The questions presented were whether: (1) the building in question is a "governmental facility"; (2) a city or county has the power to expend funds for a building the title to which will eventually vest in a private corporation; and (3) contracting with a private corporation is a legitimate means of providing a governmental service. In the opinion of the Attorney General, a local government unit with self-government powers and counties with general government powers are authorized to provide alcohol and drug abuse treatment services under Title 53, ch. 24. Local governments may contract with nonprofit corporations for the provision of such services. A program of alcohol and drug abuse treatment services provided by contract with a private nonprofit corporation is a "governmental service or facility" under 90-6-205 for the purpose of determining eligibility for coal impact assistance. 39 A.G. Op. 31 (1981).

Chapter Collateral References

Combating Substance Abuse Compels a Pound of Prevention and a Pound of Cure, A Report to the 59th Legislature From the Children, Families, Health, and Human Services Interim Committee, Mont. Leg. Serv. Div. (2004).

Part 1
General Provisions

53-24-101. Legislative purpose.

Compiler's Comments

1983 Amendment: Throughout section, changed "alcoholism and drug dependence" to "chemical dependency" and made minor changes in phraseology.

Case Notes

Alcoholism to Be Treated as a Disease: It is a legislative policy that alcoholism is to be treated as a disease, not as a crime to be punished. Azure v. Billings, 182 M 234, 596 P2d 460, 36 St. Rep. 968 (1979).

53-24-102. Declaration of policy.

Case Notes

Death in Jail From Alcohol Withdrawal — No Negligence Per Se by County — Membership in Protected Class Required: Solberg was involved in a one-vehicle accident. He was taken to jail and charged with driving while intoxicated and driving without a valid driver's license. He pleaded guilty to both offenses on the following day, was unable to pay the fine imposed, and was ordered to serve time in jail. Two days later Solberg was found dead in his cell from alcohol-related withdrawal symptoms. Solberg's personal representative brought a wrongful death action against Yellowstone County. At the trial, the District Court refused to give an instruction finding defendant negligent as a matter of law. On appeal, the Supreme Court held that 53-24-303, as interpreted in Azure v. Billings, 182 M 234, 596 P2d 460 (1979), was not applicable, as Solberg was not a member of the class protected by the statute, the publicly intoxicated. Solberg was charged with two criminal offenses to which he pleaded guilty. Whether defendant breached the common-law duty owed by a jailer to a prisoner was a question for the jury. Solberg v. Yellowstone County, 203 M 79, 659 P2d 290, 40 St. Rep. 308 (1983).

Attorney General's Opinions

Ordinances Making Intoxication a Crime Invalid: City ordinances punishing public intoxication whether as an element of an offense or as an offense in itself are in contravention of state statutes. The ordinances violate the policy of the state of treating alcoholism as a disease, not as a crime. 38 A.G. Op. 93 (1980).

53-24-103. Definitions.

Compiler's Comments

1997 Amendment: Chapter 188 inserted definitions of Commission on Accreditation of Rehabilitation Facilities and rehabilitation facility; and made minor changes in style.

1995 Amendment: Chapter 546 in definition of Department substituted "department of public health and human services provided for in 2-15-2201" for "department of corrections and human services provided for in 2-15-2301"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1983 Amendments: Chapter 406 in definition of approved private treatment facility changed "alcoholism and drug dependence" to "chemical dependency" and inserted "and" after the parenthetical; inserted definition of chemical dependency; in definition of family member substituted "chemically dependent person" for "alcoholic" twice; in definition of prevention changed "alcohol dependence and alcoholism" to "chemical dependency" and changed "an alcoholic" to "chemically dependent person"; and in definition of treatment changed "alcoholics" to "chemically dependent persons".

Chapter 513 in definition of approved private treatment facility substituted "private agency" for "private nonprofit agency, receiving public funds".

53-24-104. Deposit of funds from federal or private sources with state treasurer.

Compiler's Comments

1989 Amendment: At end substituted "state" for "other"; and made minor changes in grammar. Amendment effective July 1, 1989.

1983 Amendments: Chapter 277 substituted "federal special revenue fund or the other special revenue funds" for "federal and private revenue fund".

Chapter 406 changed "alcoholism and drug dependence" to "chemical dependency".

53-24-106. Criminal laws limitation.

Compiler's Comments

2001 Amendment: Chapter 465 inserted (3) allowing the department to impose sanctions or deny eligibility for assistance recipients who fail or refuse to comply with criteria and requirements; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 45, Ch. 465, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to payments made after January 1, 2001, for mental health services provided to children with serious emotional disturbances for whom mental health services are not provided by any other public mental health services program and whose family income is at or below 150% of the federal poverty level."

Case Notes

No Repeal by Implication: Section 53-24-106 did not repeal 61-8-508 by implication. The two statutes are not irreconcilable with each other. The former provides that intoxication in public is not a crime while the latter makes walking along a highway in such a condition a criminal offense. Kuchan v. Harvey, 179 M 7, 585 P2d 1298, 35 St. Rep. 1547 (1978).

Attorney General's Opinions

Open-Container Ordinance Valid: An open-container ordinance relating specifically to the possession and use of alcoholic beverages in public places is valid as it is allowable under 53-24-106. 38 A.G. Op. 93 (1980).

Ordinances Making Intoxication a Crime Invalid: City ordinances punishing public intoxication whether as an element of an offense or as an offense in itself are in contravention of state statutes. The ordinances violate the policy of the state of treating alcoholism as a disease, not as a crime. 38 A.G. Op. 93 (1980).

53-24-107. Public intoxication not criminal offense.

Compiler's Comments

2005 Amendment: Chapter 442 in (1) in first sentence near beginning after "be intoxicated" deleted "or incapacitated by alcohol" and near middle of second sentence after "intoxicated" deleted "or incapacitated by alcohol" and at end inserted reference to subsection (3); in (2) near middle after "intoxicated" deleted "or incapacitated by alcohol in jail"; inserted (3) relating to detention protection and records; and made minor changes in style. Amendment effective April 28, 2005.

Attorney General's Opinions

Ordinances Making Intoxication a Crime Invalid: City ordinances punishing public intoxication whether as an element of an offense or as an offense in itself are in contravention of state statutes. The ordinances violate the policy of the state of treating alcoholism as a disease, not as a crime. 38 A.G. Op. 93 (1980).

53-24-108. Use of funds generated by taxation on alcoholic beverages.

Compiler's Comments

2003 Amendment: Chapter 140 in (1) at end of introductory clause after "chemical dependency" substituted "must be distributed as follows" for "may be distributed in any of the following ways"; deleted former (1)(a) that read: "(a) as payment of fees for alcoholism services provided by state-approved private or public alcoholism programs and licensed hospitals for detoxification services"; at beginning of (1)(a) inserted "20% is statutorily appropriated, as provided in 17-7-502, to be allocated as provided in 53-24-206(3)(b), and must be distributed"; inserted (1)(b) statutorily appropriating 6.6% of the funds for distribution to certain private or public alcohol programs; inserted (1)(c) providing for the distribution of the remainder of the funds; inserted (1)(c)(i) allowing the remainder of the funds for distribution to be used as payment of fees for alcoholism programs and detoxification services; in (2) at end substituted "subsection (1)(a)" for "subsection (1)"; and made minor changes in style. Amendment effective July 1, 2003.

2002 Amendment: Chapter 21 in (1) after "department to be used" inserted "as matching funds for the Montana medicaid program and to be used"; in (1)(c) substituted "for the treatment of alcoholism, chemical dependency, and related illnesses" for "for alcoholism and chemical dependency programs"; in (2)(a) at beginning deleted "After providing funding pursuant to 53-24-206(3)(b) of at least $1 million a year" and at end deleted "but the total amount expended may not exceed $1.3 million in each biennium"; inserted (2)(b) relating to distribution of at least $1 million to state-approved chemical dependency programs; and made minor changes in style. Amendment effective August 21, 2002, and terminates July 1, 2003.

2001 Amendment: Chapter 470 in (1), (1)(a), and (1)(b) after "private" deleted "nonprofit"; in (1) after "16-1-411" inserted "and allocated to the department", after "alcoholism" inserted "which for the purposes of this section includes chemical dependency", and substituted "any of the following ways" for "either of the following manners"; inserted (1)(c) authorizing distribution of revenue as matching funds for Montana medicaid program that are used for alcoholism and chemical dependency programs; substituted (2) authorizing funding not to exceed $1.3 million in each biennium for treatment and rehabilitation for persons with co-occurring mental illness and chemical dependency for former (2) that read: "(2) State approved private chemical programs organized for profit are not eligible for revenue generated by 16-1-404, 16-1-406, and 16-1-411"; and made minor changes in style. Amendment effective April 30, 2001, and subsection (2) terminates July 1, 2003.

1997 Amendment: Chapter 422 in lead-in of (1), in (2), and in (7), after "16-1-406", deleted "16-1-408"; and made minor changes in style. Amendment effective July 1, 1997.

1987 Amendment: In (1), (2), and (7), after "16-1-408", inserted "and 16-1-411".

1983 Amendments: Chapter 277, in (7), substituted reference to state special revenue fund for reference to earmarked revenue fund.

Chapter 513, inserted "private nonprofit or public" after "state-approved" throughout (1); and inserted (2) limiting eligibility for revenue of state-approved private chemical programs organized for profit.

1981 Amendment: Deleted the provision for fees for services provided by certified alcoholism counselors and licensed physicians from (1)(a); added "for detoxification services" at the end of (1)(a); deleted "persons operating" before "state-approved alcoholism programs" in (1)(b); added "and will be distributed by the department the following year as provided in 53-24-206(3)(b)" at the end of (6).

Part 2
Administration by Department of Public Health and Human Services

53-24-204. Powers and duties of department.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 187, L. 2023. Amendment effective July 1, 2023, and terminates June 30, 2027.

2017 Amendment: Chapter 107 in (2)(g) substituted "provide planning for the optimal use of funds by increasing efficiency of services, ensuring existing needs are met" for "encourage planning for the greatest use of funds by discouraging duplication of services, encouraging efficiency of services through existing programs"; inserted (2)(j) concerning uniform standards; and made minor changes in style. Amendment effective July 1, 2017.

2003 Amendment: Chapter 140 in (2)(d) at end before "53-24-206" inserted "53-24-108 and"; and made minor changes in style. Amendment effective July 1, 2003.

1997 Amendment: Chapter 507 deleted former (2)(g) that read: "(g) certify and establish standards for the certification of:

(i) chemical dependency counselors; and

(ii) instructors providing chemical dependency educational courses"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 546 in (2)(i) substituted "board of pardons and parole" for "board of pardons". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 349 deleted second sentence of (2)(b) that read: "These updates or any part thereof may be included in the department's report to the legislature required in 53-24-210."

1991 Amendments: Chapter 112 at end of (2)(b) inserted "required in 53-24-210". Amendment effective March 20, 1991.

Chapter 186 inserted (2)(k) requiring Department to assist in developing chemical dependency education and prevention programs.

1985 Amendment: Inserted (2)(g)(ii) explaining certification of instructors providing chemical dependency educational courses; and inserted (2)(j) requiring departmental establishment of standards for and approval or disapproval of chemical dependency educational courses.

Statement of Intent: The statement of intent attached to Ch. 126, L. 1985, provided: "This bill requires a statement of intent because it grants the department of institutions [now department of public health and human services] rulemaking authority to develop standards for chemical dependency educational courses, provided by state-approved treatment programs, for driving-under-the-influence and minors-in-possession offenders who are sentenced by law to complete these courses. The bill will also allow the department to certify course instructors and inspect these courses to ensure compliance with standards.

These courses are presently being provided by state-approved chemical dependency treatment programs, but without consistent standards or approval processes. The rules should address the following:

(1) minimum training and certification standards for course instructors;
(2) procedures to justify costs of courses and fees charged;
(3) minimum screening, assessment, and evaluation criteria;
(4) minimum criteria for course curriculum content;
(5) minimum required hours and length of participation to complete the courses;
(6) minimum recordkeeping and reporting requirements;
(7) policies and procedures for the operation of the courses, including a course evaluation process; and
(8) evaluation and recommendation suggestions that the courts may use for initial and repeat offenders."

1983 Amendments: Chapter 365, in (2)(b), substituted language requiring Department to prepare a state chemical dependency plan every 4 years and update it each biennium for "prepare an annual state plan for the delivery of treatment services".

Chapter 406, in (2)(e), changed "alcoholics" to "chemically dependent persons"; in (2)(g) changed "alcoholism and drug dependence" to "chemical dependency"; and in (2)(i) changed "alcoholics" to "chemically dependent".

1981 Amendment: Substituted "facilities" for "programs" in (2)(a).

53-24-206. Administration of financial assistance.

Compiler's Comments

2003 Amendment: Chapter 140 in (3)(b) near middle of first sentence after "proceeds" inserted "that are not appropriated, as provided in subsection (3)(a), or that are not statutorily appropriated in 53-24-108(1)(b)". Amendment effective July 1, 2003.

2001 Amendment: Chapter 470 in (3)(a) and (3)(b) after "private" deleted "nonprofit"; in (3)(c) at end inserted "and chemical dependency"; and made minor changes in style. Amendment effective April 30, 2001.

1987 Amendment: In first sentence of (3)(a) inserted "or the wine tax".

1985 Amendment: In (3)(b) at beginning of second sentence inserted "The distribution of these proceeds is statutorily appropriated as provided in 17-7-502 and must be distributed".

1983 Amendments: Chapter 406, in (1) and (2), changed "alcoholism and drug dependence" to "chemical dependency".

Chapter 513, in (3)(a) and (3)(b), inserted "private nonprofit or public" after "approved"; and at end of (3)(c), deleted "or related social problems" after "alcoholism".

Statement of Intent: The statement of intent attached to HB 844 (Ch. 711, L. 1979) provided in part: "In exercising its discretion in the distribution of funds under 53-24-206, the department shall distribute the funds to promote the purposes of Title 53, chapter 24, and to insure the viability and continued operation of approved programs that can demonstrate the need for funding in excess of funds that would be available under the allocation formula of 53-24-206(3)(a)."

53-24-207. Comprehensive program for treatment.

Compiler's Comments

1995 Amendment: Chapter 165 in (3) deleted reference to 53-24-304; and made minor changes in style.

1983 Amendment: In (1) changed "alcoholics" to "chemically dependent persons".

Case Notes

Duty to Establish Program for the Treatment of Alcoholism: The Department of Health and Environmental Sciences (now Department of Public Health and Human Services) is charged with the responsibility of establishing a statewide program for the treatment of alcoholism as an illness. Azure v. Billings, 182 M 234, 596 P2d 460, 36 St. Rep. 968 (1979).

53-24-208. Facility standards.

Compiler's Comments

2017 Amendment: Chapter 107 in (2) after "services" deleted "and that the proposed services do not duplicate existing local services"; in (9) at beginning of second sentence substituted "The department shall" for "The department may, but is not required to"; and made minor changes in style. Amendment effective July 1, 2017.

1997 Amendment: Chapter 188 in (5), near beginning after "public", substituted "or" for "and"; inserted (9) regarding consideration of licensure eligibility during the accreditation period and inspection of a facility to ensure compliance with state standards; and made minor changes in style.

1991 Amendment: In (1), in second sentence near beginning after "standards", inserted "must be adopted by rule and", after "concern" deleted "only", and near end, after "standards", substituted "for the approval of treatment programs for patients" for "of treatment to be afforded patients".

1991 Statement of Intent: The statement of intent attached to Ch. 393, L. 1991, provided: "A statement of intent is required for this bill because [section 1] [53-24-208] requires the department of institutions [now department of public health and human services] to adopt standards for approval of chemical dependency treatment programs and because [section 2] [53-24-211] grants the department the authority to adopt rules specifying the use to be made of countywide plans for the treatment, rehabilitation, and prevention of chemical dependency in the department's determination of the needs of the counties. It is the intent of the legislature that the department adopt rules addressing the content, organization, management, and personnel requirements of treatment programs and that the rules governing the use of the countywide plans discourage duplication of program services."

53-24-209. Rules for acceptance for treatment.

Compiler's Comments

1995 Amendment: Chapter 164 deleted former (3), which provided that withdrawing from treatment on a prior occasion against medical advice or because of a relapse was not grounds for denial of treatment; and made minor changes in style.

1983 Amendments: Chapter 406, in first sentence, changed "alcoholics" to "chemically dependent persons".

Chapter 513, in (2), after "outpatient" deleted "or intermediate".

53-24-211. County plan to be submitted to department.

Compiler's Comments

1991 Amendment: In (4), at end of first sentence, inserted "and the use of plans by the department in determining the needs of the county for the treatment, rehabilitation, and prevention of chemical dependency".

1991 Statement of Intent: The statement of intent attached to Ch. 393, L. 1991, provided: "A statement of intent is required for this bill because [section 1] [53-24-208] requires the department of institutions [now department of public health and human services] to adopt standards for approval of chemical dependency treatment programs and because [section 2] [53-24-211] grants the department the authority to adopt rules specifying the use to be made of countywide plans for the treatment, rehabilitation, and prevention of chemical dependency in the department's determination of the needs of the counties. It is the intent of the legislature that the department adopt rules addressing the content, organization, management, and personnel requirements of treatment programs and that the rules governing the use of the countywide plans discourage duplication of program services."

1983 Amendments: Chapter 365 made the following changes: in (1), at beginning changed "By January 1 of each year," to "Every 4 years" and inserted last sentence requiring submission of an annual plan that includes revenue allocation; in (2) substituted "private and public chemical dependency programs" for "nonprofit and local government programs"; in (3), in first sentence, inserted "and annual updates" and in second sentence inserted "or update" in two places; deleted former (4) that read: "(a) After January 1 of each year, no money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of alcoholism if the county has not submitted a plan as required by subsection (1).

(b) After June 30 of each year, no money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of alcoholism if a county plan has not been approved by the department."; and in (4), in first sentence inserted "submission dates, updates," and inserted last sentence prohibiting revenue distribution absent county compliance with Department rules.

Chapter 406, in (1) and (2), changed "alcoholism" to "chemical dependency".

1983 Statement of Intent: The statement of intent attached to HB 312 (Ch. 365, L. 1983), first adopted by the House Human Services Committee, read: "The Department of Institutions [now Department of Public Health and Human Services] is requesting legislation that would allow the state and counties to develop a comprehensive long-term plan rather than the annual plans now required under 53-24-204 and 53-24-211.

Under section 53-24-211, the Department has existing rulemaking authority regarding the submission, approval, and disapproval of plans. The Department is requesting statute authority that would allow long-term state and county comprehensive plans. The only new rules the Department will adopt under this bill will be dates for submission and updating county plans.

These existing rules that the Legislature has allowed are:

(a) submission dates for the county alcohol and drug plan, and

(b) the approval date by the department or notice of disapproval."

1979 Statement of Intent: The statement of intent attached to HB 844 (Ch. 711, L. 1979) provided in part: "Section 13 [enacted as Section 9 and codified as 53-24-211] requires each county to submit a countywide plan to the department for the treatment, rehabilitation, and prevention of alcoholism and gives the department the authority to approve or disapprove of each plan.

It is intended that the rules adopted by the department with regard to the plans will:

(1) provide the procedure for the submission of the plan including the general format and the type of information needed by the department to evaluate the plan; and

(2) outline the criteria that the department will use in approving or disapproving a plan."

1981 Amendment: In (1) changed "January 1, 1980" to "January 1 of each year"; and in (4) changed "December 31, 1979" to "January 1 of each year" in (a) and changed "June 30, 1980" to "June 30 of each year" in (b).

53-24-218. Chemical dependency treatment room and board voucher program — eligibility — provider and participant requirements.

Compiler's Comments

Effective Date: Section 6, Ch. 187, L. 2023, provided: "[This act] is effective July 1, 2023."

Termination: Section 7, Ch. 187, L. 2023, provided: "[This act] terminates June 30, 2027."

Part 3

Treatment of Alcoholics and Intoxicated Persons

53-24-301. Treatment of the chemically dependent.

Compiler's Comments

2019 Amendment: Chapter 20 in (1) substituted "public or private treatment facility" for "public treatment facility", after "confirmation" deleted "from a licensed addiction counselor", substituted "medically monitored or managed inpatient care as described in the department's administrative rules" for "inpatient, freestanding care as described in the administrative rules", and inserted last sentence describing which health care professionals may provide the required confirmation; in (2) substituted "public or private treatment facility" for "public treatment facility"; and made minor changes in style. Amendment effective October 1, 2019.

2001 Amendment: Chapter 23 in (1) in first sentence near middle substituted "licensed addiction counselor" for "certified chemical dependency counselor". Amendment effective January 1, 2002.

1995 Amendment: Chapter 164 in (1) deleted former first sentence providing that an alcoholic could voluntarily apply directly to an approved public treatment facility for treatment and inserted first and second sentences providing that an applicant must obtain confirmation of chemical dependency and of appropriateness of inpatient care and granting rulemaking authority; in (2), near end, substituted "private treatment facility" for "public treatment facility"; in (3), in second sentence, substituted "chemically dependent" for "an alcoholic"; and made minor changes in style.

53-24-302. Involuntary commitment of alcoholics — rights.

Compiler's Comments

2017 Amendment: Chapter 358 in (9) near end of first sentence substituted "2-15-1029" for "47-1-201". Amendment effective July 1, 2017.

Severability: Section 48, Ch. 358, L. 2017, was a severability clause.

2005 Amendment: (Version effective July 1, 2006) Chapter 449 in (3) deleted former fifth sentence that read: "The person must be advised of the right to counsel, and if the person is unable to hire counsel, the court shall appoint an attorney to represent the person at the expense of the county"; in (9) in first sentence near middle before "counsel" inserted "assigned", after "counsel" deleted "appointed by the court or provided by the court" and inserted reference to Montana Public Defender Act, and near end before "counsel" inserted "private" and in second sentence after "shall" deleted "require, by appointment if necessary" and inserted reference to ordering office of state public defender to assign counsel; and made minor changes in style. Amendment effective July 1, 2006.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

1995 Amendment: Chapter 18 made minor changes in style.

1983 Amendment: In (5) increased the time period of custody from 30 to 40 days.

Attorney General's Opinions

Restrictions on Authority of County Attorney Regarding Involuntary Commitment of Alcoholic: A County Attorney does not have authority to file a petition for the involuntary commitment of an alcoholic pursuant to this section, nor may a County Attorney represent a spouse, guardian, relative, certifying physician, or the chief of an approved public treatment facility in a proceeding for the involuntary commitment of an alcoholic. 43 A.G. Op. 40 (1989).

53-24-303. Treatment and services for intoxicated persons.

Compiler's Comments

2005 Amendment: Chapter 442 in (1) near end after "health" inserted "care" and at end deleted "if the person consents to an offer for help"; in (2) deleted "A person who appears to be incapacitated by alcohol must be taken into protective custody by the police and must be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person, are taking the person into protective custody and shall make every reasonable effort to protect the person's health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps for the officer's own protection. An entry or other record may not be made to indicate that the person taken into custody under this section has been arrested or charged with a crime" and inserted sentence relating to peace officer liability; and made minor changes in style. Amendment effective April 28, 2005.

1995 Amendment: Chapter 165 in (1), at beginning, deleted sentence providing that an intoxicated person could voluntarily receive emergency treatment at a public facility and deleted provision for taking the person to a public treatment facility; in (2) deleted references to taking the person to a public treatment facility; deleted (3) through (6) relating to examination at, admission to, and length of stay at a public facility, being committed to the facility under 53-24-304 after a 48-hour stay, taking a person to the person's home or to other shelter, and notification to the person's family upon admission to a public facility; and made minor changes in style.

1985 Amendment: In (6) substituted "may be notified if the patient consents to such notification" for "shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected".

Case Notes

DUI Stop — "Seizure" of Vehicle — Summary Judgment for Defendant Improper: An officer stopped a car driven by Trina Nelson. Trina and Stephen both admitted that they had been drinking. The officer determined that there was no probable cause to arrest Trina for DUI and told her to park the car. Trina attempted to walk home and was hit and killed by a drunk driver. Stephen sued the county, alleging negligence and violation of 42 U.S.C. 1983. The District Court granted the county's motion for summary judgment. Stephen filed a motion for reconsideration based on a later-decided case that adopted a "state-created danger" theory supporting a section 1983 action. The District Court denied the motion. Stephen appealed, and the county moved to dismiss on the basis that the appeal was not timely filed. The Supreme Court denied the county's motion to dismiss and established criteria for equating a motion for reconsideration to a motion to alter or amend. Nelson v. Driscoll, 285 M 355, 948 P2d 256, 54 St. Rep. 1190 (1997).

Impaired Driver Not Entitled to Treatment Instead of Punishment: The defendant, who has an extensive record of driving under the influence of alcohol, was convicted on three counts of driving under the influence (DUI) and sentenced to serve 10 months in the county jail. The defendant contends that 53-24-303 requires she be given treatment for alcoholism rather than criminal punishment. However, that section provides for treatment of persons incapacitated by alcohol. It is not intended to protect those who have committed criminal acts, who are distinguishable from persons whose only fault is an affinity for alcohol. While treatment of alcoholism is desirable, it is not required instead of criminal punishment for a person convicted of DUI. St. v. Bruns, 213 M 372, 691 P2d 817, 41 St. Rep. 2178 (1984).

Death in Jail From Alcohol Withdrawal — No Negligence Per Se by County — Membership in Protected Class Required: Solberg was involved in a one-vehicle accident. He was taken to jail and charged with driving while intoxicated and driving without a valid driver's license. He pleaded guilty to both offenses on the following day, was unable to pay the fine imposed, and was ordered to serve time in jail. Two days later Solberg was found dead in his cell from alcohol-related withdrawal symptoms. Solberg's personal representative brought a wrongful death action against Yellowstone County. At the trial, the District Court refused to give an instruction finding defendant negligent as a matter of law. On appeal, the Supreme Court held that 53-24-303, as interpreted in Azure v. Billings, 182 M 234, 596 P2d 460 (1979), was not applicable, as Solberg was not a member of the class protected by the statute, the publicly intoxicated. Solberg was charged with two criminal offenses to which he pleaded guilty. Whether defendant breached the common-law duty owed by a jailer to a prisoner was a question for the jury. Solberg v. Yellowstone County, 203 M 79, 659 P2d 290, 40 St. Rep. 308 (1983).

Negligence Per Se: The violation of a statute enacted for the protection of the public is negligence per se. For this rule to apply, the plaintiff must be a member of the class in whose favor a duty was imposed by the statute, and the defendant must be a member of the class against whom a duty is imposed. Both requirements were fulfilled in this case. The police were required to take incapacitated persons to an emergency medical facility where such facility existed; failure to do so was a contributing proximate cause of plaintiff's injuries. Azure v. Billings, 182 M 234, 596 P2d 460, 36 St. Rep. 968 (1979).

Attorney General's Opinions

Treatment of Person Under Protective Custody — Examination by Physician: An approved public treatment facility must have a licensed physician examine a person who appears to be incapacitated by alcohol when that person has been taken into protective custody and is brought to the facility by the police. The approved public treatment facility is not thereafter required to treat the person who is determined to be incapacitated, pursuant to subsection (4) (now deleted) of this section, but may admit and treat the person for up to 48 hours. 42 A.G. Op. 28 (1987).

53-24-306. Records of chemically dependent persons, intoxicated persons, and family members.

Compiler's Comments

2003 Amendment: Chapter 396 in (2) near middle after "part 5" inserted "or other applicable law"; and made minor changes in style. Amendment effective April 18, 2003.

1987 Amendment: In (2), near middle of first sentence, inserted reference to Title 50, chapter 16, part 5.

1983 Amendment: In (2) changed "alcoholism" to "chemical dependency".

Case Notes

Inspection of Medical and Youth Court Records Denied — No Prejudice: The defendant, convicted of sexual intercourse without consent, contended that the District Court's refusal to furnish him the minor victim's hospital and Youth Court records for use on cross-examination prejudiced his right to "be confronted with the witnesses against him" under the sixth amendment to the U.S. Constitution (similar to Art. II, sec. 24, Mont. Const.). The Supreme Court held that 50-16-314 (repealed, 1987) and 53-24-306 exempt confidential health care information from compulsory legal process. In St. v. Camitsch, 192 M 124, 626 P2d 1250, 38 St. Rep. 563 (1981), the Supreme Court "confine[d] the permissible use of . . . juvenile records to demonstrating, by cross-examination, a witness' bias, prejudice, or motive". The defendant in this case failed to show how use of the records could have demonstrated this or how he could have built a defense based on their use. He had adequate opportunity to cross-examine the victim in an effort to damage her credibility. The Supreme Court ruled that the confrontation clause does not require that a criminal defendant be allowed to impeach the credibility of a victim by compromising the confidentiality of medical treatment or Youth Court records; therefore, the defendant's sixth amendment right was not infringed. St. v. Mendenhall, 219 M 328, 721 P2d 1255, 42 St. Rep. 2060 (1985).

Alcohol Abuse Program — Confidential Information — Use in Drunk Driving Prosecution or Arrest: Concerned that Magnuson was intoxicated, Kee attempted to keep him from driving away from the Kee ranch and, when the attempt failed, called the local Alcoholics Anonymous and talked of her fears to House, not knowing that Magnuson was in counseling with House under a federally funded program. Federal law provides that patients' records are confidential and that information received while performing any alcohol abuse prevention function cannot be used to initiate or substantiate any criminal prosecution. House called an undersheriff and told him Magnuson was intoxicated, was driving a Ford Bronco, that Tracy's Bar was his usual hangout, and that the undersheriff should watch out for Magnuson. While driving around, the undersheriff saw Magnuson driving erratically. When stopped, Magnuson smelled of alcohol, appeared drunk, and failed onsite sobriety tests. The information House gave the undersheriff was not tainted with the federal prohibition, and dismissal of a DUI charge on the grounds of taint would be reversed. House was not performing an alcohol abuse prevention function when he received the information from Kee, and thus the information he gave the undersheriff was not federally prohibited confidential records information. In addition, the information the undersheriff received from House was not used to initiate or substantiate any charge; the undersheriff's own observations were. St. v. Magnuson, 210 M 401, 682 P2d 1365, 41 St. Rep. 1121 (1984).

53-24-310. Definitions.

Compiler's Comments

Effective Date: Section 9, Ch. 648, L. 2023, provided: "[This act] is effective October 1, 2023."

Preamble: The preamble attached to Ch. 648, L. 2023, provided: "WHEREAS, Montanans facing addiction deserve the highest quality of care and support; and

WHEREAS, recovery residences can provide a healthy, sober living environment that helps individuals with substance use disorders achieve and maintain sobriety; and

WHEREAS, it is crucial that recovery residences implement best practices and sound operating procedures that enable and empower residents to gain access to community support, public services, and therapeutic treatments to advance their recovery and develop independence."

53-24-311. Recovery residence requirements.

Compiler's Comments

Effective Date: Section 9, Ch. 648, L. 2023, provided: "[This act] is effective October 1, 2023."

Preamble: The preamble attached to Ch. 648, L. 2023, provided: "WHEREAS, Montanans facing addiction deserve the highest quality of care and support; and

WHEREAS, recovery residences can provide a healthy, sober living environment that helps individuals with substance use disorders achieve and maintain sobriety; and

WHEREAS, it is crucial that recovery residences implement best practices and sound operating procedures that enable and empower residents to gain access to community support, public services, and therapeutic treatments to advance their recovery and develop independence."

53-24-312. Recovery residence prohibitions.

Compiler's Comments

Effective Date: Section 9, Ch. 648, L. 2023, provided: "[This act] is effective October 1, 2023."

Preamble: The preamble attached to Ch. 648, L. 2023, provided: "WHEREAS, Montanans facing addiction deserve the highest quality of care and support; and

WHEREAS, recovery residences can provide a healthy, sober living environment that helps individuals with substance use disorders achieve and maintain sobriety; and

WHEREAS, it is crucial that recovery residences implement best practices and sound operating procedures that enable and empower residents to gain access to community support, public services, and therapeutic treatments to advance their recovery and develop independence."

53-24-313. Powers and duties of department of public health and human services — annual county report.

Compiler's Comments

Effective Date: Section 9, Ch. 648, L. 2023, provided: "[This act] is effective October 1, 2023."

Preamble: The preamble attached to Ch. 648, L. 2023, provided: "WHEREAS, Montanans facing addiction deserve the highest quality of care and support; and

WHEREAS, recovery residences can provide a healthy, sober living environment that helps individuals with substance use disorders achieve and maintain sobriety; and

WHEREAS, it is crucial that recovery residences implement best practices and sound operating procedures that enable and empower residents to gain access to community support, public services, and therapeutic treatments to advance their recovery and develop independence."

53-24-314. Preferential placement at and referral to certified recovery residences — informed consent required for placement in certain certified recovery residences.

Compiler's Comments

Effective Date: Section 9, Ch. 648, L. 2023, provided: "[This act] is effective October 1, 2023."

Preamble: The preamble attached to Ch. 648, L. 2023, provided: "WHEREAS, Montanans facing addiction deserve the highest quality of care and support; and

WHEREAS, recovery residences can provide a healthy, sober living environment that helps individuals with substance use disorders achieve and maintain sobriety; and

WHEREAS, it is crucial that recovery residences implement best practices and sound operating procedures that enable and empower residents to gain access to community support, public services, and therapeutic treatments to advance their recovery and develop independence."

CHAPTER 25
DISABILITY INDIVIDUAL SAVINGS ACCOUNT PROGRAM

Part 1
Montana Achieving a Better Life Experience Act

Part Compiler's Comments

Transition: Section 17, Ch. 436, L. 2015, provided: "The department of public health and human services shall take all steps necessary to implement the program to allow accounts to be opened and contributions to be made no later than November 1, 2015."

Effective Date: Section 19, Ch. 436, L. 2015, provided: "[This act] is effective on passage and approval." Approved May 5, 2015.

Part Administrative Rules

Title 37, chapter 2, subchapter 5, ARM Self-sufficiency trusts — achieving a better life experience (ABLE) program.

53-25-102. Purpose.

Compiler's Comments

2019 Amendment — Code Commissioner Correction: Chapter 433 in (1) near beginning substituted "provide access" for "give Montana residents access"; and in (2)(a) near end substituted "this chapter" for "this act". Amendment effective May 10, 2019.

The code commissioner has inserted brackets around subsection (2)(b) to indicate that the subsection was rendered erroneous because Ch. 30, L. 2019, deleted references in Title 53, ch. 25, part 1, to implementing the ABLE program by contracting with another state.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

53-25-103. Definitions.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 108 inserted definition of contributor; and made minor changes in style. Amendment effective April 1, 2019.

Chapter 433 inserted definition of agent; deleted former definition that read: ""Account owner" means the designated beneficiary of the account"; in definitions of application, participating trust agreement, and trust interest substituted reference to designated beneficiary for reference to account owner; in definition of program substituted "this chapter" for "this part"; in definition of program manager substituted "acts on behalf" for "acts as an agent"; in definition of qualified withdrawal before "beneficiary of the account" inserted "designated" and in second sentence at end substituted "or the beneficiary's agent" for "by an agent of the beneficiary who has a power of attorney for the beneficiary, or by the beneficiary's legal guardian"; and made minor changes in style. Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

53-25-104. Program administration — rulemaking.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 30 in (3) deleted former first sentence that read: "The department may implement the program by contracting with another state as provided under 26 U.S.C. 529A(e)(7)"; in (4) substituted "may allow the residents of other states" for "may contract with other states to allow the residents of those states"; deleted former (5) that read: "(5) If the department contracts with another state to allow Montana residents access to the other state's program, the department shall ensure that the state's program complies with the requirements of 26 U.S.C. 529A"; and made minor changes in style. Amendment effective February 28, 2019.

Chapter 433 in (1) at beginning substituted "There is a Montana achieving a better life experience program. The department shall ensure" for "If the department creates the Montana achieving a better life experience program, it shall ensure"; in (3) substituted "The department shall" for "If the department creates the program, it shall"; in (4) substituted current language for "If the department creates the Montana achieving a better life experience program, the department may contract with other states to allow the residents of those states access to the program"; and deleted former (5) (see Ch. 30 note). Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

53-25-105. Program oversight committee — membership — powers and duties.

Compiler's Comments

2019 Amendment: Chapter 433 in (1) at beginning substituted "The department shall establish" for "If the department creates the Montana achieving a better life experience program, there must be"; in (2)(c) substituted the requirement that one member have experience working on behalf of disabled individuals and one member have a disability for the requirement that two members have experience working on behalf of disabled individuals; in (6)(b) at end substituted "this chapter" for "this part"; and made minor changes in style. Amendment effective May 10, 2019.

Retroactive Applicability: Section 15, Ch. 433, L. 2019, provided: "(1) Except as provided in subsection (2), [this act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

(2) [Section 4], amending 53-25-105, does not impact an existing public member's term on the program oversight committee."

53-25-109. Program requirements — application — establishment of account — contributions.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 30 deleted former (2) that read: "(2) The designated beneficiary of an account must be a resident of Montana or a resident of a state that has entered into a contract with Montana to provide its residents access to the program"; and made minor changes in style. Amendment effective February 28, 2019.

Chapter 433 in (1) in first and second sentences and in (6) in first and last sentences substituted reference to designated beneficiaries for reference to account owners; deleted former (1)(b)(i) and (1)(b)(ii) that read: "(i) the name, address, and social security number or employer identification number of the contributor;

(ii) the name, address, and social security number of the account owner if the account owner is not the contributor"; in (1)(b)(i) at end inserted "and the agent, if the agent is opening the account"; inserted (1)(b)(ii) requiring government-issued identification; deleted former (2) (see Ch. 30 note); in (5) substituted "A contributor to or designated beneficiary or agent" for "A contributor to, account owner of, or designated beneficiary"; and made minor changes in style. Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

53-25-110. Qualified and nonqualified withdrawals — rulemaking.

Compiler's Comments

2019 Amendment: Chapter 433 in (1) at beginning substituted "A designated beneficiary or agent" for "An account owner"; in (2) substituted "a designated beneficiary" for "an account owner"; in (3) at beginning substituted "A designated beneficiary or agent" for "An account owner"; and in (4) near middle substituted "and to the designated beneficiary or agent" for "and to the account owner or the designated beneficiary". Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

53-25-111. Changes in designated beneficiary.

Compiler's Comments

2019 Amendment: Chapter 433 in (1) and (2) substituted reference to a designated beneficiary or agent for reference to an account owner. Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

53-25-112. Selection of financial institution as program manager — contract — termination.

Compiler's Comments

2019 Amendment: Chapter 433 in (1) at beginning of third sentence substituted "Money may be deposited into an account" for "An account owner may deposit money in an account" and at end of third sentence substituted "on behalf of the trust" for "as an agent for the trust"; in (3)(d) at end substituted "designated beneficiaries or agents" for "account owners"; in (3)(g) near middle substituted "designated beneficiary" for "account owner"; in (5) near middle substituted "acting on behalf of the trust" for "as an agent of the trust"; in (7)(e) near end substituted "designated beneficiary" for "account owner"; in (10)(c) near end substituted "the designated beneficiary or agent" for "the account owner"; in (11)(b) substituted "designated beneficiaries and agents" for "account owners"; in (11)(c) in first sentence substituted "designated beneficiary" for "account owner" and in last sentence substituted "designated beneficiaries" for "account owners"; and made minor changes in style. Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

53-25-113. Limitations.

Compiler's Comments

2019 Amendment: Chapter 433 deleted former (1)(a) that read: "(a) give a designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner"; in (2) at end substituted "a designated beneficiary, agent, or contributor" for "an account owner, a contributor to an account, or a designated beneficiary"; and made minor changes in style. Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

53-25-117. Deductions for contributions.

Compiler's Comments

2021 Amendment: Chapter 503 in introductory clause near middle after "reduce the individual's" substituted "Montana taxable income" for "adjusted gross income" and after "in accordance with" substituted "15-30-2120" for "15-30-2110(12)". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2019 Amendment: Chapter 433 in introductory clause after "one or more accounts" inserted "established pursuant to this chapter" and at end after "but not more than $3,000" substituted "if the individual is" and (1) through (3) enumerating conditions for "The contribution must be made to an account owned by the contributor, the contributor's spouse, or the contributor's child or stepchild if the contributor's child or stepchild is a Montana resident"; and made minor changes in style. Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

Retroactive Applicability: Section 20, Ch. 436, L. 2015, provided: "[Sections 11, 12, and 16] [53-25-117, 53-25-118, and amendments to 15-30-2110, now repealed] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014."

53-25-118. Tax on certain withdrawals of deductible contributions.

Compiler's Comments

2021 Amendment: Chapter 503 in (1) at end after "amounts that" substituted "were deducted from income in calculating Montana individual income taxes" for "reduced adjusted gross income under 15-30-2110(12)"; and in (2) in four places and in (4) in two places substituted "Montana individual income taxes" for "adjusted gross income". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2019 Amendment: Chapter 433 in (3)(a) in four places and in (3)(b) substituted reference to designated beneficiary for reference to account owner; in (4) in first sentence after "residents of Montana" inserted "who are eligible for the deduction allowed under 53-25-117" and after "the contributor's adjusted gross income" inserted "in the amount of the contribution, up to the maximum allowed by law"; and made minor changes in style. Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

Retroactive Applicability: Section 20, Ch. 436, L. 2015, provided: "[Sections 11, 12, and 16] [53-25-117, 53-25-118, and amendments to 15-30-2110, now repealed] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2014."

53-25-119. Access to records.

Compiler's Comments

2019 Amendment: Chapter 433 near beginning substituted "agent" for "account owner". Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

2015 Amendment — Coordination: Section 66, Ch. 348, L. 2015, a coordination section, substituted "2-6-1003" for "2-6-102 and 2-6-104". Amendment effective October 1, 2015.

53-25-121. Achieving a better life experience savings trust.

Compiler's Comments

2019 Amendment: Chapter 433 in (1) at beginning deleted "If the department creates the Montana achieving a better life experience program" and in last sentence after "amounts received by the program" deleted "from account owners"; in (3) after "the instructions of the" substituted "designated beneficiary or agent" for "account owner" and after "or a financial institution acting" substituted "on behalf" for "as an agent"; in (4) at beginning substituted "A designated beneficiary or agent" for "An account owner"; and made minor changes in style. Amendment effective May 10, 2019.

Retroactive Applicability: Section 15(1), Ch. 433, L. 2019, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2018.

53-25-122. Exemption from claims of creditors.

Compiler's Comments

2021 Amendment: Chapter 31 in (1) in two places before references to contributor deleted references to account owner; in (2) near end before "contributor" deleted "owner"; and made minor changes in style. Amendment effective October 1, 2021.

Effective Date: Section 6, Ch. 108, L. 2019, provided: "[This act] is effective on passage and approval." Approved April 1, 2019.

CHAPTER 30
CORRECTIONS

Part 1
Adult Offenders

Part Case Notes

Probationer Not Entitled to Good Time Credit for Time Served on Original Sentence: Williams' suspended sentence for felony assault was revoked after Williams violated the terms of the suspension. Williams requested that he be credited for good time that he served on the suspended sentence. The District Court concluded that Williams was a probationer, not a parolee, and declined to grant good time credit. Williams appealed, but the Supreme Court affirmed. Williams' original sentence did not provide that Williams be treated as a parolee, so as a probationer, Williams was not entitled to credit for good time under McDermott v. Dept. of Corrections, 2001 MT 134, 305 M 462, 29 P3d 992 (2001). St. v. Williams, 2003 MT 136, 316 M 140, 69 P3d 222 (2003).

Prison Behavior Modification Plans Violative of Excessive Sanction Protection and Equal Protection — State Directed to Revise Incarceration Procedures: Walker, an inmate with diagnosed mental illness, alleged that conditions at the state prison violated constitutional sanctions against excessive punishment and equal protection guarantees because of his mental condition. Although Walker had been released from the state prison when his petition for postconviction relief was considered by the Supreme Court, the case was not moot, as the state contended, because the prison programs remained in place. The court went on to consider whether behavior modification programs used at the prison unconstitutionally exacerbated inmates' mental health conditions and concluded that they do. The plain meaning of the dignity clause in Art. II, sec. 4, Mont. Const., commands that the intrinsic worth and basic humanity of persons may not be violated, and if the particular conditions of confinement cause serious mental illness to be greatly exacerbated or deprive inmates of their sanity, those conditions then cross into the realm of psychological torture. Thus, prison behavior modification programs and living conditions in maximum security constitute an affront to the inviolable right to human dignity and constitute cruel and unusual punishment when they exacerbate an inmate's mental health condition. The prison was directed to conform the operations of its administrative segregation units to the requirements of this opinion. Walker v. St., 2003 MT 134, 316 M 103, 68 P3d 872 (2003). See also Campbell v. Mahoney, 2001 MT 146, 306 M 45, 29 P3d 1034 (2001).

Waiver of Right to Earn Good Time Credits in Boot Camp Program — Incarceration for Full Term Not Considered Cruel and Unusual Punishment: After being sentenced to 5 years in prison for negligent homicide, Campbell applied for admission to the boot camp program. As part of the application process, Campbell was required to read and sign a detailed, clearly written explanation of program goals, objectives, rules, and criteria, which included an acknowledgment that Campbell would be ineligible for good time credits while in the program. Pursuant to its administrative authority, the Department of Corrections had determined that good time credits would conflict with the program's emphasis on positive achievement, earned rewards, and the possibility of sentence reductions for successful program completion. Campbell was accepted in the program and spent nearly 3 months in boot camp, but did not complete the program because of a series of infractions. As a consequence, Campbell did not earn either a sentence reduction or the good time credits that might have been earned in prison. Campbell then filed a writ of habeas corpus, contending that he had a right to good time credits and that the Department's refusal to award the credits deprived him of liberty without due process and resulted in his being held beyond the lawful term of his sentence, which constituted cruel and unusual punishment. The Supreme Court noted that under Orozco v. Day, 281 M 341, 934 P2d 1009 (1997), Campbell had a protected liberty interest in the opportunity to earn good times credits at boot camp. However, Campbell voluntarily chose to relinquish his interest in good time credits in order to gain the benefits of boot camp. Thus, the state did not deprive Campbell of anything, and his due process claim failed. The Supreme Court went on to examine the distinction between nonwaivable public rights and waivable private rights, as contemplated in 1-3-204, holding that there were no grounds to conclude that Campbell could not voluntarily waive his interest in good time credits. Allowing an inmate to waive good time credits does not defeat any protectionist purpose of the good time allowance statute, particularly when the inmate chooses to relinquish the benefits of one legislatively created program for another. Finally, Campbell's cruel and unusual punishment argument was predicated on the belief that he was entitled to good time credits, but by choosing to forego the opportunity to earn good time at boot camp, Campbell actually received all the good time credit to which he was entitled and could not complain that incarceration for the full term of his lawfully imposed sentence was cruel and unusual. Campbell v. Mahoney, 2001 MT 146, 306 M 45, 29 P3d 1034 (2001). See also Davidson v. Cannon, 474 US 344 (1986), and Zinermon v. Burch, 494 US 113 (1990).

No Liberty Interest in Good Time Credits for Probationers — Credit for Time Served on Probation Properly Denied: McDermott pleaded guilty in early 1995 to issuing a bad check, felony common scheme, and received a 6-year deferred sentence and was placed on probation. After nearly 4 years on probation, McDermott had failed to comply with the conditions of probation, so the District Court revoked the deferred sentence and sentenced McDermott to 5 years at the state prison, specifying that no credit was allowed for time served while on probation or for good time. McDermott contended that he was improperly denied good time credit while on probation and that 53-30-105 (repealed 1995) violated equal protection guarantees because it granted good time credit for parolees but not probationers. The Supreme Court disagreed. Although it was held in Orozco v. Day, 281 M 341, 934 P2d 1009 (1997), that 53-30-105 created a liberty interest in good time credit for inmates, the court concluded that a similar liberty interest is not created for probationers. Because probationers are not statutorily entitled to good time credits and because the terms of probation are part of the sentence, the state's decision not to award good time credits during probation did not create an atypical and significant hardship or inevitably affect the duration of McDermott's sentence. McDermott had no protected liberty interest and was denied no process to which he was constitutionally entitled. Further, McDermott's argument that 53-30-105 violated equal protection by treating probationers differently than parolees also failed. Applying the rational basis test, the court concluded that the state has a legitimate interest in the disparate treatment of parolees and probationers regarding eligibility for sentence-reducing credits, including jurisdictional differences as well as penological interests. McDermott was properly credited with good time for the time that he was incarcerated and was properly denied credit for time spent on probation against his subsequent sentence. Thus, McDermott showed no constitutional basis for the claim that he was being illegally restrained, so his petitions for writs of habeas corpus and mandate were denied. McDermott v. Dept. of Corrections, 2001 MT 134, 305 M 462, 29 P3d 992 (2001). See also St. v. Bruns, 213 M 372, 691 P2d 817 (1984), and St. v. Nelson, 275 M 86, 910 P2d 247 (1996).

Defendant Incarcerated Prior to Sentencing Entitled to Ten Days a Month of Good Time Credit: Sebastian argued that the policy of awarding 10 days of good time allowance a month for presentence incarceration served under 53-30-105 (now repealed) constituted a wealth-based classification, in violation of MacPheat v. Mahoney, 2000 MT 62, 299 M 46, 997 P2d 753 (2000). The Supreme Court noted that it had previously addressed the good time issue in Corcoran v. Mahoney, No. 00-346 (July 2000), an unpublished opinion holding that because security levels in county jails are consistent with close custody security classifications at the state prison, defendants who are incarcerated prior to sentencing are entitled to 10 days a month of good time credit under the former good time statute. The court found the policy determination that pretrial detainees are entitled to no more than 10 days of good time credit to be reasonable and declined to apply the classification system in MacPheat to pretrial detainees. Sebastian v. Mahoney, 2001 MT 88, 305 M 158, 25 P3d 163 (2001).

Petition for Writ of Habeas Corpus Not Necessarily Mooted by Release of Petitioner From Physical Custody: Sebastian argued that he was entitled to a writ of habeas corpus because he was being unlawfully imprisoned under the Department of Corrections good time policy. The state contended that the legality of Sebastian's imprisonment was moot because he had been released from incarceration. Sebastian argued that even though he was released from prison, he was still suffering under an unlawful restraint on his liberty because the discharge date of the 10-year suspended sentence that he was serving depended on good time credit to which he was entitled. The Supreme Court noted that release from custody may moot some habeas corpus petitions because the relief requested, i.e., release from unlawful imprisonment, can no longer be granted. However, release from physical custody does not necessarily moot the petition when the court can still grant effective relief. In this case, the completion date of Sebastian's suspended sentence depended on the discharge date of his term of confinement and was thus based on the jail good time credit to which he was entitled. If the good time policy was in fact unlawful and its application to Sebastian's prison term led to an erroneous discharge date, the completion date of the suspended sentence would also be incorrect. Thus, despite the fact that Sebastian was no longer imprisoned, it was still within the power of the court to grant relief to prevent the possible unlawful restraint on Sebastian's liberty, so the petition was not moot, and the court went on to address the merits of the petition. Sebastian v. Mahoney, 2001 MT 88, 305 M 158, 25 P3d 163 (2001).

Parole Period Not to Be Reduced by Good Time Credit — Good Time Allowance Properly Limited: The sentencing court restricted Wilson's right to earn any good time against a 30-year term during which Wilson was ordered ineligible for parole. Wilson maintained that 46-18-202 contained no language that would allow the District Court to restrict a defendant's right to earn a good time allowance. Good time allowances were authorized by 53-30-105 (now repealed) and operated as a credit on a prisoner's sentence. Upon review of the sentencing order, the Supreme Court concluded that Wilson was not limited in earning good time against the sentence, but rather that the 30-year period of ineligibility for parole was not to be reduced by any good time credits that Wilson received toward the total sentence. The restriction was within the sentencing court's authority, and the sentence was affirmed. St. v. Wilson, 1999 MT 52, 293 M 429, 976 P2d 962, 56 St. Rep. 220 (1999).

Prison Disciplinary Proceedings as Remedial — No Impediment to Criminal Proceedings Involving Same Conduct: The prohibition against double jeopardy does not bar criminal prosecution for conduct that has been the subject of prior remedial administrative prison disciplinary proceedings, such as the forfeiture of good time for escape. Even if administrative sanctions are considered punishment, they are integral parts of and distinct from an inmate's single punishment of incarceration for the prior conviction. The withholding of the contingent reward of good time is not considered punishment for double jeopardy purposes because the withholding is a consequence of the underlying prior conviction that resulted in the incarceration and not a result of the rule violation or escape attempt that led to the disciplinary action itself. St. v. Nelson, 275 M 86, 910 P2d 247, 53 St. Rep. 50 (1996). See also U.S. v. Halper, 490 US 435, 104 L Ed 2d 487, 109 S Ct 1892 (1989), and U.S. v. Soto-Olivas, 44 F3d 788 (9th Cir. 1995).

Department Discretion in Establishing Rules on "Good Time" Credits — University Extension Coursework Properly Credited — Liberty Interest and Equal Protection Considered: The Department of Corrections and Human Services (now Department of Corrections) has virtually unfettered discretion under 53-30-105 (now repealed) in establishing rules that govern "good time" credits for prisoners. Nothing in the prison educational policies conflicts with 53-30-105 (now repealed); therefore, a policy granting credit for a prisoner's participation in an extension program from approved colleges or universities but not for correspondence courses does not create a liberty interest in "good time" credits. Further, in line with the Department's legitimate interest in promoting inmate education while preserving efficient administration of the prison, the Department's careful assessment that denial of "good time" credit for correspondence courses, when applied equally to all inmates, is not violative of equal protection or an unconstitutional restraint of freedom. Remington v. Dept. of Corrections and Human Services, 255 M 480, 844 P2d 50, 49 St. Rep. 1084 (1992), overruled, as to the use of the test of whether the state had created an interest of "real substance" and replaced that test with the test of whether a state had gone beyond issuing procedural guidelines and used "language of an unmistakably mandatory character", in Orozco v. Day, 281 M 341, 934 P2d 1009, 54 St. Rep. 200 (1997).

State Immune From Suit for Illegal Imprisonment When Imprisonment Later Declared Contrary to Statute: In 1979, petitioner was convicted of issuing a bad check. Her sentence was deferred, and she was placed on probation for 3 years. In 1982, petitioner's deferral was revoked because she was convicted of another crime. As a result of the revocation, she was sentenced to serve 5 years in prison. Later in 1982, the Supreme Court, relying on its interpretation of 53-30-105 (now repealed) (as it read prior to its amendment in 1981) in Crist v. Segna, 191 M 210, 622 P2d 1028, 38 St. Rep. 150 (1981), ordered petitioner's release because at the time of her imprisonment she had accumulated sufficient good time credit on probation that her deferred sentence would have been fully served. Petitioner then sued for damages for illegal imprisonment. The Supreme Court held that the State was immune from suit under 2-9-112 because the sentence imposed on petitioner for her violation of probation was a judicial act. Knutson v. St., 211 M 126, 683 P2d 488, 41 St. Rep. 1258 (1984).

Prison's Custody Classification as Alleged Violation of Plea Bargaining Agreement — Withdrawal of Plea Denied: Under a plea bargain agreement, defendant was sentenced to 10 years as a nondangerous offender without parole. Upon entering prison, he was held in close custody for 24 months under prison rules calling for dangerous offenders and those sentenced without parole to serve 24 months in close custody prior to being considered for transfer to lower, more amenable custody levels. The prosecution, defense counsel, defendant, and judge were all unaware of those rules. Defendant was not entitled to withdraw his plea on the ground he was kept in close custody for 24 months in violation of his plea agreement. There was no violation of the agreement, nor was he entitled to the additional good time credits he would have received had he not been held so long in close custody. Prison officials take many factors into account in making custody reclassifications, and there was no guarantee he would have been held in close custody only for the time he claimed he should have been upon entry to the prison. St. v. Mesler, 210 M 92, 682 P2d 714, 41 St. Rep. 939 (1984).

Good Time Earned While Serving One Sentence Not Applicable to Later Sentence: In 1970, petitioner was convicted of burglary and sentenced to 10 years in the Montana State Prison. He was released on parole in 1971. In 1976, he was returned to the Montana State Prison after being convicted on another burglary charge. Subsequently his parole was revoked. During the time petitioner was on parole, good time could be earned under 53-30-105 (now repealed) by a parolee. Under a 1981 amendment to 53-30-105 (now repealed) (prior to amendment again in 1991), this was no longer possible. In 1982, petitioner filed a petition for a Writ of Habeas Corpus, claiming that the good time he earned while on parole should be applied to reduce the discharge date of his second sentence, as the second sentence had been merged (under 46-23-217, prior to amendment) with the first sentence. The Supreme Court ruled that the sentences ran concurrently but were not merged and that therefore any good time petitioner earned while on parole on his first sentence may be applied only to the first sentence. Bagley v. Risley, 207 M 121, 672 P2d 1126, 40 St. Rep. 1937 (1983).

Discretion Allowable in Granting Good Time to Parolees: Where the petitioners sought Writs of Habeas Corpus to release them from prison on the basis of good time earned while on parole, the trial court correctly held that the prison officials could not deprive the petitioners of statutory good time earned. The law allows prison officials discretion to determine, in accordance with rules adopted by those officials, the eligibility of a prisoner for good time but does not grant unfettered discretion to deny good time absent noncompliance with the rules. As there was an attempt by the warden to cause a forfeiture of good time for noncompliance with the rules, the respondents were entitled to release. Crist v. Segna, 191 M 210, 622 P2d 1028, 38 St. Rep. 150 (1981); followed in Bagley v. Risley, 207 M 121, 672 P2d 1126, 40 St. Rep. 1937 (1983), where petitioner was on parole prior to the 1981 amendments.

Good Time Held Applicable to Parolees: Where the petitioners sought Writs of Habeas Corpus to release them from prison on the basis of good time earned while on parole, the trial court correctly held that parolees could be credited with good time under 53-30-105 (now repealed) while on parole. (Annotator's note: 1981 amendments prohibited good time while on probation or parole, but 1991 amendment restored good time while on parole.) Following rules of statutory construction, the court concluded that it was the intention of the Legislature to grant parolees good time for time served on parole and that the language of 53-30-105 (now repealed) did not act as a saving clause to apply that section only to inmates convicted prior to April 1, 1955. Crist v. Segna, 191 M 210, 622 P2d 1028, 38 St. Rep. 150 (1981).

Rulemaking Authority as to Good Time — Limitation: The Supreme Court denied petitioner's request, under a Writ of Habeas Corpus petition, to be credited for good time for participation in an education program although confined in maximum security. The computations of the state officials were found accurate. It was within their jurisdiction to impose rules under 53-30-105 (now repealed), which rules properly avoid good time awards in excess of the statutory provisions. Seadin v. Crist, 187 M 112, 608 P2d 1094, 37 St. Rep. 953 (1980).

Prison Disciplinary Hearings: Since under 53-30-105 (now repealed) the imposition of a penalty may result in a loss of good time with its effect upon ultimate release, the accused is entitled to some measure, though not the full panoply, of due process safeguards. Witnesses whose testimony would be repetitive or irrelevant need not be called. However, whenever crucial evidence is presented in the form of a hearsay report by an officer and there are no overriding considerations, fairness requires the determination of how the hearsay was obtained, especially the suggestiveness of photographic identification employed. Therefore, in this case it was an abuse of discretion not to call the officer. The court noted that it is not necessary to provide a written reason for not calling a witness. Brown v. Crist, 492 F. Supp. 965, 36 St. Rep. 1423 (D.C. Mont. 1979).

Forfeiture of Good Time Allowance: Contention by petitioner for Writ of Habeas Corpus that Board of Pardons (now Board of Pardons and Parole) did not have authority to revoke earned good time after violation of parole by petitioner under 53-30-105 (now repealed) was without merit since petitioner was sentenced prior to 1955 and section 80-741, R.C.M. 1947 (now repealed), in effect at that time, allowed such revocation of earned good time. Petition of McIlhargey, 154 M 510, 463 P2d 476 (1970).

Discretion of Parole Board: Where petitioner violated his parole, it was completely within discretion of parole board (now Board of Pardons and Parole) to withdraw his "good time" as provided in 53-30-105 (now repealed). Petition of Spurlock, 153 M 475, 458 P2d 80 (1969).

Ex Post Facto Application: Prisoner was not additionally confined by virtue of an ex post facto law under section 80-740, R.C.M. 1947 (now repealed), dealing with privilege of earning good time, not to exceed 10 days a month, conditioned upon being employed in the state prison and maintaining good conduct in the prison, as amended in 1955, where such amendment in no way affected the provisions of that section insofar as the prisoner was concerned from the way it read in 1951 at the time that he entered the state prison. In re Frost's Petition, 146 M 18, 403 P2d 612 (1965).

Reduction of Sentence: Prisoner was given the benefit of provisions of section 80-739, R.C.M. 1947 (repealed in 1955), where check of computation of statutory allowances and good time earned from state prison records disclosed that prisoner was entitled to 23 years and 9 months statutory allowances towards reduction of his sentence and that this allowance was credited to him on his entry to the prison. His sentence as fixed by the District Court would expire on October 11, 2001; applying the provisions of section 80-739, R.C.M. 1947 (repealed in 1955), the sentence was computed to expire January 10, 1978, as carried on prison records. In re Frost's Petition, 146 M 18, 403 P2d 612 (1965).

Forfeiture of Good Time:

An inmate's lost good time, once forfeited, cannot be restored. In re Kane's Petition, 145 M 516, 402 P2d 403 (1965).

The Board of Prison Commissioners (now Board of Pardons and Parole) is vested with discretionary power as to the allowance or forfeiture of good time and may make such rules as are reasonable in connection therewith. In re Owens' Petition, 139 M 637, 365 P2d 935 (1961); In re Pelke's Petition, 139 M 354, 365 P2d 932 (1961).

A convict, by escaping, forfeits all his good time. State ex rel. Herman v. Powell, 139 M 583, 367 P2d 553 (1961).

Second Conviction: Relator was convicted of crime of burglary in the first degree. After serving 1 year and 6 days, he was released from prison pending his appeal. The conviction was reversed upon such appeal, and a new trial ordered. Upon the new trial he was again convicted and sentenced for the same period as the first, 10 years. During his second incarceration he was not entitled to credit against the second sentence for time served under the first sentence. State ex rel. Nelson v. Ellsworth, 141 M 78, 375 P2d 316 (1962).

Transition: Under the "new parole laws" (Title 46, ch. 23, parts 1 and 2), a prisoner retains the right to earn good time under the old good time statutes and he is subject to forfeiture of this good time. In re Pelke's Petition, 139 M 628, 365 P2d 936 (1961); Hill v. St. 139 M 407, 365 P2d 44, 95 ALR 2d 1261 (1961).

Part Law Review Articles

The Expectancy of Parole in Montana: A Right Entitled to Some Due Process, Trueb, 48 Mont. L. Rev. 379 (1987).

53-30-101. State prison — definition.

Compiler's Comments

2021 Amendment: Chapter 339 deleted former (1) and (2) that read: "(1) The correctional facility at Deer Lodge is the Montana state prison, and its primary function is to provide for the custody, treatment, training, and rehabilitation of adult male criminal offenders.

(2) The correctional facility located in Billings is the Montana women's prison, and its primary function is to provide for the custody, treatment, training, and rehabilitation of adult female criminal offenders"; in introductory clause after "unless the context indicates otherwise," substituted "'state prison' means" for "the following definitions apply"; deleted former (3)(a) through (3)(c) that read "(a) "Montana state prison" means the correctional facility located at Deer Lodge.

(b) "Montana women's prison" or "women's prison" means the correctional facility located at Billings.

(c) "State prison" means:

(i) the Montana state prison;

(ii) the Montana women's prison;"; inserted (1) concerning state penal or correctional institutions; in (2) before "correctional facility" inserted "penal or"; in (3) after "detention center" inserted "a state penal facility, or a correctional facility" substituted "Montana inmates" for "inmates from Montana"; in (4) in two places after "private correctional facility" inserted "or penal facility"; and made minor changes in style. Amendment effective October 1, 2021.

1999 Amendment: Chapter 491 in (1) deleted former second sentence that read: "The custody, treatment, training, and rehabilitation of adult male offenders may also occur at a correctional facility in another jurisdiction pursuant to an agreement as provided in 53-30-106"; substituted definitions of Montana state prison and Montana women's prison for former definitions that read: "(b) "Montana state prison" means:

(i) the correctional facility located at Deer Lodge;

(ii) a Montana regional correctional facility; or

(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106.

(c) "Montana women's prison" or "women's prison" means:

(i) the correctional facility located at Billings;

(ii) a Montana regional correctional facility; or

(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106"; substituted state prison for Montana prison as defined term, in (iii) inserted "a state correctional facility portion of", and inserted (v) regarding private correctional facility; and made minor changes in style. Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendment: Chapter 189 in (1), at beginning of first sentence, substituted "correctional facility" for "institution" and before "state" inserted "Montana" and inserted second sentence allowing use of a correctional facility in another jurisdiction; in (2), at beginning, substituted "correctional facility" for "institution", near middle substituted "Montana women's prison" for "women's correctional system", and after "provide" deleted "facilities"; inserted (3) setting out applicable definitions; and made minor changes in style.

1995 Amendments: Chapter 18 near beginning of (2), after "located in", substituted "Billings" for "accordance with sections 1 through 7, Chapter 651, Laws of 1991" and deleted last two sentences that read: "The department of corrections and human services may continue to operate the women's correctional center in a temporary location during the 1994-95 biennium. If the authorized institution does not require the level of services provided for in Chapter 651, Laws of 1991, an alternate site in the Billings area may be identified by department officials, city of Billings officials, and Yellowstone County officials as the site of the women's correctional facility."

Chapter 546 in (2), at beginning, substituted "The institution located in Billings is the women's correctional system" for "The institution located in accordance with sections 1 through 7, Chapter 651, Laws of 1991, is the women's correctional center" and deleted last two sentences that read: "The department of corrections and human services may continue to operate the women's correctional center in a temporary location during the 1994-95 biennium. If the authorized institution does not require the level of services provided for in Chapter 651, Laws of 1991, an alternate site in the Billings area may be identified by department officials, city of Billings officials, and Yellowstone County officials as the site of the women's correctional facility"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments: Chapter 579 in (2) inserted second sentence allowing the Department to continue operating the Women's Correctional Center in a temporary location during the 1994-95 biennium. Amendment effective April 28, 1993.

Chapter 624 in (2) inserted third sentence authorizing alternative site for women's correctional facility. Amendment effective May 10, 1993.

Severability: Section 27, Ch. 624, L. 1993, was a severability clause.

1991 Amendment: Inserted (2) concerning women's correctional center and establishing its function. Amendment effective April 26, 1991.

Preamble: The preamble attached to Ch. 651, L. 1991, provided: "WHEREAS, Article II, section 28, of the Montana Constitution states that laws for the punishment of crime should be founded on the principles of prevention and reformation; and

WHEREAS, the current Women's Correction Center [now Montana Women's Prison] was created in 1982 as a temporary facility; and

WHEREAS, the current Women's Correction Center [now Montana Women's Prison] is a totally inadequate correctional facility consisting of a vacant nurses' dormitory at Warm Springs State Hospital, which provides inadequate security; inadequate medical, vocational, and other educational and rehabilitative services; and inadequate space for the state's rising population of female inmates; and

WHEREAS, population projections by the Department of Institutions [now Department of Corrections] estimate 124 female inmates will be incarcerated in a state facility, including prerelease and community-based facilities, by the year 1995; and

WHEREAS, Chapter 518, Laws of 1989, required the Department of Institutions [now Department of Corrections], in cooperation with the Governor's Criminal Justice and Corrections Advisory Council, to develop a comprehensive plan for housing female inmates and required submission of the plan to the 52nd Legislature; and

WHEREAS, the Department of Institutions [now Department of Corrections] has begun a request for proposal process by which it is soliciting proposals from various Montana communities to construct a women's correctional center; and

WHEREAS, the Legislature believes that decisions concerning the site selection process and the financing and construction of the center must be made with the interests of crime prevention and reformation of female inmates as the state's highest priority and are matters of statewide concern and appropriate for legislative action."

Selection Process for Women's Correctional Facility: Sections 1 through 7, Ch. 651, L. 1991, provided: "Section 1. Legislative findings. The legislature finds that the incarceration and management of female felony offenders is a matter of state responsibility and that the location and design of a women's correctional center providing for these services determines [determine] the proper management of those offenders, so that it is necessary to provide proper guidelines for the location and construction of the women's correctional center.

Section 2. Definitions. As used in [sections 1 through 7], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of institutions [now department of corrections] provided for in 2-15-2301.

(2) "Center" or "women's correctional center" means a women's correctional center with a capacity of approximately 120 beds providing minimum, medium, and maximum security for female inmates.

(3) "Local governmental unit" means a county, city, town, or consolidated government.

(4) "Proposal" means a proposal for the location of the facility, submitted by local governmental units to the department in response to the request for proposals required by [section 3].

Section 3. Request for proposals. (1) The department shall request that proposals be submitted to the department from local governmental units for the siting and community support of a new women's correctional center. The request must:

(a) be made in the form of a request for proposals;

(b) specify January 30, 1991, as the date on which all proposals are to be received by the department; and

(c) contain the information required under subsection (2) and other information determined necessary by the department.

(2) The request for proposal[s] must require that information in the following categories be submitted by a local governmental unit as part of any proposal:

(a) construction site information, including:

(i) the acreage of the site;

(ii) the name and address of the owner or owners and the form of the legal interest in which the site is held;

(iii) how the site may be acquired by the state;

(iv) the configuration and topography of the site;

(v) access to paved public streets and reliable utilities, such as water supply, sewage system, natural gas, electricity, telephone, and refuse disposal;

(vi) compatibility with current local zoning ordinances, as well as any ordinance modifications necessary and the procedure for making those modifications;

(vii) flood hazard information;

(viii) subsurface soils analyses and water table location;

(ix) climate; and

(x) location plan drawings, areawide master plan [now growth policy] drawings, and site plan drawings;

(b) service availability information, including:

(i) proximity, stated in the shortest roadway miles on all-weather roads, to 24-hour emergency medical services;

(ii) proximity, stated in the shortest roadway miles on all-weather roads, to 24-hour fire protection services;

(iii) proximity, stated in the shortest roadway miles on all-weather roads, to a certified local law enforcement agency and the level of the agency's capability to respond to emergencies;

(iv) proximity to, stated in the shortest roadway miles on all-weather roads, and availability of interstate transportation services;

(v) proximity to counties committing inmates;

(vi) the adequacy of the court system and legal services;

(vii) availability of motel or hotel accommodations;

(viii) an adequate number of vendors of food, motor fuel, and other supplies;

(ix) an adequate skilled workforce for employment in the center;

(x) availability of affordable housing for the center staff;

(xi) established organizations whose primary missions are specific to the needs of women;

(xii) established organizations that emphasize and are concerned with Native American issues; and

(xiii) availability of employment opportunities for inmates outside the center;

(c) program information, including:

(i) proximity to medical services at a referral hospital with 24-hour emergency room service, including the presence of an attending physician;

(ii) proximity to a hospital offering medical specialties needed by women inmates;

(iii) proximity to dental services;

(iv) proximity to chemical dependency treatment;

(v) proximity to mental health services, including psychiatric care, clinical services, inpatient and outpatient treatment, and programs appropriate to women's needs;

(vi) proximity to vocational education or its programmatic equivalent and a public or private postsecondary educational institution; and

(vii) proximity to licensed foster care and all levels of child care, including registered day care, licensed group care, and out-of-home care;

(d) additional criteria, including:

(i) the strength of community volunteer resources;

(ii) the ability of the community's postsecondary educational programs to provide appropriate interns for the center;

(iii) the receptiveness of the public school district or districts to enrolling the children of center inmates; and

(iv) the ethnic and cultural diversity of the community.

(3) The department may accept in full or partial compliance with the requirements of subsection (2) information provided to the department pursuant to any similar request for proposals process if that information otherwise satisfies the requirements of subsection (2) and was received by the department no later than January 30, 1991. If the criteria included in the department's original request for proposals for which responses were submitted by January 30, 1991, do not include all the criteria required in subsection (2), the department shall request the additional information from the respondents.

Section 4. Site selection committee. (1) Proposals submitted in response to the request for proposals required by [section 3] must be evaluated by a site selection committee. The committee consists of the following persons, whose selection must provide for gender balance on the committee:

(a) one representative of the architecture and engineering division of the department of administration, appointed by the director of the department of administration, to serve in an advisory capacity only;

(b) three representatives of the public, appointed by the governor, none of whom may be a resident of a local governmental unit submitting a proposal;

(c) the corrections division administrator and the warden of the women's correctional center [now Montana women's prison], representing the department of institutions [now department of corrections];

(d) two members of the house of representatives, neither of whom may be a resident of a local governmental unit submitting a proposal, appointed by the speaker of the house;

(e) two members of the senate, neither of whom may be a resident of a local governmental unit submitting a proposal, appointed by the president of the senate;

(f) one representative of established and recognized organizations whose primary mission is specific to women's needs, appointed by the governor; and

(g) one representative of the criminal justice and corrections advisory council, appointed by the governor.

(2) Except as otherwise provided by [sections 1 through 7], the site selection committee shall [must] be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122 regarding advisory councils.

(3) The committee shall meet as often as necessary to perform the duties assigned by [sections 1 through 7]. The committee shall consider, evaluate, and select the location for the women's correctional center according to the procedure and criteria in [section 5].

(4) The committee is attached for administrative purposes only to the department, which shall provide such staff, budgetary, administrative, and clerical services to the committee as the committee or its chairperson requests.

(5) The committee terminates on the date of the announcement of the winning proposal by the director of the department in accordance with [section 7(3)].

Section 5. Site selection procedure and criteria. (1) The site selection committee may not consider a proposal unless the proposal:

(a) is submitted within the time required by the request for proposal[s]; and

(b) contains the construction site information, service availability information, program information, and additional criteria required by [section 3(2)].

(2) The committee shall determine a maximum numeric value for each of the criteria required in [section 3]. Criteria that the committee determines to be of more relative importance must be awarded a greater maximum value. The committee shall rate each proposal considered by it by using a weighted scale process that assigns a numeric score for each criteria and then totals the score for each proposal. The score for each criteria and proposal must be determined by the extent to which each criteria is satisfied, based upon a documented demonstration of:

(a) the proximity, availability, and number of resources satisfying the criteria;

(b) the strength and quality of the resources satisfying the criteria; and

(c) the strength of the community's willingness and ability to provide resources satisfying the criteria.

Section 6. Site visitation and hearings required. The site selection committee shall determine the four proposals with the highest numeric scores. The committee shall eliminate the other proposals from further consideration. As soon as possible after elimination of the other sites, the committee shall conduct on-site reviews of the four remaining candidate sites by conducting both an on-site tour of each of the four candidate sites and holding a public hearing on the subject of the center in the community where each proposed site is located. The purpose of the tour and hearing is to receive information concerning the extent to which each candidate site satisfies the criteria in [section 3] and [section 7(2)]. The hearings must be conducted under procedures determined by the committee, and the committee shall give notice of each hearing by advertisement in a newspaper of general circulation in the county of each candidate site.

Section 7. Site selection. (1) After completing the onsite reviews required by [section 6], the committee shall again score each of the four candidate sites by applying the criteria and scoring method provided in [section 5].

(2) If two or more proposals receive the same total score, the committee shall determine the leading proposal by assigning maximum point values for and scoring those proposals on the following criteria for the community in which the center would be located:

(a) strength of community volunteer resources;

(b) ability of the community's postsecondary educational programs to provide appropriate interns for the facility [center];

(c) the receptiveness of the public school district or districts to enrolling the children of center inmates in their schools; and

(d) the ethnic and cultural diversity of the community.

(3) The center must be located at the site proposed by the local governmental unit whose proposal receives the highest numeric score using the procedure provided in this section. Upon selection of the winning proposal by the committee, the committee will inform the director of the department of its selection. The director shall review the selection process to ensure that the committee has not made an error in process or in fact. If the director determines that an error has been made, he shall remand the recommendation to the committee for further evaluation. The director shall make a public announcement of the committee's selection upon determining that no errors have been made. The committee shall submit its selection to the director of the department no later than 150 days after [the effective date of this act] [effective April 26, 1991]."

Effective Date: Section 12, Ch. 651, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 26, 1991.

Termination: Section 13, Ch. 651, L. 1991, provided: "[Sections 1 through 7] terminate 150 days after passage and approval." Approved April 26, 1991.

Case Notes

No Constitutional Liberty Interest in Being Housed Exclusively at State Prison: Following a conviction for deliberate homicide and use of a firearm, Wright was sentenced in 1996 to the state prison in Deer Lodge for 75 years, where he was originally placed. Over the years, Wright was placed at various other institutions, including out-of-state and in-state regional detention and private correctional centers. Wright filed a writ of prohibition to prevent the state from housing him anywhere but the state prison in Deer Lodge, pursuant to the terms of the written judgment. Under the law in effect at the time of Wright's sentencing, the Deer Lodge prison was the only adult male correctional facility in Montana, but the statutory definition has since been expanded to include other facilities. Wright contended that application of the amended definition to his sentence was unconstitutionally ex post facto, in violation of his liberty interests. The Supreme Court disagreed. Pursuant to Meachum v. Fano, 427 US 215 (1975), Wright's conviction sufficiently extinguished Wright's liberty interest to empower the state to confine him in any of its prisons, and under Olim v. Wakinekona, 461 US 238 (1983), Wright also had no justifiable expectation that he would be imprisoned in any particular state. Further, in order for the state to create a liberty interest, under McDermott v. Dept. of Corrections, 2001 MT 134, 305 M 462, 29 P3d 992 (2001), it must first enact a law that establishes a right of real substance, and then even those statutorily defined interests are restricted to freedom from atypical and significant hardships in relation to the ordinary incidents of prison life or restraints that inevitably affect the duration of the prisoner's confinement. The Supreme Court held that even if the 1995 definition of state prison did confer a right of real substance, being transferred from one prison to another, even out of state, did not meet the McDermott test for hardship or duration of confinement. Thus, Wright had neither a federal nor a state constitutional liberty interest in being housed exclusively at the state prison in Deer Lodge, and the state has authority to transfer Wright from that facility. Wright v. Mahoney, 2003 MT 141, 316 M 173, 71 P3d 1195 (2003).

Prisoner Rehabilitation Not State Obligation: The plaintiffs sued the state for damages, alleging that the state was negligent in releasing a nonrehabilitated prisoner who killed their child. The Supreme Court held that the state is not a guarantor of its rehabilitation facilities and that the court would not impose that obligation on the state. VanLuchene v. St., 244 M 397, 797 P2d 932, 47 St. Rep. 1609 (1990), followed in King v. St., 259 M 393, 856 P2d 954, 50 St. Rep. 848 (1993).

53-30-102. Qualifications of state prison warden.

Compiler's Comments

2021 Amendment: Chapter 339 substituted current text for former text that read: "The warden of the Montana state prison and the warden of the women's prison must be persons trained through education and experience in directing a training, rehabilitation, or custodial program in a penal institution." Amendment effective October 1, 2021.

1997 Amendment: Chapter 189 before "state" inserted "Montana" and after "women's" substituted "prison" for "correctional system".

1995 Amendment: Chapter 546 substituted "women's correctional system" for "women's correctional center"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment: After "prison" inserted "and the warden of the women's correctional center"; and made minor change in style. Amendment effective April 26, 1991.

Case Notes

Warden a Public Officer: The Warden of the state penitentiary is a public officer. Stephens v. Conley, 48 M 352, 138 P 189 (1914); State ex rel. Stephens v. District Court, 43 M 571, 118 P 268 (1911).

53-30-104. Punishment of inmates.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

53-30-106. Excessive inmate population — confinement of inmates in other institutions.

Compiler's Comments

1995 Amendment: Chapter 546 in (1), near middle of first sentence, substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 736 inserted (1) authorizing Department to declare that emergency capacity of correctional institution or system has been exceeded and to temporarily stop admissions if inmate population exceeds emergency capacity for 30 consecutive days, requiring Department Director to notify Sheriff and District Court that acceptance of new inmates will not resume until population is reduced to 95% or less of emergency capacity, authorizing detention in another jurisdiction, and requiring reimbursement to detaining jurisdiction for cost of detention and expenses for medical or hospitalization services; at beginning of (2) deleted "When the state prison is inadequate to contain an inmate sentenced to confinement there", after "suitable" substituted "detention centers" for "jails", and after "inmates" substituted "committed to a correctional institution or system administered by the department of institutions [changed to department of corrections and human services, pursuant to sec. 1, Ch. 262, L. 1991], either because a correctional institution or system has exceeded its emergency capacity or because the department has no institution that is adequate for certain inmates" for "sentenced to the state prison"; in (3), after "department", inserted "of institutions" (changed to "of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991); and made minor changes in style.

1981 Amendment: Substituted "may" for "shall" before "enter into contracts" in (1); and inserted (2) allowing the Department to contract with public or private corporations for confinement of selected inmates.

Case Notes

No Constitutional Liberty Interest in Being Housed Exclusively at State Prison: Following a conviction for deliberate homicide and use of a firearm, Wright was sentenced in 1996 to the state prison in Deer Lodge for 75 years, where he was originally placed. Over the years, Wright was placed at various other institutions, including out-of-state and in-state regional detention and private correctional centers. Wright filed a writ of prohibition to prevent the state from housing him anywhere but the state prison in Deer Lodge, pursuant to the terms of the written judgment. Under the law in effect at the time of Wright's sentencing, the Deer Lodge prison was the only adult male correctional facility in Montana, but the statutory definition has since been expanded to include other facilities. Wright contended that application of the amended definition to his sentence was unconstitutionally ex post facto, in violation of his liberty interests. The Supreme Court disagreed. Pursuant to Meachum v. Fano, 427 US 215 (1975), Wright's conviction sufficiently extinguished Wright's liberty interest to empower the state to confine him in any of its prisons, and under Olim v. Wakinekona, 461 US 238 (1983), Wright also had no justifiable expectation that he would be imprisoned in any particular state. Further, in order for the state to create a liberty interest, under McDermott v. Dept. of Corrections, 2001 MT 134, 305 M 462, 29 P3d 992 (2001), it must first enact a law that establishes a right of real substance, and then even those statutorily defined interests are restricted to freedom from atypical and significant hardships in relation to the ordinary incidents of prison life or restraints that inevitably affect the duration of the prisoner's confinement. The Supreme Court held that even if the 1995 definition of state prison did confer a right of real substance, being transferred from one prison to another, even out of state, did not meet the McDermott test for hardship or duration of confinement. Thus, Wright had neither a federal nor a state constitutional liberty interest in being housed exclusively at the state prison in Deer Lodge, and the state has authority to transfer Wright from that facility. Wright v. Mahoney, 2003 MT 141, 316 M 173, 71 P3d 1195 (2003).

53-30-110. Expense of trial for offenses committed in prison.

Compiler's Comments

2005 Amendment: (Version effective July 1, 2006) Chapter 449 in (1) in first sentence after "45-7-306" deleted "and" and inserted "or" and in second sentence at beginning inserted "The statement must be"; inserted (3) requiring public defender costs to be paid pursuant to Montana Public Defender Act; and made minor changes in style. Amendment effective July 1, 2006.

Saving Clause: Section 78, Ch. 449, L. 2005, was a saving clause.

1995 Amendment: Chapter 546 in second sentence substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-30-111. Clothing and money furnished on discharge or parole.

Compiler's Comments

1997 Amendment: Chapter 315 substituted "53-30-132" for "53-1-301"; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendment: Chapter 546 in fourth sentence substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

1981 Amendment: Substituted "may receive "gate money" in an amount up to $100" for "shall receive an amount not exceeding $25" after "paroled inmates" near the middle of the section; added the last sentence that reads: "This amount shall be in addition to the "gate money""; and made minor changes in phraseology.

53-30-131. Montana correctional enterprises prison industries training program — purpose and scope.

Compiler's Comments

2009 Amendment: Chapter 312 substituted (1) concerning the correctional enterprises program for former (1) and (2) that read: "(1) In addition to any correctional facility industry operated at the Montana state prison, the department of corrections shall conduct a prison industries training program.

(2) The purpose of the prison industries training program is to:

(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;

(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release"; in (2) in first sentence substituted "education" for "training" and in second sentence substituted "Montana correctional enterprises program" for "department" and after "private" deleted "vocational"; in (3) at beginning inserted "Montana correctional enterprises"; in (3)(a) at end substituted "within the prison system in" for "involving"; in (3)(a)(i) near beginning inserted "processing, manufacture", near middle after "crops" inserted "milk and milk products, wood products", and at end deleted "and motor vehicles"; inserted (3)(a)(ii) through (3)(a)(v) concerning animal training and boarding, vehicle and equipment maintenance and repair, wildland fire suppression, and approved community work programs for governmental entities and not-for-profit organizations; inserted (3)(b) through (3)(e) concerning repair and maintenance of institutional property and equipment, construction projects, manufacture of signs, and manufacture of license plates and related articles; substituted (4) concerning provision of products and services to enumerated entities for former text that read: "The products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch and products or services of a federally certified prison industries program, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities"; inserted (5) and (6) concerning prison-made furniture; in (7) at beginning substituted "Montana correctional enterprises program" for "department"; inserted (8) concerning sale of livestock; and made minor changes in style. Amendment effective October 1, 2009.

Retroactive Applicability: Section 8, Ch. 312, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any money that Montana correctional enterprises collected from inmates for room and board reimbursement before October 1, 2009."

1997 Amendment: Chapter 315 in (1) substituted "correctional facility" for "institutional" and after "state prison" deleted "under Title 53, chapter 1, part 3"; and inserted (5) allowing the Department to donate surplus food grown or produced at the prison to local food banks, nonprofit organizations, and low-income persons. Amendment effective July 1, 1997.

1995 Amendment: Chapter 546 in (1) substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 471 in (4), in last sentence, inserted "and products or services of a federally certified prison industries program"; and made minor changes in style.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-30-132. Inmate participation and status in prison work programs — Montana correctional enterprises prison industries training program — wages and benefits.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 139, L. 2021, amended sec. 14, Ch. 374, L. 2009, sec. 2, Ch. 139, L. 2021, amended sec. 27, Ch. 285, L. 2015, and sec. 3, Ch. 139, L. 2021, amended sec. 1, Ch. 292, L. 2015, by extending the termination date imposed by Ch. 374, L. 2009, to June 30, 2027. Effective April 1, 2021.

Extension of Termination Date: Section 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, amended sec. 14, Ch. 374, L. 2009, by extending the termination date imposed by Ch. 374 to June 30, 2021. Effective July 1, 2015.

2009 Amendments — Composite Section: Chapter 312 substituted (1) concerning performance of work by able-bodied persons for former (1)(a) that read: "The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions"; inserted introductory clause of (2) concerning correctional enterprises prison industries training program; in (2)(a) after "certification" inserted "as required by federal law"; deleted former (1)(c) that read: "(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs"; in (2)(c) substituted second and third sentences concerning setting of prices for former text that read: "Prices may not exceed prices existing in the open market for goods of comparable quality"; in (2)(d) at end substituted "and services from the Montana correctional enterprises program" for "from other correctional facilities"; deleted former (1)(g) through (1)(m) that read: "(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of litter from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of $200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must be paid a rate of pay as provided in subsection (5).

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract"; in (3) inserted introductory clause concerning correctional enterprises program; in (3)(b) at end of first sentence substituted "satisfy any unpaid court-ordered obligations, including restitution on previously discharged sentences for which restitution remains owing" for "be deposited in a department restitution fund and used to satisfy any unpaid restitution obligation of the inmate", near beginning of second sentence before "obligations" inserted "court-ordered", and near middle after "ordered" inserted "the Montana correctional enterprises program shall collect 15% of the gross wages paid to an inmate"; in (3)(c) at beginning after "collect" inserted "charges for room and board", at end of first sentence deleted "charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers", and inserted second sentence concerning deposit of room and board charges; deleted former (2) and (3) that read: "(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4"; in (4) at end substituted "(5)(b)" for "(5)"; in (5)(a) near middle inserted language concerning determination of maximum rate of pay; in (5)(b) at beginning deleted "The maximum rate of pay must be determined by the appropriation established for the program, except that", near middle after "paid" inserted "the federal minimum wage or be paid", and at end inserted "as determined by the federal bureau of justice"; in (6) near middle of first sentence substituted "Montana correctional enterprises prison industries training program" for "prison industries program"; in (7) in first sentence after "industries" deleted "training"; deleted former (8) that read: "(8) Able-bodied persons committed to a state prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 374 in (3)(b) at end after "deposit in the" substituted "account provided for in 53-9-113" for "state general fund as provided in Title 53, chapter 9, part 1". Amendment effective July 1, 2009, and terminates June 30, 2015.

Retroactive Applicability: Section 8, Ch. 312, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any money that Montana correctional enterprises collected from inmates for room and board reimbursement before October 1, 2009."

2003 Amendment: Chapter 272 in (1)(o) near beginning after "15% of the" substituted "gross" for "net", near middle after "program" inserted "to be deposited in a department restitution fund and used to satisfy any unpaid restitution obligation of the inmate or, if the obligation has been fully paid or no restitution was ordered", and after "transfer" inserted "quarterly"; and made minor changes in style. Amendment effective October 1, 2003.

Retroactive Applicability: Section 10, Ch. 272, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to offenders who have an unpaid restitution obligation on [the effective date of this act]." Effective October 1, 2003.

2001 Amendment: Chapter 118 in (1)(o) substituted "transfer to the crime victims compensation and assistance program in the department of justice for deposit in the state general fund as provided in Title 53, chapter 9, part 1" for "deposit in the Montana crime victims compensation and assistance account established under 53-9-109". Amendment effective March 23, 2001.

Preamble: The preamble attached to Ch. 118, L. 2001, provided: "WHEREAS, the 1995 Legislature in Senate Bill No. 83 changed funding for the crime victims compensation and assistance program from an earmarked special revenue account to the general fund; and

WHEREAS, the crime victims compensation and assistance program has been supported entirely by general fund money since fiscal year 1996; and

WHEREAS, repealing section 53-9-109 is necessary in order to clarify the conflict that currently exists between actual appropriation practices and the law."

1999 Amendment: Chapter 491 in (8) substituted "state prison" for "Montana prison". Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendment — Coordination: Chapter 315 inserted (1) allowing the Department of Corrections to establish prison industries for products and services needed by any level of government and for rehabilitation, obtain federal certification for interstate market access, contract with private industry for the sale of goods and employment of inmates, print catalogs, fix sale prices, require correctional facilities to purchase goods from other correctional facilities, provide for repair and maintenance of property and equipment and removal of graffiti by inmates at institutions and for removal of litter by inmates, provide for the repair and maintenance of furniture and equipment and the manufacture of license plates and street signs and related articles by inmates, sell manufactured and agricultural products and livestock on the open market, pay inmates wages and collect 15% of the wages for deposit in the crime victims compensation and assistance account, and collect charges from inmates for room and board; inserted (2)and (3) providing that furniture made in a prison may be purchased by state agencies under Title 18, chapter 4, or sold only through licensed wholesale or retail furniture outlets or export firms, except that Department of Corrections facilities and programs do not have to comply with Title 18, chapter 4; in (4), in first sentence, substituted "in accordance with subsection (5)" for "commensurate with their production function", deleted former second sentence requiring wages to be established at a rate encouraging efficient production and effective levels of inmate participation, and at end of second sentence substituted "subsection (5)" for "53-1-301(2)"; inserted (5) establishing the criteria for payment of inmates for work and providing that the maximum wage must be determined by the appropriation for the program except that an inmate in a federally certified program must be paid at a rate not less than that for similar work in the locality; inserted (6) requiring workers' compensation premiums for federally certified programs to be paid by the program or Department of Corrections and requiring a private company contracting with a program to reimburse the Department for premiums paid by the Department; in (8), at end, inserted "including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work"; and made minor changes in style. Amendment effective July 1, 1997.

Section 5, Ch. 513, L. 1997, a coordination section, substituted (1)(i) concerning construction projects for the subsection (1)(i) contained in sec. 5, Ch. 315, L. 1997, that read: "provide for construction projects, up to the aggregate sum of $25,000 a project, performed by inmates, except when the construction work is covered by a collective bargaining agreement".

1995 Amendments — Composite Section: Chapter 372 deleted former (1) that read: "(1) An inmate participating in the prison industries training program may be granted a good time allowance, not to exceed 15 days per month, notwithstanding the limits contained in 53-30-105, for outstanding participation in the program as defined by rules adopted by the department of corrections and human services. The good time allowance has the same effect as a good time allowance granted under 53-30-105, and the provisions of subsections (2) and (3) of 53-30-105 apply to the good time allowance. However, an inmate may not receive good time for participation in this program under any other section or rule that would duplicate the good time authorized in this section"; and made minor changes in style. Amendment effective April 12, 1995.

Chapter 546 in (1), at end of first sentence, and at end of (3) substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995. The amendments made by Ch. 372 rendered the amendment by Ch. 546 in (1) void.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendment: Chapter 471 in (2), in first sentence, inserted "not employed in a federally certified prison industries program" and inserted last sentence relating to federally certified prison industries; in (3), near beginning of first sentence, substituted "not working in a federally certified prison industries" for "working in the prison industries" and inserted last sentence relating to federally certified prison industries; and made minor changes in style.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Case Notes

Employment Rights Inapplicable to State Prison Inmates: Plaintiffs maintained that while they were male inmates at the state prison, they were employed in various capacities and paid wages substantially less than were paid female inmates for essentially the same jobs. They requested damages, claiming that as male prisoners they were economically discriminated against in favor of female prisoners. They also asked the District Court to describe conditions of work that would alleviate this sexual discrimination in the state prison system. However, the legislature specifically prohibited plaintiffs from receiving the relief they sought by providing that one of the penalties for being a prison inmate is that a prisoner does not have employment rights while serving a sentence in the state prison. The Supreme Court affirmed, holding the plaintiffs were precluded from recovering under both the sex discrimination statutes and the Fair Labor Standards Act. Quigg v. South, 243 M 218, 793 P2d 831, 47 St. Rep. 1176 (1990). See also Worsley v. Lash, 421 F.Supp. 556 (N.D. Ind. 1976).

53-30-133. Administration of Montana correctional enterprises program.

Compiler's Comments

2009 Amendment: Chapter 312 in (1)(a) at beginning of first sentence substituted "Montana correctional enterprises program" for "prison industries training program" and deleted former second and third sentences that read: "The department of corrections may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates"; in (1)(b) at end of first sentence substituted "use the Montana correctional enterprises program's products and services" for "explore the possibilities of using the prison industries training program"; in (2)(a) deleted former first sentence that read: "The department of corrections shall adopt rules implementing this program" and at end deleted "in the Montana Administrative Register or the Administrative Rules of Montana, or both"; in (2)(b) at beginning substituted "Montana correctional enterprises program is subject to program audits" for "department of corrections is subject to program audits of the prison industries training program"; and made minor changes in style. Amendment effective October 1, 2009.

Retroactive Applicability: Section 8, Ch. 312, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any money that Montana correctional enterprises collected from inmates for room and board reimbursement before October 1, 2009."

1995 Amendment: Chapter 546 throughout section substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1993 Amendments: Chapter 349 in first sentence of (2)(a), after "program", deleted "and shall, as provided in 5-11-210, report to the legislature its continuing plans and recommendations in implementing this program"; and made minor changes in style.

Chapter 471 in (1)(a), at end, inserted "and payment of inmate wages"; and made minor changes in style.

1991 Amendments — Instructions to Code Commissioner: Chapter 112 near beginning of (2)(a) inserted reference to 5-11-210. Amendment effective March 20, 1991.

The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-30-134. Montana correctional enterprises license plate production operating account.

Compiler's Comments

2017 Amendment: Chapter 384 in (1) substituted "enterprise fund type" for "internal service fund type"; in (2) inserted "products and services provided for pursuant to 53-30-131 through 53-30-133" and before "fees paid" substituted "and" for "or"; in (3) after "enhancement of its" inserted "inmate training and"; and made minor changes in style. Amendment effective July 1, 2017.

Severability: Section 38, Ch. 384, L. 2017, was a severability clause.

Effective Date: Section 29(2), Ch. 413, L. 2009, provided that this section is effective April 28, 2009.

53-30-141. Extension of limits of confinement.

Compiler's Comments

2021 Amendment: Chapter 339 in (1) substituted "state prison in Deer Lodge" for "Montana state prison". Amendment effective October 1, 2021.

1995 Amendment: Chapter 546 in (1) substituted "department of corrections" for "department of corrections and human services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-30-142. Escape from extended confinement.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Case Notes

Prior Ruling That Prison Escapee's Property Was Not Abandoned Not Dispositive of Later Claim That Property Was Converted: A prison escapee who was captured and returned to prison sued the prison and five prison officials for destroying the personal property that he left behind at the prison when he escaped. In a prior decision in this case, the Supreme Court ruled that there was a presumption of intent to abandon the property based on the escapee's acts, that the presumption was rebuttable, and that the escapee rebutted it, and thus his complaint was wrongly dismissed for failure to state a claim. The escapee then claimed on remand that the prison wrongfully converted his property, and defendants were granted summary judgment. The prison had a written policy that personal property left behind by an escapee was considered contraband and would be confiscated and sold or destroyed. The prior Supreme Court ruling turned on the issue of abandonment and did not control the ruling on the summary judgment motions, which turned on the issue of conversion. Defendants were entitled to raise the prison policy as a defense. It was not error to grant defendants summary judgment. Hawkins v. Mont. State Prison, 2004 MT 289, 323 M 326, 102 P3d 2 (2004).

53-30-151. Prison maintenance by inmates.

Compiler's Comments

1999 Amendment: Chapter 491 in introduction substituted "state prison" for "Montana prison". Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendment: Chapter 189 in introductory clause substituted "a Montana prison" for "the Montana state prison"; and made minor changes in style.

53-30-152. Inmates not employees.

Case Notes

Employment Rights Inapplicable to State Prison Inmates: Plaintiffs maintained that while they were male inmates at the state prison, they were employed in various capacities and paid wages substantially less than were paid female inmates for essentially the same jobs. They requested damages, claiming that as male prisoners they were economically discriminated against in favor of female prisoners. They also asked the District Court to describe conditions of work that would alleviate this sexual discrimination in the state prison system. However, the legislature specifically prohibited plaintiffs from receiving the relief they sought by providing that one of the penalties for being a prison inmate is that a prisoner does not have employment rights while serving a sentence in the state prison. The Supreme Court affirmed, holding the plaintiffs were precluded from recovering under both the sex discrimination statutes and the Fair Labor Standards Act. Quigg v. South, 243 M 218, 793 P2d 831, 47 St. Rep. 1176 (1990). See also Worsley v. Lash, 421 F.Supp. 556 (N.D. Ind. 1976).

53-30-153. Telephone account requirements for state prisons — protected accounts — disclosure required — rulemaking — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 11, L. 2023. Amendment effective April 30, 2024.

Saving Clause: Section 6, Ch. 11, L. 2023, was a saving clause.

Effective Date: Section 4, Ch. 262, L. 2017, provided: "[This act] is effective July 1, 2017."

Severability: Section 3, Ch. 262, L. 2017, was a severability clause.

53-30-154. Dog obedience training and socialization program — eligibility — administration — fees.

Compiler's Comments

Effective Date: Section 3, Ch. 766, L. 2023, provided: "[This act] is effective October 1, 2023."

Codification Change: Section 2, Ch. 766, L. 2023, provided that this section was to be codified as an integral part of Title 2, chapter 15, part 23. The Code Commissioner has codified this section in Title 53, chapter 30, part 1, to more closely reflect the subject matter.

Part 3
Community Corrections Act

Part Compiler's Comments

Preamble: The preamble attached to Ch. 554, L. 1991, provided: "WHEREAS, Article II, section 28, of the Montana Constitution requires that laws for the punishment of crime must be founded on the principles of prevention and reformation; and

WHEREAS, it is the state's policy that persons convicted of crime should be treated in accordance with their individual characteristics, circumstances, needs, and potentialities; and

WHEREAS, the existing state corrections system offers few alternatives to imprisonment for offenders who have been convicted of a nonviolent felony offense; and

WHEREAS, community corrections programs provide an alternative to imprisonment that is of value both to society and to the individual because such programs provide offenders opportunities to overcome alcohol and drug problems, to obtain employment or become involved in an educational or vocational program, to learn life skills, or to be engaged in other activities that will reduce the recidivism of offenders and enable them to be productive members of society; and

WHEREAS, community corrections programs are desirable because such programs cost substantially less compared to the costs of imprisonment in the Montana State Prison.

THEREFORE, the Legislature of the State of Montana finds it appropriate to enact legislation to establish community corrections facilities and programs for the placement and treatment of nonviolent felony offenders."

1991 Statement of Intent: The statement of intent attached to Ch. 554, L. 1991, provided: "A statement of intent is required for this bill because [section 10] [53-30-322] grants the department of institutions authority to adopt rules necessary to carry out the provisions of [sections 1 through 15] [this part].

It is the intent of the legislature that the department adopt regulations and standards for the operation of community corrections facilities and programs. In adopting rules, the department shall comply with the requirements established under [section 10] [53-30-322]. In addition, the department should consider the goals of [sections 1 through 15] [this part], which are:

(1) to reduce reliance upon the Montana state prison for detention of low-risk, nonviolent felony offenders;

(2) to increase services to offenders to help them become productive members of society;

(3) to require offenders to pay restitution to crime victims;

(4) to impose upon offenders responsibility for payment of a portion of the costs of their room and board at community corrections facilities or programs;

(5) to decentralize authority for corrections programs from state government to local or tribal governments;

(6) to stimulate local or tribal participation in the establishment of community corrections facilities and programs;

(7) to reduce the long-term costs of state corrections; and

(8) to reduce court commitments to the state prison, thereby reducing the long-term capital construction costs for the Montana state prison and other corrections facilities.

To ensure the success of the community corrections program, the department, when contracting for services, should consider a potential service provider's knowledge, background, and special expertise in the area of postconviction diversion community corrections programs.

Prior to adopting rules, the department should examine community corrections programs established in other states, especially in the states of Colorado, Iowa, Minnesota, Oregon, and Wyoming. In addition, the comments of potential service providers should be encouraged during the rulemaking process."

Report to Legislature: Section 14, Ch. 554, L. 1991, provided: "No later than January 30, 1993, the department shall submit to the legislature a report describing:

(1) the number of community corrections facilities and programs that have been established;

(2) the number and type of court-referred offenders assigned to community corrections facilities and programs;

(3) the number and type of department-referred offenders assigned to community based prerelease centers;

(4) the extent to which offenders have received and benefited from educational or job training programs related to rehabilitation;

(5) the rate of reconviction of community corrections program participants as compared to the reconviction rate for similar offenders sentenced to the state penitentiary;

(6) the amount of taxes, restitution, and room and board fees paid by offenders assigned to community corrections facilities and programs; and

(7) the number of court-referred offenders who, in the absence of community corrections facilities and programs, would have been sentenced to the custody of the department."

Part Administrative Rules

Title 20, chapter 7, ARM Community Corrections Division of Department of Corrections.

53-30-301. Short title.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-302. Purpose.

Compiler's Comments

1997 Amendment: Chapter 322 in (2) substituted "prisons" for "penitentiary", and substituted "offenders determined appropriate by the community corrections board: for "low-risk, nonviolent felony offenders"; inserted (3) relating to reduction of the use of jails for persons not requiring incarceration; inserted (4) relating to local facilities for employed offenders who can retain their jobs; and made minor changes in style.

Saving Clause: Section 17, Ch. 322, L. 1997, was a saving clause.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-303. Definitions.

Compiler's Comments

1999 Amendment: Chapter 395 in definition of offender inserted "or nolo contendere". Amendment effective October 1, 1999.

1997 Amendment: Chapter 322 in definition of community corrections facility or program, in (a), inserted "established by a local or tribal government and"; deleted definitions of crime of violence and nonviolent felony offender (see 1997 Session Law for former text); and in definition of offender substituted "criminal offense" for "felony" and deleted "The term does not include a person who has committed a crime of violence"; and made minor changes in style.

Saving Clause: Section 17, Ch. 322, L. 1997, was a saving clause.

1995 Amendment: Chapter 546 in definition of Department substituted "department of corrections" for "department of corrections and human services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Name Change: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

Case Notes

Entry of Intensive Supervision Program Officer Into Probationer's Home Without Consent Unlawful — Information Gathered Via Search Admissible as Independent Source or Inevitable Discovery Exceptions to Fruit of Poisonous Tree Doctrine: As a condition of suspended sentencing, Therriault was placed in the intensive supervision program (ISP). Near the end of the program, Therriault's supervising officer, McCarty, arrived at Therriault's residence for a routine check. Although Therriault was not there, McCarty entered the residence and found, in plain view, what he thought might be a note for him from Therriault, but which turned out to be a high school registration form for a female student. McCarty then went to Therriault's sister's home next door. Therriault's sister informed McCarty that she had seen a girl at Therriault's home during the prior 2 weeks and inquired about the lawful age of consent. McCarty then reentered Therriault's home and reviewed the form, discovering that the applicant was 14 years old. McCarty left a note for Therriault to contact him and left the residence but returned later that night to discover a 14-year-old girl in Therriault's basement. Upon petition to revoke his probation, Therriault alleged that the discovery directly resulted from an illegal search and seizure and moved to suppress all evidence under the fruit of the poisonous tree doctrine. The District Court denied the motion, revoked Therriault's suspended sentence, and sentenced him to prison for the remainder of the term. Therriault appealed. The state contended that as a participant in ISP, Therriault enjoyed little or no expectation of privacy and that McCarty's conduct did not constitute a search. The Supreme Court disagreed, finding that ISP is merely a rigid condition imposed on certain probationers and that it is the sentencing tribunal, not the ISP officer, that establishes the conditions for any search of the probationer's person or property and that any ISP rules, terms or conditions, or means of supervision that conflict with a court-ordered condition of probation will be superseded by the court's conditions. The state misconstrued Therriault's expectation of privacy under ISP because the court's probationary condition stated that Therriault would submit his residence "to search at any time by lawful authorities upon reasonable request of his Probation Officer", so Therriault could expect that an intrusion into the privacy of his home would not occur unless McCarty had reasonable cause and first posed a reasonable request. Accordingly, McCarty's conduct constituted an illegal search and evidence obtained through the unlawful conduct would not generally be admissible under the fruit of the poisonous tree doctrine. However, under St. v. New, 276 M 529, 917 P2d 919 (1996), such derivative evidence is admissible if it is: (1) attenuated from the constitutional violation so as to remove its primary taint; (2) obtained from an independent source; or (3) determined to be evidence that would have been inevitably discovered apart from the constitutional violation. In this case, the second exception applied. McCarty received independent incriminating evidence from Therriault's sister; thus, it was not the tainted evidence of the girl's name or age or the fact that she was transferring to a different school that led to her discovery, but rather the independent information that a girl of questionable age had been residing with Therriault. This irrefutable evidence, ascertained through a source sufficiently independent of McCarty's unlawful conduct, warranted exclusion from the fruit of the poisonous tree doctrine. The District Court's revocation of Therriault's suspended sentence was affirmed. St. v. Therriault, 2000 MT 286, 302 M 189, 14 P3d 444, 57 St. Rep. 1185 (2000).

Escape From Prerelease Center — Felony Escape: Chandler argued that he could not be charged with felony escape for leaving a prerelease center because he was not subject to official detention while at the center. The Supreme Court ruled that a prerelease center is a community corrections facility or program as listed in the felony escape statute and therefore escape from the center violated the plain language of the law and was punishable as a felony. St. v. Chandler, 277 M 476, 922 P2d 1164, 53 St. Rep. 774 (1996), distinguishing St. v. Nelson, 275 M 86, 910 P2d 247 (1996), and St. v. Roberts, 275 M 365, 912 P2d 812 (1996). See also St. v. Roundstone, 2011 MT 227, 362 Mont. 74, 261 P.3d 1009.

53-30-311. Community corrections facilities and programs operated by units of local government.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-312. Creation of community corrections boards — membership — appointment — terms — compensation.

Compiler's Comments

1997 Amendment: Chapter 322 in (2), in introductory clause, reduced membership from nine to "three to seven" and at end substituted "include" for "appointed as follows" and deleted from the membership requirement a County Attorney, a District Court Judge, a local private employer or representative of the Department of Labor and Industry, a mental health professional, and a person representing local or tribal drug and alcohol treatment programs and decreased the members of the public from two to one; and in (3) deleted requirement that the members be "nominated by representatives of units of local government or a tribal government", substituted "chief executive officer of the unit of local government" for "district court judges", and substituted "tribal government" for "tribal judges".

Saving Clause: Section 17, Ch. 322, L. 1997, was a saving clause.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-313. Powers and duties of community corrections boards.

Compiler's Comments

1997 Amendment: Chapter 322 in (2), near beginning after "together with", deleted "the department and"; and made minor changes in style.

Saving Clause: Section 17, Ch. 322, L. 1997, was a saving clause.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-314. Community corrections facilities and programs operated by tribal governments.

Compiler's Comments

1997 Amendment: Chapter 322 deleted former (2) allowing an agreement between the Department and a tribal government to provide community corrections facilities or programs; and made minor changes in style.

Saving Clause: Section 17, Ch. 322, L. 1997, was a saving clause.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-315. Community corrections facilities and programs operated by nongovernmental agencies.

Compiler's Comments

1997 Amendment: Chapter 322 deleted former (3) allowing an agreement between the Department and a nongovernmental agency to provide community corrections facilities or programs; and made minor changes in style.

Saving Clause: Section 17, Ch. 322, L. 1997, was a saving clause.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-321. Authority of judge to utilize community corrections facilities or programs — restrictions.

Compiler's Comments

1997 Amendment: Chapter 322 in (1) substituted "an offender" for "a nonviolent felony offender" and deleted sentence requiring the sentencing order for a person placed in a community corrections facility or program to indicate that the offender would have been sentenced to prison if the facility or program had not been available; deleted former (2) providing that an offender could be placed in a community corrections facility or program only if it was operated by a local or tribal government or a nongovernmental agency under a contract with the Department and if funding was available; adjusted subsection references; and made minor changes in style.

Saving Clause: Section 17, Ch. 322, L. 1997, was a saving clause.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-322. Powers and responsibilities of department.

Compiler's Comments

1997 Amendment: Chapter 322 in introductory clause changed "shall" to "may"; in (1) substituted "upon the request of a" for "with the active and full participation of the", substituted "provide assistance in the planning" for "establish minimum standards for the operation", and at end deleted "operated by a unit of local government, a tribal government, or a nongovernmental agency that has entered into a contract or agreement with the department to provide services for offenders"; in (2) substituted the power to contract with a community corrections facility or program for services for offenders, with the contract to address facility or program review and evaluation, accounting and reporting standards, and reimbursement, for the power to review and evaluate community corrections facilities and programs; deleted (3) allowing the Department to prescribe accounting and reporting standards for entities contracting with the Department; deleted (4) allowing reimbursement to those entities; and deleted (5) allowing rulemaking to carry out this part.

Saving Clause: Section 17, Ch. 322, L. 1997, was a saving clause.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-323. Offender payments.

Compiler's Comments

1993 Amendment: Chapter 172 in (1), at end of second sentence, substituted "reimbursement to the community corrections facility" for "payment of the following expenses in order of the priority in which they appear below" and in third sentence, after "program for", deleted "a portion of" and after "board" substituted "and services is to be paid at a rate established under 53-1-501" for "provided at the facility or program"; deleted remainder of former (1) that read: "The reimbursement rate must be reasonable, based on the offender's employment status and other financial obligations. However, the charges for room and board may not exceed 20% of the offender's net employment income.

(b) victim restitution ordered by the sentencing court, which may not exceed 20% of the offender's net employment income;

(c) deposits to a savings account or fund to be used by the offender for general living expenses following his release from the community corrections facility or program; and

(d) payment of family support"; and made minor changes in style.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-326. Escape from custody.

Compiler's Comments

1997 Amendment: Chapter 322 in introductory clause, after "guilty of escape", deleted "from official detention"; and made minor changes in style.

Saving Clause: Section 17, Ch. 322, L. 1997, was a saving clause.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

Case Notes

Prior Ruling That Prison Escapee's Property Was Not Abandoned Not Dispositive of Later Claim That Property Was Converted: A prison escapee who was captured and returned to prison sued the prison and five prison officials for destroying the personal property that he left behind at the prison when he escaped. In a prior decision in this case, the Supreme Court ruled that there was a presumption of intent to abandon the property based on the escapee's acts, that the presumption was rebuttable, and that the escapee rebutted it, and thus his complaint was wrongly dismissed for failure to state a claim. The escapee then claimed on remand that the prison wrongfully converted his property, and defendants were granted summary judgment. The prison had a written policy that personal property left behind by an escapee was considered contraband and would be confiscated and sold or destroyed. The prior Supreme Court ruling turned on the issue of abandonment and did not control the ruling on the summary judgment motions, which turned on the issue of conversion. Defendants were entitled to raise the prison policy as a defense. It was not error to grant defendants summary judgment. Hawkins v. Mont. State Prison, 2004 MT 289, 323 M 326, 102 P3d 2 (2004).

Part 5

Regional Correctional Facility Act

Part Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 316, L. 1995, provided: "A statement of intent is required for this bill in order to provide guidance to the department of corrections and human services [now department of corrections] in adopting rules relating to regional correctional facilities. It is the intent of the legislature that in selecting sites for regional correctional facilities, the department should consider the ability of the community to provide rehabilitative services to inmates, the community's willingness and ability to enter into a long-term agreement with the department for a regional correctional facility, and the need for a regional correctional facility in the area."

Effective Date: Section 9, Ch. 316, L. 1995, provided that this part is effective on passage and approval. Approved April 3, 1995.

Part Administrative Rules

Title 20, chapter 28, ARM Regional correctional facilities.

53-30-503. Definitions.

Compiler's Comments

2009 Amendment: Chapter 286 in definition of multijurisdictional service district at end after "chapter 11" substituted "part 10" for "part 11". Amendment effective July 1, 2009.

Saving Clause: Section 42, Ch. 286, L. 2009, was a saving clause.

Transition — Repealed: Section 43, Ch. 286, L. 2009, provided: "(1) Subject to subsection (2), a special district in existence on [the effective date of this act] [effective July 1, 2009] must comply with the provisions of [sections 1 through 20] [Title 7, ch. 11, part 10] upon alteration of its boundaries or a change in its amount or method of assessment. If dissolution is proposed for a special district in existence on [the effective date of this act] [effective July 1, 2009], the proposal is subject to the provisions of [section 20] [7-11-1029].

(2) A special district in existence on [the effective date of this act] [effective July 1, 2009] is required to comply with the provisions of [section 10] [7-11-1014] only upon alteration of its boundaries." This transition section was repealed by sec. 2, Ch. 97, L. 2019. See the code commissioner explanation under 7-11-1004.

1999 Amendment: Chapter 491 in definition of regional correctional facility near beginning after "means a" deleted "correctional", substituted phrase regarding facility for housing of persons that is joint detention center and correctional facility for "except the Montana state prison, the women's prison, or the Swan River boot camp", and at end after "and the department" deleted "for the housing of convicted felons". Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendments: Chapter 189 in definition of regional correctional facility, after "women's", substituted "prison" for "correctional system".

Chapter 224 inserted definition of corporation; in definition of regional correctional facility inserted reference to corporation and substituted "any combination of a local governmental entity, a corporation, and the department" for "both"; and made minor changes in style.

Code Commissioner Correction: In (5), the Code Commissioner substituted women's correctional system for women's correctional center pursuant to the authority contained in sec. 73, Ch. 18, L. 1995.

53-30-504. Authority to enter into contracts — terms — financing.

Compiler's Comments

1999 Amendment: Chapter 491 inserted (8) and (9) regarding construction and operation of regional correctional facility; and in (10) inserted first sentence regarding regional correctional facility and in second sentence near beginning inserted "charged or", inserted "or charged or convicted in federal court in another state", substituted "a state correctional facility portion" for "the state portion", and near end after "part 3 or 4" inserted phrase regarding authorization of placement in regional correctional facility. Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendment: Chapter 224 in (1), near beginning and near end, inserted reference to corporation and at end substituted "any combination of a local governmental entity, a corporation, and the department" for "both"; in (2), at end of first sentence, inserted reference to corporation or other party to the contract; in (4) inserted references to Department and to corporation; in (5) inserted reference to corporation and at end deleted "by both"; in (6), in first sentence after "facility", inserted "that may be owned and operated by a local governmental entity"; in (7) inserted reference to corporations; inserted (8) prohibiting confinement of certain persons in state portion of facility; and made minor changes in style.

Attorney General's Opinions

Limited Use of Multijurisdictional Detention Center for Confinement of Out-of-State and Federal Inmates: A multijurisdictional detention center may contract for the confinement of out-of-state and federal inmates only for the purposes authorized by 7-32-2203. Those purposes do not include the confinement of adult felony and misdemeanor offenders who are committed by an out-of-state jurisdiction or the federal government. In conformity with the intent of the Legislature to not allow routine interstate exchanges of inmates in and out of Montana, the authority to confine adult offenders who are committed by an out-of-state jurisdiction or the federal government is reserved to the Department of Corrections under narrow circumstances only. 52 A.G. Op. 4 (2007).

53-30-505. Contract time limit.

Compiler's Comments

1997 Amendment: Chapter 455 in second sentence, after "provisions of", deleted "18-3-104 and". Amendment effective April 30, 1997.

53-30-506. Local governmental entity option to purchase facility owned by state.

Compiler's Comments

1997 Amendment: Chapter 224 near end inserted reference to corporation.

53-30-507. Rulemaking authority.

Compiler's Comments

2019 Amendment: Chapter 456 in (3)(c)(ii) at end inserted "not to exceed 3% annually"; in (3)(c)(iii) substituted "limited to the following use allowances" for "including depreciation or a pro rata portion of capital costs incurred"; inserted (3)(c)(iii)(A) and (3)(c)(iii)(B) concerning capital costs; in (4) substituted current text for "For the biennium beginning July 1, 2017, the department may pay to a regional correctional facility no more than the rate it paid to that facility on December 6, 2016"; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 384 inserted (4) regarding rate paid by department to regional correctional facilities. Amendment effective July 1, 2017.

Severability: Section 38, Ch. 384, L. 2017, was a severability clause.

2005 Amendment: (Version effective July 1, 2006) Chapter 551 inserted (3) requiring the department to adopt rules specifying per diem rate for confinement of certain persons; and made minor changes in style. Amendment effective July 1, 2006.

1999 Amendment: Chapter 491 inserted fourth and fifth sentences regarding adoption of minimum standards. Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

1997 Amendment: Chapter 224 near middle of second sentence inserted reference to corporation; inserted last sentence concerning rules requiring response to request for proposals; and made minor changes in style.

Part 6
Private Correctional Facilities

Part Compiler's Comments

Applicability: Section 13, Ch. 511, L. 1997, provided: "(1) [This act] applies to proceedings begun or contracts renewed on or after [the effective date of this act] [effective May 2, 1997].

(2) [Section 7] [53-30-607] does not apply to a private correctional facility that has been established prior to [the effective date of this act]."

Effective Date: Section 14, Ch. 511, L. 1997, provided: "[This act] is effective on passage and approval." Approved May 2, 1997.

Part Administrative Rules

Title 20, chapter 27, ARM Private correctional facilities.

53-30-602. Definitions.

Compiler's Comments

1999 Amendment: Chapter 491 in definition of private correctional facility deleted former second sentence that read: "The term includes a regional correctional facility, as defined in 53-30-503, if privately operated or privately owned and operated." Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

53-30-603. Private correctional facilities — confinable persons.

Compiler's Comments

2003 Amendment: Chapter 362 in (3) at beginning of first sentence after "person" substituted "convicted in any state or U.S. federal court may be" for "charged or convicted in another state or charged or convicted in federal court in another state may not be" and at end added language relating to a written agreement and inserted last sentence relating to returning an out-of-state inmate. Amendment effective April 16, 2003.

1999 Amendment: Chapter 491 in (1) after "may not construct" deleted "or operate", inserted "in this state", and substituted "authorized" for "licensed" and deleted second sentence that read: "A license is nontransferable"; inserted (2) regarding operation of a private correctional facility; in (3) near beginning inserted "charged or", inserted "or charged or convicted in federal court in another state", after "may not be confined in" deleted "the portion of", and after "in this state" deleted "that is used for the incarceration of convicted felons for a term of over 1 year unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4"; and made minor changes in style. Amendment effective April 27, 1999.

Saving Clause: Section 24, Ch. 491, L. 1999, was a saving clause.

Retroactive Applicability: Section 26, Ch. 491, L. 1999, provided: "The amendments to 53-30-603 apply retroactively, within the meaning of 1-2-109, to all occurrences on or after July 1, 1998."

Attorney General's Opinions

Limited Use of Multijurisdictional Detention Center for Confinement of Out-of-State and Federal Inmates: A multijurisdictional detention center may contract for the confinement of out-of-state and federal inmates only for the purposes authorized by 7-32-2203. Those purposes do not include the confinement of adult felony and misdemeanor offenders who are committed by an out-of-state jurisdiction or the federal government. In conformity with the intent of the Legislature to not allow routine interstate exchanges of inmates in and out of Montana, the authority to confine adult offenders who are committed by an out-of-state jurisdiction or the federal government is reserved to the Department of Corrections under narrow circumstances only. 52 A.G. Op. 4 (2007).

53-30-604. Department duties and responsibilities — rulemaking authority.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 94, Ch. 261, L. 2021. Amendment effective April 20, 2021.

1997 Statement of Intent: The statement of intent attached to Ch. 511, L. 1997, provided: "A statement of intent is required for this bill to provide guidance to the department of corrections in adopting rules under [section 4] [53-30-604]. It is the intent of the legislature that rules adopted by the department ensure public participation in the siting of a private correctional facility, ensure that the design and construction of a private correctional facility be reviewed and approved by the department of administration, and provide that the management and operation of a private correctional facility substantially conform with recognized correctional standards, such as the American correctional association standards and national commission on correctional health care standards."

53-30-605. Requirements of request for proposals.

Case Notes

Economic Advantage Inadequate Reason for Denial of Public Right to Observe Government Deliberations in Corrections Vendor Process: A newspaper company sought to restrain the Department of Corrections from excluding the public from meetings of the committee that reviewed proposals for operating private prison facilities. The District Court held that the public had no right to observe the negotiation phase of the committee's work, but that once negotiations were completed, the process by which the conclusions were arrived at must be open to public observation. Both parties appealed. The Supreme Court noted that as part of an Executive Branch agency, the Department and the committee were considered governmental bodies pursuant to 2-15-104 for purposes of procurement and that under the constitutional right to know, proposals submitted by private vendors were considered documents of a public body or agency that, under 2-6-102 (now repealed), the public has a right to inspect. Under the two-part test in Missoulian v. Bd. of Regents, 207 M 513, 675 P2d 962 (1984), the only exception to the constitutional provision arises when the demand of individual privacy clearly exceeds the merits of public disclosure. The state contended that the meetings at issue were closed for economic advantage, but economic advantage is neither a privacy interest nor a sufficient reason for denying the public the opportunity to observe deliberations of public bodies or to examine public documents, including proposals submitted to the public body by a vendor, unless the proposal concerns a privacy interest involving legitimate trade secrets or individual safety. A public agency's desire for privacy does not provide an exception to the public's constitutional right to observe its government at work. To the extent that provisions in 18-4-304 or ARM 2.5.602 require exclusion of the public from the competitive bid process, those provisions are unconstitutional and unenforceable. Great Falls Tribune Co., Inc. v. Day, 1998 MT 133, 289 M 155, 959 P2d 508, 55 St. Rep. 524 (1998), following Mtn. States Tel. & Tel. Co. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181 (1981), State ex rel. Great Falls Tribune Co., Inc. v. District Court, 238 M 310, 777 P2d 345 (1989), Great Falls Tribune Co., Inc. v. Great Falls Pub. Schools, 255 M 125, 841 P2d 502 (1992), and Common Cause of Mont. v. Statutory Comm. to Nominate Candidates for Comm'r of Political Practices, 263 M 324, 868 P2d 604 (1994). See also Assoc. Press, Inc. v. Dept. of Revenue, 2000 MT 160, 300 M 233, 4 P3d 5, 57 St. Rep. 657 (2000).

Part 7
Restrictive Housing

Part Compiler's Comments

Effective Date: Section 16, Ch. 482, L. 2019, provided that this part is effective January 1, 2020.

53-30-702. Definitions.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 339 in definition of facility after "state prison" inserted "as", substituted "53-30-101(1), (2), and (4)" for "53-30-101(3)(c)(i) through (3)(c)(iii) and (3)(c)(v)", and before "correctional facility" deleted "youth". Amendment effective October 1, 2021.

Chapter 557 in definition of restrictive housing in second sentence at end after “detention” inserted “if the conditions of confinement require inmates to be confined to a cell for at least 22 hours a day”; inserted definition of severe mental illness; and made minor changes in style. Amendment effective July 1, 2021.

53-30-708. Mental health status review.

Compiler’s Comments

2021 Amendment: Chapter 557 in (1) near beginning substituted “youth inmates with a mental disorder” for “youth inmates with mental health issues, a mental disorder, or mental illness”; in (3) in first sentence near middle substituted “who has been placed in restrictive housing, a qualified health care professional shall notify” for “health staff shall assess the risk of exacerbation of mental disorder and notify”; in (4) in second sentence near middle substituted “documented in the inmate’s record” for “documented on the inmate’s log” and in third sentence substituted “documentation” for “logs”; in (5) substituted current text for former text (see 2021 Session Law for former text); in (6) in two places substituted “severe mental illness” for “serious mental disorder”; and made minor changes in style. Amendment effective July 1, 2021.

TITLES 54 THROUGH 59
RESERVED

TITLE 60
HIGHWAYS AND TRANSPORTATION

CHAPTER 1
HIGHWAY CODE

Chapter Attorney General's Opinions

Authority of U.S. Fish and Wildlife Service to Regulate Public Right-of-Way Within Wildlife Refuge: The U.S. Fish and Wildlife Service has the authority within the boundaries of a wildlife refuge to regulate the use of a public right-of-way established pursuant to Revised Statutes section 2477 (43 U.S.C. 932). Public recreational use of that right-of-way may be permitted only to the extent that is practicable and not inconsistent with the primary objectives for which the refuge was established. 45 A.G. Op. 13 (1993).

Chapter Collateral References

Tax Appeals and Oversize Loads: A Final Report on the Activities of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2014).

Part 1
General Provisions

60-1-101. Legislative findings.

Case Notes

Animal on Highway — Failure to Establish Duty of Highway Employee: Summary judgment was properly granted to the state in a wrongful death action where a motorist was killed after striking a horse on the highway. Plaintiffs cited no authority that a highway maintenance employee had a duty to remove live animals from the roadway or to ensure that animals did not come back onto the highway. Whitfield v. Therriault Corp., 229 M 195, 745 P2d 1126, 44 St. Rep. 1896 (1987), followed in Yager v. Deane, 258 M 453, 853 P2d 1214, 50 St. Rep. 610 (1993).

60-1-102. Legislative policy and intent.

Compiler's Comments

2019 Amendment: Chapter 299 in introductory clause after "Consistent with the" deleted "foregoing" and after "determinations and declarations" inserted "provided in 60-1-101"; in (2) after "custodian of the" substituted "commission-designated highway systems" for "federal-aid"; in (3) after "that the state" deleted "shall"; and made minor changes in style. Amendment effective October 1, 2019.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Case Notes

Auto Collisions on State Highway Intersections: Where individuals involved in automobile collision sued city for negligent design, regulation, and maintenance of intersection and city showed that intersection was part of state highway system, city was not liable. State ex rel. Helena v. District Court, 167 M 157, 536 P2d 1182 (1975).

Attorney General's Opinions

Maintenance of County Roads — Discretionary or Mandatory: A county is required to maintain county roads established through the petition process but is not legally required to maintain other county roads, which include county roads created by dedication to the public. The Board of County Commissioners exercised its discretion to authorize maintenance of a county road created by dedication to the public from 1952 until 1981. The county is not required by law to maintain the road but has, within the limits of available funds, the power and discretion to do so. 41 A.G. Op. 32 (1985).

City Council — Lack of Authority to Regulate Crosswalk on Federal-Aid Highway in Manner Inconsistent With State Law: A city council may not enact an ordinance requiring a driver of a motor vehicle on a federal-aid or state highway to stop for a pedestrian within a crosswalk when the pedestrian is not on the half of the roadway on which the vehicle is traveling and when the pedestrian is not close enough to be in danger. 41 A.G. Op. 10 (1985).

Forest Service Development Roads: The laws applicable to vehicle size and weight are enforceable upon highways but not upon Forest Service development roads. This part, however, generally extends its jurisdiction over these roads. 37 A.G. Op. 9 (1977).

60-1-103. General definitions.

Compiler's Comments

2019 Amendment: Chapter 299 in introductory clause after "unless the context otherwise requires" inserted "in this title"; inserted definitions of commission-designated highway systems, federal-aid highway funds, financial district, interstate highway, national highway system, primary highway system, secondary highway system, and urban highway system; deleted definition that read: ""Federal-aid highway" means a public highway that is a portion of any of the federal-aid highway systems"; deleted definition that read: ""Federal-aid highway systems" means all of the systems named as part of the systems and their urban extensions"; deleted definition that read: ""Federal-aid interstate system" means that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C."; deleted definition that read: ""Federal-aid primary system" means that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C."; deleted definition that read: ""Federal-aid secondary system" means that system of public highways not in the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C."; in definition of state highways substituted current definition for former definition that read: ""State highway" means any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department"; and made minor changes in style. Amendment effective October 1, 2019.

2001 Amendment: Chapter 125 in definitions of condemnation and public highways inserted "as provided in Title 70, chapter 30, and chapter 4 of this title"; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

1999 Amendment: Chapter 546 inserted definition of scenic-historic byway; and made minor changes in style. Amendment effective July 1, 1999.

Severability: Section 6, Ch. 546, L. 1999, was a severability clause.

1995 Amendment: Chapter 75 near beginning of definition of abandonment, before "easement", inserted "or an" and at beginning of second sentence inserted "Abandonment is"; in definition of Commission substituted "transportation" for "highway"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways and reference to Director of Transportation for reference to Director of Highways. Amendment effective July 1, 1991.

Section Not Codified: Section 32-2203 (part), R.C.M. 1947, including definitions of "auditor", "clerk", "committee", "superintendent", "supervisor", "surveyor", and "treasurer", was not codified in the MCA because it is no longer relevant. This part of the section has not been repealed and is still valid law. Citation may be made to sec. 2-101, Ch. 197, L. 1965, as amended by sec. 69, Ch. 316, L. 1974.

Administrative Rules

ARM 18.5.103 Highway approaches — definitions.
ARM 18.6.202 Outdoor advertising — definitions.
ARM 18.8.101 Motor carrier services — definitions.

Case Notes

Federal Courts Look to State Law to Determine What Constitutes a "Public Highway Legally Established" for the Purposes of Federal Land Grant Statutes: In Montana, a public highway legally established is only the portion of the former right-of-way of a railroad that is established by the county as a road open to the public. Avista Corp. Inc. v. Wolfe, 549 F3d 1239 (9th Cir. 2008).

"Heavy or Highway" Construction Construed — "Utility Rights-of-Way" Construed: After receiving complaints about the wages being paid to workers constructing tunnels for heating and electric utilities on the Montana State University-Bozeman campus, the Montana Department of Labor and Industry (DLI) held that the construction projects were "heavy" construction within the

meaning of 18-2-401(5) and (7) and that a higher wage should be paid. The DLI also held that the contracting state agency, the Department of Administration (DA), was liable for back wages. The DA appealed the DLI decision to the District Court, which held that the project was not "heavy" construction because it was not a utility "right-of-way". The Supreme Court held that the District Court erred in applying the definition of "right-of-way" found in this section and in holding that a "right-of-way" is only an interest in land. The Supreme Court pointed out that 18-2-401 sets out a listing of projects that are to be built or constructed. The Supreme Court noted that not only could an interest in land not be "constructed" but that the inclusion of "rights-of-way" in the list of types of projects listed in 18-2-401(5) was not intended by the Legislature, because of the use of the phrase "such as", to be an exclusive list of projects. The Supreme Court therefore held that the tunnels were "utility rights-of-way", that they qualified as "heavy construction" within the meaning of 18-2-401(5), and that a higher wage should have been paid by the DA. Dept. of Administration v. Ekanger, 284 M 151, 943 P2d 994, 54 St. Rep. 821 (1997).

Abandonment of State Highway — Statements by State Field Supervisor Contemporaneous With Removal of Asphalt Held Not Evidence of Official Act by State Evidencing Clear Intent to Abandon Easement — Asphalt Alone Not "Highway": DeVoe brought a declaratory judgment action against the state, claiming that the removal of asphalt from a curving intersection and statements by a supervisor of a crew removing the old roadway evidenced an intent by the state to abandon its easement granted in 1937. DeVoe argued that statements by James Williams, the state's field project manager in charge of removal of the asphalt from the section of highway on the state's easement claimed by DeVoe to have been abandoned, showed that the state intended to abandon the easement. The Supreme Court held that the statements by Williams, to the effect that the state might give up the easement, were evidence of an intent to abandon but did not constitute evidence of an official act by the state indicating a clear intent to abandon the 1937 easement. The Supreme Court also noted that a "highway" is defined as including the highway right-of-way and that, for this reason, removal of asphalt does not constitute removal of the highway. The Supreme Court held that the District Court properly granted summary judgment against DeVoe because the District Court properly found that the easement was still subject to highway-related uses. DeVoe v. St., 281 M 356, 935 P2d 256, 54 St. Rep. 207 (1997).

Attorney General's Opinions

Access to Rivers and Streams Via County Road Right-of-Way and Bridges: Given that the public has the right to use public highways in any manner and for any purpose consistent with or reasonably incidental to public travel, this right includes the use of public rights-of-way created by county roads to gain access to rivers and streams. Using a county road right-of-way as an access point to a river or stream right-of-way is consistent with and reasonably incidental to the public's right to travel on county roads. Further, a bridge and its abutments, as part of a public highway, offer the same access to rivers and streams for recreational use as the highway to which they are attached. However, the public's right of access is not unlimited and is subject to the following limitations: (1) the recreating public must stay within the county road and bridge right-of-way, which is assumed to be 60 feet unless otherwise stated by petition or dedication; (2) access may be limited by the reasonable exercise of a governing body's police power to control the use of roads for purposes such as safety and parking; and (3) use of a public highway may be limited by the manner in which it was created, such as a road created by prescriptive easement, which is limited both in size and usage to the original use during the prescriptive period and may include access for hunting, fishing, and recreation. 48 A.G. Op. 13 (2000).

Municipal Construction of Storm Sewers With Gas Tax Revenues Allowed: A city may use its gas tax allocation to construct streets and highways, and because a highway is defined as including "drainage structures", the city may use its share of gasoline tax allocation for construction of storm sewers and drains in and under city streets for removal of runoff water. 40 A.G. Op. 19 (1983).

Maintenance of Bridge Utilized by the Public but Not Located on a County Road Maintained by the County: Prior to July 1, 1979, by analogy to the definition of "public highway" in 60-1-103, it would appear that a bridge on a road utilized by the public, which was located over a boundary between two counties, would be the common responsibility of the two counties. However, by adding a definition of "public bridges", the 1979 Legislature made it clear that counties are not responsible for maintenance of bridges that are utilized by the public but which are not located in a city or town in the county or on a county road maintained by the county. 38 A.G. Op. 50 (1979).

Forest Service Development Road: Because a United States Forest Service development road is not, by statutory definition, a highway, the provisions of law regarding license plates do not apply to vehicles operated solely on Forest Service development roads. 37 A.G. Op. 9 (1977).

Application of Traffic Laws Upon Forest Service Development Roads: Only the traffic laws regulating parking, moving, safety, and related areas are enforceable by the Highway Patrol and county Sheriffs against vehicles operating on United States Forest Service development roads. 37 A.G. Op. 9 (1977).

Forest Service Development Roads: The laws applicable to vehicle size and weight are enforceable upon highways but not upon Forest Service development roads. This chapter, however, generally extends its jurisdiction over these roads. 37 A.G. Op. 9 (1977).

Law Review Articles

New Prescriptive Easement Law: The Montana Supreme Court Expands Public Access to Private Land in Public Lands Access Ass'n v. Board of County Commissioners of Madison County, Inabnit, 77 Mont. L. Rev. 185 (2016).

Part 2
Classification of Highways

60-1-201. Classification — highways and roads.

Compiler's Comments

2019 Amendment: Chapter 299 in (1)(a) substituted "commission-designated highway systems" for "federal-aid highways". Amendment effective October 1, 2019.

2009 Amendment: Chapter 241 in (3) at end inserted "or that have been the subject of a request under 7-14-2622 and for which a legal route has been recognized by a district court as provided in 7-14-2622"; and made minor changes in style. Amendment effective October 1, 2009.

1999 Amendment: Chapter 440 at end of (2) substituted "may be designated as county roads or city streets upon the acceptance of the county or city" for "are county roads or city streets"; and made minor changes in style. Amendment effective October 1, 1999.

Preamble: The preamble attached to Ch. 440, L. 1999, provided: "WHEREAS, it has become necessary to clarify the duties of boards of county commissioners regarding roads under their jurisdiction; and

WHEREAS, it is appropriate to specify how the maintenance and oversight of certain roads may be transferred to a county in a manner that protects private property rights and allows the public to participate in the process; and

WHEREAS, clarifying in statute the definition of a county road and the rights and responsibilities of a board of county commissioners will prevent county road-related disputes from entering the court system."

Case Notes

Use of 1999 Version of Statute Rather Than 1997 Version Harmless Error: The Pedersons argued that the lower court erred in using the 1999 version of this section when their complaint had been filed when the 1997 version was in effect. The Supreme Court held that although the lower court used the wrong version, it had recognized that the question of whether or not a county road existed depended on Title 7, ch. 14, and not on this title, which deals primarily with state highways. Therefore, the use of the wrong statutory version by the lower court was harmless error. Pederson v. Dawson County, 2000 MT 339, 303 M 158, 17 P3d 393, 57 St. Rep. 1441 (2000).

Attorney General's Opinions

Access to Rivers and Streams Via County Road Right-of-Way and Bridges: Given that the public has the right to use public highways in any manner and for any purpose consistent with or reasonably incidental to public travel, this right includes the use of public rights-of-way created by county roads to gain access to rivers and streams. Using a county road right-of-way as an access point to a river or stream right-of-way is consistent with and reasonably incidental to the public's right to travel on county roads. Further, a bridge and its abutments, as part of a public highway, offer the same access to rivers and streams for recreational use as the highway to which they are attached. However, the public's right of access is not unlimited and is subject to the following limitations: (1) the recreating public must stay within the county road and bridge right-of-way, which is assumed to be 60 feet unless otherwise stated by petition or dedication; (2) access may be limited by the reasonable exercise of a governing body's police power to control the use of roads for purposes such as safety and parking; and (3) use of a public highway may be limited by the manner in which it was created, such as a road created by prescriptive easement, which is limited both in size and usage to the original use during the prescriptive period and may include access for hunting, fishing, and recreation. 48 A.G. Op. 13 (2000).

60-1-204. Maureen and Mike Mansfield heritage route.

Compiler's Comments

Preamble: The preamble to Ch. 643, L. 1989, provided: "WHEREAS, Maureen and Mike Mansfield are two of Montana's most renowned people; and

WHEREAS, Mike Mansfield has distinguished himself as one of America's leading statesmen; and

WHEREAS, recently the governments of Japan and the United States have bestowed on him their highest civilian tributes; and

WHEREAS, Mike Mansfield has retired after 70 years of public service, having served as a Marine, teacher, member of the United States House of Representatives, member of the United States Senate, and diplomat; and

WHEREAS, Maureen Mansfield was born and raised in Butte and Mike Mansfield spent the first 7 years of his life in Great Falls and later worked in the mines in Butte; and

WHEREAS, during this centennial year of statehood, it is fitting that Maureen and Mike Mansfield be honored and recognized for their many accomplishments by designating the 160 miles of U.S. Interstate Highway 15 between Butte and Great Falls as the "Maureen and Mike Mansfield heritage route"."

60-1-205. Charles M. Russell trail.

Compiler's Comments

Preamble: The preamble attached to Ch. 412, L. 1993, provided: "WHEREAS, Charles M. Russell, preeminent western artist, is celebrated for his historic portrayals of the West and had strong ties to the Judith Basin country of central Montana; and

WHEREAS, the Judith Basin, the heartland of Montana, is the setting for many of Russell's paintings from the artist's early days with Jake Hoover, when Russell joined in the Judith Basin roundups and colorfully captured the western epic with paintings of buffalo, Native Americans, trappers, cattle roundups and depicted the high times in Stanford and the quiet days in Utica; and

WHEREAS, there is a growing national and international interest and fascination with western history, and U.S. Highway 87, State Highway 200, crosses the heart of the Judith Basin between the majestic Highwood Mountains and the historic Little Belt Mountains, connecting the C.M. Russell Museum in Great Falls with historic Lewistown and providing outstanding opportunities to experience the West as it is and as it was; and

WHEREAS, there is significant local interest in preserving and interpreting the rich history of this area that once served as the common hunting ground for Montana tribes and in developing responsible tourism in order to help diversify local economies and provide satisfying experiences for visitors; and

WHEREAS, there are numerous attractions of interest to local residents and visitors, including museums in Lewistown, Utica, Stanford (where Snowdrift, the famed white wolf is featured), Belt, and Great Falls, and expansive vistas of the country Russell loved, preserved, and portrayed so beautifully, including Square Butte, the Hoover cabin, Russell Point, and Yogo, home of the world's most striking sapphires."

60-1-206. Donald J. Ruhl medal of honor highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 67, L. 1995, provided: "WHEREAS, Donald Jack Ruhl was born in Columbus, Montana, on July 2, 1923, and graduated from high school in Joliet, Montana, in 1942; and

WHEREAS, Donald J. Ruhl was known and admired by employers, friends, and family as a hard-working, responsible, and dedicated youth; and

WHEREAS, Donald J. Ruhl enlisted in the Marine Corps Reserves on September 12, 1942, entered active duty on the same day, and began military service in San Diego, California; and

WHEREAS, Donald J. Ruhl, as a Marine recruit, demonstrated physical abilities as a sharpshooter, combat swimmer, boxer, all-around athlete, and model Marine; and

WHEREAS, Donald J. Ruhl was promoted to Private First Class on December 19, 1942, and, within 5 weeks, had completed training and was certified as a qualified parachutist with Company "C", Third Parachute Battalion, Third Marine Division; and

WHEREAS, PFC Ruhl sailed aboard the USS Mount Vernon on March 12, 1943, as a mortar crewman, en route to New Caledonia; and

WHEREAS, in September 1943, PFC Ruhl, as a member of the renamed Company "L", Third Parachute Battalion, First Marine Parachute Regiment, First Marine Amphibious Corps, sailed for the island of Guadalcanal aboard the USS American Legion, the first of several voyages in campaigns throughout the Pacific theater; and

WHEREAS, PFC Ruhl began a last series of voyages in January 1945, sailing from Hilo, Hawaii, through the Hawaiian Islands, to Saipan and eventually to the shores of Iwo Jima, where, on February 19, 1945, D-Day on Iwo Jima, PFC Donald J. Ruhl and the Marines landed and joined the battle; and

WHEREAS, within 24 hours of landing on Iwo Jima, PFC Donald J. Ruhl, ever valiant, single-handedly seized a blockhouse by routing the enemy and, subsequently, rescued a wounded, fellow Marine from enemy mortar and machine gun fire, thereby saving the Marine's life; and

WHEREAS, following that heroic effort, PFC Donald J. Ruhl returned to the unit, volunteered to investigate an enemy gun emplacement, and occupied the position through the night; and

WHEREAS, on the morning of February 21, 1945, PFC Donald J. Ruhl, with a platoon guide, assisted an advance of "E" Company, Twenty-Eighth Marines, against enemy fortifications at the base of Mount Suribachi where, under heavy fire, the two Marines were targeted with an enemy grenade; and

WHEREAS, PFC Donald J. Ruhl, the selfless soldier, instantly called a warning to the other Marine, dived upon the deadly missile, absorbed the full charge of the exploding grenade, and saved the life of a friend and the lives of other nearby Marines; and

WHEREAS, 2 days later, "E" Company raised the American flag atop Mount Suribachi, an event that was made possible in part by the heroic action and death of PFC Donald J. Ruhl; and

WHEREAS, PFC Donald J. Ruhl was posthumously awarded the Congressional Medal of Honor for bravery and heroism, which award was presented to PFC Donald J. Ruhl's parents on January 12, 1947."

60-1-207. Old forts trail.

Compiler's Comments

2005 Amendment: Chapter 74 inserted introductory clause; inserted (2) establishing additional course of old forts trail; and made minor changes in style. Amendment effective March 24, 2005.

Preamble: The preamble attached to Ch. 321, L. 1997, provided: "WHEREAS, north central Montana is rich in diverse historic resources; and

WHEREAS, cultural tourism is an important industry in north central Montana; and

WHEREAS, on January 27, 1996, the Fort Assinniboine Preservation Association, the Havre Area Chamber of Commerce, Fort Benton's River and Plains Society and Fort Restoration Committee, and governmental entities in Saskatchewan, Canada, formed the Old Forts Trail Association; and

WHEREAS, the Old Forts Trail Association wishes to promote cultural tourism in north central Montana, southeastern Alberta, and southwestern Saskatchewan by designating the Old Forts Trail; and

WHEREAS, the routes that the Old Forts Trail Association seek to commemorate provided vital military and economic links among the outposts and towns of north central Montana, southeastern Alberta, and southwestern Saskatchewan in the 19th century; and

WHEREAS, formal recognition of the Old Forts Trail would enlighten the public about a significant period in the development of north central Montana, southeastern Alberta, and southwestern Saskatchewan; would attract more visitors to north central Montana and Canada; and would encourage tourists to stay in the area, thereby fostering the local economy."

60-1-208. Montana highway 3.

Compiler's Comments

Effective Date: Section 2, Ch. 342, L. 1997, provided "[This act] is effective July 1, 1997."

60-1-209. 163rd infantry regiment (sunset division) heritage highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 256, L. 2003, provided: "WHEREAS, the 163rd Infantry Regiment has served Montana and this nation in war and in peace throughout the past 2 centuries; and

WHEREAS, the year 2003 is the occasion of the 60th anniversary of the 163rd Infantry Regiment's heroic efforts to help the allied forces win the Battle of Sananada in World War II in the Southwest Pacific, a battle recognized as the first major land victory against the Japanese forces; and

WHEREAS, the 163rd Infantry Regiment was ordered into active duty on September 16, 1940, with a force of 1,700 men, including nearly 200 representatives of Montana tribes, and after training for 1 year became part of the initial American forces ordered into duty in the Pacific theater when the United States entered World War II in December 1941; and

WHEREAS, the 163rd Infantry Regiment earned numerous citations and letters of appreciation from Army headquarters during and after World War II, in particular for what General Jacob Devers referred to as "76 days of unrelieved fighting, a record in jungle warfare", as the 163rd Infantry Regiment and the 41st Infantry Division to which it was assigned carried on a 1,000-mile campaign in the jungles of New Guinea; and

WHEREAS, the 163rd Infantry Regimental combat team served as one of the initial occupation forces in Japan after World War II until being demobilized and sent home in January 1946; and

WHEREAS, the 163rd Infantry Regimental combat team upon its return to Montana became a major element of Montana's National Guard, serving as the basis for the Montana Army and Air National Guard, which continue to serve Montana today; and

WHEREAS, the 163rd Infantry Regimental combat team and its successor organizations, the 163rd Armored Cavalry Regiment and the 163rd Armored Brigade and current units, recruited along U.S. Highway 2 among Montana's Hi-Line communities of Bainville, Poplar, Wolf Point, Glasgow, Malta, Harlem, Chinook, Shelby, Havre, Whitefish, Kalispell, and Libby and on the Fort Peck, Rocky Boy, Fort Belknap, and Blackfeet Reservations; and

WHEREAS, the 163rd Infantry Regiment is the successor to volunteer troops that started with the Montana Territorial Volunteers, who served from 1867 to 1887, and proceeded to the First Montana Infantry Regiment, the Montana National Guard formed in March 1887, which became the First Montana Infantry Regiment, United States Volunteers, which was formed to fight in the Spanish-American and Philippine-American Wars in 1898-1899 and which later became the 2nd Montana Infantry, which provided emergency services for Montana before being activated to serve on the U.S.-Mexican Border in 1916 and then was redesignated as the 163rd Infantry Regiment prior to being called to duty in World War I in 1917-1919; and

WHEREAS, the cities and towns of the Hi-Line and the rest of Montana are extremely proud of the services of the 163rd Infantry Regiment; and

WHEREAS, more than 100,000 Montanans have served or are currently serving in units associated with the 163rd Infantry Regiment and deserve recognition for their accomplishments in serving the state and the country."

Effective Date: This section is effective October 1, 2003.

60-1-210. Purple heart trail.

Compiler's Comments

Preamble: The preamble attached to Ch. 538, L. 2003, provided: "WHEREAS, on August 7, 1782, at his Newburgh, New York, headquarters, George Washington devised a badge of distinction to be worn by enlisted men and noncommissioned officers; and

WHEREAS, the badge, named the Badge of Military Merit and patterned in the "figure of a heart in purple cloth or silk edged with narrow lace or binding", was awarded for "any singularly meritorious action", permitted the wearer to pass guards and sentinels without challenge, and required the honoree's name and regiment to be inscribed in a Book of Merit; and

WHEREAS, after the Revolutionary War, no more American soldiers received the Badge of Military Merit; and

WHEREAS, the valiant efforts in 1927 by Army Chief of Staff General Charles P. Summerall to revive the Badge of Military Merit ultimately failed in Congress; and

WHEREAS, on January 7, 1931, Army Chief of Staff General Douglas MacArthur pursued a new medal that the War Department formally announced on February 22, 1932; and

WHEREAS, after the award was reinstated, recipients of a Meritorious Service Citation Certificate during World War I, along with other eligible soldiers, could exchange their award for the Purple Heart; and

WHEREAS, Army regulations at the time defined the conditions of the award as "a wound which necessitates treatment by a medical officer and which is received in action with an enemy, may in the judgment of the commander authorized to make the award be construed as resulting from a singularly meritorious act of essential service"; and

WHEREAS, the award of the Purple Heart still represents the thoughts reflected in George Washington's orderly book dated August 7, 1782: "The road to glory in a patriot army and a free country is thus open to all.""

Effective Date: This section is effective October 1, 2003.

60-1-211. Patrick G. Galvin memorial highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 216, L. 2005, provided: "WHEREAS, Patrick G. Galvin worked tirelessly to improve transportation and roads in the State of Montana; and

WHEREAS, Patrick G. Galvin believed strongly that Montana Highway 3 was an important link in the vitality of the economy of the state; and

WHEREAS, Montana Highway 3 is a crucial artery between North Central Montana and Eastern Montana for commercial entities and private citizens alike; and

WHEREAS, Patrick G. Galvin served the people of Montana with integrity and compassion during his four terms as a state representative; and

WHEREAS, Patrick G. Galvin had vast experience running freight trains from Great Falls to Laurel and saw on a daily basis the critical connection that Montana Highway 3 provides to all Montana citizens and businesses."

Effective Date: Section 3, Ch. 216, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 10, 2005.

60-1-212. Richard Dean Roebling memorial highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 388, L. 2005, provided: "WHEREAS, statistics compiled by the Montana Department of Transportation indicate that in the last 2 years, nearly 40% of all fatal accidents involving motor vehicles were alcohol-related accidents; and

WHEREAS, the 97 fatalities that resulted from alcohol-related crashes in 2003 serve as a painful reminder of the need to promote highway safety; and

WHEREAS, in 1997, the 55th Legislature recognized the dangers that motor vehicles posed to individuals engaged in highway construction and maintenance work; and

WHEREAS, in an effort to mitigate the dangers, the 55th Legislature enacted a bill that doubled penalties for traffic violations in highway construction and work zones; and

WHEREAS, in 2003, to further protect highway workers, the 58th Legislature created the offense of reckless endangerment of a highway worker; and

WHEREAS, despite legislative efforts and a public information campaign initiated by the Department of Transportation to warn the driving public to drive slowly and carefully through highway construction and work zones, accidents have occurred in these areas; and

WHEREAS, in June 2004, 38-year-old father of two Richard Dean Roebling, a road engineer employed on a road reconstruction project on Main Street in Billings, was struck and killed by an intoxicated driver; and

WHEREAS, it is appropriate that Main Street in Billings bear the name of Mr. Roebling to commemorate Mr. Roebling's life and service to the community of Billings, to recognize the valuable contributions of highway construction workers in Yellowstone County and throughout the state, and to remind motorists of the dangers of drunk driving and the importance of driving carefully through highway construction and work zones."

Effective Date: This section is effective October 1, 2005.

60-1-213. Robert E. Ewing Jr. memorial highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 58, L. 2007, provided: "WHEREAS, Robert E. Ewing Jr. was an exceptional individual who dedicated his entire life's work to building the highway system in Montana; and

WHEREAS, Robert E. Ewing Jr. worked nearly 50 years to construct and improve roads in Montana; and

WHEREAS, Robert E. Ewing Jr. had a lifetime commitment to do the best job possible for the Montana Department of Transportation and the people of Montana; and

WHEREAS, Robert E. Ewing Jr. was the resident engineer during construction of Interstate 90 from Columbus to Park City, which in 1971 won the first place construction award from the Montana Highway Commission for new interstate highway construction; and

WHEREAS, Robert E. Ewing Jr. was a man of the highest personal integrity who was a dedicated public servant with an outstanding record of accomplishment and service."

Effective Date: Section 3, Ch. 58, L. 2007, provided: "[This act] is effective on passage and approval." Approved March 27, 2007.

60-1-214. Warrior trail highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 109, L. 2007, provided: "WHEREAS, southeastern Montana is rich in cultural history and has been inhabited by industrious and resourceful people from the time of the first Montanans, the Indians, and pioneers and homesteaders, to the present day; and

WHEREAS, this culture is kept alive today through spirited community events, such as the Northern Cheyenne powwow, Crow fair, rodeos, and historical recreations; and

WHEREAS, the Legislature recognizes the importance of tourism to economic development and small business development."

Effective Date: Section 3, Ch. 109, L. 2007, provided that this section is effective on passage and approval. Approved March 30, 2007.

60-1-215. Highway patrol officer David Graham memorial highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 140, L. 2009, provided: "WHEREAS, Trooper David A. Graham was a dedicated trooper to the safety and protection of the citizens of Montana; and

WHEREAS, David was dedicated to the happiness of his family and friends; and

WHEREAS, David will always be loved and missed dearly as he was the most helpful and loving person we have known."

Effective Date: Section 3, Ch. 140, L. 2009, provided: "[This act] is effective on passage and approval." Approved April 2, 2009.

60-1-216. Highway patrol officer Evan F. Schneider memorial highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 141, L. 2009, provided: "WHEREAS, Evan F. Schneider proudly and honorably served the great State of Montana as a Montana Highway Patrol Trooper; his service record was exemplary; and even the people he arrested thanked him for his kindness and respect; and

WHEREAS, Evan helped many Montanans who were in crisis on our State's highways; and

WHEREAS, Evan joyfully fulfilled his duty as a Montana Highway Patrol Trooper to protect every person who travels Montana's highways; and

WHEREAS, we honor his ultimate sacrifice, his final duty to the citizens of Montana."

Effective Date: Section 3, Ch. 141, L. 2009, provided: "[This act] is effective on passage and approval." Approved April 2, 2009.

60-1-217. Highway patrol officer Michael W. Haynes memorial highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 105, L. 2011, provided: "WHEREAS, Michael W. Haynes proudly and honorably served the citizens of the great state of Montana as a Highway Patrol Trooper and had an exemplary service record; and

WHEREAS, Michael saved many lives during his service while being one of the top enforcers of violations that take many of our citizens, specifically driving under the influence; and

WHEREAS, we honor his final sacrifice, possibly saving some other innocent victim, and his final duty to the citizens of Montana."

Effective Date: Section 3, Ch. 105, L. 2011, provided that this section is effective on passage and approval. Approved April 1, 2011.

60-1-218. Highway patrol officer David DeLaittre memorial highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 219, L. 2011, provided: "WHEREAS, David DeLaittre proudly, honorably, and courageously served the citizens of Montana as an exemplary highway patrol trooper; and

WHEREAS, David dedicated his life to public safety as he served the people of Montana; and

WHEREAS, David fought courageously as his final service to keep all of us safe upon the highways of this great state; and

WHEREAS, we honor David as he made the ultimate sacrifice as his final duty to the citizens of Montana."

Effective Date: Section 3, Ch. 219, L. 2011, provided that this section is effective on passage and approval. Approved April 18, 2011.

60-1-219. Pintler veterans' memorial scenic highway.

Compiler's Comments

Effective Date: Section 3, Ch. 222, L. 2011, provided: "[This act] is effective on passage and approval." Effective April 18, 2011.

60-1-220. Patrick A. Pyette memorial highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 246, L. 2013, provided: "WHEREAS, Patrick A. Pyette, working as the Undersheriff for the Blaine County Sheriff's Office in Chinook, died in the line of duty Wednesday, December 14, 2011, while directing traffic around the scene of a disabled truck on U.S. Highway 2, between Harlem and Chinook; and

WHEREAS, Patrick A. Pyette was dedicated to his community and the people of northcentral Montana and served the people of Montana with integrity and compassion during his 10 years in the Blaine County Sheriff's Office and as a lifelong Montanan; and

WHEREAS, Joshua Thomas "Josh" Rutherford, working as a Deputy for the Blaine County Sheriff's Office in Chinook, died in the line of duty Wednesday, May 29, 2003, while responding to a domestic disturbance not far from Harlem, where he lived; and

WHEREAS, Josh Rutherford was committed to his family and community and proud to serve in a career in law enforcement, as were his father, his brother, his sister, and others in his family; and

WHEREAS, U.S. Highway 2 is a crucial and essential transportation artery along Montana's storied "Hi-Line"."

Effective Date: Section 4, Ch. 246, L. 2013, provided: "[This act] is effective on passage and approval." Approved April 22, 2013.

60-1-221. Joshua Thomas "Josh" Rutherford memorial highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 246, L. 2013, provided: "WHEREAS, Patrick A. Pyette, working as the Undersheriff for the Blaine County Sheriff's Office in Chinook, died in the line of duty Wednesday, December 14, 2011, while directing traffic around the scene of a disabled truck on U.S. Highway 2, between Harlem and Chinook; and

WHEREAS, Patrick A. Pyette was dedicated to his community and the people of northcentral Montana and served the people of Montana with integrity and compassion during his 10 years in the Blaine County Sheriff's Office and as a lifelong Montanan; and

WHEREAS, Joshua Thomas "Josh" Rutherford, working as a Deputy for the Blaine County Sheriff's Office in Chinook, died in the line of duty Wednesday, May 29, 2003, while responding to a domestic disturbance not far from Harlem, where he lived; and

WHEREAS, Josh Rutherford was committed to his family and community and proud to serve in a career in law enforcement, as were his father, his brother, his sister, and others in his family; and

WHEREAS, U.S. Highway 2 is a crucial and essential transportation artery along Montana's storied "Hi-Line"."

Effective Date: Section 4, Ch. 246, L. 2013, provided: "[This act] is effective on passage and approval." Approved April 22, 2013.

60-1-222. Joseph J. Dunn memorial highway.

Compiler's Comments

Preamble: The preamble attached to Ch. 148, L. 2015, provided: "WHEREAS, Joseph J. Dunn was killed in the line of duty on August 14, 2014, when he was struck down by a vehicle being pursued by law enforcement; and

WHEREAS, Joseph J. Dunn served his country as a Marine in Afghanistan and served his community as a deputy in the Cascade County Sheriff's Department; and

WHEREAS, Joseph J. Dunn lived his life as a devoted Christian and family man who demonstrated his faith, hope, and love in boundless optimism, tireless self-sacrifice, and quiet courage; and

WHEREAS, Joseph J. Dunn left behind two parents, two siblings, two small children, and a wife, as well as countless fellow law enforcement officers, all of whom loved and were loved by him; and

WHEREAS, after 33 short years of life and so much yet to live for, Joseph J. Dunn gave the ultimate sacrifice while protecting the citizens of Cascade County; and

WHEREAS, the 64th Legislature of the State of Montana wishes to honor his memory and commitment to service."

Effective Date: Section 3, Ch. 148, L. 2015, provided that this section is effective on passage and approval. Approved March 27, 2015.

60-1-223. David L. Briese Jr. memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 124, L. 2017, provided: "[This act] is effective on passage and approval." Approved March 30, 2017.

Preamble: The preamble attached to Ch. 124, L. 2017, provided: "WHEREAS, David L. Briese Jr. was killed in the line of duty on November 3, 2006, when responding to another deputy's call for assistance with a combative suspect; and

WHEREAS, David L. Briese Jr. dedicated his life to public safety as he served the people of Montana; and

WHEREAS, David L. Briese Jr., whose call number was 3-42, served for 11 years as a detention officer and as a deputy in the Yellowstone County and Big Horn County Sheriff's Offices; and

WHEREAS, David L. Briese Jr. gave the ultimate sacrifice while serving the citizens of Yellowstone County; and

WHEREAS, David L. Briese Jr. left behind two sons, a stepdaughter, a wife, two parents, and a sister; and

WHEREAS, Interstate 90 between mile 445 and mile 451 runs near the Yellowstone County Detention Facility, where David L. Briese Jr. started his career with Yellowstone County and where he lost his life; and

WHEREAS, the 65th Legislature of the State of Montana wishes to honor his memory and commitment to service."

60-1-224. Senator Conrad Burns memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 192, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 13, 2017.

Preamble: The preamble attached to Ch. 192, L. 2017, provided: "WHEREAS, Senator Conrad Burns was dedicated to the state of Montana and to his community of Billings; and

WHEREAS, a resident of Montana since 1962, Senator Burns was a cattle auctioneer and a farm reporter, eventually founding the successful Northern Ag Network, before beginning a career in public service; and

WHEREAS, Senator Burns served as Yellowstone County Commissioner before his election to the U.S. Senate in 1988, where he represented the state of Montana for three terms; and

WHEREAS, Senator Burns understood the importance of infrastructure development and, through his influential membership on the Senate Appropriations Committee, secured critical funding for numerous road and building projects throughout Montana, including the Zimmerman Trail in Billings and the Helena Armed Forces Reserve Center and the Training Center Headquarters; and

WHEREAS, Senator Burns' support was instrumental in the completion of improvements to Airport Road in Billings; and

WHEREAS, designation of a portion of Airport Road as the Senator Conrad Burns Memorial Highway would honor Senator Burns and recognize his commitment to and hard work on behalf of the community of Billings and the state of Montana."

60-1-225. David Thatcher memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 54, L. 2019, provided: "[This act] is effective on passage and approval." Approved March 7, 2019.

Preamble: The preamble attached to Ch. 54, L. 2019, provided: "WHEREAS, David Thatcher grew up on an eastern Montana homestead, helping support his family in the Great Depression; and

WHEREAS, David Thatcher graduated from Absarokee High School in 1939, enlisted in the U.S. Army Air Corps in 1940, and volunteered for the Doolittle Raid after the attack on Pearl Harbor; and

WHEREAS, David Thatcher, through gallantry in action, saved the lives of his entire crew after they crash landed off the Chinese coast; and

WHEREAS, David Thatcher was a vital member of the Missoula community, raising his family with his wife of 70 years, carrying the mail for the U.S. Postal Service, gardening, camping, serving with the Odd Fellows, and worshiping at the First Baptist Church; and

WHEREAS, the 66th Legislature of the State of Montana honors David Thatcher for his exemplary life of service."

60-1-226. Trenton Johnson memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 116, L. 2019, provided: "[This act] is effective on passage and approval." Approved April 3, 2019.

Preamble: The preamble attached to Ch. 116, L. 2019, provided: "WHEREAS, Trenton Johnson was a 2016 graduate of Missoula's Hellgate High School, where he had been recognized as a scholar and a member of Hellgate's four-time state champion lacrosse team; and

WHEREAS, Trenton Johnson was 19 years old and a sophomore at Montana State University; and

WHEREAS, Trenton Johnson was in his first season as a wildland firefighter with Grayback Forestry; and

WHEREAS, on July 19, 2017, Trenton Johnson was part of an initial attack team dispatched to the Florence Fire near Seeley Lake in the Lolo National Forest when he was struck by a falling tree snag and passed away from the injuries he sustained when struck; and

WHEREAS, Trenton Johnson gave his life to protect Montana; and

WHEREAS, the 66th Legislature of the State of Montana honors Trenton Johnson and his sacrifice."

60-1-227. Pearl Harbor Veterans memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 182, L. 2019, provided: "[This act] is effective on passage and approval." Approved April 18, 2019.

Preamble: The preamble attached to Ch. 182, L. 2019, provided: "WHEREAS, State Secondary Highway 532 runs adjacent to the Yellowstone National Cemetery, where Pearl Harbor veterans including Edward J. Chlapowski, who keyed the encoded message to all ships and stations that Pearl Harbor was under attack, are interred; and

WHEREAS, to honor these Pearl Harbor veterans from the Greatest Generation it is appropriate to rename this portion of roadway "Pearl Harbor Veterans Memorial Highway.""

60-1-228. Montana medal of honor highway.

Compiler's Comments

Effective Date: Section 3, Ch. 321, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

Preamble: The preamble attached to Ch. 321, L. 2019, provided: "WHEREAS, numerous states have designated stretches of U.S. Highway 20 as a memorial to recipients of the Medal of Honor; and

WHEREAS, U.S. Highway 20 spans Gallatin County from the Targhee pass to the Wyoming border within Yellowstone National Park; and

WHEREAS, eight Montanans have earned the Medal of Honor."

60-1-229. Dolly Smith Akers memorial highway.

Compiler's Comments

Effective Date: Section 4, Ch. 370, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

Preamble: The preamble attached to Ch. 370, L. 2019, provided: "WHEREAS, Dolly Smith Akers, also known as Day Eagle Woman, was born on March 23, 1901, in Wolf Point, Montana; and

WHEREAS, Dolly Smith Akers was the daughter of William Henry and Nellie Trexler Smith; and

WHEREAS, Dolly Smith Akers attended school in Wolf Point, Montana, and in Riverside, California; and

WHEREAS, Dolly Smith Akers lived and worked on a ranch north of Poplar; and

WHEREAS, Dolly Smith Akers worked as a welfare worker and state coordinator of Indian reservations in Montana; and

WHEREAS, Dolly Smith Akers entered politics with her election to the Assiniboine-Sioux tribal council at Fort Peck as the first woman elected to the council; and

WHEREAS, Dolly Smith Akers served as chairman of the tribe, was accused of striking the Bureau of Indian Affairs superintendent, was impeached, and was pardoned by President Nixon; and

WHEREAS, Dolly Smith Akers remained active in tribal politics for 40 years and was elected 57 times as a tribal delegate to Washington, D.C.; and

WHEREAS, in addition to tribal politics, Dolly Smith Akers was also active in state politics; and

WHEREAS, Dolly Smith Akers was elected to the state Legislature in 1932 and served in the 1933 Legislative Assembly, where she was the first Indian woman to be elected to the Montana State Legislature; and

WHEREAS, although she was elected as a Democrat, Dolly Smith Akers eventually joined and was active in the Republican Party; and

WHEREAS, Dolly Smith Akers, while in the Legislature, served as chairman of the Federal Relations Committee; and

WHEREAS, Dolly Smith Akers was a special representative of the Governor to the U.S. Secretary of the Interior, was special advisor on Indian Affairs to President Eisenhower, and was the Governor's delegate to the 1960 White House Conference on Children and Youth; and

WHEREAS, Dolly Smith Akers was a member of the Montana State Advisory Committee of the Farmers Home Administration, the National Council of American Indians, where she served as vice-president, and the state Inter-Tribal Policy Board, where she served as secretary; and

WHEREAS, Dolly Smith Akers died on June 5, 1986, in Helena, Montana, leaving behind a trailblazing legacy of public service at the tribal, state, and federal level."

60-1-230. Mason Moore memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 17, L. 2019, provided: "[This act] is effective on passage and approval." Approved February 26, 2019.

Preamble: The preamble attached to Ch. 17, L. 2019, provided: "WHEREAS, Deputy Sheriff Mason Palmer Bethea Moore came to Montana with his wife, sons, and daughter from a South Carolina family and community dedicated to service for public safety; and

WHEREAS, Mason Moore protected the people of South Carolina as a police corporal, deputy sheriff, and investigator; and

WHEREAS, Mason Moore served the people of Montana in the Central Valley Fire District, the Motor Carrier Service, the Three Forks Fire Department, and the Broadwater County Sheriff's Office, bearing Badge No. 43-8; and

WHEREAS, Mason Moore had the drive to help his community at every level he could; and

WHEREAS, in Broadwater County on U.S. Highway 287 on May 16, 2017, Mason Moore gave his life in the line of duty; and

WHEREAS, the 66th Legislature of the State of Montana honors Mason Moore for his service and his sacrifice."

60-1-231. Brent Witham memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 55, L. 2019, provided: "[This act] is effective on passage and approval." Approved March 7, 2019.

Preamble: The preamble attached to Ch. 55, L. 2019, provided: "WHEREAS, Brent Witham of the Vista Grande Hotshots came to Montana to fight the Lolo Peak Fire in 2017; and

WHEREAS, on August 2, 2017, Brent Witham died fighting the fire after a falling tree struck him; and

WHEREAS, Brent Witham gave his life to protect Montanans; and

WHEREAS, the 66th Legislature of the State of Montana honors Brent Witham."

60-1-232. Flathead County veterans memorial.

Compiler's Comments

Effective Date: Section 4, Ch. 338, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

60-1-233. Jeannette Rankin memorial highway.

Compiler's Comments

Effective Date: Section 4, Ch. 457, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 10, 2019.

Preamble: The preamble attached to Ch. 457, L. 2019, provided: "WHEREAS, Jeannette Rankin was born near Missoula, Montana, on June 11, 1880. She grew up on a ranch, which she helped to maintain, and enjoyed the outdoor Montana lifestyle many of us cherish; and

WHEREAS, Jeannette Rankin studied at the University of Montana, graduating in 1902 with a Bachelor of Science degree in biology; and

WHEREAS, Jeannette Rankin worked as a social worker before becoming involved in the women's suffrage movement; and

WHEREAS, Jeannette Rankin's advocacy work in Montana was instrumental in granting women the unrestricted right to vote in Montana in 1914; and

WHEREAS, Jeannette Rankin was significant in initiating legislation that eventually became the 19th Amendment to the U.S. Constitution, granting unrestricted voting rights to women; and

WHEREAS, Jeannette Rankin made history as the first woman to hold federal office in the United States when she was elected to serve in the U.S. Congress; and

WHEREAS, Jeannette Rankin was elected to the U.S. Congress in 1916 and again in 1940; and

WHEREAS, Jeannette Rankin passed away in 1973 leaving a legacy of advocacy and freedom for future generations; and

WHEREAS, the 66th Legislature of the State of Montana honors Jeannette Rankin for her exemplary life of service and leadership."

60-1-234. Minnie Spotted-Wolf memorial highway.

Compiler's Comments

Effective Date: Section 4, Ch. 481, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 10, 2019.

Preamble: The preamble attached to Ch. 481, L. 2019, provided: "WHEREAS, Minnie Spotted-Wolf was born on a ranch near Heart Butte, Montana, in 1923; and

WHEREAS, Minnie Spotted-Wolf was a member of the Blackfeet Tribe; and

WHEREAS, as a young woman, Minnie Spotted-Wolf worked her father's ranch, where her work included driving a 2-ton truck and breaking horses; and

WHEREAS, Private Minnie Spotted-Wolf became the first Native American woman to serve in the United States Marine Corps when she enlisted in the Marine Corps Women's Reserve in July 1943; and

WHEREAS, Minnie Spotted-Wolf's ranch working experience served her well as a heavy equipment operator and driver for the United States Marine Corps; and

WHEREAS, Minnie Spotted-Wolf served in the United States Marine Corps in World War II and in peace time, from 1943 to 1947; and

WHEREAS, after her military service, Minnie Spotted-Wolf earned a Bachelor of Arts degree in Elementary Education from Northern Montana College and spent 29 years as a teacher; and

WHEREAS, Minnie Spotted-Wolf passed away on January 1, 1988, leaving a legacy of service, both as a Marine and as a teacher; and

WHEREAS, the 66th Legislature of the State of Montana honors Minnie Spotted-Wolf for her exemplary life of service and leadership."

60-1-235. Louis Charles Charlo memorial highway.

Compiler's Comments

Effective Date: Section 4, Ch. 478, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 10, 2019.

Preamble: The preamble attached to Ch. 478, L. 2019, provided: "WHEREAS, Louis Charles Charlo, a U.S. Marine from the Confederated Salish and Kootenai Tribes, served in crucial roles for the raising of the two U.S. flags on Mount Suribachi during the Battle of Iwo Jima; and

WHEREAS, Louis Charles Charlo was born September 26, 1926, the son of Mary and Antoine Charlo; and

WHEREAS, Louis Charles Charlo's great grandfather was Chief Charlo, the head chief of the Bitterroot Salish from 1870 to 1910; and

WHEREAS, the Battle of Iwo Jima was a major battle in which the U.S. Marine Corps landed on and eventually captured the island of Iwo Jima from the Imperial Japanese Army during World War II; and

WHEREAS, Louis Charles Charlo ascended Mount Suribachi with three fellow Marines on the morning of February 23, 1945, to conduct route reconnaissance and determine enemy disposition on the summit prior to the first flag raising; and

WHEREAS, it is traditionally known that Louis Charles Charlo participated in the raising of the first U.S. flag, which came from aboard U.S.S. Missoula, on Mount Suribachi; and

WHEREAS, Louis Charles Charlo provided security on the summit of Mount Suribachi for the raising of the second U.S. flag, immortalized by Associated Press photographer Joseph Rosenthal; and

WHEREAS, Louis Charles Charlo was killed as he was attempting to rescue Private Ed McLaughlin, a wounded soldier stranded in an area of the Iwo Jima battlefield known as the Meat Grinder; and

WHEREAS, Louis Charles Charlo was carrying McLaughlin on his back and both were killed just a few feet from safety; and

WHEREAS, Louis Charles Charlo earned the Presidential Unit Citation Ribbon with one bronze star, the Asiatic-Pacific Campaign Ribbon with one bronze star, the World War II Victory Medal, and the Purple Heart; and

WHEREAS, Senator Mike Mansfield, then a U.S. Representative, traveled to Iwo Jima in 1948 and escorted Louis Charles Charlo's body back to Montana; and

WHEREAS, Louis Charles Charlo is now buried at the Saint Ignatius Old Catholic Cemetery, Lake County, Montana; and

WHEREAS, the 66th Legislature of the State of Montana honors Louis Charles Charlo."

60-1-236. Otto Fossen memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 7, L. 2021, provided: "[This act] is effective on passage and approval." Approved February 23, 2021.

Preamble: The preamble attached to Ch. 7, L. 2021, provided: "WHEREAS, Deputy Sheriff Otto Fossen lived, raised his family, and served in Liberty County, where many of his descendants still reside; and

WHEREAS, Otto Fossen dedicated 30 years to service for public safety, protecting the people of north central Montana as Deputy Sheriff of Liberty County; and

WHEREAS, Otto Fossen was a man who was compassionate and fair, a man who kept the peace in his community, in his state, and in his heart; and

WHEREAS, Otto Fossen selflessly helped his community as leader, loyal servant, and hero; and

WHEREAS, on October 5, 1957, Otto Fossen gave his life in the line of duty while protecting his community; and

WHEREAS, the 67th Legislature of the State of Montana honors Otto Fossen for his service and sacrifice."

60-1-237. Helen Clarke memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 44, L. 2021, provided: "[This act] is effective on passage and approval." Approved March 1, 2021.

Preamble: The preamble attached to Ch. 44, L. 2021, provided: "WHEREAS, Helen Piotopowaka Clarke was born in 1846 to a Scottish American father and a Blackfeet mother, Cothcocoma; and

WHEREAS, she spent most of her childhood at a convent school in Cincinnati and returned to Montana just a few years before a group of Blackfeet men murdered her father in 1869; and

WHEREAS, on January 23, 1870, Clarke's brothers participated in the Bear River Massacre (Baker Massacre), during which the U.S. Army slaughtered 217 women, children, and the elderly suffering from smallpox of the peaceful camp of Chief Heavy Runner; and

WHEREAS, following the massacre, Helen Clarke moved to the east coast and had a brief but successful acting career in New York; and

WHEREAS, in 1875, she returned to Montana and found a teaching position in Helena, but experienced discrimination and racism because of her mixed race ancestry; and

WHEREAS, in 1882, Clarke was elected as Lewis and Clark County Superintendent of Schools, one of the first two women and the only person of Indian descent to hold elective office in Montana Territory. She held the position for three terms; and

WHEREAS, in 1889, Clarke left Montana to work for the Department of Interior, Indian Bureau, as an allotment agent. Again, she was met with discrimination—this time for her sex. Officials within the department felt a woman had no business or legal right to work as an Indian agent; and

WHEREAS, in 1901, Clarke moved to San Francisco, where she established herself as a tutor of "artes, elocution and dramatic art." However, anti-Indian prejudices followed her to California; and

WHEREAS, in 1911, Clarke wrote about the pervasiveness of anti-Indian racism: "This very nation looks with eyes askance upon the cultured, the intelligent, intellectual half-breeds of mixed-bloods who reside either off or on reservations. Such inconsistencies in character or principles belong not to a great people"; and

WHEREAS, by the end of her remarkable life, Clarke had proved through experience a bitter truth: no matter how accomplished a woman was, no matter how assimilated a person of indigenous ancestry, America was unwilling to let go of its prejudices against both women and Indians; and

WHEREAS, Helen Piotopowaka Clarke died on March 4, 1923, in the village of East Glacier, Montana, and was laid to rest in the East Glacier Cemetery; and

WHEREAS, the 67th Legislature of the State of Montana honors Helen Clarke for her work in improving the quality of life and equality of opportunity in her time."

60-1-238. Terry Spotted Wolf, Sr. memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 414, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 7, 2021.

Preamble: The preamble attached to Ch. 414, L. 2021, provided: "WHEREAS, Terry Spotted Wolf, Sr. was born and raised in Montana; and

WHEREAS, after completing the Montana State Law Enforcement Police Academy in 1976, Terry Spotted Wolf, Sr. joined the Northern Cheyenne Bureau of Indian Affairs Police Department; and

WHEREAS, Terry Spotted Wolf, Sr. served on the police force for more than a decade as an officer, sergeant, lieutenant, police captain, and chief of police; and

WHEREAS, Terry Spotted Wolf, Sr. served with distinction, earning two awards for bravery and receiving a certification of commendation award from the American Legion and many letters of commendation from his superior officers; and

WHEREAS, Terry Spotted Wolf, Sr. was selected as police officer of the year in 1979; and

WHEREAS, while driving a patrol car one morning, Terry Spotted Wolf, Sr. heard over the radio that another Bureau of Indian Affairs officer was pursuing a vehicle with a suspected drunk driver; and

WHEREAS, Terry Spotted Wolf, Sr. immediately turned his patrol car around and began driving to assist his fellow officer in the high-speed pursuit; and

WHEREAS, Terry Spotted Wolf, Sr. was killed in the line of duty when his patrol car was involved in an accident, causing Terry Spotted Wolf, Sr. to be fatally injured; and

WHEREAS, the 67th Legislature of the State of Montana honors Terry Spotted Wolf, Sr."

60-1-239. Chief Earl Old Person memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 146, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 18, 2023.

Preamble: The preamble attached to Ch. 146, L. 2023, provided: "WHEREAS, Earl Old Person, whose Blackfoot name is Ahka Pa Ka Pee, which means "Charging Home," was born in 1929 to Juniper and Milly Old Person, who raised him near Starr School and taught him his native Blackfeet language; and

WHEREAS, at 7 years of age Earl Old Person presented Blackfeet culture to the people of Montana by performing Blackfeet song and dance when Browning High School made its first appearance in the state basketball tournament and continued in his youth to present Blackfeet culture to the people of the United States and the world; and

WHEREAS, Earl Old Person was elected to his first term as a tribal council member in 1954, became chairman 10 years later, and served as chairman for 34 years; and

WHEREAS, Earl Old Person became chief of the Blackfeet Nation in 1978; and

WHEREAS, Earl Old Person delivered the first State of the Tribes address to the Montana Legislature in 1993; and

WHEREAS, Earl Old Person was an advocate of education and a leader of cultural preservation; and

WHEREAS, Earl Old Person died in 2021 and was the longest-serving elected tribal leader in the nation; and

WHEREAS, the 68th Legislature of the State of Montana honors Earl Old Person."

60-1-240. Jacob Allmendinger memorial highway.

Compiler's Comments

Effective Date: Section 3, Ch. 147, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 19, 2023.

Preamble: The preamble attached to Ch. 147, L. 2023, provided: "WHEREAS, Jacob Allmendinger's family moved to Butte, Montana, when he was a child, and he went to high school in Belgrade; and

WHEREAS, Jacob Allmendinger married his high school sweetheart, Monica, and they had three children; and

WHEREAS, Jacob Allmendinger worked as a 9-1-1 dispatcher for 7 years and volunteered with the Gallatin County Sheriff's Office Search and Rescue Team for 8 years; and

WHEREAS, Jacob Allmendinger became a deputy sheriff in 2017; and

WHEREAS, Jacob Allmendinger started a landscaping business with his brother-in-law, Sergeant Brian Taylor, to further provide for his family, whom he loved more than anything in the world; and

WHEREAS, Jacob Allmendinger died in the line of duty on October 19, 2019, in a tragic vehicle accident while responding to a call for assistance near Fairy Lake; and

WHEREAS, the world was a better place for having Jacob Allmendinger in it, and his selfless legacy is evident in his children, his wife, his siblings, and all his family and will be forever remembered by the members of the Gallatin County Sheriff's Office; and

WHEREAS, the 68th Legislature of the State of Montana honors Jacob Allmendinger."

60-1-241. Ensign James A. Shelton memorial highway.

Compiler's Comments

Effective Date: This section is effective May 8, 2023.

Preamble: The preamble attached to Ch. 459, L. 2023, provided: "WHEREAS, James A. Shelton was born on September 20, 1916, near Denton, Montana, as the fourth child of John Henry Shelton and Anice Lucinda Cady Shelton; and

WHEREAS, James A. Shelton graduated from Denton High School in 1934 and went on to earn a degree in forestry; and

WHEREAS, James A. Shelton enlisted in the United States Navy in 1941, where he became an aviation cadet and was commissioned ensign in that same year; and

WHEREAS, James A. Shelton was assigned to VS-6 aboard the U.S.S. Enterprise at Pearl Harbor; and

WHEREAS, James A. Shelton was part of the squadron assigned to find the Japanese fleet at the Battle of Midway on June 4, 1942, a turning point in the Second World War; and

WHEREAS, James A. Shelton, along with several members of the aviator squadrons, continued the attack despite low fuel levels and never returned from the battle; and

WHEREAS, James A. Shelton was posthumously awarded the Navy Cross for extraordinary heroism in 1942 and two naval destroyers have subsequently been named in his honor."

CHAPTER 2
STATE ADMINISTRATION

Chapter Case Notes

Highway Not an Attractive Nuisance — Summary Judgment Properly Granted: In an action for the wrongful death of the plaintiff's son which occurred when the decedent was struck by an automobile on a controlled-access highway, the District Court did not err in granting the state's motion for summary judgment. As one of the conditions of declaring an object an attractive nuisance, the plaintiff must prove that children are unable to discover or appreciate the dangerous condition of the object. Because there is nothing in the record to prove that a 5-year-old child would not appreciate the dangerous condition of the highway, the highway cannot be found to be an attractive nuisance. Big Man v. St., 192 M 29, 626 P2d 235, 38 St. Rep. 362 (1981).

Chapter Collateral References

Tax Appeals and Oversize Loads: A Final Report on the Activities of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2014).

Part 1
Transportation Commission

Part Case Notes

Federal-Aid Primary Designation — Necessary Prerequisite to Economic Growth Center Designation: Under federal law, a road may not be designated as eligible to receive economic growth center funds unless it has previously been designated as a primary highway. Although the Highway Commission (now Transportation Commission) had decided the Big Sky spur should be added to the primary system, the road did not meet the requirements of 23 U.S.C. § 103. The District Court held that the road had improperly been designated a "primary route". Because the road was not properly a "primary route" it was not eligible to receive economic growth center funds. Nat'l Forest Preserv. Group v. Volpe, 359 F. Supp. 136 (D.C. Mont. 1973).

Part Attorney General's Opinions

Highway Commission (Now Transportation Commission), Not Board of County Commissioners, Responsible for Final Determination of Route Selection: Highway Commission (now Transportation Commission) is empowered to make final route decision with regard to federal-aid secondary system. The Commission, however, must work with local county officials in evaluating possible alternative routes prior to final determination. 36 A.G. Op. 44 (1975).

60-2-107. Abandonment of highways — exchange of roadways — public notice required.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) near end substituted "commission-designated highway" for "federal-aid"; and in (3) near end substituted "commission-designated highway system" for "federal-aid". Amendment effective October 1, 2019.

2005 Amendments — Composite Section: Chapter 168 in (4) near beginning after "used to" inserted "provide existing legal" and near middle after "land" inserted "or waters, including access for public recreational use as defined in 23-2-301 and as permitted in 23-2-302"; and made minor changes in style. Amendment effective April 7, 2005.

Chapter 226 in (1), (2), and (3) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 15, 2005.

1999 Amendments — Composite Section: Chapter 107 inserted (4) prohibiting commission from abandoning highway, road, or right-of-way accessing public land unless another highway, road, or right-of-way provides substantially same access; and inserted (5) prohibiting commission from abandoning highway, road, or right-of-way accessing private land benefiting two or more landowners unless all agree. Amendment effective March 18, 1999.

Chapter 440 inserted (2) concerning procedure for abandoning or discontinuing maintenance on a highway; and made minor changes in style. Amendment effective October 1, 1999.

Preamble: The preamble attached to Ch. 440, L. 1999, provided: "WHEREAS, it has become necessary to clarify the duties of boards of county commissioners regarding roads under their jurisdiction; and

WHEREAS, it is appropriate to specify how the maintenance and oversight of certain roads may be transferred to a county in a manner that protects private property rights and allows the public to participate in the process; and

WHEREAS, clarifying in statute the definition of a county road and the rights and responsibilities of a board of county commissioners will prevent county road-related disputes from entering the court system."

1997 Amendment: Chapter 178 inserted (2) allowing the mutually beneficial exchange of portions of highways, roads, and streets; and made minor changes in style.

Law Review Articles

The Remarkable Odyssey of Stream Access in Montana, Lane, 36 Pub. Land & Resources L. Rev. 69 (2015).

60-2-110. Setting priorities and selecting projects.

Compiler's Comments

2001 Amendment: Chapter 269 in (1) at beginning inserted exception clause. Amendment effective July 1, 2001.

1995 Amendment: Chapter 75 inserted (5) providing that the Commission shall establish and determine priorities and projects for rail and transit programs and coordinate intermodal transportation within the state; and inserted (6) providing methodology for carrying out the requirements of this section. Amendment effective July 1, 1995.

1995 Statement of Intent: The statement of intent attached to Ch. 75, L. 1995, provided: "A statement of intent is required for this bill because the department of transportation is required in 60-2-110 to adopt rules to administer statutory provisions that require the transportation commission to establish priorities and select and designate segments for construction and reconstruction on the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways; to establish and determine priorities and projects for rail and transit programs; and, to the extent possible, coordinate intermodal transportation within the state. The legislature contemplates that rules promulgated under 60-2-110 address, at a minimum, the criteria and procedures to be followed in establishing priorities and selecting projects."

1993 Amendment: Chapter 87 in (1), at end, substituted "the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways" for "federal-aid interstate and federal-aid primary and state highway systems"; inserted (2) requiring Commission consultation with the Board of County Commissioners regarding the secondary highway system; inserted (3) requiring Commission consultation with the appropriate local government authorities regarding the urban highway system; and made minor changes in style.

Interim Study Committee Bill: Chapter 30, L. 1983, was introduced at the request of the Interim Committee on Highways. See committee report, Legislative Council, 1982.

Case Notes

Equitable Relief Available to Correct Inadvertent Bidding Errors in Revising Highway Construction Project: Contractor E.H. Oftedal and Sons, Inc. (Oftedal), submitted a bid on a Montana highway project. Because Oftedal's was the lowest bid, the state awarded the contract to Oftedal, but upon later investigation, Oftedal determined that the bid contained several errors amounting to $789,000, and requested that the bid be withdrawn. The request was denied, so Oftedal requested an upward revision of the bid to reflect the mistakes. Even if the contract amount was revised upward to reflect the errors, Oftedal's bid would still have been lowest. Although the state recognized that Oftedal had made an unintended mistake, the request for upward revision was also denied, in part because the Federal Highway Administration would not allow any federal money to be used to cover any state cost over Oftedal's original bid. To avoid losing its substantial bid bond, Oftedal signed the contract under protest for the original amount and petitioned the District Court for equitable relief under 28-2-1611 through an upward revision of the contract sum. The District Court denied relief and granted summary judgment to the state. Oftedal appealed to the Supreme Court, seeking an upward revision to reflect the amount of the error and an order for specific performance of the revised contract. The Supreme Court found that equitable relief was appropriate because of mistake, and remanded to the District Court with instructions to reform the contract to reflect the true intentions of the parties. The mistakes in this case were inadvertent, and even though some negligence might have been inherent in the mistakes, they could not be said to preclude equitable relief when viewed in light of the parties' agreed assessment of the nature of the errors. Negligence of the party creating the mistake is not necessarily a bar to judicial reformation of a contract. Under 28-2-1612, for the purpose of revising a contract, a court must presume that all parties intended to make an equitable and conscientious agreement, and it could not be presumed that either party intended Oftedal to incur the hardship of supplying $789,000 of work and material to the state without compensation. E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

Public Contracts Subject to Fundamental Contract Analysis — Public Bidding and Contract Modification Statutes Not Inherently Inconsistent: Public contracts are not necessarily exempt from fundamental contract analysis because competitive bidding statutes were established for the benefit of the public rather than to establish the rights of bidders. Nothing in the competitive bidding statutes places public contracts out of reach of remedies at law or the equitable relief provided under 28-2-1611 if a party is otherwise qualified for relief under the terms of the statute. Further, public bidding statutes and contract modification statutes are not inherently inconsistent, so 28-2-1611 may be applied to public contracts. E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

60-2-111. Letting of contracts on state highways and commission-designated highway systems.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 145, L. 2023. Amendment effective April 18, 2023.

Modification of Termination Date: Section 7, Ch. 145, L. 2023, amended sec. 6, Ch. 54, L. 2017, by modifying the termination date imposed by Ch. 54 to June 30, 2023. Effective April 18, 2023.

2019 Amendment: Chapter 299 in (1) near beginning substituted "the highways located on commission-designated highway systems and state highways" for "the highways and streets located on highway systems and state highways as defined in 60-2-125". Amendment effective October 1, 2019.

2017 Amendment: Chapter 54 inserted (4) concerning alternative project delivery contracts. Amendment effective October 1, 2017, and terminates December 31, 2024.

2007 Amendment: Chapter 56 in (3) near end after "contracting" deleted "pilot" and after "authorized in" deleted "60-2-135 through". Amendment effective July 1, 2007.

2003 Amendment: Chapter 192 inserted (3) allowing contracts for design-build contracting pilot program projects; and made minor changes in style. Amendment effective April 1, 2003.

1993 Amendment: Chapter 87 in (1), near beginning, substituted "the construction or reconstruction of the highways and streets located on highway systems and state highways as defined in 60-2-125" for "work on state and federal-aid highways"; and made minor changes in style.

1983 Amendment: At beginning of (1), inserted the proviso; and inserted (2) allowing the Commission to delegate the authority to award contracts to the Department or a local government unit.

Administrative Rules

Title 18, chapter 3, subchapter 1, ARM Contractor debarment procedures.

ARM 18.3.201 Standards of responsibility.

ARM 18.15.504 Dyed special fuel.

Case Notes

Equitable Relief Available to Correct Inadvertent Bidding Errors in Revising Highway Construction Project: Contractor E.H. Oftedal and Sons, Inc. (Oftedal), submitted a bid on a Montana highway project. Because Oftedal's was the lowest bid, the state awarded the contract to Oftedal, but upon later investigation, Oftedal determined that the bid contained several errors amounting to $789,000, and requested that the bid be withdrawn. The request was denied, so Oftedal requested an upward revision of the bid to reflect the mistakes. Even if the contract amount was revised upward to reflect the errors, Oftedal's bid would still have been lowest. Although the state recognized that Oftedal had made an unintended mistake, the request for upward revision was also denied, in part because the Federal Highway Administration would not allow any federal money to be used to cover any state cost over Oftedal's original bid. To avoid losing its substantial bid bond, Oftedal signed the contract under protest for the original amount and petitioned the District Court for equitable relief under 28-2-1611 through an upward revision of the contract sum. The District Court denied relief and granted summary judgment to the state. Oftedal appealed to the Supreme Court, seeking an upward revision to reflect the amount of the error and an order for specific performance of the revised contract. The Supreme Court found that equitable relief was appropriate because of mistake, and remanded to the District Court with instructions to reform the contract to reflect the true intentions of the parties. The mistakes in this case were inadvertent, and even though some negligence might have been inherent in the mistakes, they could not be said to preclude equitable relief when viewed in light of the parties' agreed assessment of the nature of the errors. Negligence of the party creating the mistake is not necessarily a bar to judicial reformation of a contract. Under 28-2-1612, for the purpose of revising a contract, a court must presume that all parties intended to make an equitable and conscientious agreement, and it could not be presumed that either party intended Oftedal to incur the hardship of supplying $789,000 of work and material to the state without compensation. E.H. Oftedal & Sons, Inc. v. St., 2002 MT 1, 308 M 50, 40 P3d 349 (2002).

Effect of Exculpatory Clause on Quantities Underrun: A highway contractor, in preparing his bids, relied on "borrow" estimates (referring to the amount of dirt secured from adjacent or nearby sources) prepared by the Highway Department (now Department of Transportation). When performing the work, the contractor found the estimates to be high. Clark contended it suffered a loss on the borrow work due to fixed costs and overhead. The state relied on exculpatory clauses in the contract to avoid payment. The Supreme Court found that the exculpatory clauses alone would not overcome Clark's justifiable reliance on the state's estimates. The case was remanded for a new trial. Clark Bros. Contractors v. St., 218 M 490, 710 P2d 41, 42 St. Rep. 1765 (1985).

Wrongful Death Action — Exclusion of Construction Contract Terms Upheld: In a wrongful death action in which the decedent's surviving spouse brought suit against the state and its contractor for negligently failing to warn the decedent of an abrupt edge at the shoulder of a highway construction project, the court properly excluded certain provisions in the contract between the state and the contractor regarding certain traffic control devices mentioned in a payment schedule. Because the question in the case was whether certain devices should have been used, the contract provisions allowing their use were of no probative value and were irrelevant. Workman v. McIntyre Constr. Co., 190 M 5, 617 P2d 1281, 37 St. Rep. 1637 (1980).

60-2-112. Competitive bidding — reciprocity.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 145, L. 2023. Amendment effective April 18, 2023.

Modification of Termination Date: Section 7, Ch. 145, L. 2023, amended sec. 6, Ch. 54, L. 2017, by modifying the termination date imposed by Ch. 54 to June 30, 2023. Effective April 18, 2023.

2021 Amendment: Chapter 111 in temporary version in (7) after "the commission may award" substituted "general contractor construction management" for "alternative project delivery" and after "Title 18, chapter 2, part 5," substituted "if the provisions of 60-2-145 have been met" for "for projects that the department has determined are appropriate for those contracts"; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 54 inserted (7) concerning alternative project delivery contracts; and made minor changes in style. Amendment effective October 1, 2017, and terminates December 31, 2024.

2007 Amendment: Chapter 56 in (5) near end after "contracting" deleted "pilot" and after "provisions of" deleted "60-2-135 through". Amendment effective July 1, 2007.

2003 Amendment: Chapter 192 inserted (5) allowing a contract under the design-build contracting pilot program; and made minor changes in style. Amendment effective April 1, 2003.

2001 Amendment: Chapter 181 in (1) at end of third sentence deleted "and 18-1-112"; throughout (5) after "foreign country" inserted "or province or other political subdivision of that country"; in (5)(b) near middle after "agreement with" inserted "or has exchanged letters of information with"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 28, Ch. 181, L. 2001, provided: "[This act] applies to contracts for which the contracting government entity begins the contracting process after October 1, 2001."

1999 Amendment: Chapter 306 inserted (5) prohibiting department of transportation and transportation commission from entering into contracts for highway construction projects with bidders not headquartered in United States unless reciprocity agreement in place; and inserted (6) defining construction. Amendment effective April 14, 1999.

Contingent Voidness: Section 3, Ch. 306, L. 1999, provided: "Contingent voidness. (1) If the federal government notifies the state in writing that the enforcement of [this act] places at risk this state's eligibility to receive federal funds for highway projects, then the bracketed language in [this act] is void pursuant to subsection (2).

(2) The bracketed language in [this act] is void on the date that the director of the department of transportation certifies to the governor in writing that the director has received written notice of the federal government's intention to terminate allocation of highway funds to Montana because of the enforcement of [this act]." On April 13, 1999, the federal government notified the state that the provisions of Senate Bill No. 330 (Ch. 306, L. 1999) are contrary to federal highway laws. On March 3, 2000, the director of the department of transportation certified to the governor that the written notice was received.

1997 Amendment: Chapter 443 in (1), at end of first sentence, inserted "to the lowest responsible and responsive bidder".

Severability: Section 22, Ch. 443, L. 1997, was a severability clause.

1995 Amendment: Chapter 286 in (1), at beginning of first sentence, inserted exception clause and near middle increased the cost estimate requiring competitive bidding from $10,000 to $50,000; inserted (4) allowing the Commission to delegate to the Department the authority to enter certain contracts without competitive bidding; and made minor changes in style.

1985 Amendment: Deleted former (4) that read: "If, on any highway construction work financed in whole or in part by federal funds, the commission finds that enforcement of the provisions contained in 37-71-203 and 18-2-311 relating to public contractors working beyond contract time will result in a reduction in the full benefits of Title 23, U.S.C., it may waive enforcement of such provisions."

1983 Amendment: In (1), increased amount of contract required to be let by bid from $1,000 to $10,000; deleted former (2) and (3), which read: "(2) If the commission finds that the work may be done in some more efficient manner, it need not let the contract by competitive bidding.

(3) If, on highway construction work financed in whole or in part by federal funds, the United States secretary of transportation affirmatively finds that under the circumstances relating to a particular project some method other than competitive bidding is in the public interest, the commission may enter into contracts with a board of county commissioners. These contracts may authorize each county to acquire rights-of-way for, survey, and construct farm-to-market, secondary, or feeder roads within the county by force account, unit price, or otherwise, as may be agreed by the commission and the board."; inserted (2) allowing the Commission to let contracts by means other than competitive bidding under special circumstances; and inserted (3) allowing the Commission to enter into contracts with local governments without competitive bidding, based on lower total costs.

Administrative Rules

Title 18, chapter 3, subchapter 1, ARM Contractor debarment procedures.

Case Notes

Unanticipated Work — Additional Compensation: When a contractor on a highway construction project relies on representations of the Department in preparing his bid, he is entitled to compensation for additional costs incurred in order to rectify conditions differing from the representations. Kiely Constr. Co. v. St. Highway Comm'n, 154 M 363, 463 P2d 888 (1970). See also Sand Kay Constr. Co. v. St. Highway Comm'n, 145 M 180, 399 P2d 1002 (1965); Hash v. R.J. Sundling & Sons, Inc., 150 M 388, 436 P2d 83 (1967); Haggart Constr. Co. v. St. Highway Comm'n, 149 M 422, 427 P2d 686 (1967).

60-2-113. Bidder's security — contractor's bond.

Compiler's Comments

2009 Amendment: Chapter 48 in (1)(a) at beginning inserted "Subject to subsection (1)(b)"; inserted (1)(b) allowing the commission to accept electronic bid bonds; in (2) at beginning of second sentence deleted "For the purposes of those sections with relation to contracts with the commission"; and made minor changes in style. Amendment effective March 23, 2009.

60-2-114. Bids for contracts let by commission to contain security, unit price, and signature.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Applicability: Section 5, Ch. 282, L. 1999, provided: "[This act] applies to bids made in response to requests for bids made after October 1, 1999."

60-2-115. Contract let by commission — time for final payment of contract price — interest.

Compiler's Comments

2013 Amendment: Chapter 348 in (1) substituted "Subject to subsections (2) through (4), the department shall comply" for "The commission shall comply"; inserted (2) through (6) concerning final acceptance and final payment and defining terms; and made minor changes in style. Amendment effective October 1, 2013.

Saving Clause: Section 2, Ch. 348, L. 2013, was a saving clause.

Effective Date: This section is effective October 1, 1999.

Applicability: Section 3, Ch. 439, L. 1999, provided: "[This act] applies to contracts entered into after October 1, 1999."

60-2-116. Payment of contractors and subcontractors.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

60-2-117. Contract indemnification provisions — definition.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

60-2-120. Alternative project delivery.

Compiler's Comments

Effective Date: Section 10, Ch. 145, L. 2023, provided: "[This act] is effective on passage and approval." Approved April 18, 2023.

60-2-121. Authority of commission to prioritize expenditures on railroad crossings — public hearing.

Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 359, L. 1989, provided: "A statement of intent is required for this bill because it delegates to the highway commission [now transportation commission] authority to adopt rules to prioritize the expenditure of funds on railroad crossings. It is the intent of the legislature that in adopting those rules, the commission comply with applicable statutes and with its own rules. The legislature further intends that the commission develop a system of prioritization of crossings to be applied by the department of highways [now department of transportation], including but not limited to consideration of sight distance, number and speed of trains, traffic volume, approach angle, highway alignment, approach grades, crossing width, and any other hazardous conditions that warrant the installation of signals."

Administrative Rules

Title 18, chapter 6, subchapter 3, ARM Railroad crossing signalization.

60-2-126. Designation of public highways — apportionment of funds.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) after "For the purpose of" substituted "apportioning" for "allocating". Amendment effective October 1, 2019.

60-2-127. Allocation of funds for projects.

Compiler's Comments

2005 Amendment: Chapter 336 inserted (4) authorizing commission to enter into contracts with local governments to use urban funds to retire bonds issued under 7-7-110. Amendment effective July 1, 2006.

Preamble: The preamble attached to Ch. 336, L. 2005, provided: "WHEREAS, 23 U.S.C. 122, as amended by section 311 of the National Highway System Designation Act of 1995 (NHS Act), makes bond-related costs eligible for federal reimbursement on any eligible federal-aid project; and

WHEREAS, under the NHS Act, states and local governments can issue bonds to fund federal-aid projects that are payable from future federal-aid highway funds; and

WHEREAS, these financing mechanisms are referred to as grant anticipation revenue vehicles (GARVEE) or grant anticipation notes (GANS); and

WHEREAS, the Montana Department of Transportation has funded urban transportation improvements through federal-aid highway funds apportioned to the urban highway system under section 60-3-211, MCA; and

WHEREAS, it is the intention of this legislation to allow eligible local governments to issue GARVEE bonds or GANS to construct approved urban projects and commit funds apportioned to the urban highway system under section 60-3-211, MCA, by the Department of Transportation to their repayment."

1999 Amendment: Chapter 298 inserted (3) allowing the commission, with the concurrence of appropriate local officials, to authorize the use of federal-aid highway funds allocated under subsections (1)(c) and (1)(d) for any project eligible under 23 U.S.C. 133(b) relative to the surface transportation program. Amendment effective October 1, 1999.

60-2-128. Maintenance system — designation of highways.

Compiler's Comments

1997 Amendment: Chapter 178 at beginning of second sentence inserted exception clause.

60-2-129. Allocation of funds.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) at end of first sentence substituted "60-1-103" for "60-2-125". Amendment effective October 1, 2019.

1995 Amendment: Chapter 75 inserted (2) providing that the Commission shall allocate all federal transit administration funds, freight assistance funds, or any funds or grants available by legislative appropriation; inserted (3) providing that the Commission may authorize the transfer of federal funds between qualified programs; inserted (4) providing that the Commission may delegate functions and responsibilities to the Department; and made minor changes in style. Amendment effective July 1, 1995.

60-2-133. U.S. highway 2 — planning.

Compiler's Comments

2009 Amendment: Chapter 273 at the beginning substituted "commission may" for "commission shall", at end substituted "project may" for "project must", deleted former (2) and (3) that read: "(2) The department shall seek additional federal funding that does not require a state funding match for the U.S. highway 2 project.

(3) The department may not expend any resources on the U.S. highway 2 project that would jeopardize any future highway projects"; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: Section 5, Ch. 269, L. 2001, provided: "[This act] is effective July 1, 2001."

60-2-134. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 145, L. 2023. Amendment effective April 18, 2023.

2021 Amendment: Chapter 111 in definition of request for proposals and definition of request for qualifications after "a part of the design-build" inserted "or alternative project delivery". Amendment effective October 1, 2021.

2007 Amendment: Chapter 56 in introductory clause after "60-2-112" deleted "60-2-135 through". Amendment effective July 1, 2007.

Effective Date: Section 10, Ch. 192, L. 2003, provided that this section is effective on passage and approval. Approved April 1, 2003.

60-2-137. Design-build contracting process — submission of proposals — department's duties.

Compiler's Comments

2021 Amendment: Chapter 111 in (1) after "Once the" inserted "commission, acting on a recommendation of the" and after "contracting process will be used" inserted "and the commission has approved selection criteria proposed by"; and made minor changes in style. Amendment effective October 1, 2021.

2007 Amendment: Chapter 56 in (1) at beginning deleted "In accordance with recommendations of the design-build contracting board"; in (3)(a) near end after "technical" inserted "and price"; in (3)(b) near beginning of first and second sentences after "technical" inserted "and price" and at end of second sentence inserted "and the lump-sum price to complete the project"; in (4) near beginning after "technical" inserted "and price"; and made minor changes in style. Amendment effective July 1, 2007.

Effective Date: Section 10, Ch. 192, L. 2003, provided that this section is effective on passage and approval. Approved April 1, 2003.

60-2-140. Rawhide stampede rustlers and rendezvous trade corridor — planning.

Compiler's Comments

Effective Date: This section is effective October 1, 2005.

60-2-141. Use of Montana-made wooden materials in highway and road projects.

Compiler's Comments

2019 Amendment: Chapter 299 near middle substituted "the highways located on commission-designated highway systems and state highways" for "the highways and streets located on highway systems and state highways as defined in 60-2-125". Amendment effective October 1, 2019.

Effective Date: This section is effective October 1, 2011.

Part 2
Department of Transportation General Powers and Duties

Part Compiler's Comments

Department of Transportation Performance Audit — Section Not Codified: Section 4, Ch. 267, L. 2017, provided: "(1) By June 30, 2018, there must be a one-time performance audit of the department of transportation provided for in 2-15-2501. The performance audit must be conducted by or at the direction of the legislative auditor and must include but is not limited to:

(a) a comparison of the Montana department of transportation to similar agencies in at least three other similar states or provinces on a quantitative measure, such as dollars spent or highway miles constructed and maintained. The following points of comparison are of specific interest:

(i) number of full-time equivalent employees;

(ii) inventory of equipment owned by the department;

(iii) federal highway dollars received;

(iv) cost of engineering services; and

(v) whether engineering services were performed by department staff or a private firm.

(b) an examination of the budgets, costs, and functions of the Montana department of transportation over time; and

(c) consideration of whether any functions of the department of transportation could be performed at the same quality for a lower cost by a private entity.

(2) The purpose of the audit provided for in this section is to accomplish the objectives established in 5-13-308.

(3) The cost of the audit in whole or in part must be paid by the department of transportation from the highway nonrestricted account provided for in 15-70-125.

(4) Following review by the legislative audit committee, the audit must be presented to the revenue and transportation interim committee provided for in 5-5-227 and must be posted on the website of the legislative audit division.

(5) By June 30, 2019, there must be a followup to the performance audit provided for in this section that includes a review of the progress of the department of transportation on recommendations resulting from the audit and information on:

(a) the number of full-time equivalent employees employed by the department of transportation;

(b) department costs per full-time equivalent employee;

(c) pay increases provided to employees in the previous year;

(d) department costs per road mile constructed; and

(e) the total cost of contracted labor.

(6) Following review by the legislative audit committee, the audit followup to the performance audit must be presented to the revenue and transportation interim committee provided for in 5-5-227."

Although Ch. 267 contained a codification instruction, section 4 was not codified because of its short duration. Section effective July 1, 2017.

Transfer of Functions: Sections 12 through 14, Ch. 512, L. 1991, provided: "Section 12. Transfer of rulemaking authority. Any existing authority of the department of highways, the department of commerce, or the department of revenue to make rules on the various functions transferred by the provisions of [sections 1 through 14] is extended to the provisions of [sections 1 through 14].

Section 13. Application of transfer provisions. The provisions of 2-15-131 through 2-15-137 govern:

(1) the merger into the department of transportation [of] the functions of the department of highways and those functions of the departments of commerce and revenue specified in [sections 1 through 14]; and

(2) the transfer of the various functions contained in [sections 1 through 14].

Section 14. Governor to implement. The governor shall implement the provisions of [sections 1 through 14] by executive order."

60-2-201. General powers of department.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) near middle substituted "commission-designated highway" for "federal-aid". Amendment effective October 1, 2019.

1983 Amendment: At end of (1), inserted phrase beginning "according to priorities".

Codification: Section 60-2-201 was amended by sec. 1, Ch. 324, L. 1979, which added a new subsection (5). The added material is codified as 60-11-101.

Administrative Rules

Title 18, chapter 3, subchapter 1, ARM Contractor debarment procedures.
ARM 18.3.201 Standards of responsibility.
Title 18, chapter 5, subchapter 1, ARM Highway approaches.
Title 18, chapter 6, subchapter 3, ARM Railroad crossing signalization.
Title 18, chapter 15, ARM Motor fuels tax.
ARM 18.15.504 Dyed special fuel.

Case Notes

Acceptance of One Asphalt Test Sample Insufficient Proof of Waiver of Right to Apply Contract Specifications: Respondent submitted a bid on a highway construction project and contracted with the state to provide polymer modified asphalt cement (PMAC) according to specifications in the state contract, including satisfaction of the ring-and-ball softening point test. The contract required that asphalt samples be taken at the project site, with each sample representing an asphalt lot. Those samples began to fail the ring-and-ball softening point test almost immediately, so according to the contract terms, reductions were made in payments to respondent to make up for the shorter life expectancy and inferior quality of the asphalt. Respondent disputed the payment reductions on the basis that the state had improperly heated the project test samples to a pouring temperature of 330 degrees F rather than 340 degrees F used during the mix design testing, causing the project samples to fail the test. Citing Kelly v. Lovejoy, 172 M 516, 565 P2d 321 (1977), the District Court held that the state had waived the temperature requirements when it accepted the mix design sample at 340 degrees F and had therefore erroneously assessed price reductions for the samples tested at 330 degrees F. The Supreme Court noted that for the state to waive the right to enforce the contract, the acquiescence must be voluntary and intentional. By accepting one PMAC at 340 degrees F, unlike in Kelly, the state did not voluntarily and intentionally relinquish its right to enforce the contract specifications. Relinquishment may be proved either by express declaration or by a course of acts and conduct so as to induce the belief that the state's intention and purpose were to waive its rights. Evidence failed to show that the one-time acceptance was an intentional relinquishment of the right to enforce the contract specifications, nor was the one-time acceptance a course of conduct sufficient to induce the belief that the state's intention and purpose were to waive the temperature requirement mandated by the ring-and-ball softening point test. The District Court's finding of waiver was incorrect as a matter of law, constituting reversible error. Respondent's claims for breach of contract, fraud, and negligent misrepresentation and a motion for summary judgment were properly denied. Idaho Asphalt Supply v. St., 1999 MT 291, 297 M 66, 991 P2d 434, 56 St. Rep. 1168 (1999).

Department Jurisdiction: District Court erred in granting summary judgment for city upon a special assessment for a sidewalk along combined city and state highway right-of-way where city installed sidewalk after plaintiff refused as Highway Department (now Department of Transportation) has exclusive jurisdiction to let contracts and control construction in or along state highway. Palffy v. Bozeman, 168 M 108, 540 P2d 955 (1975).

Judicial Review of Highway Commission (Now Transportation Commission) Rule: Where Highway Commission (now Transportation Commission) conducted investigations and held hearings to determine number of interchanges and their location with respect to new interstate highway and nearby town and agreed that one interchange was sufficient, District Court abused its discretion in issuing Writ of Mandamus ordering Commission to construct two such interchanges, since Commission complied with this section and its decision cannot be disturbed unless clear abuse of discretion is shown. Erie v. St. Highway Comm'n, 154 M 150, 461 P2d 207 (1969), distinguished in St. Highway Comm'n v. Lavoie, 155 M 39, 466 P2d 594 (1970).

Commission Regulations as Evidence: In action for wrongful death of driver of state highway truck while sanding road in snowstorm, it was error to admit into evidence safety manual adopted by Highway Commission (now Transportation Commission) and rule requiring that engineers, supervisors, and foremen erect warning devices upon highway before beginning work, since requirement imposed no duty upon deceased driver to erect warning devices. Williams v. Maley, 150 M 261, 434 P2d 398 (1967).

Attorney General's Opinions

Authority to Close Road or Highway: Authority to temporarily close a state highway or county road, due to hazardous conditions, belongs to the Department of Highways (now Department of Transportation) and each Board of County Commissioners, respectively. Designation of a particular individual having this authority is left to the discretion of the Department and each board. The latter may appoint a county road supervisor or superintendent capable of making this decision. Only in cases of extreme emergency may the Highway Patrol block traffic, and then only temporarily. 37 A.G. Op. 116 (1978).

Highway Commission (Now Transportation Commission), Not Board of County Commissioners, Responsible for Final Determination of Route Selection: Highway Commission (now Transportation Commission) is empowered to make final route decision with regard to federal-aid secondary system. The Commission, however, must work with local county officials in evaluating possible alternative routes prior to final determination. 36 A.G. Op. 44 (1975).

60-2-202. Duties of department.

Compiler's Comments

1991 Amendment: Deleted former (3) that read: "(3) prepare and submit to the governor on or before the 15th day of each month a report of work constructed, under construction, and proposed for construction; the progress made during the preceding month; and recommendations for improvements and their estimated costs"; and made minor change in style. Amendment effective March 18, 1991.

1985 Amendment: In (1) substituted "Helena" for "the capitol".

60-2-203. Maintenance responsibility.

Compiler's Comments

1999 Amendment: Chapter 542 inserted (2) requiring department to assume maintenance responsibility for identified paved secondary roads and authorizing department to phase in maintenance, with complete assumption by January 1, 2001; and made minor changes in style. Amendment effective April 30, 1999.

Case Notes

Road Maintenance — Nondelegable Duty of Care Precluding Common-Law Indemnity Claim: Comer was fatally injured in a fall on a Butte sidewalk that was within the state highway system, and her estate sued the state and the county. The state sought summary judgment against the county on a common-law indemnity claim, but summary judgment was denied. On appeal, the Supreme Court affirmed. Under 60-2-204, the state is required to maintain all public highways. The county was merely an agent of the state regarding highway maintenance, and federal law provides that it is the duty of the state to maintain projects constructed under the provisions of federal-aid statutes. This statutorily imposed duty curtails the state's ability to abrogate its duty of care through a contract with the county, and the state's statutory duty of care to Comer existed independently of any duties delegated to the county through construction contracts. The state may enter contracts with third parties for the maintenance of sidewalks, but the contracts do not remove the state's nondelegable statutory duty of care. Thus, the state's breach of its independent duty of care precluded the state's common-law indemnity claim, and the state lacked the clean hands necessary to obtain common-law indemnity. Under these circumstances it was also proper to place the state on the verdict form, and because the state bore the majority of responsibility for Comer's accident, the state's cross-claim for common-law indemnity was properly denied. St. v. Butte-Silver Bow County, 2009 MT 414, 353 M 497, 220 P3d 1115 (2009), following State ex rel. Helena v. District Court, 167 M 157, 536 P2d 1182 (1975). See also Rogers v. W. Airlines, 184 M 170, 602 P2d 171 (1979).

No Duty of State to Use Particular Maintenance Equipment: Plaintiffs contended that the state was negligent in using a snowplow rather than a motor patrol to remove hard-packed snow and ice. Although the state does have a duty to exercise ordinary and reasonable care in maintaining Montana highways, there is no legal authority for a separate duty to use a particular piece of equipment in meeting the duty of care in highway maintenance. Hatch v. Dept. of Highways, 269 M 188, 887 P2d 729, 51 St. Rep. 1512 (1994).

Facts Establishing Reasonable Basis for Difference of Opinion on Question of State Highway Maintenance: The following facts rose to the level of substantial evidence required to support a jury verdict that the state was not negligent in maintaining a section of highway: (1) the entire 29-mile section was patrolled during the workweek prior to the accident and was bare and dry when the crew took the weekend off; (2) the method of snow removal on the section was common and practical; (3) at an accident at the same site the previous morning, a highway patrol officer evaluated the curve and decided that although the road was wet, it did not constitute a hazard sufficient to call in the maintenance crew; (4) the acting crew foreman on the day of the accident testified that the highway was not patrolled that day because the weather had warmed up to the point that a patrol was not necessary; and (5) crew members all testified that they had never encountered a situation in which only one curve of the highway was icy while the remainder of the section was bare and dry. Hash v. St., 247 M 497, 807 P2d 1363, 48 St. Rep. 277 (1991), distinguished in Yager v. Deane, 258 M 453, 853 P2d 1214, 50 St. Rep. 610 (1993).

Animal on Highway — Failure to Establish Duty of Highway Employee: Summary judgment was properly granted to the state in a wrongful death action where a motorist was killed after striking a horse on the highway. Plaintiffs cited no authority that a highway maintenance employee had a duty to remove live animals from the roadway or to ensure that animals did not come back onto the highway. Whitfield v. Therriault Corp., 229 M 195, 745 P2d 1126, 44 St. Rep. 1896 (1987), followed in Yager v. Deane, 258 M 453, 853 P2d 1214, 50 St. Rep. 610 (1993).

Highway Death — Sovereign Immunity: The State may not under Montana's Constitution or any law maintain a defense of sovereign immunity against claims arising from death, and there is no such defense as "financial feasibility or discretion" which would relieve the State of liability for traffic deaths resulting from highways maintained unsafely. State ex rel. Byorth v. District Court, 175 M 63, 572 P2d 201 (1977). However, where cost is but one among many factors affecting the state's choice of a particular method of construction or maintenance, it is relevant evidence on the reasonableness of the alternative taken. Townsend v. St., 227 M 206, 738 P2d 1274, 44 St. Rep. 1014 (1987), citing Modrell v. St., 179 M 498, 587 P2d 405 (1978), and followed in Walden v. St., 250 M 132, 818 P2d 1190, 48 St. Rep. 893 (1991). However, see Yager v. Deane, 258 M 453, 853 P2d 1214, 50 St. Rep. 610 (1993).

Attorney General's Opinions

Authority to Close Road or Highway: Authority to temporarily close a state highway or county road, due to hazardous conditions, belongs to the Department of Highways (now Department of Transportation) and each Board of County Commissioners, respectively. Designation of a particular individual having this authority is left to the discretion of the Department and each board. The latter may appoint a county road supervisor or superintendent capable of making this decision. Only in cases of extreme emergency may the Highway Patrol block traffic, and then only temporarily. 37 A.G. Op. 116 (1978).

60-2-204. Maintenance agreements with local governments.

Compiler's Comments

1999 Amendment: Chapter 542 at beginning inserted exception clause; and made minor changes in style. Amendment effective April 30, 1999.

1993 Amendment: Chapter 87 at end of introductory clause deleted reference to 60-2-105 and inserted reference to 60-2-128; and made minor changes in style.

Maintenance of Fort Benton-Chester Highway: Chapter 629, L. 1989, requires the Department to assist in maintaining FAS 223, Fort Benton to Chester, starting July 1, 1989.

Case Notes

Road Maintenance — Nondelegable Duty of Care Precluding Common-Law Indemnity Claim: Comer was fatally injured in a fall on a Butte sidewalk that was within the state highway system, and her estate sued the state and the county. The state sought summary judgment against the county on a common-law indemnity claim, but summary judgment was denied. On appeal, the Supreme Court affirmed. Under 60-2-204, the state is required to maintain all public highways. The county was merely an agent of the state regarding highway maintenance, and federal law provides that it is the duty of the state to maintain projects constructed under the provisions of federal-aid statutes. This statutorily imposed duty curtails the state's ability to abrogate its duty of care through a contract with the county, and the state's statutory duty of care to Comer existed independently of any duties delegated to the county through construction contracts. The state may enter contracts with third parties for the maintenance of sidewalks, but the contracts do not remove the state's nondelegable statutory duty of care. Thus, the state's breach of its independent duty of care precluded the state's common-law indemnity claim, and the state lacked the clean hands necessary to obtain common-law indemnity. Under these circumstances it was also proper to place the state on the verdict form, and because the state bore the majority of responsibility for Comer's accident, the state's cross-claim for common-law indemnity was properly denied. St. v. Butte-Silver Bow County, 2009 MT 414, 353 M 497, 220 P3d 1115 (2009), following State ex rel. Helena v. District Court, 167 M 157, 536 P2d 1182 (1975). See also Rogers v. W. Airlines, 184 M 170, 602 P2d 171 (1979).

Attorney General's Opinions

Authority to Close Road or Highway: Authority to temporarily close a state highway or county road, due to hazardous conditions, belongs to the Department of Highways (now Department of Transportation) and each Board of County Commissioners, respectively. Designation of a particular individual having this authority is left to the discretion of the Department and each board. The latter may appoint a county road supervisor or superintendent capable of making this decision. Only in cases of extreme emergency may the Highway Patrol block traffic, and then only temporarily. 37 A.G. Op. 116 (1978).

60-2-208. Seeding along highways.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) at beginning substituted "After a segment of a commission-designated highway system" for "After a federal-aid". Amendment effective October 1, 2019.

1997 Amendment: Chapter 42 in (2) substituted "natural resources conservation service" for "soil conservation service"; and made minor changes in style. Amendment effective March 12, 1997.

60-2-210. Payment of construction and maintenance costs within municipalities.

Compiler's Comments

1995 Amendment: Chapter 106 near beginning, after "department", inserted "either solely or in conjunction with a city, county, or consolidated local government"; and made minor changes in style.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Case Notes

Construction of Sidewalk Within Highway Right-of-Way: City had no authority to construct sidewalk within the right-of-way boundary line of a state highway although within the city limits without notice or consultation with the Highway Department (now Department of Transportation), nor did it have authority to charge the costs of such construction to the abutting property owner. Palffy v. Bozeman, 168 M 108, 540 P2d 955 (1975).

60-2-211. Bypassing of municipalities — consent of municipal governing body.

Case Notes

Retroactive Application of Statute: Statute would not be enforced in favor of nonconsenting municipality where Highway Commission (now Transportation Commission) had acquired rights and obligations and begun construction of the bypass before its enactment and enactment did not disclose legislative intent to apply retroactively. Harlem v. Highway Comm'n, 149 M 281, 425 P2d 718 (1967).

60-2-217. Signs identifying mountain ranges — scenic loop highways — costs — responsibility of department.

Compiler's Comments

2019 Amendment: Chapter 299 in (1)(a) after "a vehicle traveling on a" deleted "primary or interstate" and after "in Montana" inserted "that is part of the national highway system or primary highway system"; and in (1)(b) near beginning substituted "highways that are part of the national highway system or primary highway system" for "primary or interstate highways" and at end substituted "national highway system or primary highway system" for "primary or interstate highway". Amendment effective October 1, 2019.

1989 Amendment: Inserted (1)(b) requiring identification, by signs placed at junctions with primary or interstate highways, of designated scenic loops; inserted (2) clarifying Department responsibility with regard to scenic loop highway signs; and made minor changes in form.

60-2-218. Welcome and farewell signs — design, erection, maintenance — completion date — exceptions.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) near middle substituted "national highway system or primary highway system" for "federal-aid interstate highway, except interstate 90 at the Montana-Idaho border in Mineral County, and each federal-aid primary highway"; deleted former (1)(c) that read: "(c) subject to the exception in this subsection (1), complete the construction and erection of welcome and farewell signs:

(i) on the four interstate highways and on highway 212 in Carter County before July 1, 1991; and

(ii) on the remainder of the primary highways at the earliest possible date"; deleted former (2) that read: "(2) However, nothing in this section prevents the department from constructing and erecting signs on the remaining primary highways before July 1, 1991"; and made minor changes in style. Amendment effective October 1, 2019.

1995 Amendment: Chapter 363 deleted former (2) and (3) that read: "(2) Except as provided in subsection (3), the welcome and farewell signs must be:

(a) (i) on the interstate system, approximately 20 feet high and 38 feet wide; and

(ii) on the primary system, approximately 8 feet high and 16 feet wide;

(b) of substantial timber and plank construction, similar to those shown in the design dated July 16, 1962, and formerly in use at Montana's borders, with the inscriptions:

(i) at each entrance to Montana:

"The Gate is Open
Welcome to
MONTANA"; and

(ii) at each exit from Montana:

"So Long!
Come Again to
MONTANA".

(3) Notwithstanding the provisions of subsection (2), welcome or farewell signs in place on the interstate highway system on April 24, 1989, and required to be replaced under the provisions of this section must be utilized at locations on the primary highway system as long as those signs remain serviceable. When those signs are no longer serviceable, they must be replaced on the primary systems with signs described in subsection (2)"; adjusted subsection references; and made minor changes in style.

Effective Date: Section 4, Ch. 621, L. 1989, provided that this section is effective April 24, 1989.

60-2-219. Department authorized to accept and expend funds for welcome and farewell signs.

Compiler's Comments

Item Veto: As passed, the second sentence of this section read: "There is appropriated for the 1990-91 biennium $25,000 from the highway special revenue fund to pay toward this project." The Governor item vetoed the amount. The Code Commissioner has not codified the second sentence because it was rendered meaningless.

Effective Date: Section 4, Ch. 621, L. 1989, provided that this section is effective April 24, 1989.

60-2-220. Cultural heritage areas — signs — location and design — funding.

Compiler's Comments

2005 Amendment: Chapter 497 inserted (1)(b) providing for the establishment of a cultural heritage area encompassing Miles City; in (2) near middle after "highways in" substituted "the appropriate areas signs identifying those areas" for "Silver Bow County and Deer Lodge County signs identifying those counties"; in (3) in first sentence inserted "and the city of Miles City"; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 422 in (4), after "and may expend", deleted "as a statutory appropriation under 17-7-502". Amendment effective July 1, 1997.

Preamble: The preamble attached to Ch. 127, L. 1993, provided: "WHEREAS, Butte-Silver Bow and Anaconda-Deer Lodge are the sites of more than 100 years of living history of the early development of natural resources and the industrialization of America; and

WHEREAS, the cities of Butte and Anaconda have been recognized for their rich mining, smelting, social, labor, and ethnic history on the state and national levels; and

WHEREAS, Butte-Silver Bow and Anaconda-Deer Lodge make a significant contribution to understanding and interpreting the history of the great State of Montana; and

WHEREAS, the natural and cultural resources of the region have been inventoried, and an assessment has been made of the suitability of these resources for protection and interpretation; and

WHEREAS, Butte-Silver Bow has been designated a National Historic Landmark District by the U.S. Department of Interior and is listed on the National Register of Historic Places, as are many sites in Anaconda-Deer Lodge; and

WHEREAS, many of these nationally significant mining and smelting sites are threatened by demolition, vandalism, natural deterioration, and proposed reclamation; and

WHEREAS, natural and cultural resources of Butte-Silver Bow and Anaconda-Deer Lodge can make a substantial contribution to economic development in the region, especially in regard to enhancing tourism opportunities; and

WHEREAS, there exists a critical need to develop a comprehensive and coordinated plan of action to protect and interpret the historic/cultural future of Butte-Silver Bow and Anaconda-Deer Lodge."

60-2-240. Use of postconsumer recycled materials in highway construction projects.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

60-2-242. Markers — commemorative highways.

Compiler's Comments

2003 Amendment: Chapter 538 near end of (1) inserted reference to 60-1-210; inserted (3) enumerating private persons; and made minor changes in style. Amendment effective October 1, 2003.

60-2-244. Posted notice required at rest areas — human trafficking hotline — invasive species prevention.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 456, L. 2023. Amendment effective October 1, 2023.

Effective Date: This section is effective October 1, 2013.

60-2-245. Construction projects — project impacts — notice.

Compiler's Comments

2019 Amendment: Chapter 448 inserted (1)(b)(ii) concerning installation of new rumble strips within 200 yards of a residential building; and made minor changes in style. Amendment effective October 1, 2019.

Effective Date: Section 3, Ch. 100, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 4, Ch. 100, L. 2017, provided: "[This act] applies to projects that are selected and prioritized under 60-2-110 on or after [the effective date of this act]." Effective July 1, 2017.

Part 3

Ports of Entry, Checking Stations, and Interstate Cooperation

Part Compiler's Comments

Resolution Related to Ports of Entry During 1988 Olympics: Senate Joint Resolution No. 3, passed by the 50th Legislature on March 5, 1987, provided: "WHEREAS, the travel industry is an important and vital part of Montana's economy; and

WHEREAS, the Montana Legislature recognizes that the 1988 Winter Olympics in Alberta, Canada, will provide a unique opportunity to promote the state's travel industry; and

WHEREAS, there exist 11 ports of entry between the State of Montana and the Provinces of Alberta, British Columbia, and Saskatchewan, Canada.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States government be strongly urged to operate ports of entry between Montana and the Provinces of Alberta, British Columbia, and Saskatchewan, Canada, on summer-hour schedules to assist travelers during the 1988 Winter Olympics.

(2) That the United States Congress be strongly urged to provide additional highway funding to keep the roads leading to ports of entry between Montana and the Provinces of Alberta, British Columbia, and Saskatchewan, Canada, in excellent driving condition during the 1988 Winter Olympics.

(3) That Montana state and county governments be strongly urged to keep highways leading to ports of entry between Montana and the Provinces of Alberta, British Columbia, and Saskatchewan, Canada, in excellent driving condition during the 1988 Winter Olympics.

(4) That the Montana Department of Highways [now Department of Transportation] be urged to budget its highway funds to provide that highways leading to ports of entry between

Montana and the Provinces of Alberta, British Columbia, and Saskatchewan, Canada, be kept in excellent driving condition during the 1988 Winter Olympics.

(5) That the Secretary of State send copies of this resolution to the Speaker of the United States House of Representatives, the President of the United States Senate, all members of the Montana Congressional Delegation, the Montana Highway Department [now Department of Transportation], the appropriate officials of the affected Montana counties, the chairpersons of the United States and Canadian Olympic Committees, and the Legislative Assemblies of the Provinces of Alberta, British Columbia, and Saskatchewan, Canada."

Part 6
Scenic-Historic Byways Program

Part Compiler's Comments

Effective Date: Section 4, Ch. 546, L. 1999, provided: "(1) Except as provided in subsection (2), [this act] is effective July 1, 1999.

(2) On passage and approval, the commission may establish and appoint members to a scenic-historic advisory council and the department may promulgate rules to effect the purposes of the scenic-historic byways program." Approved April 30, 1999.

Severability: Section 6, Ch. 546, L. 1999, was a severability clause.

CHAPTER 3
DISTRIBUTION AND APPORTIONMENT OF HIGHWAY FUNDS

Chapter Law Review Articles

Review of Route Selection for the Federal-Aid Highway Systems, Tippy, 27 Mont. L. Rev. 131 (1965-1966).

Part 1
Federal-Aid Funds

60-3-101. Assent to federal law.

Administrative Rules

Title 18, chapter 3, subchapter 1, ARM Contractor debarment procedures.
ARM 18.3.201 Standards of responsibility.
Title 18, chapter 7, subchapter 1, ARM Right-of-way encroachments.
Title 18, chapter 7, subchapter 2, ARM Right-of-way occupancy by utilities.

Case Notes

Department Jurisdiction: District Court erred in granting summary judgment for city upon a special assessment for a sidewalk along combined city and state highway right-of-way where city installed sidewalk after plaintiff refused as Highway Department (now Department of Transportation) has exclusive jurisdiction to let contracts and control construction in or along state highway. Palffy v. Bozeman, 168 M 108, 540 P2d 955 (1975).

Part 2
State Funds

60-3-201. Distribution and use of proceeds of gasoline tax.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 123, L. 2023. Amendment effective July 1, 2023.

2019 Amendments — Composite Section: Chapter 177 in (1)(c) at end inserted "to be used pursuant to 23-2-825"; deleted former (6)(a) that read: "(a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles"; and made minor changes in style. Amendment effective July 1, 2019.

Chapter 455 in (7) in first sentence substituted “aeronautics operations account provided for in 67-1-308” for “aeronautics account of the department of transportation”; in second sentence after “internal combustion engines” deleted “except fuel for which refunds have been made”; and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 17, Ch. 455, L. 2019, provided: “[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act].” Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

2017 Amendments — Coordination: Chapter 384 in (1) at beginning deleted “All”, near middle inserted “deposited as provided in 15-70-403(2) and (3) and”, near end of first sentence inserted “15-70-126 and 15-70-127 and”, deleted former second sentence that read: “The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102”, and near end inserted “of the gasoline tax collected under 15-70-403”; in (1)(e) substituted “the remaining amount as provided for in 15-70-126 and 15-70-127” for “the remaining amount:

(i) for use by the department on the highways in this state selected and designated by the commission;

(ii) for collection of the fuel taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state”. Amendment effective July 1, 2017.

The amendments to this section made by sec. 15, Ch. 267, L. 2017, and sec. 16, Ch. 384, L. 2017, were rendered void by sec. 33, Ch. 384, L. 2017, a coordination section.

Severability: Section 38, Ch. 384, L. 2017, was a severability clause.

2015 Amendment: Chapter 220 in (1) substituted “the gasoline tax under 15-70-343 [renumbered 15-70-403]” for “license taxes under the Distributor’s Gasoline License Tax Act”; in (1)(e) substituted “the remaining amount” for “The remainder of the money must be used”; in (1)(e)(i) inserted “for use”; in (1)(e)(ii) substituted “fuel taxes” for “license taxes”; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 472 in (1) in first sentence and in (1)(d) and (1)(e)(i) substituted reference to department for reference to department of transportation; and in (5)(b)(ii) substituted “special revenue fund” for “trust fund” and substituted “80-7-816” for “80-7-811”. Amendment effective April 28, 2005.

2001 Amendment: Chapter 7 in (5)(b)(ii) at end after “credited to the” substituted “noxious weed management trust fund provided for in 80-7-811” for “Montana noxious weed control trust fund”. Amendment effective October 1, 2001.

1995 Amendments: Chapter 356 in (1)(b) increased the percentage creditable to the snowmobile account from 23/64 of 1% to 15/28 of 1%; in (5)(a), at end, inserted “for enforcement purposes, and for the control of noxious weeds”; inserted introductory clause of (5)(b); in (5)(b)(i), in first sentence, increased from 10% to 13% the amount deposited to the snowmobile account that must be used to promote snowmobile safety, education, and enforcement and inserted second sentence requiring that two-thirds of the 13% be used for safety and education and one-third for enforcement; inserted (5)(b)(ii) requiring that 1% be credited to the noxious weed control trust fund; and in (5)(c), after “less than”, substituted “15/28 of 1%” for “23/64 of 1%”, after “propelling” inserted “registered”, and after “snowmobiles” substituted “in” for “on public lands of”. Amendment effective July 1, 1995.

Chapter 442 at end of (1) substituted “After deductions for amounts paid out of the suspense account for gasoline tax refunds, the remainder is allocated as follows” for “Subject to that provision”; in (1)(a) through (1)(d), after “1%”, substituted “to” for “of all money must be deposited in”; in (4), at end of first sentence, deleted “except for the payment of refunds under 15-70-221 through 15-70-226”; and in (4), in second sentence, (5), (6)(b), and (7), in second sentence, inserted exception clause concerning refunds. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 40 in (1)(b) and (5) reduced amount designated for snowmobile account from 1/2 of 1% to 23/64 of 1%. Amendment effective July 1, 1994.

1993 Amendment: Chapter 87 in (1)(e)(i), before “highways”, deleted “federal-aid” and after “designated” substituted “by the commission” for “under Title 23, U.S.C., on highways leading from each county seat in the state to the federal highway system of federal-aid roads if the county seat is not on the system, and on the other roads that have been or may be authorized by the laws of Montana”; and in (2), near middle of first sentence after “expended”, deleted “through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state" and at end substituted "this title" for "60-3-204 through 60-3-206".

1991 Amendments: Chapter 512 in (1), in first sentence before "suspense account for gasoline tax refund", substituted "department of transportation's" for "department of revenue's" and in second sentence substituted "The portion" for "so much"; in (1)(d) substituted "department of transportation" for "department of commerce"; in (1)(e)(i) substituted "department of transportation" for "department of highways"; in (5) deleted former second sentence that read: "For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile account each year shall be used to promote snowmobile safety"; in (7) substituted "department of transportation" for "department of commerce"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 698 inserted (1)(c) requiring deposit of 1/8 of 1% of license tax proceeds in an off-highway vehicle account; in (5) deleted former second sentence (see Ch. 512 note); inserted (6) specifying allowable uses for money credited to the off-highway vehicle account; and made minor changes in style. Amendment effective July 1, 1991.

1985 Amendment: In (1) at end of third sentence, inserted clause referring to deposit of 1/25 of 1% of all money in aeronautics revenue fund; and inserted (6) regulating use of money credited to the aeronautics account.

1983 Amendment: In second sentence of (1), substituted "debt service fund" for "sinking fund"; in (1) and (4), substituted "state special revenue fund" for "earmarked revenue fund"; and in (5), substituted "snowmobile account" for "snowmobile fund" in two places.

Attorney General's Opinions

Snowmobile and State Park Accounts — Derivation: The percentages of the distributor's gasoline license tax to be deposited in the state park account and in the snowmobile account should be derived from the gross taxes collected by the Department of Revenue (now Department of Transportation) under the license tax. (See 1995 amendment.) 38 A.G. Op. 67 (1980).

60-3-205. Apportionment of state funds to primary highway system.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) substituted current text for former text that read: "Prior to the beginning of each biennium, the commission, referring to highway sufficiency ratings developed by the department, shall designate a level of sufficiency considered adequate and a lesser level of sufficiency considered critical, both to be used to compute the apportionment of federal-aid highway funds for the primary highway system during the succeeding biennium"; in (2) substituted current text for former text that read: "The department shall then compute the ratio:"; deleted former (2)(a), (2)(b), and (3) (see 2019 Session Law for former text); in (3) in first sentence substituted "apportioned for the primary highway system" for "available for the primary highway system in any biennium" and in second sentence near middle substituted "funds apportioned under the analysis in subsection (2), its allocation is limited" for "funds available under the formula in subsection (3), its apportionment is limited" and at end substituted "reallocated among the other districts according the analysis" for "redistributed among the other districts according to the formula"; in (4) substituted current text concerning transferring and obligating allocated primary highway system funds for former (5)(a) and (5)(b) (see 2019 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2019.

1999 Amendment: Chapter 177 in (5)(a) near beginning after "projects" substituted present language pertaining to transfer of apportioned primary system funds by the commission for "obligations in any financial district may exceed the amount apportioned to that district by up to 25%. The amount of excess obligations must be deducted from future apportionments to that district"; inserted (5)(b) explaining the intent of the provisions allowing transfers between districts; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment: Chapter 87 in (1), near end, substituted "federal-aid highway funds for the primary highway system" for "construction funds for the federal-aid primary system"; in (2)(a) and (2)(b) substituted "primary highway system" for "federal-aid primary system"; in (3), in two places before "funds", substituted "federal-aid highway" for "state construction" and in two places substituted "primary highway system" for "federal-aid primary system"; in (4), in first sentence, substituted "primary highway system" for "federal-aid primary system"; and inserted (5) allowing obligations to exceed the apportioned amount by up to 25% and requiring deduction of excess obligations from future apportionments.

1983 Amendment: In (1) through (3), substituted present language for: "(1) Each fiscal year the department shall determine the amount of incompleted mileage of the federal-aid primary system within each of the financial districts. As a basis for determination of incompleted mileage, the department shall compare the present condition of the system with the latest approved state standards. Any mileage failing to meet those standards shall be included in the determination as partially completed. The proportion of completion shall be determined by estimating the amount of work which must be performed to complete the highway.

(2) The department shall then compute the ratio between the incompleted mileage in each district and the total incompleted mileage of the federal-aid primary system in the state.

(3) The department shall then apportion available state construction funds to the federal-aid primary system in each district on the basis of the computed ratio."; and inserted (4) limiting receipt of federal-aid primary system funds, limiting apportionment, and requiring redistribution of excess funds.

Interim Committee Bill: House Bill 9 (Ch. 412, L. 1983) was introduced by request of the Joint Subcommittee on Highways. See committee report, Montana Legislative Council, 1982.

Case Notes

Federal-Aid Primary Designation — Necessary Prerequisite to Economic Growth Center Designation: Under federal law, a road may not be designated as eligible to receive economic growth center funds unless it has previously been designated as a primary highway. Although the Highway Commission (now Transportation Commission) had decided the Big Sky spur should be added to the primary system, the road did not meet the requirements of 23 U.S.C. § 103. The District Court held that the road had improperly been designated a "primary route". Because the road was not properly a "primary route" it was not eligible to receive economic growth center funds. Nat'l Forest Preserv. Group v. Volpe, 359 F. Supp. 136 (D.C. Mont. 1973).

60-3-206. Apportionment of funds to secondary highway system.

Compiler's Comments

1999 Amendment: Chapter 542 throughout section substituted references to district for references to county; in first sentence in (1) after "apportion" inserted "at least 65% of" and at end substituted "among the districts for capital construction needs" for "among the counties" and inserted second sentence requiring remainder of funds to be used for secondary highway system pavement preservation; in (1)(a) substituted "30%" for "one-fourth"; in (1)(b) substituted "35%" for "one-fourth"; in (1)(c) substituted "30%" for "one-fourth"; in (1)(d) substituted "5%" for "one-fourth" and in two places substituted "rural bridge square footage" for "value of rural land"; at end of first sentence in (2) substituted "district if a majority of the boards of county commissioners of the counties in another district approve the donation of the extra amount" for "county" and at end of second sentence substituted "recipient district and returned to the donor district" for "county"; inserted definitions of capital construction, district, pavement preservation, and rural bridge square footage; in definition of rural population substituted "the total population of all of the counties in a district" for "total county population"; in definition of rural road mileage substituted "on roads functionally classified and approved by the transportation commission as major collectors or minor arterials" for "outside of incorporated cities and towns" and after "system" deleted "and the national highway system, and those roads that are inside incorporated cities and towns and are functionally classified and approved by the commission as a major collector or a minor arterial, exclusive of road mileage on the primary system and the national highway system"; in (3)(f)(ii) after "mileage" inserted "within national parks or road mileage"; deleted former definition of value of rural lands that read: ""Value of rural lands" includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands must be computed from the latest available information from the department of revenue.

(ii) The basis for the value of state-owned lands must be computed from the latest figures on the total grazing, timber, and agricultural lands in each county based on the most recent information available from the department of natural resources and conservation"; inserted (4) regarding voting for purpose of secondary highway capital construction priorities and prohibiting conversion of existing paved secondary highway to graveled surface without concurrence of county commissioners where road located; and made minor changes in style. Amendment effective April 30, 1999.

1997 Amendment: Chapter 239 in (3)(a) defining rural population, near beginning, substituted "county population as reported in the latest decennial federal census" for "population" and near end substituted "determined by the department, using the latest decennial federal census" for "reported in the latest federal census" and deleted last sentence that read: "Federal census population figures must be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county"; in (3)(b)(i) defining rural road mileage, after "cities", inserted "and towns" and after "system" inserted "and those roads that are inside incorporated cities and towns and are functionally classified and approved by the commission as a major collector or a minor arterial, exclusive of road mileage on the primary system and the national highway system"; inserted (3)(b)(ii) regarding road mileage within certain incorporated cities and unincorporated areas; in (3)(c)(i) defining value of rural lands substituted "available information from" for "biennial report of"; in (3)(c)(ii) substituted "based on the most recent information available from the" for "contained in the latest biennial report of the" and at end substituted "natural resources and conservation" for "state lands"; deleted (3)(c)(iii) that read: "(iii) The average value of privately owned lands is the average value of state-owned lands if the actual value is not available"; and made minor changes in style. Amendment effective July 1, 1997.

1993 Amendment: Chapter 87 in (1), in six places, substituted reference to county for reference to financial district and in first sentence, after "apportion", substituted "the federal-aid highway funds allocated" for "available state construction funds" and before "secondary" deleted "federal-aid"; substituted (2) concerning county exceeding obligation apportionment for former language that read: "Funds apportioned to each district shall be further apportioned to each county in the district on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, obligations in any county may exceed the amount apportioned to that county to the extent of five times the amount of the last apportionment to the county. The amount of any excess obligations shall be deducted from future apportionments to that county"; in (3)(b), near middle of first sentence before "primary", deleted "federal-aid" and at end substituted "national highway system" for "federal-aid interstate system"; and made minor changes in style.

1989 Amendment: In second sentence of (2) increased from three times to five times the amount of the apportionment that may be obligated in a county.

1981 Amendment: Substituted "obligations" for "expenditures" in the last two sentences of (2).

60-3-207. Secondary highway information.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) at end substituted "financial district" for "county". Amendment effective October 1, 2019.

1981 Amendment: Substituted "November 30" for "August 30" in the first sentence.

60-3-211. Apportionment of state funds to urban highway system.

Compiler's Comments

2013 Amendment: Chapter 45 in (1) substituted "urban areas in the state as delineated and reported in the latest federal census with populations of 5,000 or more in the ratio of urban population in each urban area to the total urban population in all urban areas in the state" for "cities in the state with populations of over 5,000 in the ratio of urban population in each city to the total urban population in all cities in the state with populations of over 5,000"; in (2) substituted "population within the urban area, as reported in the latest federal census, with a population of 5,000 or more and that population within the adjusted and federal highway administration-approved fringe areas based on the latest federal census" for "population within the incorporated limits of cities with populations of over 5,000 and that population within unincorporated urban fringe areas delineated and reported in the latest federal census"; and in (3) in three places substituted "urban area" for "city". Amendment effective October 1, 2013.

1993 Amendment: Chapter 87 in (1), after "apportion", substituted "the federal-aid highway funds allocated for the urban highway system" for "state construction funds available for matching federal-aid urban funds"; and made minor changes in style.

1981 Amendment: Substituted "obligations" for "expenditures" twice in (3).

60-3-212. Interim apportionment to match federal-aid funds.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

60-3-219. Allocation of funds — apportionment.

Compiler's Comments

1995 Amendment: Chapter 75 substituted "transportation commission" for "highway commission". Amendment effective July 1, 1995.

Part 3
Shared-Use Paths

Part Compiler's Comments

Inventory of Trails and Paths — Maintenance — Report to Legislature: Section 1, Ch. 384, L. 2015, provided: "The department of transportation shall:

(1) compile an inventory of all multiuse trails or other paths within state-maintained federal-aid highway rights-of-way that are separated from motorized vehicular traffic by open spaces, pavement, markings, or barriers and that are usable for transportation purposes by pedestrians, runners, bicyclists, skaters, equestrians, and other nonmotorized users;

(2) develop a plan for maintaining and repairing the trails and other paths described in subsection (1), including estimated costs for maintenance and repair; and

(3) provide a report of the inventory and maintenance plan to the revenue and transportation interim committee and to the 65th legislature." Effective May 4, 2015, and terminates May 1, 2017.

60-3-301. Short title.

Compiler's Comments

2017 Amendment: Chapter 250 substituted "Shared-Use Path Act" for "Footpath and Bicycle Trail Act of 1975". Amendment effective July 1, 2017.

60-3-302. Shared-use path defined.

Compiler's Comments

2017 Amendment: Chapter 250 substituted current text defining shared-use path for "As used in this part, "bicycle trail" means a publicly owned and maintained lane or way designated and signed for use as a bicycle route." Amendment effective July 1, 2017.

60-3-303. Shared-use paths to be established — funding.

Compiler's Comments

2017 Amendment: Chapter 250 in (1)(a) in first sentence inserted "Subject to the provisions of subsection (1)(b)", in two places inserted "or the department", and at end substituted "may construct or extend a shared-use path" for "may construct footpaths and bicycle trails. Footpaths and bicycle trails may be established and extended to the nearest city or town or termination point of the highway or road"; in (1)(a)(ii) substituted "at any time along a highway, road, or street" for "In addition, footpaths and bicycle trails may be established along all streets" and after "jurisdiction" deleted former second sentence that read: "Funds may also be expended to construct footpaths and bicycle trails along other highways, roads, and streets and in parks and recreation areas"; in (1)(a)(iii) after "convenience" deleted former second sentence that read: "Footpaths and bicycle trails may be constructed along all sections of the national defense interstate highway system."; inserted (1)(b) providing for usage of funds allocated by the department; in (2) substituted "A shared-use path" for "Footpaths and trails"; in (2)(a) and (2)(b) substituted "path" for "paths and trails"; in (3) at end of first sentence substituted "to construct or extend shared-use paths" for "for footpaths and bicycle trails"; and made minor changes in style. Amendment effective July 1, 2017.

1999 Amendment: Chapter 297 in (1) in first and fourth sentences deleted reference to funds received from the state transportation commission state special revenue fund; and made minor changes in style. Amendment effective July 1, 1999.

1995 Amendment — Phrase Change: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in two places in (1) and in (3). Amendment effective July 1, 1995.

1989 Amendment: At beginning of first sentence of (1) substituted "The" for "Out of the funds received by the", after "county or city" inserted "with funds received", near end of first sentence, after "revenue fund", substituted "may construct" for "reasonable amounts shall be expended as necessary for the establishment of", in third sentence substituted "may" for "shall", in fourth sentence, before "footpaths", substituted "construct" for "maintain", and in fifth sentence, after "trails", substituted "may" for "shall" and after "system" deleted "within a reasonable time after the completion of that system"; in (2) substituted "may" for "are" and after "not" deleted "required to"; substituted language in (3) requiring Commission to contract for establishment of footpaths and bicycle trails and to establish certain accounting procedures for former subsection that read: "(3) The amount expended by the state highway commission or by a city or county as required or permitted by this section shall never in any one fiscal year be less than 3/4 of 1% of the amount appropriated to the department of highways from the state special revenue fund for the construction program, maintenance program, and preconstruction program"; and made minor changes in phraseology.

1983 Amendment: Substituted references to state special revenue fund for references to earmarked revenue fund.

60-3-304. Duties of department of transportation.

Compiler's Comments

2017 Amendment: Chapter 250 in (1) substituted "The allocation of available funds for the maintenance, repair, and establishment of shared-use paths" for "The establishment of paths and trails" and near middle substituted "are primarily for the maintenance and repair of shared-use paths and for the promotion" for "are for the promotion"; inserted (3)(a) regarding an inventory of all shared-use paths located in the right-of-way; inserted (3)(b) regarding plan for maintenance and repair; in (3)(c) substituted "construction and maintenance standards for shared-use paths" for "construction standards for footpaths and bicycle trails"; in (3)(d) substituted "signing shared-use paths that applies to all shared-use paths, whether under" for "signing footpaths and bicycle trails which shall apply to paths and trails under" and substituted "jurisdiction of the commission or a city or county" for "jurisdiction of the commission and cities and counties. The commission and cities and counties shall restrict the use of footpaths and bicycle trails under their jurisdiction to pedestrians and nonmotorized vehicles to the maximum possible extent, except that the commission, in cooperation with local governments, may authorize the operation of snowmobiles on designated portions of bicycle trails and footpaths when snow conditions permit"; inserted (3)(e) providing for allocation of funds; inserted (4) providing for limitation on use by motorized vehicles and authorization for use of snowmobiles; and made minor changes in style. Amendment effective July 1, 2017.

1995 Amendment — Phrase Change: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in (1). Amendment effective July 1, 1995.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

60-3-308. Shared-use path project.

Compiler's Comments

Effective Date: Section 11, Ch. 250, L. 2017, provided: "[This act] is effective July 1, 2017."

60-3-309. Allocation of funds.

Compiler's Comments

Effective Date: Section 11, Ch. 250, L. 2017, provided: "[This act] is effective July 1, 2017."

CHAPTER 4

ACQUISITION AND DISPOSITION OF PROPERTY

Chapter Case Notes

No Intent to Abandon Public Road Despite Reconveyance of Surrounding Property to Private Interests: In 1939 and 1940, the Shelby Country Club conveyed 160 acres of land to the city of Shelby with the understanding that the city would beautify the property as a park and lease it to the country club for a golf course. The city graded a road to the property and maintained Club Road thereafter. When the city could not obtain funds for a park, the property was reconveyed to the country club, and eventually, plaintiff acquired most of the property, while an 11.75-acre parcel was acquired by defendants. Plaintiff sought to have Club Road declared a private road and asked for damages for defendants' use of the road. The city subsequently annexed the road into the city limits and intervened in the suit, along with Toole County, to protect the public interest. The District Court declared Club Road to be a public road, and the Supreme Court affirmed. Although the District Court relied on section 32-103, R.C.M. 1947, rather than the applicable section 1612, R.C.M. 1921, the fact remained that once Club Road was laid out by the city as a public road and maintained its character through more than 50 years of public use, it remained a public road despite the reconveyance of the surrounding property to private interests, absent any clear intent by the city to abandon it. Smith v. Russell, 2003 MT 326, 318 M 336, 80 P3d 431 (2003).

Public Highway Established Pursuant to 1895 Law — Mere Nonuse by County Not Considered Abandonment — Inapplicability of Prescriptive Easement and Reverse Adverse Possession: The District Court found that the Tucker Gulch Road was clearly defined and in use by the public for at least 27 years prior to enactment of sec. 2600, The Codes and Statutes of Montana (1895), which declared all highways and roads then used by the public as public highways. However, the court went on to hold that it was not a petitioned county road and that there was a prescriptive easement by the public over the road that had been lost through abandonment and by reverse adverse possession when a new road was relocated near the old one. The District Court properly found that Tucker Gulch Road was a public highway; however, mere nonuse or lack of maintenance by the county was insufficient to indicate a clear intent to abandon the road without notice and a public hearing. Moreover, the county's failure to respond to several quiet title actions in which the county was not served and the county's adoption of a resolution naming the road did not indicate an intent to abandon. Abandonment cannot be established by mere implication. The Supreme Court cited Baertsch v. Lewis & Clark County, 256 M 114, 845 P2d 106 (1992), for the general rule that title to a public road may not be obtained by adverse possession. The Supreme Court also cited Granite County v. Komberec, 245 M 252, 800 P2d 166 (1990), and affirmed the District Court's finding that there was not a public prescriptive easement along the relocated new road because most of the nonpermissive use of the new road was by occasional recreationists. The District Court's conclusion that creation of the easement was not specific and that the easements were designed for the access of the owners for activities associated with residential living was in error, however, absent evidence in the access agreement or survey establishing such a restriction. Thus, the grant of unrestricted access to landowners who had owned a mine adjoining the property in question was not in error. McCauley v. Thompson-Nistler, 2000 MT 215, 301 M 81, 10 P3d 794, 57 St. Rep. 855 (2000), distinguishing Pub. Lands Access Ass'n, Inc. v. Boone & Crockett Club Foundation, Inc., 259 M 279, 856 P2d 525 (1993), and followed in Lee v. Musselshell County, 2004 MT 64, 320 M 294, 87 P3d 423 (2004). The Supreme Court clarified its ruling in McCauley on abandonment of a public highway in Soup Creek, LLC v. Gibson, 2019 MT 58, 395 Mont. 105, 439 P.3d 369.

Establishment of Public Highway Under United States Revised Statutes Section 2477 — Use Alone Insufficient Under State Law — State Declaration of Existence of Public Highways Inapplicable: The Richters brought an action in District Court to condemn an easement across the land of a neighbor that surrounded their property on three sides, claiming that a public highway had been established, pursuant to United States Revised Statutes section 2477 (R.S. 2477), across public land before that land ultimately passed to their neighbor. The Supreme Court reviewed the purpose of R.S. 2477, as described in Butte v. Mikosowitz, 39 M 350, 102 P 593 (1909), and noted that it had earlier held in St. v. Nolan, 58 M 167, 191 P 150 (1920), that R.S. 2477, later codified as 43 U.S.C. 932, was only an offer by the United States to convey land but that state law determined how that offer was accepted and, in that case, held that at that time there were four ways in which a public highway could be established under Montana law. The Supreme Court then reviewed the history of the Montana statutes governing how the R.S. 2477 offer was accepted by the state and pointed out that in 1895, section 2603 of the Political Code of Montana was adopted providing that use alone was insufficient to establish a public road over private land, although section 2603 was amended in 1913 to delete the prohibition against creating a public highway by use alone. Therefore, between 1895 and 1913, a public road could be established by use only if public authorities with jurisdiction over the property on which the road was claimed took an act tantamount to a declaration that a particular road was a public road. Because the Richters presented no evidence that the County Commissioners with jurisdiction over the road that they claimed to exist upon their neighbor's property had taken any action to declare that road to be a public highway, the Supreme Court held that as a matter of law, the Richters' evidence of use alone was insufficient to establish a public right-of-way upon that land between 1903 and 1907. The Supreme Court also held that section 2600, Political Code of Montana, enacted in 1895, declaring that highways used by the public are public highways, did not create a public highway across what became their neighbor's property because that statute applied only to existing uses at the time of the statute's enactment and Richters' evidence did not demonstrate any use of the road until 1902. Richter v. Rose, 1998 MT 165, 289 M 379, 962 P2d 583, 55 St. Rep. 663 (1998). See also McCauley v. Thompson-Nistler, 2000 MT 215, 301 M 81, 10 P3d 794, 57 St. Rep. 855 (2000), and Watson v. Dundas, 2006 MT 104, 332 M 164, 136 P3d 973 (2006).

Evidence Insufficient to Prove Common-Law Dedication of Public Right-of-Way Across Private Property: The Richters brought an action in District Court to condemn an easement across the land of a neighbor that surrounded their property on three sides, claiming that a public highway had been established across what became their neighbor's land after the United States had sold the property to its first private owner. The Supreme Court noted that it had previously held in Kaufman v. Butte, 48 M 400, 138 P 770 (1914), that Montana law required that both an offer by the owner of the land evidencing the owner's intent to dedicate the land for a public right-of-way and an acceptance of that offer by the public had to be demonstrated to prove a common-law easement. Distinguishing McKey v. Hyde Park, 134 US 84 (1890), the Supreme Court held that because the Richters presented no evidence that the first private owner of the land took any action demonstrating an intent to dedicate a public right-of-way across her property, the Richters failed to prove the existence of that right-of-way. Richter v. Rose, 1998 MT 165, 289 M 379, 962 P2d 583, 55 St. Rep. 663 (1998).

Chapter Law Review Articles

The Montana Law of Valuation in Eminent Domain, Sullivan, 34 Mont. L. Rev. 90 (1973).

Review of Route Selection for the Federal-Aid Highway Systems, Tippy, 27 Mont. L. Rev. 131 (1965-1966).

Part 1
Acquisition of Property

Part Attorney General's Opinions

Authority of U.S. Fish and Wildlife Service to Regulate Public Right-of-Way Within Wildlife Refuge: The U.S. Fish and Wildlife Service has the authority within the boundaries of a wildlife refuge to regulate the use of a public right-of-way established pursuant to Revised Statutes section 2477 (43 U.S.C. 932). Public recreational use of that right-of-way may be permitted only to the extent that is practicable and not inconsistent with the primary objectives for which the refuge was established. 45 A.G. Op. 13 (1993).

60-4-101. Rights acquired by public in highway.

Law Review Articles

New Prescriptive Easement Law: The Montana Supreme Court Expands Public Access to Private Land in Public Lands Access Ass'n v. Board of County Commissioners of Madison County, Inabnit, 77 Mont. L. Rev. 185 (2016).

60-4-102. General power of department to acquire interests in property.

Compiler's Comments

2001 Amendment: Chapter 19 inserted last sentence exempting acquisition of fee simple interest under this section from 70-30-104(2); and made minor changes in style. Amendment effective February 19, 2001.

Saving Clause: Section 4, Ch. 19, L. 2001, was a saving clause.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

60-4-103. Purposes for which property acquired.

Case Notes

Eminent Domain — Highway Interchange and Visitor Center Public Use — Chamber of Commerce Building Not: The state attempted to condemn an 8.72-acre parcel to build a highway interchange and visitor center. Forty percent of the proposed building was to be used by the local Chamber of Commerce, a private, nonprofit organization. The District Court held that the highway interchange and visitor center are public purposes and that the state had lawfully exercised its power of eminent domain as to the entire 8.72-acre parcel but that the Chamber of Commerce could not be a part of the planned highway interchange building complex. Property owners appealed on the grounds that by including the Chamber in the plans, the entire taking is unlawful. The Supreme Court held that the District Court did not err in severing the Chamber's participation in the building plan and granting the condemnation order because the Chamber's presence was not a part of the request for condemnation. Bozeman v. Vaniman, 271 M 514, 898 P2d 1208, 52 St. Rep. 543 (1995).

Market Value of Condemned Land: Where Highway Commission (now Transportation Commission) condemned land for purposes of gaining an easement for the construction and maintenance of a state highway and not for obtaining a deposit of gravel, sand, and other materials on the land, testimony as to the value of such materials was inadmissible as speculative, remote, and conjectural and not within the purpose of section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104). St. Highway Comm'n v. Mott, 142 M 402, 384 P2d 922 (1963).

Railroad Right-of-Way: Section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), permitted the State to condemn land in order to provide right-of-way for a railroad being moved to allow construction of public highways. State ex rel. De Puy v. District Court, 142 M 328, 384 P2d 501 (1963).

Rental of Unused Right-of-Way: The 1961 amendment of section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), so as to give express authority for the rental of unused right-of-way rendered moot a taxpayer's action to restrain the Highway Commission (now Transportation Commission) from granting an encroachment permit, where there was no indication that the permit when granted, would violate the terms of the statutory amendment. Wilson v. St. Highway Comm'n, 140 M 253, 370 P2d 486 (1962).

Transfer of Land:

Any manner of transferring unused highway right-of-way that was inconsistent with section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), was by implication excluded. Wilson v. St. Highway Comm'n, 140 M 253, 370 P2d 486 (1962).

Under section 32-1615, R.C.M 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), the State Highway Commission (now Transportation Commission) could not give away or loan gratuitously the use of an unused highway right-of-way. Wilson v. St. Highway Comm'n, 140 M 253, 370 P2d 486 (1962).

Exercise of Eminent Domain Power: Under section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), the Highway Commission (now Transportation Commission) was the only tribunal authorized to relocate state highways through the power of eminent domain. A public utility could not condemn land for a right-of-way for the relocation of a highway which was necessitated by the fact that the then present highway would be affected by the construction of a dam for which the utility was using the eminent domain power. State ex rel. Bartholomew v. District Court, 126 M 183, 248 P2d 215 (1952).

Selection of Routes Discretionary: Under section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), where a particular route was chosen by the Highway Commission (now Transportation Commission) as a highway, it was within its discretion to decide which segment or portion thereof should be first constructed, and the mere fact that such portion ran through a sparsely settled area and would in itself benefit but few persons did not authorize the courts to enjoin its construction on the ground that cost thereof would constitute a wanton waste of money. State ex rel. St. Highway Comm'n v. District Court, 107 M 126, 81 P2d 347 (1938).

Inability to Purchase: Under section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), where the Highway Commission (now Transportation Commission) sought to condemn lands for highway purposes, in order to invoke the jurisdiction of the court, it must allege in its complaint that it has been unable to acquire the right-of-way desired by purchase. St. v. Whitcomb, 94 M 415, 22 P2d 823 (1933).

Necessity for Taking Land: The requirement of section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), that land sought to be condemned for highway purposes had to be "necessary" does not mean an absolute necessity for the particular location but means reasonably requisite for the accomplishment of the end in view, under the circumstances of the case. St. v. Whitcomb, 94 M 415, 22 P2d 823 (1933).

Public Good Versus Injury to Landowner: Under section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), where the Highway Commission (now Transportation Commission) selected a particular route for a highway, a landowner whose land was sought to be condemned for right-of-way could not be heard to say that a different one could have been selected; solution of the question of necessity involved consideration of the questions of the greatest good to the public and the least injury to the owner whose property was sought to be taken. St. v. Whitcomb, 94 M 415, 22 P2d 823 (1933).

Eminent Domain Exercised Upon Direction of Commission: Under section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), the right to obtain a right-of-way for a state highway by the exercise of condemnation proceedings was lodged exclusively with the State Highway Commission (now Transportation Commission), the right to be exercised in the name of the state upon direction by the Commission to the Attorney General or a County Attorney. State ex rel. McMaster v. District Court, 80 M 228, 260 P 134 (1927).

60-4-104. Exercise of right of eminent domain — presumption.

Compiler's Comments

2003 Amendment: Chapter 330 in (1) at beginning inserted "Subject to subsections (4) and (5)"; inserted (4) and (5) relating to an expedited acquisition process; and made minor changes in style. Amendment effective April 15, 2003.

Applicability: Section 5, Ch. 330, L. 2003, provided: "[This act] applies to actions initiated on or after [the effective date of this act]." Effective April 15, 2003.

Case Notes

Department Failure to Consider Alternate Routes — Condemnation Order Reversed: After being asked in 1975 by the county to improve a road, the State Highway Department (now Department of Transportation) had surveyed and located a proposed route by 1978. Prior to its choice of a proposed route, the Department had met informally with the Department of State Lands (functions now transferred to Department of Natural Resources and Conservation) because a portion of the route bordered on school trust lands. The Department of State Lands (functions now transferred to Department of Natural Resources and Conservation) was planning the installation of pivot sprinkler irrigation systems on the land. Although no record of the meeting exists, apparently both Departments were satisfied that the proposed highway would not interfere with the proposed irrigation development. In 1981, Standley Brothers entered into a lease of the school trust land, and the Department began negotiations with them to acquire a portion of their leasehold interest. Upon learning that the proposed route would interfere with the irrigation system, Standley Brothers asked for the route to be moved. The Department assessed the cost of a change in route, decided not to change it, and brought a successful condemnation action in District Court. The Supreme Court reversed because the Highway Department (now Department of Transportation) had violated 60-4-104 and 70-30-110 by failing to consider the possibility of alternate routes reasonably equal in terms of public good that would reduce private injury. The court directed the Highway Department (now Department of Transportation), in its reconsideration, to take into account only actual construction costs of the alternate route, not those costs created by the failure to consider an alternate route in the first place. State ex rel. Dept. of Highways v. Standley Bros., 215 M 475, 699 P2d 60, 42 St. Rep. 563 (1985).

Interpretation of "Necessary": When the evidence presented at trial indicated that the proposed location of an improved road was the shortest, most direct, and least expensive route consistent with the design objectives, the District Court properly found that the interest sought by the Highway Department (now Department of Transportation) was necessary for the improvement. The word "necessary" in this statute does not mean an absolute or indispensable necessity but rather a reasonable, requisite, and proper means to accomplish the improvement. State ex rel. Dept. of Highways v. Standley Bros., 215 M 475, 699 P2d 60, 42 St. Rep. 563 (1985).

Possible Alternative Route: A disputable presumption, established by Highway Department (now Department of Transportation) resolution of public interest and necessity, was not overcome by evidence that a possible alternative route might have been selected. Dept. of Highways v. Higgins, 166 M 90, 530 P2d 776 (1975).

Substantial Evidence Supporting Choice of Route: When the sole controverting evidence rebutting the presumption of this section was that of the landowner and the statutory presumption was buttressed by the testimony of a district ranger who testified that routing a highway through public lands would cause injury to the public lands, there was substantial evidence supporting the choice of the proposed route. Dept. of Highways v. Higgins, 166 M 90, 530 P2d 776 (1975).

Burden of Proof:

In order to attack the presumption raised by a resolution of public interest and necessity for condemnation of a strip of land without providing for a livestock underpass, landowner must introduce evidence as to the amount of his damages if the land is taken without building an underpass. St. Highway Comm'n v. Parini, 159 M 248, 496 P2d 1140 (1972).

Under section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), where Commission condemned defendant's land to build bypass through it rather than reconstruct highway through town, it became incumbent upon the defendant to show fraud, abuse of discretion, or arbitrary action in order to defeat the Commission's action, whereas the Commission had only to establish that the taking of the property was reasonably necessary for rebuilding the highway. St. Highway Comm'n v. Crossen-Nissen Co., 145 M 251, 400 P2d 283 (1965), distinguished in St. Highway Comm'n v. Lavoie, 155 M 39, 466 P2d 594 (1970).

Judicial Interference: Under section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), it was not within the province of the judicial branch of government to interfere with the exercise of eminent domain in the absence of clear and convincing evidence of arbitrariness or abuse of discretion by Commission. St. Highway Comm'n v. Crossen-Nissen Co., 145 M 251, 400 P2d 283 (1965), distinguished in St. Highway Comm'n v. Lavoie, 155 M 39, 466 P2d 594 (1970).

Power to Condemn: Under section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), the power of eminent domain was vested exclusively in the Legislature and could be exercised only by the Legislature and those agencies to whom it delegated the power. St. Highway Comm'n v. Crossen-Nissen Co., 145 M 251, 400 P2d 283 (1965).

Selection of Route: Under section 32-1615, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-103 and 60-4-104), the Highway Commission (now Transportation Commission) did not abuse its discretion in taking farm land by eminent domain even though it was shown that town through which old highway had passed would be financially harmed and bypass would cost more to build, since the resulting savings in travel costs to highway users, in addition to the compensation paid the petitioners, offset disadvantages claimed by them. St. Highway Comm'n v. Crossen-Nissen Co., 145 M 251, 400 P2d 283 (1965), distinguished in St. Highway Comm'n v. Lavoie, 155 M 39, 466 P2d 594 (1970).

60-4-105. Acquisition of whole parcel — sale of excess.

Case Notes

Amount of Property Which May Be Taken: Trial court did not exceed powers under statute when it limited amount of property sought to be appropriated by state to that portion of property actually needed for proposed highway improvement because question whether public interest required taking of entire parcel was question of fact to be determined by court; preliminary order of court limiting amount of appropriation to that actually required for construction of city street improvements was supported by evidence that excess land retained some value as separate parcel notwithstanding Commission's argument that remaining land was financial remnant of such value as to be of little market value and give rise to claims over severance and other damages. St. Highway Comm'n v. Chapman, 152 M 79, 446 P2d 709 (1968).

60-4-109. Irrigable lands rendered unusable — unpaid construction costs.

Case Notes

Cost of Future Operation and Maintenance: Highway Commission (now Transportation Commission) is not obligated to pay irrigation district for future cost of operation and maintenance attributable to lands taken within irrigation district for highway purposes since lands taken will not continue to benefit from services of irrigation district, notwithstanding fact that takings have reduced total irrigable acreage of district and thereby increased per acre cost of operation and maintenance of district. Helena Valley Irrigation District v. St. Highway Comm'n, 150 M 192, 433 P2d 791 (1967).

60-4-110. Highway crossing railroad, canal, or ditch.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) after "Whenever any" substituted "commission-designated highway system" for "federal-aid"; in (2) after "of any court, no damages" substituted "may" for "shall"; and made minor changes in style. Amendment effective October 1, 2019.

60-4-111. Acquisition of property for controlled-access facility.

Case Notes

Judicial Determination of Necessity: The power to determine the public necessity of a proposed highway or controlled access facility remains with the trial judge. St. Highway Comm'n v. Yost Farm Co., 142 M 239, 384 P2d 277 (1963).

Part 2
Disposition of Property

Part Compiler's Comments

Transfer of Highway Property to Yellowstone County — Section Not Codified: Section 1, Ch. 307, L. 1989, directed the Department of Highways (now Department of Transportation) to transfer its interest in certain property in Yellowstone County to the County of Yellowstone, City of Billings, or ZooMontana, Inc., a corporation, for development of a zoo, botanical gardens, and related facilities, effective March 24, 1989. Because the provisions of Title 60, ch. 4, part 2, specifically did not apply to the transfer, Ch. 307 was not codified by the Code Commissioner. See Ch. 307, L. 1989, for the full text.

Part Case Notes

"Successor in Interest": The Highway Department's (now Department of Transportation's) interpretation of "successor in interest" as the adjacent landowner whose chain of title can be traced to the original owner of the entire tract was upheld as a reasonable administrative interpretation of 60-4-204 (now repealed). St. v. Midland Materials Co., 204 M 65, 662 P2d 1322, 40 St. Rep. 666 (1983).

Statute in Existence at Date of Disposition as Controlling: The Department of Highways (now Department of Transportation) obtained property in 1944 from the plaintiffs and disposed of it in 1978 without giving notice to the plaintiffs as required by 60-4-201. The issue on appeal was whether the Department had to comply with procedures for exchanging property contained in a 1959 amendment to section 32-1616, R.C.M. 1947 (repealed in 1965 and replaced in substance by 60-4-201 through 60-4-205). The Department argues that to require it to comply with the 1959 amendment amounts to a retroactive application of the statute. The Supreme Court stated that application of statutes that modify the procedure for exercising a vested right or carrying out a duty does not constitute retroactive legislation. The 1959 amendment only changes the procedure the Department must follow in disposing of property. The underlying right claimed by the Department has not been impaired, nor have additional duties been imposed on the Department. To apply the 1959 amendment to the property in question does not make the legislation retroactive. Castles v. Dept. of Highways, 187 M 356, 609 P2d 1223 (1980).

Sale Without Authority: Because it holds land in public trust and it failed to comply with statutory requirements for land sales, the Department of Highways (now Department of Transportation) was without authority to make the sale of land. The deed derived from the sale without authority was held void. Therefore, the Department of Highways (now Department of Transportation) cannot be estopped from denying the validity of the deed. Norman v. St., 182 M 439, 597 P2d 715 (1979).

Part Attorney General's Opinions

Highway Right-of-Way — Abandonment vs. Sale — Funds Held in Trust: The Code provisions regarding abandonment are to be followed when the Highway Commission (now Transportation Commission) relinquishes a right-of-way easement. Under the facts giving rise to this opinion the Highway Department (now Department of Transportation) received $1.8 million from the Anaconda Company to be used for alternative traffic facilities upon abandonment of the right-of-way. The Highway Department (now Department of Transportation) has authority to hold such funds in trust for Butte-Silver Bow. 38 A.G. Op. 57 (1979).

60-4-201. Exchange of interest in real property.

Compiler's Comments

2007 Amendment: Chapter 342 inserted (3) authorizing department to exchange public rights-of-way with municipality or county in return for municipality or county assuming full maintenance authority and requiring roadway to be operated for public transportation purposes. Amendment effective October 1, 2007.

2005 Amendment: Chapter 226 in (1) in second sentence at beginning inserted exception clause; in (2) at beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective April 15, 2005.

2001 Amendment: Chapter 279 deleted former (2) that read: "(2) The owner from whom the interest was originally acquired by the state or his successor in interest has the right to require the department to offer the land for sale in the manner set forth in 60-4-202 and 60-4-203. The department shall notify the owner or successor in interest of its intention to exchange the interest. The owner shall make his demand for sale by registered or certified mail to the department within 10 days after receipt of notice from the department"; inserted (2) regarding exchange and sale by department of state's interest in excess land; and made minor changes in style. Amendment effective October 1, 2001.

Case Notes

"Successor in Interest": The Highway Department's (now Department of Transportation's) interpretation of "successor in interest" in former subsection (2) of this section as the adjacent landowner whose chain of title can be traced to the original owner of the entire tract was upheld as a reasonable administrative interpretation of the statute. St. v. Midland Materials Co., 204 M 65, 662 P2d 1322, 40 St. Rep. 666 (1983).

60-4-202. Sale of interest in real property.

Compiler's Comments

2021 Amendment: Chapter 88 in (1) at end of last sentence substituted "60-4-203" for "77-2-321". Amendment effective October 1, 2021.

2005 Amendment: Chapter 226 in (1) in second sentence near beginning after "provided in" inserted "60-4-213 through 60-4-218 and"; in (3) at beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective April 15, 2005.

2001 Amendment: Chapter 279 in (1) in second sentence at beginning inserted exception clause and near middle increased minimum value of property for mandatory sale by auction from $2,500 to $10,000; inserted (2) regarding sale without auction; inserted (3) regarding notification to landowners before sale of interest in real property; and made minor changes in style. Amendment effective October 1, 2001.

1995 Amendment: Chapter 232 in first sentence, after "real property", deleted "however acquired by it", in second sentence increased amount to "$2,500" from "$100", and in last sentence inserted "of an interest at auction"; and made minor changes in style.

1981 Amendment: Deleted "or by sealed bids as the department decides" after "public auction" in the second sentence; substituted "77-2-321" for "60-4-203" in the last sentence.

Case Notes

Easement: Easement granting state right to use property adjoining highway as public park was not such an "interest in real property" as to require public sale of park area upon abandonment of highway and park area; quitclaim deed reconveying state's interest to fee holder was valid. Park County Rod & Gun Club v. Dept. of Highways, 163 M 372, 517 P2d 352 (1973).

60-4-203. Conduct of sale.

Compiler's Comments

2021 Amendment: Chapter 88 in (1) at end of first sentence after "located" inserted "and on the department's website", deleted second sentence that read: "The notice of sale must contain the information required by 77-2-322", and in last sentence at beginning substituted "The sale may be held in person" for "Sale must be held" and at end after "located" inserted "or through an online auction"; inserted (2) regarding the content of the notice of sale; and made minor changes in style. Amendment effective October 1, 2021.

2019 Amendment: Chapter 170 in (3) near end of first sentence substituted "6 months" for "3 months". Amendment effective October 1, 2019.

2005 Amendment: Chapter 226 in (1), (2), (3), and (4) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 15, 2005.

2001 Amendment: Chapter 279 in (2) increased minimum value of property for mandatory appraisal from $2,500 to $10,000. Amendment effective October 1, 2001.

1995 Amendment: Chapter 232 in (2) increased amount to "$2,500" from "$100"; and made minor changes in style.

1981 Amendment: Increased the publication period in (1) from 2 to 4 weeks; inserted the second sentence in (1) referencing required information in the notice of sale; deleted "unless the department finds it impractical, in which case the sale shall be held at the office of the department" at the end of (1).

60-4-205. Private sale if no bid or offer.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

60-4-207. Conveyances — execution and contents.

Compiler's Comments

2001 Amendment: Chapter 386 in (1) at beginning of second sentence inserted exception clause; inserted (2) allowing a wetland mitigation site to be conveyed by the department of transportation with a perpetual conservation easement, restricting who may own the conservation easement, and providing special restrictions for wetland mitigation sites; and made minor changes in style. Amendment effective October 1, 2001.

60-4-208. Abandonment or vacation of commission-designated highway system or state highways.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) near beginning substituted "commission-designated highway system" for "federal-aid". Amendment effective October 1, 2019.

Case Notes

Public Easement Not Extinguished by Nonuse: A public roadway does not cease to exist as a public roadway, nor is a public easement extinguished, by mere nonuse. Bridger v. Lake, 271 M 186, 896 P2d 406, 52 St. Rep. 395 (1995), following Baertsch v. Lewis & Clark County, 256 M 114, 845 P2d 106 (1992). See also Ashby v. Maechling, 2010 MT 80, 356 Mont. 68, 229 P.3d 1210.

60-4-209. Abandoned highway property — title vests in contiguous owner.

Compiler's Comments

2005 Amendment: Chapter 226 in (1), (3), and (5) at beginning inserted exception clause; and made minor changes in style. Amendment effective April 15, 2005.

60-4-213. Purpose.

Compiler's Comments

Effective Date: Section 13, Ch. 226, L. 2005, provided that this section is effective on passage and approval. Approved April 15, 2005.

60-4-214. Definitions.

Compiler's Comments

Effective Date: Section 13, Ch. 226, L. 2005, provided that this section is effective on passage and approval. Approved April 15, 2005.

60-4-215. Application of other laws.

Compiler's Comments

Effective Date: Section 13, Ch. 226, L. 2005, provided that this section is effective on passage and approval. Approved April 15, 2005.

60-4-216. Procedure for abandonment.

Compiler's Comments

Effective Date: Section 13, Ch. 226, L. 2005, provided that this section is effective on passage and approval. Approved April 15, 2005.

60-4-217. Criteria for abandonment.

Compiler's Comments

Effective Date: Section 13, Ch. 226, L. 2005, provided that this section is effective on passage and approval. Approved April 15, 2005.

60-4-218. Title.

Compiler's Comments

Effective Date: Section 13, Ch. 226, L. 2005, provided that this section is effective on passage and approval. Approved April 15, 2005.

Part 4
Relocation of Utilities

Part Case Notes

City as Public Utility — Cost of Relocating — "Taking" — Local Self-Government: A city acting in its proprietary capacity as an operator of water, sewer, and lighting facilities is a public utility; therefore, Title 60, ch. 4, part 4, applies. The city must pay 25% of the costs of relocating its water, sewer, and light systems incurred as a result of the Broadway Avenue-Federal Aid Urban System project. Necessary relocation of municipally owned utility systems is not a taking of private property requiring just compensation. The doctrine of local self-government does not prevent the application of 60-4-403 as an unconstitutionally imposed tax or compelled incurrence of debt. St. v. Helena, 193 M 441, 632 P2d 332, 38 St. Rep. 1283 (1981).

60-4-401. Occupancy and relocation — definitions.

Compiler's Comments

2019 Amendment: Chapter 299 in introductory clause at end substituted "the following definitions apply" for "terms are defined as follows"; in definition of facility at end substituted "a commission-designated highway system or state highway" for "a federal-aid system or state highway"; deleted former definition that read: ""Federal-aid systems" includes the following, as defined in 60-2-125:

(a) national highway system;
(b) primary highway system;
(c) secondary highway system; and
(d) urban highway system"; deleted former definition that read: ""State highway" means that term as defined in 60-2-125"; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 203 in definition of utility at end inserted "including water and sewer facilities"; and made minor changes in style. Amendment effective October 1, 2017.

1997 Amendment: Chapter 324 in introductory clause substituted "this part, unless otherwise indicated" for "the sections relating to relocation of utilities facilities"; in definition of cost of relocation, in (a), substituted "means the amount" for "includes the entire amount" and inserted "for material, labor, and equipment" and inserted (b) stating what cost of relocation does not mean; inserted definitions of facility and state highway; in definition of federal-aid systems, after "includes the", inserted "following, as defined in 60-2-125"; and deleted definition of interstate system that read: ""Interstate system" includes any highway now included or which may hereafter be included as a part of the national system of interstate and defense highways provided for in Title 23, U.S.C." Amendment effective April 21, 1997.

1995 Amendment: Chapter 231 substituted (3)(a) through (3)(d) concerning components of federal-aid systems for "federal-aid primary system, the federal-aid secondary system, the federal-aid interstate system, and urban extensions of all of them"; and made minor changes in style.

60-4-402. Occupancy and relocation of utility facilities — rules.

Compiler's Comments

2019 Amendment: Chapter 303 inserted (1)(a) and (1)(c) concerning additional requirements for the department to adopt rules concerning utilities; inserted (3) providing an exception to the permitting provisions of this section; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendment: Chapter 203 in first sentence at beginning deleted "Except as provided in 60-4-403(2) and (3)" and substituted "shall adopt reasonable rules governing right-of-way occupancy by a utility and, except as provided in 60-4-403(2) and (3)" for "may adopt reasonable rules"; inserted last two sentences concerning rule requirements; and made minor changes in style. Amendment effective October 1, 2017.

1997 Amendment: Chapter 324 at beginning substituted "Except as provided in 60-4-403(2) and (3)" for "After appropriate hearings", substituted "rules" for "regulations", inserted "reimbursement to a utility for the costs of", and at end substituted "facilities" for "tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (hereafter called "facilities") of a utility in, on, along, over, across, through, or under a project on any federal-aid systems"; deleted (2) requiring Department notice to all concerned of the place and time of a public hearing to determine necessity of a relocation of facilities; and deleted (3) providing that after the hearing, the Department could determine that the facilities must be relocated and if it did, the utility had to relocate them in accordance with the Department's order and could maintain and operate the relocated facility in the new location. Amendment effective April 21, 1997.

1997 Statement of Intent: The statement of intent attached to Ch. 324, L. 1997, provided: "A statement of intent is required for this bill because it allows the department of transportation to modify rules to reflect changes in its reimbursement responsibilities to utilities for facility relocation. The legislature intends that the department's rules address the changes in the definition of "cost of relocation", the removal of the hearing process, and the full reimbursement of costs associated with relocating small publicly owned water and sewer utilities."

Administrative Rules

Title 18, chapter 7, subchapter 2, ARM Right-of-way occupancy by utilities.
ARM 18.7.207 Electronic utility permit application process.

60-4-403. Relocation — costs.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) at end substituted "commission-designated highway systems construction" for "federal-aid systems construction"; in (2)(b) at end substituted "commission-designated highway system construction" for "federal-aid system construction"; and in (3)(b) at end substituted "commission-designated highway system construction" for "federal-aid highway system construction". Amendment effective October 1, 2019.

1997 Amendment: Chapter 324 in (1) inserted "Except as provided in subsections (2) and (3)" and after "of all costs of relocation" deleted "including the costs of acquisition of new right-of-way, of"; inserted (2) stating the conditions under which the Department shall pay the entire cost of relocating a publicly owned facility with 500 or fewer service connectors; inserted (3) stating the conditions under which the Department shall pay for 85% of the cost of relocating a publicly owned facility with between 500 and 1,000 service connectors; and made minor changes in style. Amendment effective April 21, 1997.

1995 Amendment: Chapter 231 near end substituted "federal-aid systems" for "highway"; and made minor changes in style.

Administrative Rules

ARM 18.7.207 Electronic utility permit application process.

Case Notes

Relocation Requirement Met — Reimbursement Appropriate: This section does not list any prerequisites for payment of relocation costs. It does not contemplate, mention, or refer to federal or state ownership of the highway. It does not require that the utility own, rent, or lease the land. It does not require that the state and the utility company have a written contract specifying payment provisions. The only requirement before 75% of relocation costs must be paid by the state is that a utility company relocate its facilities in order for the state to further highway construction. N. Lights, Inc. v. St., 265 M 47, 874 P2d 6, 51 St. Rep. 394 (1994).

City as Public Utility — Cost of Relocating — "Taking" — Local Self-Government: A city acting in its proprietary capacity as an operator of water, sewer, and lighting facilities is a public utility; therefore, Title 60, ch. 4, part 4, applies. The city must pay 25% of the costs of relocating its water, sewer, and light systems incurred as a result of the Broadway Avenue-Federal Aid Urban System project. Necessary relocation of municipally owned utility systems is not a taking of private property requiring just compensation. The doctrine of local self-government does not prevent the application of 60-4-403 as an unconstitutionally imposed tax or compelled incurrence of debt. St. v. Helena, 193 M 441, 632 P2d 332, 38 St. Rep. 1283 (1981).

Part 5
Collaborative Broadband Installation

60-4-501. Broadband deployment.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 694, L. 2023. Amendment effective May 19, 2023.

Effective Date: This section is effective October 1, 2021.

Part 6
Right-of-Way Use Agreements

60-4-601. Interstate right-of-way — department role.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 694, L. 2023. Amendment effective May 19, 2023.

Effective Date: Section 3, Ch. 439, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 10, 2021.

CHAPTER 5
CONTROL OF ACCESS AND INFORMATION SIGNS

Chapter Case Notes

Highway Not an Attractive Nuisance — Summary Judgment Properly Granted: In an action for the wrongful death of the plaintiff's son which occurred when the decedent was struck by an automobile on a controlled-access highway, the District Court did not err in granting the state's motion for summary judgment. As one of the conditions of declaring an object an attractive nuisance, the plaintiff must prove that children are unable to discover or appreciate the dangerous condition of the object. Because there is nothing in the record to prove that a 5-year-old child would not appreciate the dangerous condition of the highway, the highway cannot be found to be an attractive nuisance. Big Man v. St., 192 M 29, 626 P2d 235, 38 St. Rep. 362 (1981), followed in Yager v. Deane, 258 M 453, 853 P2d 1214, 50 St. Rep. 610 (1993).

Part 1
Control of Access

60-5-101. Policy.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) at beginning deleted "highways included by the federal highway administration in the national system of"; and in (3) substituted "other commission-designated highway systems and state highways" for "such other federal-aid and state highways as shall be designated by the commission in accordance with the requirements set forth in this chapter". Amendment effective October 1, 2019.

Case Notes

No Duty to Maintain Right-of-Way Fence — Summary Judgment Properly Granted: In an action for the wrongful death of the plaintiff's son which occurred when the decedent was struck by an automobile on a controlled-access highway, the District Court did not err in its conclusion that the state had no duty to maintain a right-of-way fence in a condition to bar pedestrian access to the highway. As there is no law requiring the state to erect a fence in the first instance, there can be no liability for alleged negligent maintenance of the fence. There is no policy of the law requiring the state to ensure the safety of pedestrians who intentionally enter upon a roadway. Big Man v. St., 192 M 29, 626 P2d 235, 38 St. Rep. 362 (1981), followed in Yager v. Deane, 258 M 453, 853 P2d 1214, 50 St. Rep. 610 (1993).

Judicial Determination of Necessity: The power to determine the public necessity of a proposed highway or controlled access facility remains with the trial judge. St. Highway Comm'n v. Yost Farm Co., 142 M 239, 384 P2d 277 (1963).

60-5-102. Definitions.

Compiler's Comments

2019 Amendment: Chapter 299 in definition of arterial highway after "a state highway designated by" substituted "the commission as part of the noninterstate component of the national highway system, the primary highway system, and any highway so designated as a part of the secondary highway system that" for "agreement between the commission and the secretary of transportation as part of the federal-aid primary system and any highway so designated as a part of the federal-aid secondary system which"; in definition of controlled-access highway in first sentence after "for through traffic or other" substituted "commission-designated highway system" for "federal-aid" and in second sentence near beginning substituted "interstate highways that" for "the interstate highway system which"; in definition of existing highway in second sentence near end substituted "or portions of highways, roads, or streets" for "or portions thereof"; deleted former definition that read: ""Interstate highway" means a highway included as a part of the national system of interstate highways"; in definition of throughway at end substituted "or a portion of a town or city" for "or a portion thereof"; and made minor changes in style. Amendment effective October 1, 2019.

60-5-103. Designation as controlled-access highway.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) near middle of first sentence substituted "commission-designated highway system or state highway may not" for "federal-aid or state highway shall"; in (1)(a) after "land or other persons" deleted "shall"; and made minor changes in style. Amendment effective October 1, 2019.

60-5-104. Powers of highway authorities.

Compiler's Comments

2001 Amendment: Chapter 125 in (2) in third sentence substituted "as provided in Title 70, chapter 30, and chapter 4 of this title" for "in the same manner as may now or hereafter be authorized by law"; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

60-5-105. Design of controlled-access facility — entrance and exit restricted.

Case Notes

No Duty to Maintain Right-of-Way Fence — Summary Judgment Properly Granted: In an action for the wrongful death of the plaintiff's son which occurred when the decedent was struck by an automobile on a controlled-access highway, the District Court did not err in its conclusion that the state had no duty to maintain a right-of-way fence in a condition to bar pedestrian access to the highway. As there is no law requiring the state to erect a fence in the first instance, there can be no liability for alleged negligent maintenance of the fence. There is no policy of the law requiring the state to ensure the safety of pedestrians who intentionally enter upon a roadway. Big Man v. St., 192 M 29, 626 P2d 235, 38 St. Rep. 362 (1981), followed in Yager v. Deane, 258 M 453, 853 P2d 1214, 50 St. Rep. 610 (1993).

60-5-106. Elimination of grade crossings.

Compiler's Comments

2019 Amendment: Chapter 299 in (1) near middle of first sentence and in (3) near end of second sentence substituted "commission-designated highway systems" for "federal-aid"; and made minor changes in style. Amendment effective October 1, 2019.

60-5-108. Maintenance of frontage roads.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Case Notes

No Dispute Regarding Dangerous Road — Evidence That Highway Signs Erected Following Accident Properly Excluded: The trial court granted the state's motion in limine to exclude evidence of highway signs erected at a frontage road accident scene following the accident unless the evidence was offered to rebut or refute evidence that the state did not consider the accident site to be dangerous. Larson contended that the absence of signs established the roadway's danger and partially vitiated his negligence. The Supreme Court held that granting the motion in limine was not an abuse of discretion. The state conceded that the road was dangerous, and excluding the signs as evidence did not preclude Larson from fully presenting his theory that the road was dangerous, so evidence of signs erected subsequent to the accident would only have substantiated proof already offered at trial. St. v. Larson, 2004 MT 345, 324 M 310, 103 P3d 524 (2004).

60-5-110. Commercial enterprise or structure prohibited — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 351, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 267 in (2) in last sentence substituted "highway nonrestricted account provided for in 15-70-125" for "nonrestricted highway state special revenue account". Amendment effective July 1, 2017.

2007 Amendment: Chapter 435 in (1) in exception clause near beginning inserted reference to subsection (3); inserted (3) allowing a contract with a blind vendor to install vending machines on the right-of-way of any state highway under certain conditions; and made minor changes in style. Amendment effective May 8, 2007.

2003 Amendment: Chapter 168 in exception clause in (1) inserted "and subsection (2) of this section", after "owned" inserted "or leased", and at end substituted "controlled-access facility" for "facility or on any publicly leased land used in connection therewith"; inserted (2) allowing department to install or allow installation of electronic communication equipment and electronic informational kiosks on right-of-way and to charge fee for use of equipment or kiosk and requiring deposit of fees in nonrestricted state special revenue account for highway purposes; and made minor changes in style. Amendment effective October 1, 2003.

1989 Amendment: At beginning inserted exception clause. Amendment effective July 1, 1989.

Case Notes

Condemnation Including Private Offices — Evidence to Be Considered — Due Process of Law: The state condemned part of the Vanimans' land for a highway interchange, rest area, and visitor center. The city of Bozeman, which funded part of the project, agreed with the Bozeman Chamber of Commerce that the Chamber would locate its corporate offices in the visitor center. The Vanimans objected to the condemnation as not being for a public purpose. The Supreme Court held that the District Court erred when it failed to consider evidence showing that the Bozeman Chamber of Commerce intended to locate its corporate offices in the proposed visitor center and that this failure constituted a denial of due process of law. Bozeman v. Vaniman, 264 M 76, 869 P2d 790, 51 St. Rep. 154 (1994).

60-5-111. Violations — penalties.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 5
Information Signs

Part Compiler's Comments

1989 Statement of Intent: The statement of intent attached to Ch. 537, L. 1989, provided: "A statement of intent is required for this bill because [section 15] [60-5-503] grants the department of highways [now department of transportation] authority to adopt rules to implement the provisions of [this act].

It is the intent of the legislature that the department have discretion to adopt rules that will result in a motorist information sign program that will aid the traveling public in locating gas, food, lodging, camping, recreation, and other tourist services that are conveniently accessible from the interstate and primary highways within the state. Such rules should supplement and interpret the provisions of [this act].

In adopting rules, the department should develop a policy for installation of motorist information signs. At a minimum, this policy should include criteria for:

(1) standards of service for business eligibility for placement of a logo sign;
(2) distances to eligible services;
(3) selection of eligible businesses for motorist information signing;
(4) location of motorist information signs at interchanges or intersections, in accordance with federal standards;
(5) standards for the size, design, installation, and maintenance of motorist information signs; and
(6) the costs to businesses for installation, annual maintenance, and repair of business signs.

It is intended that the department establish service eligibility requirements with the knowledge that in the rural vastness of this state it is important for a traveler to obtain information about available services, even if the full range of services contemplated by federal guidelines is not available. The department may provide a method for the substitution or replacement of services that are not available at a location, and it may establish some method of signing to indicate to the traveler that a particular service category is not available at the signed businesses.

It is intended that the department may require additional terms and conditions relating to issuance of a franchise for operation of the motorist information sign program. Such additional requirements may relate to termination of a franchise agreement and to the posting of a contractor's bond for sign construction and maintenance.

Finally, the department should consider the success of the motorist information sign programs established in the states of Idaho and Washington and the logo sign franchise program established in the state of Minnesota."

Effective Date: Section 20, Ch. 537, L. 1989, provided: "[This act] is effective July 1, 1989."

60-5-501. Purpose.

Administrative Rules

ARM 18.6.434 General service signs.

60-5-502. Definitions.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

60-5-503. Rulemaking authority.

Administrative Rules

Title 18, chapter 6, subchapter 4, ARM Motorist information signs.

60-5-505. Franchises.

Administrative Rules

ARM 18.6.430 Application procedure and notice.
ARM 18.6.431 Lease agreements.
ARM 18.6.432 Maintenance.
ARM 18.6.433 Removal of signs and covering seasonal signs.
ARM 18.6.436 Oversight of the franchisee by the Department.

60-5-510. Costs.

Administrative Rules

ARM 18.6.435 Fees for posting on specific information sign panels and tourist-oriented directional signs.

60-5-512. Specific information signs — number of business signs — distances.

Compiler's Comments

1997 Amendment: Chapter 281 in first sentence of (3) substituted "where there are not more than four qualified businesses" for "where there are only one or two qualified businesses" and in second sentence substituted "four business signs" for "two business signs". Amendment effective April 16, 1997.

1993 Amendment: Chapter 260 near beginning of (2), after ""GAS"", deleted "specific information sign, and no more than four business signs may be displayed on a"; and made minor changes in style. Amendment effective April 2, 1993.

Administrative Rules

ARM 18.6.404 Location of qualified businesses for specific information signs.
ARM 18.6.406 Specific information sign design and order.
ARM 18.6.409 Business signs.

60-5-513. Sign composition — spacing — conformity with laws.

Administrative Rules

Title 18, chapter 6, subchapter 4, ARM Motorist information signs.

60-5-514. Business eligibility — criteria — restrictions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 38, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

Administrative Rules

ARM 18.6.403 Business eligibility for specific information signs.
ARM 18.6.431 Lease agreements.

60-5-519. Tourist-oriented directional signs within right-of-way of primary highway system.

Administrative Rules

ARM 18.6.420 Tourist-oriented directional signs — general.

60-5-521. Sign composition — design — conformity with standards and rules.

Administrative Rules

ARM 18.6.420 Tourist-oriented directional signs — general.
ARM 18.6.421 Tourist-oriented directional advance signs.
ARM 18.6.422 Design of tourist-oriented directional signs and panels.
ARM 18.6.423 Tourist-oriented directional sign installation.

60-5-522. Business eligibility — criteria — restrictions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 39, Ch. 685, L. 2023. Amendment effective October 1, 2023.

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

1993 Amendment: Chapter 260 inserted (2) regarding priority for businesses in operation for 12 months a year; and made minor changes in style. Amendment effective April 2, 1993.

Administrative Rules

ARM 18.6.403 Business eligibility for specific information signs.

60-5-530. Antilittering signs.

Compiler's Comments

Effective Date: Section 4, Ch. 112, L. 2021, provided: "[This act] is effective July 1, 2021."

CHAPTER 6
HIGHWAY ENCROACHMENTS

Part 1
Removal of Encroachments by State Authorities

Part Administrative Rules

Title 18, chapter 7, subchapter 1, ARM Right-of-way encroachments.

60-6-101. Highway encroachments — permit — immediate removal.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 581, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 303 in (1) substituted current text for former text that read: "If any highway under the jurisdiction of the transportation commission is encroached upon by a fence, building, structure, sign, marker, mailbox, newspaper delivery box, or other obstruction, the department of transportation may"; inserted (1)(a) and (1)(b) concerning encroachment permits; inserted (2)(a) concerning application for highway right-of-way encroachments; inserted (2)(b) requiring the adoption of administrative rules regarding encroachment permits and the removal of encroachments; inserted (3)(b) concerning encroachment permits for mail and newspaper boxes; inserted (3)(c) prohibiting fees for encroachment permits for mail and newspaper boxes; inserted (5) excluding utility facilities that are lawfully occupying a highway right-of-way from encroachment requirements; and made minor changes in style. Amendment effective October 1, 2019.

1995 Amendment — Phrase Change: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in (1). Amendment effective July 1, 1995.

1991 Amendments: Chapter 287 in (1), after "marker", inserted "mailbox, newspaper delivery box"; and inserted (2) requiring adoption of rules regarding mailboxes and newspaper delivery boxes on public highway rights-of-way.

Chapter 512 in (1) substituted reference to Department of Transportation for reference to Department of Highways. Amendment effective July 1, 1991.

Administrative Rules

Title 18, chapter 7, subchapter 1, ARM Right-of-way encroachments.

Case Notes

Encroachment Permit Process Discretionary Act — Not Subject to Writ of Mandate. Kageco Orchards, LLC v. Dept. of Transportation, 2023 MT 71, 412 Mont. 45, 528 P.3d 1097.

60-6-102. Notice of encroachment.

Compiler's Comments

2019 Amendment: Chapter 303 in (1) near beginning substituted "an unpermitted encroachment" for "the encroachment"; and made minor changes in style. Amendment effective October 1, 2019.

60-6-103. Encroachment not permanently affixed — time limit for removal — penalty.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 581, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 303 in (1) substituted current text for former text that read: "If the encroachment is not permanently affixed to the land, such encroachment shall be removed from the right-of-way within 2 days after receipt of the notice. If such an encroachment remains on the right-of-way after this period of time, the person who causes, owns, or controls the encroachment shall be liable for the cost of such removal"; inserted (2) concerning immediate removal of an encroachment that presents an imminent danger to the public; and made minor changes in style. Amendment effective October 1, 2019.

60-6-104. Unpermitted encroachment — department action.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 581, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 303 at beginning substituted "If an encroachment permit provided for in 60-6-101 has not been granted and the person erecting or maintaining the encroachment fails to remove it after receiving notice pursuant to 60-6-102" for "If the encroachment is denied"; and made minor changes in style. Amendment effective October 1, 2019.

60-6-105. Encroachment affixed to the land — time limit for removal — penalty — immediate removal.

Compiler's Comments

2019 Amendment: Chapter 303 in (1) substituted current first sentence for former text that read: "If an encroachment affixed to the land is not denied and is not removed within 5 days after receipt of the notice, the department may remove it at the expense of the person who causes, owns, or controls it"; inserted (2) concerning immediate removal of an encroachment that presents an imminent danger to the public; and made minor changes in style. Amendment effective October 1, 2019.

60-6-106. Limitation of authority within incorporated municipalities — exclusion outside incorporated municipalities — inclusion due to lack of local ordinances.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

CHAPTER 7
LIVESTOCK ON HIGHWAYS

Part 1
Fencing of Open Range

Part Law Review Articles

A Triumph of Myth Over Principle: The Saga of the Montana Open-Range, Andes, 56 Mont. L. Rev. 485 (1995).

60-7-102. Definitions.

Compiler's Comments

2001 Amendment: Chapter 204 in definitions of high-hazard area and low-hazard area inserted references to secondary highway system; and made minor changes in style. Amendment effective October 1, 2001.

60-7-103. Department to fence right-of-way through open range — exception.

Compiler's Comments

2001 Amendment: Chapter 204 at beginning of first sentence of (1) inserted exception clause and near middle of sentence substituted "a primary or secondary highway or a county road or bridge" for "the state highway system"; in first sentence of (2) before "fence" inserted "right-of-way" and substituted "the high-hazard areas where fencing is warranted" for "every high-hazard area" and at beginning of second sentence inserted "Even if a right-of-way fence is determined to be unwarranted pursuant to subsection (3)" and after "necessary" inserted "to enhance safety and"; inserted (3) concerning fencing along a secondary highway through open range that passes through a county park"; and made minor changes in style. Amendment effective October 1, 2001.

Sections Not Codified: Sections 32-2427 and 32-2428, R.C.M. 1947, were not codified in the MCA because they were of temporary importance. These sections have not been repealed and are still valid law. Citation may be made to sec. 2, Ch. 311, L. 1969, as amended by sec. 92, Ch. 316, L. 1974, and sec. 4, Ch. 255, L. 1974.

Case Notes

When No Duty to Construct Fence: Where section of federal-aid primary highway on which appellant collided with cattle had been neither constructed nor reconstructed after July 1, 1969, and had not been classified a "high-hazard area", the Department of Highways (now Department of Transportation) had no statutory duty to construct fence or livestock control devices and was properly dismissed as a defendant. Ambrogini v. Todd, 197 M 111, 642 P2d 1013, 39 St. Rep. 400 (1982), followed in Yager v. Deane, 258 M 453, 853 P2d 1214, 50 St. Rep. 610 (1993).

Part 2

Grazing of Livestock on Highways

Part Law Review Articles

Searching for the Montana Open Range: A Judicial and Legislative Struggle to Balance Tradition and Modernization in an Evolving West, Archer, 63 Mont. L. Rev. 197 (2002).

A Triumph of Myth Over Principle: The Saga of the Montana Open-Range, Andes, 56 Mont. L. Rev. 485 (1995).

60-7-201. Grazing livestock on highway unlawful.

Compiler's Comments

1995 Amendment — Phrase Change: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in (1) and (2). Amendment effective July 1, 1995.

Case Notes

Open-Range No Duty Rule — Applies Only to Relationship Between Livestock Owner and Motorists: Larson-Murphy struck a bull while driving at night and suffered extensive injuries. The lower court dismissed her case with no accompanying legal memorandum providing a legal basis for its decision. However, the bull's owners had argued that they could not be held liable based on the no duty rule of open-range law. The Supreme Court stated that open-range laws allow certain livestock to legally occupy a highway but that state laws also permit a motorist to legally occupy the same highway. There is no statute that provides that a livestock owner is not liable for injuries suffered by motorists colliding with the livestock owner's livestock. Therefore, the Supreme Court stated that any assertion of legal duties arising from the legal relationship between owners of livestock and motorists is beyond the scope of Montana's statutory open-range doctrine. The Supreme Court held that because both livestock and a motorist may have an equal right to lawfully occupy a highway, the livestock owner and the motorist each owe the other a legal duty to use the highway so as not to injuriously interfere with the other's right of use. Therefore, ascertaining the precise standard of care that each owes the other must be viewed in light of the circumstances under which the harm occurs. The Supreme Court reversed the directed verdict in favor of the defendants and remanded the case for a determination by the trier of fact to determine if the bull's owners had violated their duty of care to Larson-Murphy. (See 27-1-724 enacted in 2001.) Larson-Murphy v. Steiner, 2000 MT 334, 303 M 96, 15 P3d 1205, 57 St. Rep. 1411 (2000).

Open-Range No Duty Rule Not Applicable to Legal Relationship Between Livestock Owners and Motorists: Larson-Murphy struck a bull while driving at night and suffered extensive injuries. The lower court dismissed her case with no accompanying legal memorandum providing a legal basis for its decision. However, the bull's owners had argued that they could not be held liable based on the no duty rule of open-range law. The Supreme Court held that the no duty rule under the open-range doctrine does not apply to the legal relationship between livestock owners and motorists. However, the law of the open range remains the law of the state, and the term "open range" includes all highways outside of private enclosures used by the public unless modified by the Legislature. (See 27-1-724 enacted in 2001.) Larson-Murphy v. Steiner, 2000 MT 334, 303 M 96, 15 P3d 1205, 57 St. Rep. 1411 (2000).

Absence of Proof of Open Range or Fenced Highway — Directed Verdict Improper: Indendi hit a horse on Highway 84, killing the animal, sustaining personal injuries, and totaling her vehicle. She alleged negligence on the part of the horse owner as well as violations of fencing and livestock herding laws and open-range exceptions. The horse owner counterclaimed for loss of the horse. The District Court directed a verdict in favor of the horse owner. A directed verdict may be granted only when it appears that the nonmoving party cannot recover on any view of the evidence, including the legitimate inferences drawn from that evidence. Absent proof that the land was open range and that Highway 84 was a fenced highway, it was improper for the court to direct a verdict premised on the horse owner's satisfaction of the duty exclusion in 60-7-202(2). Indendi v. Workman, 272 M 64, 899 P2d 1085, 52 St. Rep. 644 (1995), following Ambrogini v. Todd, 197 M 111, 642 P2d 1013 (1982).

Horse on County Highway — No Duty to Motorists — Open Range Doctrine Not Changed: Plaintiff sued for injuries she received when a horse ran onto a county highway located within a herd district. The lower court granted defendants summary judgment on the basis that the livestock owners owed no duty to the plaintiff as a matter of law. The Supreme Court affirmed. The herd district statutes were designed only to protect other landowners and thus were not exceptions to the open-range doctrine. The herd district statutes were not designed to protect motorists, but were only intended to protect landowners and owners of livestock. Williams v. Selstad, 235 M 137, 766 P2d 247, 45 St. Rep. 2254 (1988), overruled, to the extent that Selstad holds that the open-range no duty rule applies to the legal relationship between livestock owners and motorists, in Larson-Murphy v. Steiner, 2000 MT 334, 303 M 96, 15 P3d 1205, 57 St. Rep. 1411 (2000) (see 27-1-724 enacted in 2001).

Animal on Highway — Failure to Establish Duty of Highway Employee: Summary judgment was properly granted to the state in a wrongful death action where a motorist was killed after striking a horse on the highway. Plaintiffs cited no authority that a highway maintenance employee had a duty to remove live animals from the roadway or to ensure that animals did not come back onto the highway. Whitfield v. Therriault Corp., 229 M 195, 745 P2d 1126, 44 St. Rep. 1896 (1987), followed in Yager v. Deane, 258 M 453, 853 P2d 1214, 50 St. Rep. 610 (1993).

Open Range — Question of Law: The plaintiff sued the defendant for injuries she suffered when she swerved to avoid defendant's horse that was standing on a secondary highway. The District Court granted the defendant's motion for summary judgment, and the Supreme Court affirmed. Neither the presence of privately constructed fences nor the lack of designation in zoning regulations indicates an area is not open range. Open range designation is a legal determination, not a question of fact for the jury. The defendant was not obligated to keep his livestock off the secondary highway, and the order of the District Court granting summary judgment was not error. Siegfried v. Atchison, 219 M 14, 709 P2d 1006, 42 St. Rep. 1807 (1985).

Erosion of Open Range Law: Generally, an open range designation implies that an owner is not liable for his wandering livestock. Prior to 1974, a rancher was liable only for willful failure to keep his livestock off a federal-aid primary highway. However, with the 1974 amendment of 60-7-201, ranchers are now liable for negligent conduct that results in the presence of their cattle on the rights-of-way of such highways. Ambrogini v. Todd, 197 M 111, 642 P2d 1013, 39 St. Rep. 400 (1982).

Liability Not Absolute: As amended in 1974, under this section liability of a person whose cattle are on a federal-aid primary highway is not absolute but is based on the negligence of the owner in permitting them to be there. Where the owner is not excluded by 60-7-202 from the application of this section, the existence of negligence is for the trier of fact to decide. Ambrogini v. Todd, 197 M 111, 642 P2d 1013, 39 St. Rep. 400 (1982).

60-7-202. Exclusions.

Compiler's Comments

2001 Amendment: Chapter 204 inserted (4) concerning parts of the secondary highway system passing through county parks; and made minor changes in style. Amendment effective October 1, 2001.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Case Notes

Open-Range No Duty Rule Not Applicable to Legal Relationship Between Livestock Owners and Motorists: Larson-Murphy struck a bull while driving at night and suffered extensive injuries. The lower court dismissed her case with no accompanying legal memorandum providing a legal basis for its decision. However, the bull's owners had argued that they could not be held liable based on the no duty rule of open-range law. The Supreme Court held that the no duty rule under the open-range doctrine does not apply to the legal relationship between livestock owners and motorists. However, the law of the open range remains the law of the state, and the term "open range" includes all highways outside of private enclosures used by the public unless modified by the Legislature. (See 27-1-724 enacted in 2001.) Larson-Murphy v. Steiner, 2000 MT 334, 303 M 96, 15 P3d 1205, 57 St. Rep. 1411 (2000).

Absence of Proof of Open Range or Fenced Highway — Directed Verdict Improper: Indendi hit a horse on Highway 84, killing the animal, sustaining personal injuries, and totaling her vehicle. She alleged negligence on the part of the horse owner as well as violations of fencing and livestock herding laws and open-range exceptions. The horse owner counterclaimed for loss of the horse. The District Court directed a verdict in favor of the horse owner. A directed verdict may be granted only when it appears that the nonmoving party cannot recover on any view of the evidence, including the legitimate inferences drawn from that evidence. Absent proof that the land was open range and that Highway 84 was a fenced highway, it was improper for the court to direct a verdict premised on the horse owner's satisfaction of the duty exclusion in subsection (2) of this section. Indendi v. Workman, 272 M 64, 899 P2d 1085, 52 St. Rep. 644 (1995), following Ambrogini v. Todd, 197 M 111, 642 P2d 1013 (1982).

60-7-203. Penalty.

Case Notes

Res Ipsa Loquitur Inapplicable to Statute: This section eliminates any presumptions of negligence that might arise in accidents between vehicles and livestock. Without a presumption of liability, res ipsa loquitur, which is itself a presumption of liability so long as certain conditions are met, is inappropriate. Indendi v. Workman, 272 M 64, 899 P2d 1085, 52 St. Rep. 644 (1995).

60-7-204. Flag escorts — prohibitions against nighttime herding on public highways.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment — Phrase Change: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in the first sentence. Amendment effective July 1, 1995.

Case Notes

Definition Not Limited by Definition Found Elsewhere in Montana Code Annotated: The appellant argued that the District Court should apply the definition of "flag person" found in 61-8-102, regarding traffic regulation, in its interpretation of "flag person" as used in 60-7-204. The court disagreed, holding that by its terms 60-7-204 addresses "flag person escorts" and does not strictly contemplate the use of actual flags. Walden v. Yellowstone Elec. Co., 2021 MT 123, 404 Mont. 192, 487 P.3d 1.

CHAPTER 11
RAIL TRANSPORTATION

Chapter Compiler's Comments

Transfer of Functions: Sections 12 through 14, Ch. 512, L. 1991, provided: "Section 12. Transfer of rulemaking authority. Any existing authority of the department of highways, the department of commerce, or the department of revenue to make rules on the various functions transferred by the provisions of [sections 1 through 14] is extended to the provisions of [sections 1 through 14].

Section 13. Application of transfer provisions. The provisions of 2-15-131 through 2-15-137 govern:

(1) the merger into the department of transportation [of] the functions of the department of highways and those functions of the departments of commerce and revenue specified in [sections 1 through 14]; and

(2) the transfer of the various functions contained in [sections 1 through 14].

Section 14. Governor to implement. The governor shall implement the provisions of [sections 1 through 14] by executive order."

Chapter Law Review Articles

Section 13(4) of the Interstate Commerce Act: Unfair?, Alke, 36 Mont. L. Rev. 146 (1975).

Chapter Collateral References

A Reexamination of Railroad and Utility Valuation and Options for Complying with Federal Legislation, Revenue Oversight Committee Report to the 50th Legislature, Ch. 1, Mont. Leg. Council (1986).

Report and Recommendations, Joint Subcommittee on Transportation, Interim Report, Mont. Leg. Council (1982).

Part 1
General Provisions

60-11-101. Rail planning.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Commerce. Amendment effective July 1, 1991.

1981 Amendment: Inserted "of commerce" after "The department".

Codification: Section 60-2-201 was amended by sec. 1, Ch. 324, L. 1979, which added a new subsection (5). The added material is codified as 60-11-101.

60-11-111. Identification and acquisition of railroad rights-of-way — identification of railroad lines for rehabilitation.

Compiler's Comments

2005 Amendment: Chapter 496 in (3)(e) near middle after "under" inserted "former". Amendment effective July 1, 2005.

1995 Amendments: Chapter 418 in (4) substituted "department of natural resources and conservation" for "department of state lands". Amendment effective July 1, 1995.

Chapter 545 deleted former (3)(c) that read: "(c) shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to subsections (3)(a) and (3)(b)"; adjusted subsection references; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

1995 Transition: Section 81, Ch. 545, L. 1995, provided: "(1) The members of the legislative council, as provided in 5-11-101, the members of the legislative finance committee, as provided in 5-12-202, the members of the legislative audit committee, as provided in 5-13-202, and the members of the environmental quality council, as provided in 5-16-101, must be appointed as soon as possible following [the effective date of this section] [effective April 27, 1995].

(2) To implement the changes provided in [this act], the office of the legislative council, the office of budget and program planning, and the department of administration shall establish all necessary authorizations during the accounting preparation process known as the "turnaround" process, beginning in April or May 1995, to administer the several appropriations made by any means to programs of the legislative branch agencies consolidated under [sections 3 and 4] [5-2-503 and 5-2-504] for fiscal year 1996 or 1997 or the biennium ending June 30, 1997, as appropriations to a single legislative agency while maintaining the specific identification, legislative intent, and purpose for which the appropriations were made. During this transition, the executive director may authenticate documents as required to accomplish the purposes of [this act]. Appropriate changes on the statewide budgeting and accounting system and the payroll, personnel, and position control system must also be made and authorized as required to accomplish the purposes of [this act].

(3) Personnel and property of the environmental quality council are transferred to the legislative services division effective July 1, 1995."

1993 Amendment: Chapter 541 inserted (2) concerning identification of branch lines for the purposes of loans and grants; inserted (3)(b) requiring identification of branch lines; in (3)(c), at end, substituted "subsections (3)(a) and (3)(b)" for "subsection (2)(a)"; in (3)(d) substituted "subsection (3)(a)" for "subsection (2)(a)"; in (3)(d)(ii) substituted "subsection (3)(d)" for "subsection (2)(c)"; inserted (3)(f) requiring procedures for providing loans and grants; in (4) substituted "subsection (3)(d)(i)" for "subsection (2)(c)(i)"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 509 inserted (2)(d) relating to Department assistance to others in acquiring ownership or easement of abandoned railbeds; and made minor changes in style.

Chapter 512 in (2) substituted reference to Department of Transportation for reference to Department of Commerce. Amendment effective July 1, 1991.

Preamble: The preamble attached to Ch. 509, L. 1991, provided: "WHEREAS, the legislature recognizes that there is an ever-increasing demand for public recreational trails; and

WHEREAS, abandoned railbeds are uniquely suited for public recreational uses; and

WHEREAS, the potential value of abandoned railbeds as public rights-of-way should be evaluated prior to their disposal; and

WHEREAS, abandoned railbeds may be held in trust as public recreational trails until such time as the railbeds can be reactivated as a railroad."

1991 Statement of Intent: The statement of intent attached to Ch. 509, L. 1991, provided: "It is the policy of the state of Montana to preserve the integrity of abandoned or vacant railroad corridors for the purpose of recreational, transportation, and utility corridors. Accordingly, the state and the department of commerce should make every effort to preserve these corridors intact for future uses.

To further this policy and to alert the public of the potential availability of abandoned railbeds, the department shall identify and maintain a list of persons representing recreational, transportation, and utility interests throughout the state and other interested persons, including adjacent landowners, who have a potential interest or stake in abandoned railroad corridors. Upon receiving notification from the interstate commerce commission of an impending abandonment proceeding for a railbed in the state, the department shall, pursuant to 60-11-111(2)(d), notify each of the persons on the list. Upon receiving a request from an interested person representing a recreational, transportation, or utility interest, or from another interested person, including an adjacent landowner, the department shall arrange for and facilitate discussions between the person and the railroad. The department shall assist with these discussions for no longer than 30 days, and the railroad, under these circumstances, shall respond to any proposal set forth by an interested person or the department."

1985 Amendment: In (1), after "local transportation service" inserted "or future use as transportation corridors" and at end inserted "or easements therein"; in (2)(c) after "acquire" inserted "easements in the rights-of-way or"; and inserted (3) clarifying administration responsibilities for abandoned rights-of-way.

60-11-113. Short title.

Compiler's Comments

Effective Date: Section 11, Ch. 602, L. 2005, provided: "[This act] is effective July 1, 2005."

60-11-114. Purpose.

Compiler's Comments

Effective Date: Section 11, Ch. 602, L. 2005, provided: "[This act] is effective July 1, 2005."

60-11-115. Revolving loan account — statutory appropriation — rulemaking.

Compiler's Comments

Effective Date: Section 11, Ch. 602, L. 2005, provided: "[This act] is effective July 1, 2005."

60-11-116. Funding for account.

Compiler's Comments

Effective Date: Section 11, Ch. 602, L. 2005, provided: "[This act] is effective July 1, 2005."

60-11-117. Definitions.

Compiler's Comments

Effective Date: Section 11, Ch. 602, L. 2005, provided: "[This act] is effective July 1, 2005."

60-11-118. Revenue bond debt service account — deposit of bond proceeds.

Compiler's Comments

Effective Date: Section 11, Ch. 602, L. 2005, provided: "[This act] is effective July 1, 2005."

60-11-119. Authority to issue revenue bonds.

Compiler's Comments

Effective Date: Section 11, Ch. 602, L. 2005, provided: "[This act] is effective July 1, 2005."

60-11-120. Railroad and intermodal transportation facility loans — authorization — eligibility.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 496 in (1)(b)(i) at end inserted "except as prohibited by federal law" and in second sentence at end inserted "except as required by federal law" (amendment in second sentence rendered void by Ch. 602 amendment); and made minor changes in style. Amendment effective July 1, 2005.

Chapter 602 in (1) near beginning after "legislature" substituted "for the purposes provided for in this section and pursuant to 60-11-115 must" for "may", after "department" deleted "of transportation", and at end after "loans" deleted "and grants"; in (1)(b) after "improvement" inserted "construction, purchase, maintenance, or rehabilitation"; inserted (1)(b)(ii) allowing loans for branch lines or short lines; inserted (1)(b)(iii) allowing loans for sidings; inserted (1)(b)(iv) allowing loans for light density railroad lines; inserted (1)(b)(v) allowing loans for rolling stock; deleted former second sentence of (1) that read: "Proceeds of all repayments of loans, including interest, made under this section must be deposited in the state general fund"; in (3) after "loan" deleted "or grant" and at end after "section" deleted "for the development or improvement of an intermodal transportation facility under this section"; in (3)(b) at beginning substituted "purpose" for "intermodal transportation facility" and after "loan" deleted "or grant"; inserted (4) through (8) regarding loan application information, funding, administration, and conditions; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 422 in (1), at beginning of first sentence, substituted "Money appropriated by the legislature" for "Money deposited in the special railroad facilities and intermodal transportation facilities account created in 60-11-122" and at end of last sentence substituted "state general fund" for "special railroad facilities and intermodal transportation facilities account"; and made minor changes in style. Amendment effective July 1, 1997.

Effective Date: Section 7, Ch. 541, L. 1993, provided that this section is effective July 1, 1993.

60-11-121. Legislative findings.

Compiler's Comments

1997 Amendment: Chapter 42 in (1)(a) substituted "49 CFR, chapter X" for "49 CFR, chapter 10". Amendment effective March 12, 1997.

1993 Amendment: Chapter 541 inserted (1)(b) concerning railroads eligible for freight assistance programs; inserted (2) concerning improvement of railroad infrastructure and negative impact on highways; inserted (3) concerning preservation of railroads and improvement of transportation facilities; inserted (4) concerning loans and grants to railroads and to port authorities; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Applicability: Section 5, Ch. 513, L. 1991, provided: "[This act] is effective on passage and approval [approved April 20, 1991] and applies to all money received pursuant to [section 3(1)] [60-11-123(1)] after [the effective date of this act] [effective April 20, 1991]."

60-11-123. Disposition of revenue from state-owned railroads — use of money.

Compiler's Comments

1997 Amendment: Chapter 422 in (1), at end, substituted "state general fund" for "special railroad facilities and intermodal transportation facilities account created in 60-11-122"; and in (2), after "60-11-123", substituted "funding available" for "the special railroad facilities and intermodal transportation facilities account created in 60-11-122". Amendment effective July 1, 1997.

1993 Amendment: Chapter 541 in (1) and (2), after "facilities", inserted "and intermodal transportation facilities"; and in (2) substituted "60-11-120" for "60-11-121" and at end inserted reference to loans and grants to railroad lines and intermodal transportation facilities.

Effective Date — Applicability: Section 5, Ch. 513, L. 1991, provided: "[This act] is effective on passage and approval [approved April 20, 1991] and applies to all money received pursuant to [section 3(1)] [60-11-123(1)] after [the effective date of this act] [effective April 20, 1991]."

Part 2
Rail Passenger Service

60-11-201. Agreements for rail passenger service application.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1985 Amendment: Near middle of section, after "(45 U.S.C. 563(b))", inserted "or any interstate or federal proposal for the purpose of maintaining or augmenting rail passenger service in the state"; and inserted last sentence of section relating to Amtrak rail passenger service expansion agreements.

60-11-202. Southern amtrak route account.

Compiler's Comments

Effective Date: Section 3, Ch. 208, L. 2001, provided that this section is effective July 1, 2001.

CHAPTER 21
PUBLIC TRANSPORTATION

Part 1
General Provisions

60-21-101. Department of transportation authorized to represent the state on public transportation issues.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Commerce. Amendment effective July 1, 1991.

Part 2
Rail Passenger Service

60-11-201. Agreements for rail passenger service application.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1985 Amendment: Near middle of section, after "(45 U.S.C. 563(b))", inserted "or any interstate or federal proposal for the purpose of maintaining or augmenting rail passenger service in the state"; and inserted last sentence of section relating to Amtrak rail passenger service expansion agreements.

60-11-202. Southern amtrak route account.

Compiler's Comments

Effective Date: Section 3, Ch. 205, L. 2001, provided that this section is effective July 1, 2001.

CHAPTER 21
PUBLIC TRANSPORTATION

Part 1
General Provisions

60-21-101. Department of transportation authorized to represent the state on public transportation issues.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Commerce. Amendment effective July 1, 1991.

TITLE 61
MOTOR VEHICLES

CHAPTER 1
DEFINITIONS

Chapter Compiler's Comments

Preamble — Study Committee Created: The preamble attached to Ch. 493, L. 1997, provided: "WHEREAS, there is a declining working cash balance in the highways state special revenue account, which may lead to a reduction in state-funded construction projects; and

WHEREAS, highways state special revenue account money is being used to support an increasing number of programs and projects, and it is therefore appropriate to determine the proper use of dedicated revenue; and

WHEREAS, the Department of Transportation may be facing a decline in federal matching funds for construction and maintenance programs; and

WHEREAS, increased travel on Montana's roads, highways, and bridges has intensified the need to strengthen Montana's highway infrastructure for the safety of the traveling public and the well-being of the state's economy.

THEREFORE, the Legislature finds it appropriate that an interim study committee be established and assigned to complete a comprehensive review of the highways state special revenue account and the state's transportation infrastructure needs."

Chapter 493, L. 1997, provided: "Section 1. Transportation funding and expenditure study committee — composition — appointments. (1) There is a transportation funding and expenditure study committee.

(2) The committee is composed of the following members:

(a) four members of the house of representatives, two from each party, appointed by the speaker of the house; and

(b) four members of the senate, two from each party, appointed by the committee on committees.

(3) The department of transportation may provide support staff and technical advisers to assist the committee.

(4) The members of the committee shall elect a presiding officer from among the members.

(5) A vacancy occurring on the committee must be filled in the same manner as the original appointment.

Section 2. Meetings. (1) The presiding officer shall schedule meetings of the transportation funding and expenditure study committee as necessary and shall give advance notice to the committee members of the time and place of each meeting.

(2) The committee may adopt rules of procedure for the conduct of its meetings.

Section 3. Reimbursement of expenses. Each member of the transportation funding and expenditure study committee appointed under [section 1] [not codified] is entitled to the compensation and expenses provided for in 5-2-302.

Section 4. Powers and duties — staff support — recommendations — report. (1) The transportation funding and expenditure study committee shall make a thorough study of:

(a) funding sources of the highways state special revenue account, including gasoline tax, diesel tax, permit fees, new car sales tax, and gross vehicle weight taxes and fees;

(b) expenditures from the highways state special revenue account, including legislative appropriations, statutory appropriations, statutory distributions, and refunds;

(c) infrastructure usage and needs for the state's primary and secondary roads and the national highway and urban systems, including projected long-term needs;

(d) the most cost-effective use of highways state special revenue account dollars;

(e) the priority placed on and between broad program investment categories, including:

(i) the investment of highways state special revenue account funds on maintenance of streets and highways;

(ii) matching federal-aid and highway program funds;

(iii) state-funded construction programs;

(iv) administrative and overhead costs of the department of transportation;

(v) the state highway patrol;

(vi) the state park, snowmobile, and off-highway vehicle accounts;
(vii) allocations to cities, counties, and towns;
(viii) the alcohol incentive program;
(ix) off-road tax refunds for agricultural use;
(x) tribal member refund allocations;
(xi) the motor vehicle division of the department of justice; and
(xii) any other current statutory distribution of the highways state special revenue account money.

(2) The legislative fiscal division shall supply staff support to the committee.

(3) The committee is authorized to secure information of any type from any agency, board, or commission or from any independent organization. A state agency, board, or commission shall supply information upon the request of the committee.

(4) On or before August 1, 1998, the committee shall submit to the legislative finance committee and the 56th legislature a report of its findings and conclusions. The report must contain recommendations for legislation and drafts of proposed legislation to ensure that:

(a) highways state special revenue account funds are used in the most cost-effective manner to meet transportation infrastructure needs; and

(b) transportation infrastructure needs are addressed with the available highways state special revenue account funds identified by the committee pursuant to subsection (1)(a) in light of the findings made in subsection (1)(e).

Section 5. Funding for study — appropriation. There is appropriated to the legislative fiscal division an amount not to exceed $25,000. The money is appropriated from the nondedicated portion of the highways state special revenue fund for the purpose of conducting the study identified in [section 4] [not codified]. The funds may be used only for fulfilling the duties of the transportation funding and expenditure study committee, including:

(1) reimbursing or compensating the committee members as provided in [section 3] [not codified];

(2) contracting for services to assist in the study to be conducted by the committee; and

(3) paying other expenses incurred by the committee or by the legislative fiscal division in completing the study."

Effective Date: Section 6, Ch. 493, L. 1997, provided: "[This act] is effective July 1, 1997."

Termination: Section 7, Ch. 493, L. 1997, provided: "[This act] terminates June 30, 1999."

Part 1
Vehicles

Part Case Notes

Manufactured Home Not Violative of Covenant That Prohibited Mobile Homes Unless Considered Prebuilt Home on Permanent Foundation: Gagnon purchased a manufactured home and placed it on a permanent foundation in plaintiff's subdivision. One part of a subdivision covenant defined a mobile home in a manner that included a manufactured home, while a second part of the covenant generally prohibited placement of mobile homes in the subdivision but did not prevent prebuilt homes on permanent foundations if the structure met federal housing specifications as nonmobile, permanent, residential homes. Gagnon conceded that the manufactured home was a mobile home pursuant to Fox Farm Estates Landowners Ass'n v. Kreisch, 285 M 264, 947 P2d 79 (1997). However, in this case, it was not the type of home that was at issue but rather the language of the covenant. To prohibit Gagnon's home by applying only the first part of the covenant would have rendered the second part meaningless. The Supreme Court interpreted the covenant in its entirety and held that Gagnon's manufactured home was allowed in the subdivision. Grassy Mtn. Ranch Owners' Ass'n v. Gagnon, 2004 MT 245, 323 M 19, 98 P3d 307 (2004).

No Due Process Violation Based on Lack of Requirement Under Implied Consent Statutes to Provide Information Concerning Ramifications of Refusal to Take Breath Test: Turbiville, a North Dakota resident, was stopped in Montana for suspected DUI and was read a preliminary alcohol screening test advisory that outlined the right to refuse a breath test and the license suspension accompanying a refusal. He was provided no additional information concerning other rights regarding the preliminary breath test (PBT), particularly that Turbiville could refuse the test and challenge the license seizure in court. Turbiville took the PBT and an Intoxilyzer test, both of which indicated intoxication, and later moved to suppress the test results on grounds that the Montana implied consent statutes were misleading and inaccurate as applied to nonresidents. The motion was denied, and Turbiville appealed, asserting that if he had been advised of the right to a hearing to challenge the license seizure, he would have refused the PBT and that failure to provide an adequate advisory violated due process. The Supreme Court disagreed. The option to refuse a breath or blood test is not a matter of due process, but rather a matter of grace bestowed by the Legislature, and the Legislature may contour the favor in any manner considered appropriate. The implied consent statutes do not require an officer to provide information to an arrested motorist as to ramifications of the refusal to take a test, nor is a driver even entitled to be informed of the option to refuse the test. Further, by clear definition in 61-1-136 (now repealed—see 61-1-101 for definitions), a driver's license includes a nonresident's driving privilege, so Turbiville's contention that the advisory was misleading on grounds that Montana had no authority to suspend a North Dakota driver's license also failed because the advisory was technically correct and accomplished the purpose of informing Turbiville of the potentially serious consequences of losing Montana driving privileges upon refusal to take a breath test. St. v. Turbiville, 2003 MT 340, 318 M 451, 81 P3d 475 (2003).

Restrictive Covenant Prohibiting Mobile Homes — Application to Manufactured Home — "Mobile Home" Used in Ordinary and Popular Sense: Wittmers purchased a 26- by 60-foot manufactured home that was capable of being put on wheels and moved it to a subdivision in Gallatin County. The plaintiffs brought an action to restrain Wittmers from maintaining the home within the subdivision because it was in violation of a restrictive covenant that prohibited the use of "mobile homes". The Supreme Court held that the covenant was not ambiguous and that the term "mobile home", which was undefined in the covenants, should be understood in its ordinary and popular sense. The Supreme Court noted that other statutory definitions of the term "mobile home" could be looked to for guidance in determining the meaning of the term for the purposes of the covenants and that those other definitions include structures such as Wittmers'. The Supreme Court held that the District Court correctly construed the term "mobile home" to include the Wittmers' manufactured home because their home fell within other definitions of the term "mobile home", because the Supreme Court had previously construed the term to include homes such as the Wittmers' in two other cases before the court, and because the Wittmers' home had the characteristics of a mobile home. Newman v. Wittmer, 277 M 1, 917 P2d 926, 53 St. Rep. 516 (1996), followed in Toavs v. Sayre, 281 M 243, 934 P2d 165, 54 St. Rep. 155 (1997), and Fox Farm Estates Landowners Ass'n v. Kreisch, 285 M 264, 947 P2d 79, 54 St. Rep. 1142 (1997).

Liability Coverage of Newly Acquired Vehicle — Date of Delivery Determinative: Powell purchased a truck from his brother and sister-in-law, making monthly payments to his brother. During the time that Powell made payments, the truck remained in the possession of Powell's brother, who continued to use the truck as in the past. In January, Powell's brother executed a title in Powell's name, but the intent of both parties was that the truck would be owned by Powell after the payments were completed. When all of the payments were completed, Powell's brother executed a bill of sale and canceled his insurance policy on the truck. Several days later, Powell struck and killed a pedestrian with the truck. The pedestrian's insurance company claimed that title to the truck passed more than 30 days prior to the accident and that because Powell had failed to give notice to the company of his new ownership of the truck, the truck was not a "newly acquired car" within the meaning of the insurance policy. The Supreme Court held that "delivery" of the truck, as contemplated by the insurance policy, would be construed in the ordinary sense of the word to mean the passage of physical possession of the truck. Because that occurred on July 10, when the payments were completed and the bill of sale signed, the period for notification of a newly acquired car had not yet expired and the policy was therefore construed to apply to the truck. St. Farm Fire & Cas. Co. v. Powell, 274 M 92, 906 P2d 198, 52 St. Rep. 1138 (1995).

Suspension of License Hearing — Need Only Show Reasonable Belief Vehicle on Highway: A hearing to suspend an individual's license for refusing to take a blood alcohol test is a civil proceeding separate and distinct from the criminal DUI charge. The arresting officer need only show that he had reasonable grounds to believe that the vehicle was on a way of the state open to the public. The Supreme Court ruled that considering statutory language and precedent, the officer had reasonable grounds to believe that the defendant's pickup, located approximately 10 feet from the traveled portion of the roadway, was on a way of the state open to the public. Gebhardt v. St., 238 M 90, 775 P2d 1261, 46 St. Rep. 1114 (1989).

Snowmobile as Within Definition of "Vehicle": The Supreme Court's reading of the plain language of 61-1-103 (now repealed—see 61-1-101 for definitions) indicates a snowmobile fits within the definition of "vehicle". (See 2001 amendment.) St. v. Delap, 237 M 346, 772 P2d 1268, 46 St. Rep. 856 (1989).

No Interest Retained by Seller of Automobile — Sale Not Conditional Although Debt Remained: Johnson sold a car to Blankenship for $7,000, with $5,000 paid initially and $2,000 to be paid within

1 year. Johnson was insured under a policy that stated that except with respect to conditional sale, Johnson was the sole owner. Neither Johnson nor Blankenship requested transfer of the policy to Blankenship. Before Blankenship secured insurance coverage, he injured Sandford in an accident. Sandford sought to extend the policy to Blankenship under the conditional sale exception because $2,000 was still owed. The District Court properly found the $2,000 was simply an unsecured debt and not part of a conditional sale. Blankenship had acquired title to and exercised total control of the car, and Johnson retained no interest; therefore, Johnson's policy afforded no coverage or defense to claims against Blankenship. Colonial Ins. Co. v. Sandford, 231 M 469, 753 P2d 880, 45 St. Rep. 768 (1988).

Determination of Vehicle Ownership — Installment Sales Contract Not Indicative of Ownership for Insurance Purposes: Jordet, an adult, jointly purchased a vehicle for the exclusive use of his minor sister-in-law, who made the downpayment, repaid registration and license fees, made the only installment payment, purchased separate insurance, possessed the only keys, and maintained sole use and control of the vehicle. The District Court decided that the term "owned vehicle" in Jordet's automobile policy included the jointly owned vehicle and that Jordet's signature on the installment sales contract conclusively placed the vehicle under his policy. The Supreme Court reversed, noting that the purchase of property and the insurance of property are distinct transactions and that Jordet's signature on the sales contract did not establish ownership for insurance purposes. Implicit in ownership is the ability to control how, when, where, and by whom the property will be used. Since Jordet never exercised any of the indicia of ownership that would be compatible with his insuring the vehicle, it was not an "owned vehicle" under the terms of his policy. Truck Ins. Exch. v. Nelson, 228 M 233, 743 P2d 572, 44 St. Rep. 1482 (1987).

Dump Truck Not Implement of Husbandry — No Exemption: An old dump truck used in a ranching operation was not exempt from registration and payment of fees as an implement of husbandry because it was not designed for agricultural purposes. St. v. Patton, 227 M 167, 737 P2d 498, 44 St. Rep. 983 (1987).

Two Roads Not Forming Intersection: In a negligence action based upon a vehicular accident, the record showed that the road on which plaintiff was traveling was a paved through road; the short segment on which the defendant approached was not a through road and therefore could not form an "intersection" within the meaning of 61-1-212 (now repealed—see 61-8-102 for definitions). The evidence did not show that the two roads joined were highways. The trial court therefore erred in establishing that the collision took place at an "intersection", which would have required the plaintiff's driver to yield the right-of-way. Kimes v. Herrin, 217 M 330, 705 P2d 108, 42 St. Rep. 1231 (1985).

Transfer of Car Ownership for Purposes of Garage Liability Insurance Policy: In action by insurance company to determine rights and obligations under garage liability insurance policy issued to dealer in relation to vehicle sold by dealership that later was involved in accident without purchaser acquiring registration or certificate of title, the court held that change in ownership occurred under a purchase contract although the certificate of title had not transferred. The presumption in 61-3-105 (now repealed, but see 61-3-435) can be overcome by the facts in a particular case. Section 61-3-201 has no effect on ownership transfer for insurance purposes. Prospector Chevrolet, Inc., delivered the vehicle to Clive Lapp. Under the U.C.C., the sale was complete and Lapp became the owner. Lapp had the right to use or dispose of the automobile as he wished. Prospector had relinquished all its legal rights to the vehicle even though it still had the statutory duties relating to transfer of certificate of ownership. Legal title passed to Lapp on date of delivery. Safeco Ins. Co. v. Lapp, 215 M 196, 695 P2d 1310, 42 St. Rep. 289 (1985).

Construction of Section: Section 61-1-117 (now repealed—see 61-1-101 for definitions) requires two showings to determine that a motor vehicle is used: first, a showing that the title had been transferred; and second, that the motor vehicle had been so used as to become secondhand. Thus, a car purchased by plaintiff that had been shipped by the manufacturer to the seller, titled to a rental business, but which had not been used except for 50 miles put on by seller was not a used vehicle. Barker v. Rice Motors, 208 M 86, 676 P2d 200, 41 St. Rep. 190 (1984).

Emergency Lane Travel: The purpose of 61-8-331 is to forbid crossing over by vehicles into the driving lanes reserved for opposite-direction traffic. Section 61-8-331 does not apply to vehicles that may occasionally be driven over or into the emergency lane of an interstate highway. Damjanovich v. W. Fire Ins. Co., 204 M 455, 665 P2d 1128, 40 St. Rep. 999 (1983).

Semitrailer as Occupied Structure: Defendant broke into the trailer portion of a semitrailer and removed 28 cases of beer. He was convicted of burglary. Defendant contended that a trailer attached to a semitruck was not an "occupied structure" within the meaning of 45-6-204. The court found that a semitrailer is a "vehicle" within the meaning of the motor vehicle laws and the criminal code. St. v. Shannon, 171 M 25, 554 P2d 743 (1976).

Highway: Prior to the 1959 amendment of section 32-2114(a), R.C.M. 1947 (61-1-201, MCA, now repealed—see 61-1-101 for definitions), a road that was not publicly maintained was not a highway within the meaning of this chapter even though it may have been open to public use. Leach v. Great N. Ry., 139 M 84, 360 P2d 94 (1961).

"Owner": A wife was co-owner with her husband of a vehicle. Her registration, even though indivisible from that of her husband, was excluded from the operation of section 53-422, R.C.M. 1947 (now repealed), after the husband was involved in an accident with another vehicle. He alone became subject to the provisions of the statute regarding suspension. State ex rel. Penhale v. St. Highway Patrol, 133 M 162, 321 P2d 612 (1958).

Construction of Burglary Statute: In view of the definitions of "motor vehicle" in 61-1-102 (now repealed—see 61-1-101 for definitions), the word "automobile" (now "vehicle") as used in the statute defining burglary (section 94-901, R.C.M. 1947, as amended, now 45-6-204) did not include trucks, buses, and the like. St. v. Duran, 127 M 233, 259 P2d 1051 (1953).

Part Attorney General's Opinions

Property Tax Freeze Inapplicable to Light Vehicle Tax: Although Ch. 211, L. 1987, replaced the fee in lieu of tax on light vehicles with a property tax, the property tax freeze instituted by Initiative No. 105 applies only to property described in Title 15, ch. 6, part 1, and is inapplicable to items of personal property such as light vehicles, motorcycles, motor homes, quadricycles, travel trailers, and campers. 42 A.G. Op. 21 (1987).

Parochial School Vehicles and Head Start Vehicles as School Buses: Parochial school vehicles and Head Start vehicles used to transport children to and from school are school buses within the meaning of 61-1-116 (now repealed—see 61-8-102 for definitions), and as such they must comply with the provisions of Title 61 relative to school bus equipment, operation, and inspection. 39 A.G. Op. 63 (1982).

Authority to Regulate Parking on Private Lots: The uniform act regulating traffic on highways as adopted by the state precludes a municipal corporation from enacting an ordinance to regulate parking upon privately owned lots. 37 A.G. Op. 53 (1977).

Forest Service Development Roads — Size and Weight: The laws applicable to vehicle size and weight are enforceable upon highways but not upon Forest Service development roads. This chapter, however, generally extends its jurisdiction over these roads. 37 A.G. Op. 9 (1977).

Forest Service Development Road — Licensing: Because a United States Forest Service development road is not a highway by statutory definition, the provisions of law regarding license plates do not apply to vehicles operated solely on Forest Service development roads. 37 A.G. Op. 9 (1977).

Similar Vehicle to Wheelchair: A self-propelled golf cart vehicle used by invalids is a similar vehicle to a self-propelled wheelchair and is exempt from motor vehicle registration. 36 A.G. Op. 86 (1976).

Truck Modified as Implement of Husbandry Subject to Registration: A pickup truck, modified to qualify as "implement of husbandry", is a "motor vehicle" under Title 53, R.C.M. 1947 (now Title 61, MCA—see 61-1-101 for definitions), and is subject to registration and licensing before being operated on public roads. Driver need not have a valid driver's license if vehicle is "implement of husbandry". 36 A.G. Op. 26 (1975).

Special Mobile Equipment Not Assessable: Special mobile equipment, as defined in section 53-642, R.C.M. 1947 (61-1-104, MCA, now repealed—see 61-1-101 for definitions), does not come within the definition of "motor vehicle" and therefore is not assessable as a motor vehicle. 31 A.G. Op. 9 (1965).

61-1-101. Definitions.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 109 in definition of motor home in (b) near end substituted "NFPA 1192 standard on recreational vehicles" for "ANSIA/A119.2 standard"; in definition of travel trailer in (a) substituted "46 feet" for "40 feet" and deleted former (c) that read: "(c) with gross trailer area of less than 320 square feet"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 389 in definition of owner near beginning after "possession and control vested in" substituted " an individual human being" for "the conditional vendee", near middle after "for security or otherwise" inserted "in an individual human being", and near end substituted "individual human being or mortgagor" for "person" and after "possession" in two places inserted "and control"; in definition of person inserted "human being"; in definition of temporary registration permit in (b)(ii) at end substituted "61-3-303(4)(b)" for "61-3-303(3)(b)"; and made minor changes in style. Amendment effective April 29, 2021.

Chapter 498 in definition of under the influence substituted "61-8-1001" for "61-8-401" Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2019 Amendment: Chapter 309 inserted definition of autocycle; in definition of motorcycle inserted (1)(d) including an autocycle; and made minor changes in style. Amendment effective October 1, 2019.

2017 Amendments — Composite Section: Chapter 323 in definitions of driver's license and low-speed restricted driver's license in (a) of both definitions substituted "learner license" for "instruction permit"; in definition of low-speed restricted driver's license after "means a license" deleted "or permit"; and in definition of quadricycle in (a) at end deleted "and a motor capable of producing not more than 50 horsepower". Amendment effective May 4, 2017.

Chapter 435 in definition of temporary registration permit inserted (b)(ii) concerning authorization to operate for 90 days from date a record is issued for certain permits; and made minor changes in style. Amendment effective October 1, 2017.

2015 Amendments — Composite Section: Chapter 120 in definition of motorcycle inserted (b) and (c) regarding motorcycle designed for use on highways and for off-road recreational use; and made minor changes in style. Amendment effective January 1, 2016.

Chapter 199 in definition of commercial motor vehicle in (b)(i) after "emergency" deleted "service" and in (b)(i)(B) substituted current text for "entitled to the exemptions granted under 61-8-107". Amendment effective October 1, 2015.

Chapter 374 in definitions of motorcycle, motor-driven cycle, and motor vehicle in (b) after "bicycle" inserted "or a moped"; in definition of motorized nonstandard vehicle in (c) inserted "a moped as defined in 61-8-102"; and made minor changes in style. Amendment effective October 1, 2015.

2011 Amendments — Composite Section — Coordination: Chapter 209 inserted definitions of golf cart, low-speed electric vehicle, and low-speed restricted driver's license; in definition of motor vehicle inserted (a)(iii) including certain golf carts; and made minor changes in style. Amendment effective January 1, 2012.

Section 11, Ch. 247, L. 2011, a coordination section, in definition of motor vehicle in (a)(iii) inserted "pursuant to 61-8-391". Amendment effective April 22, 2011.

Chapter 296 inserted definitions of CDLIS driver record, downgrade, and hazardous material; and made minor changes in style. Amendment effective January 30, 2012.

The amendment to this section made by sec. 4, Ch. 247, L. 2011, was rendered void by sec. 11, Ch. 247, L. 2011, a coordination section.

2009 Amendments — Composite Section: Chapter 83 inserted definition of school zone; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 353 in definition of medium-speed electric vehicle in (a)(i) increased speed from 35 to 45 miles an hour and inserted (c) limiting gross vehicle weight to 5,000 pounds or less. Amendment effective October 1, 2009.

2007 Amendments — Composite Section: Chapter 20 inserted definition of sell and definition of storage lot; and made minor changes in style. Amendment effective March 16, 2007.

Chapter 44 in definition of authorized agent agreement near end after "agent" substituted "is required to" for "must"; and substituted county where the vehicle is domiciled for county where a vehicle is domiciled as defined term (amendment rendered void by Ch. 329 amendment). Amendment effective October 1, 2007.

Chapter 83 in definition of revocation in first sentence near beginning inserted "termination by action of the department of a person's", substituted reference to privilege to apply for and be issued license for period of time for "are terminated and", and at end inserted "or exercised"; in definition of suspension inserted reference to temporary withdrawal by action of department and substituted "and privilege to apply for or be issued a driver's license for a period of time designated by law" for "are temporarily withdrawn, but only during the period of suspension"; and made minor changes in style. Amendment effective March 30, 2007.

Chapter 233 inserted definition of medium-speed electric vehicle; and made minor changes in style. Amendment effective April 23, 2007.

Chapter 329 inserted definitions of business entity, custom-built motorcycle, customer identification number, domiciled, and Montana resident; deleted definition of county where a vehicle is domiciled that read: ""County where a vehicle is domiciled" means the county in which the vehicle owner permanently resides or, if a vehicle is owned by a corporation or is leased or used for commercial purposes, the county in which the vehicle is permanently assigned or most frequently used, dispatched, or controlled"; in definition of dealer near beginning after "person" deleted "firm, association, or corporation", near middle after "consignment" deleted "or acting as a broker, as defined in 61-4-131", after "pole trailers" inserted "travel trailers, motorboats, sailboats, snowmobiles, off-highway vehicles, or special mobile equipment", and at end deleted "firm, association, or corporation and that are required to be licensed under chapter 4 of this title"; in definition of manufactured home substituted "15-24-201" for "15-1-101"; in definition of manufacturer after "person" deleted "firm, corporation, or association" and after "semitrailers" inserted "pole trailers, travel trailers, motorboats, sailboats, snowmobiles, or off-highway vehicles"; in definition of mobile home substituted "15-24-201" for "15-1-101"; in definition of motorcycle near beginning of first sentence after "vehicle" inserted "that has a seat or saddle for the use of the operator and that is designated to travel on" and after "ground" deleted "and a saddle on which the operator sits or a platform on which the operator stands and a driving wheel in contact with the ground in addition to the wheels of the vehicle itself"; in definition of motor vehicle inserted (a)(ii) concerning quadricycles and in (b) after "61-8-102" inserted "an electric personal assistive mobility device, a motorized nonstandard vehicle"; in definition of nonresident at end substituted "Montana resident" for "resident of this state"; in definition of not used for general transportation purposes after "street rod" inserted "or a custom-built motorcycle" and after "car" inserted "or motorcycle"; in definition of off-highway vehicle in (a) near beginning substituted "designed" for "used" and in (b)(iii) at beginning substituted "motor vehicles designed to transport persons or property upon the highways" for "vehicles otherwise issued a certificate of title and registered under the laws of the state"; substituted definition of recreational vehicle for former definition that read: ""Recreational vehicle" includes self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use"; in definition of registration decal after "pole trailer" inserted "motorboat, sailboat, personal watercraft, or snowmobile"; in definition of retail sale at beginning after "sale of a" substituted "a motor vehicle, trailer, semitrailer, pole trailer, travel trailer, motorboat, snowmobile, off-highway vehicle" for "a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a travel trailer, a motorcycle, a quadricycle"; in definition of wholesaler at beginning after "person" deleted "firm, partnership, association, or corporation", after "used motor vehicle" deleted "recreational vehicle", after "pole trailer" inserted "travel trailer, motorboat, snowmobile, off-highway vehicle, or", after "equipment" deleted "motorcycle, or quadricycle", and after "only to" deleted "vehicle"; and made minor changes in style. Amendment effective January 1, 2008.

Retroactive Applicability: Section 5, Ch. 83, L. 2007, provided: "[Sections 1 and 2] [61-1-101 and 61-5-203] apply retroactively, within the meaning of 1-2-109, to any suspension or revocation imposed against an unlicensed person prior to [the effective date of this act]." Effective March 30, 2007.

2005 Amendments — Composite Section — Coordination: Chapter 542 substituted introductory clause for former text that read: "Unless the context indicates otherwise, the words and phrases defined in this chapter have, as used in this title, the meanings respectively ascribed to them in this chapter"; inserted definitions; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 7, Ch. 233, L. 2005, a coordination section, in definition of motor vehicle at end of (b) inserted "or a motorized wheelchair or other low-powered, mechanically propelled vehicle that is designed specifically for use by a physically disabled person and that is used as a means of mobility for that person" and in definition of vehicle inserted (b) excluding a manually or mechanically propelled wheelchair.

Pursuant to sec. 5, Ch. 241, L. 2005, a coordination section, in definition of travel trailer after "means a" substituted "vehicle" for "trailer", in (a) reduced length from 45 feet to 40 feet and after length deleted "and 8 feet or less in width originally designed or permanently altered", inserted (b) concerning size and weight restrictions, inserted (c) concerning gross trailer area, and at beginning of (d) inserted "that is designed"; and made minor changes in style.

Pursuant to sec. 36, Ch. 428, L. 2005, a coordination section, in definition of commercial motor vehicle in (a)(iv) after "school bus" deleted "as defined in 20-10-101", in (a)(v) after "used" substituted "in the transportation of hazardous material as defined in 61-8-801" for "to transport any quantity or form of hazardous material, as defined in 61-8-801, required to be placarded pursuant to Title 49, Code of Federal Regulations", in (b)(ii)(B) inserted "to or from the farm", inserted (b)(iii) regarding a vehicle operated for military purposes, and inserted (c)(iv) defining school bus.

Pursuant to sec. 11, Ch. 468, L. 2005, a coordination section, inserted definition of motorized nonstandard vehicle.

Pursuant to sec. 12, Ch. 468, L. 2005, a coordination section, inserted definition of electric personal assistive mobility device.

Pursuant to sec. 13, Ch. 468, L. 2005, a coordination section, in definition of motorcycle in (b) at end inserted "a motorized nonstandard vehicle, or a two- or three-wheeled all-terrain vehicle that is used exclusively on private property"; and made minor changes in style.

Pursuant to sec. 14, Ch. 468, L. 2005, a coordination section, in definition of motor-driven cycle in (b) at end inserted "or a motorized nonstandard vehicle".

Pursuant to sec. 129, Ch. 596, L. 2005, a coordination section, inserted definitions of authorized agent, authorized agent agreement, and county where a vehicle is domiciled.

Pursuant to sec. 133, Ch. 596, L. 2005, a coordination section, in definition of trailer inserted (b) excluding a mobile home or a manufactured home.

Pursuant to sec. 134, Ch. 596, L. 2005, a coordination section, in definition of manufactured home substituted "has the meaning provided in 15-1-101" for "a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards.

(b) The term does not include a mobile home, as defined in 15-1-101 or this section, a housetrailer, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976".

Pursuant to sec. 135, Ch. 596, L. 2005, a coordination section, substituted definition of temporary registration permit for former text that read: "(a) a paper record produced and issued by the department, its authorized agent, a county treasurer, or a law enforcement officer to a person to whom ownership of a vehicle was transferred that, when mounted in the left-hand corner of a rear window of a motor vehicle or affixed as prescribed on a motorboat, a sailboat that is 12 feet in length or longer, a snowmobile, or an off-highway vehicle, authorizes the operation of the vehicle for a specified time period prior to registration under 23-2-512, 23-2-616, 23-2-804, or 61-3-303; or

(b) a durable license plate-style placard approved by the department and issued by an authorized agent of the department or a county treasurer to a person to whom ownership of a vehicle has been transferred that, when attached to the rear of the vehicle in a manner prescribed by the department, authorizes the operation of a motor vehicle for a specified time period prior to registration under 61-3-303".

Pursuant to sec. 136, Ch. 596, L. 2005, a coordination section, substituted definition of mobile home or housetrailer for former text that read: "means a trailer or a semitrailer that is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place, either permanently or temporarily, and that is equipped for use as a conveyance on streets and highways or a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a housetrailer but that is used permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services or for any commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier".

Pursuant to sec. 137, Ch. 596, L. 2005, a coordination section, inserted definition of registration or register.

Effective Date: Section 11, Ch. 458, L. 2005, provided: "[This act] [61-1-101(10), (23), (38), (60), and (64)] is effective on passage and approval." Approved April 28, 2005.

Case Notes

Four-Wheeler Driven on Road — Motor Vehicle by Statutory Definition: A four-wheeler driven by the defendant on roads around town was a motor vehicle, as defined in this section, even if two subsections of the definition applied to it as a motor vehicle. St. v. Otten, 2011 MT 83, 360 Mont. 144, 253 P.3d 834.

CHAPTER 2
HIGHWAY SAFETY

Part 1
Traffic Safety Program

Part Compiler's Comments

Severability Clause: Section 8, Ch. 177, L. 1967, was a severability clause.

Transfer of Function: Section 8(1), Ch. 274, L. 1981, provided: "The functions of the department of community affairs of administering the highway traffic safety program under 61-2-102 and 61-2-103 and of assisting in delivery of emergency medical services under 50-6-104 and 50-6-203 are transferred to the department of justice."

61-2-102. Definitions.

Compiler's Comments

2005 Amendment: Chapter 576 in definition of highway traffic safety program in second sentence after "uniform" substituted "guidelines established pursuant to" for "standards established by the secretary of commerce of the United States under", substituted "23 U.S.C. 402" for "Title 23, U.S.C.", and at end after "amended" inserted "and may include defensive driving programs administered by the entity designated by the governor in 61-2-103"; and made minor changes in style. Amendment effective October 1, 2005.

1995 Amendment: Chapter 538 in definition of Department substituted "transportation" for "justice provided for in Title 2, chapter 15, part 20"; and made minor changes in style. Amendment effective July 1, 1995.

1981 Amendment: Substituted "department of justice" for "department of community affairs" and changed cite in (3).

61-2-103. Duties.

Compiler's Comments

2007 Amendment: Chapter 8 in (1) in two places after "Highway Safety Act" substituted "23 U.S.C. 401 through 403" for "of 1966"; in (2)(a) after "safety" deleted "and establish comprehensive training programs, including establishment and regulation of driver training schools, certification of the schools and instructors, and establishment of adult training and retraining programs"; deleted former (2)(b) that read: "(b) develop and procure practice driving facilities, simulators, and other teaching aids for school and driver training use"; inserted (2)(c) requiring cooperation with the office of public instruction to provide support and maintenance of federally compliant driver training facilities; and made minor changes in style. Amendment effective October 1, 2007.

1995 Amendment: Chapter 538 in (2), in introductory clause after "department", deleted "of justice"; in (3), at beginning, inserted "The department of justice shall"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Inserted third sentence of (1) allowing Governor to appoint an administrator of the highway traffic safety program.

1981 Amendment: Substituted "department of justice" for "department of community affairs" in the introductory clause of (2).

Administrative Rules

ARM 23.3.420 Safety equipment for fertilizer trailers.

61-2-105. Local programs.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-2-106. County drinking and driving prevention program.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

1993 Amendment: Chapter 436 inserted second and third sentences of (2) providing for public meetings and notice.

1991 Amendment: In (4)(b)(iv), after "county governing body", deleted "or the department"; and in (5) substituted "may" for "must".

61-2-107. License reinstatement fee to fund county drinking and driving prevention programs.

Compiler's Comments

2021 Amendment: Chapter 498 in (1) in middle substituted "61-8-1016" for "61-8-402". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2003 Amendment: Chapter 442 in (1) near middle after "a fee of" increased fee paid to department from $100 to $200; in (2) near beginning after "deposit" inserted "one-half of" and near middle after "general fund" substituted "and the other half in an account in the state special revenue fund to be used" for "One-half of the fees must be appropriated and used"; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendments: Chapter 18 deleted (2)(b) that read: "(b) On or before June 30, 1994, the department shall transfer to the general fund the balance of the driver's license reinstatement fee state special revenue account"; and made minor changes in style.

Chapter 509 in (2) deleted second sentence that read: "For each fiscal year, an amount up to $50,000 of the money from the fees remaining in the general fund after appropriation for those programs is statutorily appropriated, as provided in 17-7-502, to the department to purchase and maintain equipment used to analyze breath for the presence of alcohol"; deleted (2)(b) that read: "(b) On or before June 30, 1994, the department shall transfer to the general fund the balance of the driver's license reinstatement fee state special revenue account"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Special Session Amendment: Chapter 2 in (2)(a), in first sentence after "shall deposit", deleted "one-half of"; in (2)(b) substituted requirement that the Department transfer to the general fund the balance of the reinstatement fee account on or before June 30, 1994, for provision providing that one-half of the fees collected under subsection (1) be distributed to the counties that they were collected in to be distributed to cities and towns in the county on a pro rata population basis to be used in programs addressing the problems of minors and of adult chemical dependency and for local law enforcement training and equipment; and made minor changes in style. Amendment effective December 16, 1993.

1993 Amendment: Chapter 492 in (2)(a), near middle of first sentence before "used", inserted "appropriated and" and inserted second sentence statutorily appropriating up to $50,000 for each fiscal year from fees remaining in general fund after program appropriations to be used by Department to purchase and maintain equipment to analyze breath for presence of alcohol. Amendment effective July 1, 1993.

1992 Special Session Amendment: Chapter 5 in (2)(b), at end of first sentence, substituted requirement that fees be deposited in the general fund for former requirement that fees be deposited in the state special revenue fund for distribution to County Treasurers, in second sentence substituted requirement that fees be deposited in the general fund on or before June 30, 1993, for requirement that money be distributed to County Treasurer of county of collection, and deleted language creating system for distribution of funds by County Treasurer (see version effective July 1, 1993, for text). Amendment effective January 21, 1992.

Effective Date — Termination: Section 7(1), Ch. 5, Sp. L. January 1992, provided that this section is effective on passage and approval (approved January 21, 1992) and terminates July 1, 1993.

1991 Amendment: In (1) increased fee from $50 to $100; in (2)(a), after "deposit", inserted "one-half of" and inserted last phrase requiring use of fees for county drinking and driving prevention programs; and inserted (2)(b) specifying use of remainder of fees.

1989 Amendment: Near middle of (1), after "61-8-402", substituted "must remain suspended or revoked" for "may not be restored".

1987 Statement of Intent: The statement of intent attached to Ch. 643, L. 1987, provided: "It is the intent of the legislature:

(1) that the proceeds of the license reinstatement fee be deposited in the general fund;

(2) that the amount of money collected in each county be recorded for each quarter; and

(3) that the legislature appropriate each quarter, from the general fund to the highway traffic safety division of the department of justice, an amount equal to the proceeds collected in fiscal 1988 and fiscal 1989 from the counties with a drinking and driving prevention program, for distribution to those counties."

Case Notes

Requirement of Payment of Reinstatement Fee Not Violation of Ex Post Facto Law: Cooney argued that under the law as it existed prior to 1989, the revoked status of his license would have been removed whether or not he paid any fee when his license expired by its own terms and that therefore the application of the new law requiring payment of a fee before the revoked status of a license may be changed was an ex post facto violation as applied to him. The Supreme Court held that the application of the law did not violate the ban on ex post facto legislation because it did not change the legal consequences of Cooney's prior conduct and that in addition, the 1989 amendment was intended to clarify that a period of revocation continues until a defendant pays the required fee. St. v. Cooney, 284 M 500, 945 P2d 891, 54 St. Rep. 967 (1997). See also St. v. Clark, 2000 MT 40, 298 M 300, 997 P2d 107, 57 St. Rep. 185 (2000).

Jury Trial Not Statutorily Mandated in Driver's License Suspension Case — Not Violative of Right to Trial by Jury: Section 61-8-403 dictates that the court examine the facts and determine the merits of a petition challenging the suspension or revocation of a license but does not contemplate the role of a jury in the hearing, presuming instead that a jury will not be present, through assignment of tasks to the court. The inviolate right to a trial by jury is not a prospective right that is automatically granted in every new proceeding that may arise. Rather, the right that is constitutionally preserved is that right to a jury trial that existed at the time that the constitution was enacted. There is not and has never been a right to a jury trial in purely equitable actions in Montana. Suspension or revocation of a driver's license pursuant to the implied consent law is a civil administrative sanction, not a criminal penalty, and is intended to protect the public rather than punish the driver. The hearing to determine the propriety of a driver's license suspension is an action in equity because compensatory or punitive damages are not allowed. Further, the reinstatement fee does not constitute a punishment that converts the equitable action into a criminal action because the fee is dedicated to the public purpose of funding county drinking and driving prevention programs. Therefore, a driver is not entitled to a trial by jury in a proceeding to determine the propriety of a driver's license suspension. Supola v. Dept. of Justice, 278 M 421, 925 P2d 480, 53 St. Rep. 984 (1996).

61-2-108. Funding allocation for programs to prevent or reduce drinking and driving.

Compiler's Comments

2015 Amendment: Chapter 141 inserted (2) regarding distribution of funds to counties; and made minor changes in style. Amendment effective July 1, 2015.

1997 Amendment: Chapter 42 near end, after "61-2-107", deleted "(a)". Amendment effective March 12, 1997.

1992 Special Session Amendment: Chapter 5 near middle of sentence, after "department shall", inserted "to the extent of the appropriation authorized for the purpose specified in this part". Amendment effective January 21, 1992.

Effective Date — Termination: Section 7(1), Ch. 5, Sp. L. January 1992, provided that this section is effective on passage and approval (approved January 21, 1992) and terminates July 1, 1993.

1991 Amendment: Inserted reference to county portion of proceeds and reference to 61-2-107(2)(a).

61-2-109. Emergency medical services grants.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 95, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2013 Amendment: Chapter 120 in first sentence substituted "legislative fiscal analyst" for "legislative finance committee" and in second sentence inserted "be provided in an electronic format and". Amendment effective July 1, 2013.

Effective Date: Section 33, Ch. 486, L. 2009, provided: "[This act] is effective July 1, 2009."

Emergency Medical Service Grant Program Reports: Section 27, Ch. 486, L. 2009, provided: "The department of transportation shall report to the children, families, health, and human services interim committee twice during each year of the interim on the results of the emergency medical service grant program funded in House Bill No. 2. The reports must include grants submitted, grants processed and awarded, and the remaining balance of the appropriation."

Part 2
Vehicle Equipment Safety

61-2-201. Vehicle Equipment Safety Compact.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

61-2-202. Legislative findings on equipment safety.

Compiler's Comments

1985 Amendment: In (3) substituted reference to department of justice for reference to division of motor vehicles.

61-2-204. State commissioner on vehicle equipment safety commission.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-2-207. Documents filed and notices given by equipment safety commission.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

61-2-208. Equipment safety commission funds.

Compiler's Comments

2001 Amendment: Chapter 483 in (2) after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1983 Amendment: Substituted reference to department of commerce for reference to department of administration.

Transfer of Function: Section 1, Ch. 287, L. 1983, substituted reference to Department of Commerce for reference to Department of Administration.

1981 Amendment: Substituted "department of administration" for "department of community affairs" in (2).

Transfer of Function: Section 7, Ch. 274, L. 1981, provided in part: "(1) The functions of the department of community affairs of auditing the accounts and financial transactions of political subdivisions and generally assisting political subdivisions in . . . 61-2-208 . . . are transferred to the department of administration."

Part 3
Driver Improvement Program

61-2-302. Establishment of driver rehabilitation and improvement program — participation by offending drivers.

Compiler's Comments

2021 Amendment: Chapter 498 in (2) in middle of introductory clause substituted "61-8-1002(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)" for "61-8-401, 61-8-406, or 61-8-411". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2019 Amendment: Chapter 445 in (1) near beginning of second sentence after "The programs may consist of" inserted "electronic or"; in (8) at end after "district court of the state" deleted "or hearing examiner of the department"; and made minor changes in style. Amendment effective May 10, 2019.

2013 Amendment: Chapter 153 in (2) inserted reference to 61-8-411; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 149 in (2) inserted "unless the suspension or revocation was for an offense under 61-8-401 or 61-8-406". Amendment effective October 1, 2011.

Applicability: Section 7, Ch. 149, L. 2011, provided: "[This act] applies to offenses committed on or after [the effective date of this act]." Effective October 1, 2011.

2003 Amendments — Composite Section: Chapter 556 in (1) near beginning of first sentence substituted "may" for "shall" and at end of second sentence after "techniques" inserted "and must include the requirements for obtaining a restricted probationary driver's license"; deleted former (1)(b) that read: "(b) The rules must:

(i) provide for the local program courses to be operated by private entities;

(ii) develop a procedure for certifying private entities as driver rehabilitation and improvement course providers;

(iii) establish the criteria that private entities must meet in order to be certified by the department; and

(iv) provide for an alternative driver rehabilitation and improvement procedure for drivers who live in areas where a course is not offered"; in (2) substituted text authorizing person whose license is suspended or revoked to participate in driver rehabilitation and improvement program for former (2) that read: "(2) Official participation in the driver rehabilitation and improvement program is limited to those persons whose license to operate a motor vehicle in the state of Montana is"; in (2)(a) at beginning substituted "suspended" for "subject to suspension or revocation" and after "state" inserted "unless the suspension was imposed under the authority provided in Title 61, chapter 8, part 8"; in (2)(b)(i) after "revocation" deleted "or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208"; deleted former (2)(c) that read: "(c) subject to suspension as provided in 61-11-204(3)"; in (5) after "revocation" substituted "action must be terminated and the suspension or revocation action must be reinstated" for "order must be terminated and the order of suspension or revocation enforced"; in (7) substituted text allowing department to establish fee schedule for driver improvement and rehabilitation program to defray program costs for former (7) and (8) that read: "(7) The department and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules that may be charged to those persons participating in the driver improvement and rehabilitation program. The fees must be collected separately by the department and by the entity with which the department contracts under subsection (1)(b).

(8) The fees collected by the department under subsection (7) must be used to help defray costs incurred by the department in administering the program and in contracting with private entities as provided in subsection (1). The department may not use the fees collected under subsection (7) for any other purpose"; and made minor changes in style. Amendment effective May 5, 2003.

Chapter 611 in (2)(a) at end deleted "or, unless otherwise provided by the sentencing court, is suspended under 45-5-624(2)(b)". Amendment effective October 1, 2003.

The amendments to this section made by Ch. 300, L. 2003, were rendered void by sec. 15(7), Ch. 556, L. 2003, a coordination section.

2001 Amendments — Composite Section: Chapter 64 in (2)(a) substituted "is suspended under 45-5-624(2)(b)" for "a violation of 45-5-624". Amendment effective March 16, 2001.

Chapter 207 at beginning of (10)(a) inserted exception clause; inserted (10)(b) prohibiting department from issuing restricted probationary license to permit individual from driving commercial vehicle when individual is disqualified under state or federal law or when license or driving privilege is revoked, suspended, or canceled; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 218 in (1)(a) near beginning substituted "shall" for "may"; inserted (1)(b) specifying requirements for rules; inserted (2)(c) concerning suspension as provided in 61-11-204(3); near end of (3) substituted "driver rehabilitation and improvement program" for "driver improvement program"; in (7) near beginning of first sentence after "department" substituted "and the entity with which the department contracts under subsection (1)(b) shall establish separate fee schedules" for "may establish a schedule of fees"; substituted last sentence of (7) and all of (8) concerning fees and fee usage for "The fees must be used to help defray costs of maintaining the program"; and made minor changes in style. Amendment effective April 6, 2001.

Applicability: Section 5, Ch. 64, L. 2001, provided: "[This act] applies to offenses committed on or after [the effective date of this act]." Effective March 16, 2001.

Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

1999 Amendment: Chapter 258 in (2) after "persons" deleted "who are not subject to an ignition interlock restriction imposed under 61-8-442 and"; and in (2)(b)(i) after "revocation" inserted remainder of subsection concerning second or subsequent offense. Amendment effective October 1, 1999.

1997 Amendment: Chapter 107 in (2), after "persons", inserted "who are not subject to an ignition interlock restriction imposed under 61-8-442 and". Amendment effective July 1, 1997.

1995 Amendment: Chapter 481 in (2)(a), at end, inserted "or, unless otherwise provided by the sentencing court, a violation of 45-5-624"; in (8), near middle, inserted reference to Youth Court Judge; and made minor changes in style.

1985 Amendments: Chapter 444 inserted (9) allowing department to issue restricted probationary license to participant in driver rehabilitation and improvement program; and inserted (10) establishing as a misdemeanor a violation of the restrictions imposed on a restricted license.

Chapter 503 in (9) substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

Title 23, chapter 3, subchapter 1, ARM Driver licensing.
ARM 23.3.202 Driver rehabilitation point system.
ARM 23.3.203 Persons eligible for driver rehabilitation program.
ARM 23.3.204 Driver rehabilitation program.
ARM 23.3.205 Fees for driver rehabilitation program.
ARM 23.3.231 Probationary licenses.
ARM 23.3.232 Restrictions on probationary licenses.

Case Notes

Validity of Driver Rehabilitation Point System: The driver rehabilitation point system implemented by ARM 23.3.202 is a valid administrative rule expressly authorized by 61-2-302 and impliedly authorized by 61-5-206. The point system increases the fairness of the suspension process, harmonizes with its enabling legislation, and is necessary to effectuate statutory purposes. Bick v. Dept. of Justice, 224 M 455, 730 P2d 418, 43 St. Rep. 2331 (1986).

Part 5
Emergency Medical Service Providers Grant Program

Part Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 323, L. 2011, repealed sec. 12, Ch. 437, L. 2009, which terminated this part June 30, 2011. Effective May 6, 2011.

Effective Date: Section 11, Ch. 437, L. 2009, provided: "[This act] is effective July 1, 2009."

Termination: Section 12, Ch. 437, L. 2009, provided: "[Sections 1 through 7] [enacting Title 61, chapter 2, part 5] terminate June 30, 2011."

61-2-502. Definitions.

Compiler's Comments

2019 Amendment: Chapter 220 inserted definition of emergency care provider; in definition of emergency medical service substituted "an out-of-hospital treatment service or interfacility emergency medical transportation" for "a prehospital or interhospital emergency medical transportation or treatment service"; deleted definition that read: ""Emergency medical technician" means a person who has been specially trained in emergency care in a training program approved by the board and licensed by the board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition"; in definition of patient in (b) at beginning inserted exception clause; in definition of volunteer emergency care provider at beginning substituted ""Volunteer emergency care provider"" for ""Volunteer emergency medical technician"", after "Title 50, chapter 6, part 2, and provides" substituted "out-of-hospital, emergency medical, or community-integrated health care or interfacility transport" for "emergency medical care", and in (b)(ii) after "to provide emergency medical" inserted "or community-integrated health"; and made minor changes in style. Amendment effective July 1, 2019.

61-2-503. Emergency medical services grant program — eligibility — matching funds.

Compiler's Comments

2019 Amendment: Chapter 220 in (2)(c) in two places and in (3) substituted "emergency care providers" for "emergency medical technicians". Amendment effective July 1, 2019.

Administrative Rules

ARM 18.14.301 Definitions.
ARM 18.14.303 Reasons for not allowing a grant.

61-2-504. Grant review criteria.

Compiler's Comments

2019 Amendment: Chapter 220 in (6) substituted "emergency care providers" for "emergency medical technicians". Amendment effective July 1, 2019.

Administrative Rules

ARM 18.14.301 Definitions.
ARM 18.14.302 Criteria for review

61-2-505. Grant awards — appeals.

Administrative Rules

ARM 18.14.301 Definitions.
ARM 18.14.303 Reasons for not allowing a grant.

61-2-506. Rulemaking authority.

Administrative Rules

Title 18, chapter 14, subchapter 3, ARM Administration of an emergency medical service grant.

61-2-507. Emergency grant appropriations.

Administrative Rules

ARM 18.14.301 Definitions.
ARM 18.14.304 Emergency fund.

CHAPTER 3
CERTIFICATES OF TITLE, REGISTRATION, AND TAXATION OF MOTOR VEHICLES

Chapter Collateral References

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, 11 U.L.A. 421.

Part 1
General Provisions

61-3-101. Duties of department — records.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 44 in (3) near middle before "motorboat" inserted "camper"; in (4) near middle before "motorboats" inserted "campers"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 180 in (2)(a)(i) near middle after "department" inserted "by a tribal government"; and made minor changes in style. Amendment effective October 1, 2007. The amendment by Ch. 329 rendered the amendment by Ch. 180 void.

Chapter 329 throughout section inserted references to travel trailers and off-highway vehicles; substituted (2)(a) concerning owner information for former text that read: "the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department or by a motor vehicle agency of another jurisdiction, the owner's driver's license or identification card number and the issuing jurisdiction; or

(ii) if the owner is a corporation, the registered agent's name and, if the agent is the holder of a driver's license or identification card, the agent's driver's license or identification card number and the issuing jurisdiction"; substituted (3)(a) concerning owner information for former text that read: "the name, residence, and mailing address of the owner and the driver's license or identification card data required in subsections (2)(a)(i) and (2)(a)(ii)"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendments — Composite Section — Coordination: Section 42, Ch. 542, in (1)(a) after "motor vehicles" inserted "trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, and snowmobiles"; in (1)(b) substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, and snowmobile" for "vehicle"; in (2) after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; in (2)(b) in two places after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; in (2)(b)(i), (2)(b)(ii), (2)(b)(v), (2)(b)(vi), (2)(b)(vii), (2)(b)(x) in two places, and (4) substituted references to motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile for references to vehicle; in (2)(b)(iv) after "odometer reading" inserted "if applicable"; in (3) after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; in (5) near beginning of first sentence before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

Section 126, Ch. 596, L. 2005, a coordination section, provided that if Senate Bill No. 285 (enacted as Ch. 542, L. 2005) and [this act] were both passed and approved, then 61-3-101 was amended as follows: in (1)(a) at end after "motor vehicles" inserted "trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, and snowmobiles"; in (1)(b), (2)(b)(i), (2)(b)(ii), (2)(b)(v), (2)(b)(vi), (2)(b)(viii), and (2)(b)(x) in two places substituted references to motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, and snowmobile for "vehicle"; in (2) and (2)(b) in two places after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; in (3) after "motor vehicle" inserted "trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile"; in (2)(b)(iv) after "reading" inserted "if applicable"; in (4) substituted "motor vehicles, trailers, semitrailers, pole trailers, motorboats, personal watercraft, sailboats, or snowmobiles" for "vehicles"; in (5) before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in (1)(a) near beginning after "shall" substituted "create and maintain a central registry of electronic files that includes an electronic record of title" for "keep a record" and after "section" substituted "for motor vehicles for which" for "of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles"; inserted (1)(a)(i) through (1)(a)(iii) listing items to be included in the central registry; inserted (1)(b) requiring the central registry to contain an electronic record of vehicles with certificate of title issued by another jurisdiction and of vehicles for which a certificate of title was not issued; in (2) in introductory clause substituted "The electronic record of title for a motor vehicle must contain the following information" for "The record must show the following"; in (2)(a) substituted "the name, residence, and mailing address of the owner and" for "the name of the owner, the residence address by street or rural route, the town, and the county and the mailing address if different from the residence address"; inserted (2)(a)(i) requiring the inclusion of driver's licenses or identification card numbers; inserted (2)(a)(ii) requiring information on the registered agent if the owner is a corporation; substituted (2)(b) concerning a description of the motor vehicle for former language that read: "the name and address of the conditional sales vendor, mortgagee, or other lienholder and the amount due under the contract or lien"; in (2)(b)(iv) near beginning before "year" inserted "manufacturer's designated model" and after "manufacture" inserted "and the odometer reading at the time of the transfer of ownership"; substituted (2)(b)(vii) pertaining to gross vehicle weight for former language that read: "if a truck or trailer, the number of tons capacity or GVW if imprinted on the manufacturer's identification plate"; deleted former (2)(j) that read: "(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle"; inserted (2)(b)(viii) through (2)(b)(x) providing for recording transaction record numbers, brands, and license plate or certificate numbers; in (2)(b)(xi) after "may" inserted "be required for registration or may"; substituted (3) pertaining to the minimum information to be contained by an electronic record of registration for former language that read: "(3) The department shall file applications for registration received by it from county treasurers and register the vehicles and the vehicle owners as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;
(b) alphabetically under the name of the owner;
(c) numerically under make and identifying number of the vehicle; and

(d) under another index of registration as the department considers expedient"; deleted former (4) through(6) that read: "(4) The department shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration.

(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(6) In the case of dealers, the records must show the information contained in the application for a dealer's, wholesaler's, or auto auction license, as required by chapter 4, parts 1 and 2, of this title, as well as the distinctive license number assigned to the dealer"; in (5) near beginning after "part 5" substituted "vehicle records maintained by the department" for "department records"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2001 Amendment: Chapter 363 in (8) at beginning of first sentence substituted "Subject to the provisions of Title 61, chapter 11, part 5, department records" for "All records" and near middle after "records" inserted exception clause, near middle of second sentence substituted "shall require" for "may require", and substituted last sentence prohibiting disclosure of information except pursuant to 61-11-507, 61-11-508, or 61-11-509 for former sentence that read: "However, the department may, by rule, reasonably restrict disclosure of information on an owner if the owner has requested in writing that the department not disclose the information or if the demands of individual privacy clearly exceed the merits of public disclosure." Amendment effective April 23, 2001.

2000 Amendment by Referendum: Chapter 515, L. 1999, in first sentence of (4) after "amount of" substituted "fees, including local option taxes or fees" for "motor vehicle taxes and fees" and after "subject to" substituted "a registration fee under 61-3-560 through 61-3-562" for "tax under 61-3-503" and near middle of second sentence substituted "registration fee, other appropriate fees, and local option taxes or fees, if applicable" for "taxes and fees"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 409 in (6) after "dealer's" inserted "wholesaler's, or auto auction" and after "required by" substituted "chapter 4, parts 1 and 2, of this title" for "61-4-101 through 61-4-105"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 416 in third sentence in (8) after "owner" deleted "or the owner's vehicle" and after "the information" inserted "or if the demands of individual privacy clearly exceed the merits of public disclosure"; and made minor changes in style. Amendment effective October 1, 1999.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1997 Amendment: Chapter 496 inserted (4) concerning collection of taxes and fees at time of registration; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1991 Amendments: Chapter 236 in (7) inserted second sentence allowing reasonable restriction of disclosure upon written request of owner.

Chapter 604 in (1), before "dealers", inserted "manufacturers and"; at beginning of (2) deleted "In the case of motor vehicles, trailers, and semitrailers"; in (2)(a), after "residence", inserted "address", after "by" inserted "street or rural route", and at end substituted "mailing address if different than residence address" for "business address"; in (3), in introductory clause after "owners", deleted "thereof in suitable books or on index cards"; in (6), near beginning after "files", inserted "regardless of any other statutory requirements" and near end, after "files", substituted "that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien" for "which have ceased to be of any value"; deleted former (7) that read: "(7) The department may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, to sheriffs, and to the chiefs of police of each incorporated city of the state who are able to communicate with such short-wave radio station"; in (7), near end of first sentence after "cost of", deleted "transcribing" and inserted second sentence allowing Department to require identification; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 724 in (1), before "dealers", inserted "manufacturers and"; in (2)(c) and (2)(g) substituted "vehicle" for "car"; in (2)(d), before "vehicle", deleted "car or"; inserted (2)(j) regarding a holder of a perfected security interest in a vehicle; and made minor changes in style.

Composite Section: In preparing the composite of this section, the Code Commissioner has not codified stylistic changes to subsections (3) and (6) made by Ch. 724, L. 1991, because of conflicts with changes made by Ch. 604, L. 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 236, L. 1991, provided: "A statement of intent is required for this bill to provide guidelines for the adoption of administrative rules to implement 61-3-101(8). The department of justice is granted authority to reasonably restrict by rule the dissemination of vehicle registration information if the restriction is requested in writing by the vehicle owner and the department determines the demands of individual privacy clearly outweigh the merits of public disclosure."

1991 Statement of Intent: The statement of intent attached to Ch. 604, L. 1991, provided: "A statement of intent is required for this bill because it grants additional rulemaking authority to the department of justice. The department shall adopt rules to develop a procedure for the registration or reregistration of motor vehicles, boats, snowmobiles, travel trailers, campers, motor homes, and off-highway vehicles. The department shall create a users' advisory group to assist the department in creating and operating a county motor vehicle computer system to be used jointly by the department and county treasurers and their employees. The department shall make policy decisions necessary to develop and implement the computer system jointly with the county motor vehicle computer committee."

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

1985 Amendments: Chapter 503 in (1), (3), (3)(d), (6), (7), (8), and (9) substituted references to department of justice for references to division of motor vehicles.

Chapter 555 deleted former (9) that read: "Within 30 days following the end of each calendar quarter, the division shall send to each county assessor and to the department of revenue a list of the certificates of ownership for housetrailers and mobile homes issued during the preceding calendar quarter to owners within each assessor's respective county. The list must contain the name and address of the owner or the names and addresses of joint owners and a description of the housetrailer, including the year built and the serial number".

1981 Amendment: Added subsection (9) requiring the division to send to each county assessor and to the department of revenue, within 30 days following the end of each calendar quarter, a list of certificates of ownership for housetrailers and mobile homes issued during preceding quarter in each respective county.

Administrative Rules

Title 23, chapter 3, subchapter 8, ARM Vehicle taxation.

Attorney General's Opinions

Proper County: The county in which a motor vehicle must be licensed is that county wherein the owner makes his permanent residence at the time of application for registration. 36 A.G. Op. 11 (1975).

61-3-103. Filing of security interests — perfection — rights — procedure — fees.

Compiler's Comments

2021 Amendment: Chapter 566 in (8)(b) at beginning substituted "The fee to file a lien is $8" for "Beginning January 1, 2002, and ending June 30, 2019, the fee is $8"; deleted former (8)(c) that read: "(c) Beginning July 1, 2019, the fee is $4 and must be deposited in the state general fund"; and in (9)(a) in two places, (9)(b), and (9)(c) substituted "2034" for "2026". Amendment effective July 1, 2021.

Preamble: The preamble attached to Ch. 566, L. 2021, provided: "WHEREAS, the Legislature is concerned with the delays associated with transferring defendants to state custody after imposition of sentence. When the Department of Corrections does not timely assume custody of defendants after sentencing, local government facilities may lack capacity to hold other persons. It is the expectation of the Legislature that the Department of Corrections will ensure that defendants sentenced for one or more felonies will not remain in a county detention facility for more than 10 business days after sentencing unless unusual circumstances arise; and

WHEREAS, with respect to the Department of Corrections, the Legislature has been advised that the vocational opportunities at the Montana Women's Prison are inadequate, particularly when compared to the offerings at the Montana State Men's Prison. The Legislature is mindful that the campuses may face different limitations in what programming may be offered based on location, footprint, and facilities; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 that the Department of Corrections had drug treatment beds that were not fully utilized in fiscal year 2019, which resulted in a payment for failure to allow the contractor to operate at 75% capacity; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned that the Department of Corrections has yet to fully implement statutory directives to measure the effectiveness of its programs—both those provided by the Department of Corrections employees and those provided by contractors. In 2017, the Legislature directed the Department of Corrections to conduct evaluations of programs to determine their impact on reducing recidivism. This work, in addition to other requirements in Senate Bill No. 59 (2017), appears to be unaddressed or incomplete. Moreover, the Department of Corrections' definition of recidivism is an inadequate measure for the determination of effectiveness of its programming. The Legislature is interested in having data on crimes committed by those discharged from the Department of Corrections' custody, not merely "the rate at which adult offenders return to prison in Montana for any reason within three years of their release from prison", which fails to address reentry outcomes of many individuals committed to the Department of Corrections' custody and evaluates a truncated time period; and

WHEREAS, with respect to the Office of State Public Defender, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 regarding billing practices by contractors, including the failure to require the use of assistants for nonattorney tasks, and allowing contractors to work a number of hours each year that may induce attorneys to be contractors instead of the Office of State Public Defender employees; and

WHEREAS, with respect to the Office of State Public Defender, it is the sense of the Legislature that the Office of State Public Defender expends its appropriation, in part, to perform tasks that are not required by the state or federal constitution or by statutory directive, such as in section 47-1-104(4), MCA. Given limited resources and the demands on the Office of State Public Defender staff, the Legislature believes that it is incumbent on the Office of State Public Defender management to limit the scope of its work to what is required by statute and the constitution; and

WHEREAS, with respect to the Office of State Public Defender, neither through its employees nor its contractors should the Office of State Public Defender impair the Legislature's intent to have defendants share in the costs of counsel provided by the Office of State Public Defender. The Office of State Public Defender employees and contractors should not move the court to waive assessments under section 46-8-113, MCA, unless the defendant can show a compelling reason why they cannot pay this assessment over the course of the sentence; and

WHEREAS, in House Bill No. 640 (2019), the Legislature established a mechanism to ensure that sexual abuse reports generated by those with mandatory reporting responsibilities are provided to county attorneys and that county attorneys report to the Attorney General on the status of the investigations and prosecutions generated from these referrals. It is the sense of the Legislature that the Department of Justice has not undertaken a thorough review of the reports generated pursuant to section 41-3-210(3), MCA, and the Legislature urges the Department of Justice to do so; and

WHEREAS, the Legislature has taken a number of steps to strengthen the laws and investigative response to address human trafficking and sexual exploitation of minors. Given the collective commitment in the legislative and executive branches to combat these crimes, the Legislature needs greater clarity on whether its appropriations and statutory changes are having an impact; and

WHEREAS, the Legislature expresses its concern that the backlog of testing on sexual assault kits must be eliminated as soon as possible; and

WHEREAS, the definition of recidivism utilized by the judicial branch in evaluating the effectiveness of treatment courts is different than the definition used by the Department of Corrections for its programming, making it difficult to compare the effectiveness of treatment courts to in-patient treatment. It is the sense of the Legislature that a single definition of recidivism would make it possible to have a consistent evaluation of effectiveness; and

WHEREAS, the Legislature believes that expungement of a conviction for driving under the influence of drugs or alcohol will impair the correctional and public safety goals that the Legislature aims to achieve through the Section D appropriation."

2015 Amendment: Chapter 398 in (8)(b) and (8)(c) substituted "2019" for "2016"; in (9)(a) and (9)(b) after "June 30" substituted "2026" for "2018"; in (9)(a) in last sentence and (9)(c) after "July 1" substituted "2026" for "2018"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 41 in (1)(a) near middle after "acknowledgment" inserted "of a voluntary security interest or lien by the owner of", near end after "snowmobile" deleted "owner of a voluntary security interest or lien", and substituted "prescribed" for "required"; deleted former introductory clause and (1)(a)(i) and (1)(a)(ii) that read: "The entry may be made if:

(i) the person is applying for a certificate of title and the manufacturer's certificate of origin or a certificate of title is being surrendered; or

(ii) a transfer of ownership is not sought"; at beginning of (1)(d) inserted exception clause and near middle substituted "shall" for "may not"; and made minor changes in style. Amendment effective January 1, 2010.

2007 Amendment: Chapter 50 in (8)(b) near beginning after "June 30" substituted "2016" for "2011"; in (8)(c) after "July 1" substituted "2016" for "2011"; in (9)(a) at beginning of first sentence inserted "Until June 30, 2018" and inserted second sentence providing that the fee for a new certificate of title is $5 beginning July 1, 2018; in (9)(b) at beginning inserted "Until June 30, 2018"; inserted (9)(c) providing for deposit of the fee in the general fund beginning July 1, 2018; and made minor changes in style. Amendment effective July 1, 2007.

Termination Provision Repealed: Section 8, Ch. 50, L. 2007, repealed sec. 15, Ch. 562, L. 2003, which would have terminated the 2003 amendments to this section June 30, 2013. Effective July 1, 2007.

2005 Amendment: Chapter 542 in (1)(a) near middle after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" and near end substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle"; in (1)(b), (1)(c), (5), and (9) substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle"; in (2), (3), (4) in two places, (6), (7)(a), (7)(b), and (8)(a) after "motor vehicle" inserted references to trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile; in (8)(b) near middle of second sentence after "forwarded to the" substituted "state" for "department of revenue"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendments — Composite Section — Coordination: Chapter 114 in (8)(b) in last sentence substituted "department of revenue" for "state treasurer"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 477 substituted (1)(a) pertaining to the entry of a voluntary security interest or lien for former language that read: "Except as provided in 61-3-109, the department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, and the amount of the lien and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer in the county in which the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle"; inserted (1)(b) through (1)(d) pertaining to transaction summary receipts, perfection of liens, and recording a lien on the face of a certificate; in (2) near middle inserted "Title 23, chapter 2, part 5, 6, or 8"; in (3) near beginning after "against" inserted "the electronic record of title for" and after "this section" inserted "and the applicant has requested issuance of a certificate of title under 61-3-201"; deleted former (4) through (6) that read: "(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in 61-3-109 and subsection (6) of this section, a voluntary security interest or lien is perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Except as provided in 61-3-109, voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date that the lien notice is delivered to the department, of the existence of the security interest"; in (5) at beginning substituted "A secured party or lienholder who has a perfected security interest in a vehicle and who" for "A conditional sales vendor or chattel mortgagee or assignee who", after "satisfaction of" substituted "the security interest or lien within 21 days" for "a chattel mortgage, assignment, or conditional sales contract within 15 days", after "department" increased payment from $1 to $25, and before "fails" substituted "secured party or lienholder" for "person"; in (6) at beginning substituted "Within 24 hours after receiving" for "Upon receipt of", after "department shall" deleted "within 24 hours", and after "mail to owner" substituted "or any secured party or lienholder of record" for "conditional sale vendor, mortgagees, or assignees of the owner, conditional sale vendor, or mortgagees"; deleted former (10) that read: "(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time that this law takes effect"; inserted (7) pertaining to a secured party assigning an interest in a vehicle; in (8)(a) in first sentence near beginning after "fee" deleted "of $8", in second sentence at beginning substituted "The fee covers" for "The $8 fee includes the cost of filing a satisfaction or release of the security interest and also" and after "cost of entering" substituted "and, upon the subsequent satisfaction or release, of removing the security interest or lien from the electronic record of title" for "the satisfaction or release on the records of the department and of deleting the endorsement of the security interest from the face of the certificate of ownership", and deleted third and fourth sentences that read: "A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer"; in (8)(b) inserted first sentence providing time period when fee is $8; inserted (8)(c) providing for time when fee is $4 and for deposit of fee in general fund; and made minor changes in style. Amendment effective January 1, 2004.

Pursuant to sec. 83(1)(b), Ch. 477, L. 2003, a coordination section, inserted (9) concerning fee for issuance of a new certificate of title upon release of security interest or lien. Because subsection (9) is identical to a subsection inserted by Ch. 562, L. 2003, the coordination instruction was meaningless. Therefore, (9) terminates June 30, 2013.

Chapter 562 in (8)(a) in second sentence at end after "department" deleted "and of deleting the endorsement of the security interest from the face of the certificate of ownership"; and inserted (9) requiring fee of $10 to be paid to department by vehicle owner if, following satisfaction or release of security interest and removal from records, owner requests new certificate of title without security interest or lien on title face and requiring fee to be deposited in motor vehicle information technology system account. Amendment effective July 1, 2003, and terminates June 30, 2013.

Termination Provisions Repealed: Section 81, Ch. 477, L. 2003, repealed sec. 4, Ch. 90, L. 1997, and sec. 2, Ch. 260, L. 1999, which terminated amendments to this section June 30, 2008, and sec. 9, Ch. 394, L. 2001, which terminated amendments to this section June 30, 2011. Effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2001 Amendment: Chapter 394 in (11) in first and second sentences substituted "$8" for "$4", at beginning of fifth sentence inserted "Of the $8 fee, $4" and inserted last sentence concerning deposit of remaining $4 of fee in information technology account; and made minor changes in style. Amendment effective January 1, 2002, and terminates June 30, 2011.

1999 Amendment: Chapter 409 in (2) in both versions after "under" substituted "chapter 4 of this title" for "the provisions of 61-4-101"; and in version effective July 1, 2008, made minor changes in style. Amendment effective October 1, 1999.

Extension of Termination: Section 2, Ch. 260, L. 1999, amended sec. 4, Ch. 90, L. 1997, to extend the termination date for this section from June 30, 2000, to June 30, 2008.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1997 Amendment: Chapter 90 at beginning of (1) and (6) inserted exception clause referring to 61-3-109; in (5), in exception clause, inserted reference to 61-3-109; and made minor changes in style. Amendment terminates June 30, 2000.

Termination: Section 4, Ch. 90, L. 1997, provided that the amendments to this section terminate June 30, 2000.

1993 Amendment: Chapter 482 at beginning of (1) deleted sentence that provided that a security interest in a motor vehicle is not valid against creditors, subsequent purchasers, or encumbrancers unless a lien notice has been perfected as provided in this section and filed on a form approved by the Department, in first sentence, before "security", inserted "voluntary" and before "lien" deleted "other", in fourth sentence substituted "voluntary security interests and liens" for "security interest or lien", and inserted fifth sentence requiring involuntary liens to be filed against the record of the encumbered motor vehicle; in (2), after "9", deleted "and no endorsement on the certificate of title is necessary for perfection"; at beginning of (5) inserted exception clause and near beginning substituted "voluntary security interest or lien" for "security interest or other lien as provided in this section"; at beginning of (6) substituted "Voluntary security interests or lien filings" for "Security interests or other lien filings" and after "perfected" substituted "on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department" for "when received by the department"; near beginning of (9) substituted "notice of any involuntary liens" for "liens, or notice of liens dependent on possession" and after "attachments" deleted "etc."; and made minor changes in style.

1991 Amendment: In (1), near end of first sentence, substituted "perfected" for "filed with the department"; in (3), near middle of first sentence after "perfected", deleted "by filing"; in (5) substituted first and second sentences regarding perfection of a security interest for former first sentence that read: "The filing of a security interest or other lien, as herein provided, perfects a security interest which has attached at the time the certificate of ownership noting such interest is issued" and at beginning of third sentence substituted "Perfection under this section" for "Issuance of a certificate of ownership" and near middle substituted "date of delivery of the lien notice to the county treasurer" for "time of filing"; and inserted (6) regarding perfection of security interests that do not require transfer of ownership.

1989 Amendment: Near end of (10) substituted reference to state general fund for reference to motor vehicle recording account of the state special revenue fund. Amendment effective July 1, 1989.

1987 Amendments: Chapter 361 in (10), in last sentence near middle, substituted "paid to the county treasurer for deposit" for "deposited by the department" and at end inserted "in accordance with 15-1-504".

Chapter 378 in (10), in first and third sentences, increased fee from $3 to $4, in second sentence changed reference to the $3 fee to reference to the $4 fee, and made minor changes in phraseology. Amendment effective January 1, 1988.

1985 Amendments: Chapter 341 in (1) in first sentence, substituted "a lien notice, on a form approved by the department, that shows a security interest has been created" for "the security agreement or other lien instrument that creates the security interest or a true copy thereof certified by a notary public", in second sentence, changed "security agreement" to "security interest", deleted "instrument" after "lien", substituted "accompanied by or specified in the application for a certificate", for "accompanied by the certificate", and after "encumbered", deleted "except in the sale of a new motor vehicle by a duly licensed dealer", inserted third and fourth sentences requiring retention of security interest by secured party and describing contents of sufficient security agreement, in fifth sentence, changed "agreement, lien instrument, or its certified copy" to "interest or lien", after "by entering" deleted "upon its records", and after "secured party" deleted "together with the amount of the security interest and, except as provided in subsection (2), shall endorse the same information", and in sixth sentence changed "security agreement" to "security interest" and after "lien", deleted "instrument"; inserted (2) relating to perfection of security interest in motor vehicle held as inventory; in (3) at beginning of first sentence, changed "security agreement" to "security interest" and after "lien" deleted "instrument"; at end of (4) deleted "Security agreements and other lien instruments filed with the division, and all renewals and assignments thereof, shall be retained by it for a period of 8 years after the maturity date stated in the security agreement, lien instrument, or renewal, or if no maturity date is therein stated, for a period of 13 years after receipt, after which they may be destroyed"; in (5) in first sentence, changed "security agreement" to "security interest" before and deleted "instrument or copy thereof" after "or other lien" and at end substituted "at the time the certificate of ownership noting such interest is issued" for "under the document filed", and in second sentence, at beginning, substituted "Issuance of a certificate of ownership" for "Filing of a security agreement or other lien instrument" and at end deleted "created by the document filed"; and in (10) in first sentence, substituted "security interest" for "security agreement" before and deleted "instrument" after "or other lien", and in third sentence substituted "copy of a certificate of ownership subject to a security interest or other lien" for "copy of a security agreement or other lien instrument", and substituted "any security interest or other lien" for "any instrument".

Chapter 358 in fifth sentence of (1) after "given on the certificate", inserted proviso requiring department to return certificate of ownership to county treasurer where vehicle is to be registered if transfer of ownership and security interest filing are paid by creditor or secured party, and made minor changes in phraseology.

Chapter 503 in (1), (3), (4), and (6) through (10) substituted references to department of justice for references to division of motor vehicles.

1985 Saving Clause: Section 4, Ch. 341, L. 1985, provided that 1985 amendments do not affect any security interest or lien filed or perfected prior to October 1, 1985.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1979 Saving Clause: Section 6, Ch. 502, L. 1979, was a saving clause.

Case Notes

Defrauding Creditor — Elements of Sale Necessary to Establish Ownership: A judgment was entered in favor of the plaintiff, Kovacich, because of failure of Norgaard to make payments for the purchase of farm machinery. Kovacich made an attempt to levy against a truck owned by Norgaard, who, upon learning the truck was going to be seized, removed it from a consignment lot and sold it to McNair, a close friend. McNair did not register the truck in his name or purchase insurance for it. The Department of Justice verified that the truck was registered to Norgaard, and thereafter a Writ of Execution was issued, pursuant to which the truck was seized. Norgaard obtained a Writ of Prohibition preventing sale of the truck. After a hearing, the District Court set aside the Writ of Prohibition, allowing Kovacich to proceed with the sale, and Norgaard appealed, contending District Court error in allowing the sale. The Supreme Court found that resolution of the issue turned on whether the transaction between Norgaard and McNair was an attempt by Norgaard to defraud his creditor. The court held that under 31-2-315 (now repealed), unless the transfer from Norgaard to McNair was accompanied by immediate delivery and followed by an actual and continued change of possession, the transfer "is conclusively presumed to be fraudulent and therefore void against those who are his creditors while he remains in possession". Finding no evidence of immediate delivery or of any actual change of possession, the District Court order allowing sale was upheld. Kovacich v. Norgaard, 221 M 26, 716 P2d 633, 43 St. Rep. 608 (1986).

Notice of Agister's Lien: Failure of automobile repairman to file copy of asserted agister's lien with registrar of motor vehicles (new Department of Justice) as required by subsection (1) of this section rendered that lien invalid as against bank holding recorded security interest in vehicle repaired and those seizing vehicle on the bank's behalf. Parker v. West, 161 M 170, 505 P2d 94 (1973).

Notice of Prior Interest: Where auto repairman failed to ascertain true ownership of auto before making repairs, the filing of conditional sales contract with the registrar of motor vehicles (now Department of Justice) by assignee prior to repairman's lien established a dominant interest under subsection (4) of this section. Williamson v. Skerritt, 141 M 422, 378 P2d 215 (1963).

Innocent Purchaser May Rely on Record Ownership: Under this section, an innocent purchaser of an automobile relying on the record ownership will be protected, particularly where he dealt with the record owner who was in the possession of the car. A mortgage covering an automobile given by one not in the chain of title, though recorded, is not constructive notice to subsequent purchasers. Rigney v. Swingley, 112 M 104, 113 P2d 344 (1941).

Delay by Conditional Sale Vendor in Delivering Certificate of Title: Under subsection (e) of section 53-110, R.C.M. 1947 (now subsection (5) of this section), a demand was required before one could be pronounced guilty of withholding delivery of a certificate of title, and the time the owner delays making application for duplicate certificate, under section 61-3204, R.C.M. 1947, defendant contending he does not have original, should be deducted. Anderson v. Commercial Credit Co., 110 M 333, 101 P2d 367 (1940).

Liability for Personal Injuries: An automobile dealer assigned a conditional sales contract covering a truck to a finance corporation. The truck was involved in a collision with a car parked along the highway, and plaintiff was injured. The finance corporation was not liable for damages under plaintiff's theory that as the registered owner of the truck it should be liable. Coombes v. Letcher, 104 M 371, 66 P2d 769 (1937).

Purchaser From Established Dealer Protected: A finance company, the assignee of conditional sale contract, left a car covered by a contract with an established dealer who was a conditional vendee and who sold the car to innocent purchaser. In an action for possession of the car, although the conditional sale contract had been filed with the registrar, the finance company was estopped to deny the dealer's apparent authority to sell, either as owner or as agent of the conditional vendor. It is not incumbent upon one purchasing from a regular dealer to make inquiry concerning the title. Rasmussen v. Lee & Co., Inc., 104 M 278, 66 P2d 119 (1937).

61-3-106. Report of stolen and recovered motor vehicles — accessibility — insurance fraud and theft reporting — immunity — definitions.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) in first sentence substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle" and in fourth sentence after "motor vehicles" inserted "trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles"; in (1) in first and third sentences and in (2) near beginning substituted "motor vehicle" for "vehicle"; in (3) near end, (7)(b)(i), (7)(b)(iv) in two places, and (7)(c) in two places after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in (1) in first sentence at end after "by the" substituted "department on the state's criminal justice information system" for "law enforcement network system (LENS)", in third sentence near beginning after "information" substituted "the state's criminal justice information system" for "LENS", and in fourth sentence at beginning substituted "The department shall" for "It shall also be the duty of LENS to"; in (2) deleted former second sentence that read: "Before issuing a certificate of ownership, the department shall check the vehicle identification number on the motor vehicle to be registered against the state automated stolen vehicle file"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1991 Amendment: Inserted (3) relating to release of insurance information; inserted (4) relating to privileged information and exemption from subpoena duces tecum; inserted (5) relating to release of information by governmental agency; inserted (6) relating to immunity from liability for release of information; and inserted (7) providing definitions.

1985 Amendments: Chapter 233 in (1) near middle of first sentence, after "to make", substituted "an immediate entry regarding each vehicle theft or recovery into the state automated stolen vehicle file maintained by the law enforcement network system (LENS)" for "immediate report to the division of all motor vehicles reported to him as stolen or recovered, upon forms provided for by the division", at beginning of third sentence, after "Upon", substituted "entry" for "receipt" and at end of third sentence, after "information", substituted "LENS and the national crime information center must be allowed immediate access to the state automated stolen vehicle file" for "the division shall file it in an index to be known as the stolen and recovered motor vehicle index", in last sentence after "duty of", substituted "LENS" for "the division", at end of (1) deleted "The division shall prepare once a month a list of all motor vehicles stolen or recovered during the previous month and forward a copy of it to every sheriff and all police departments in cities of the first, second, and third class"; at beginning of (2) substituted "The state automated stolen vehicle file must be made available" for "The list shall also be forwarded", at end of first sentence of (2) added "through access to the national crime information center", near middle of (2) after "check the" substituted "vehicle identification number" for "motor and serial number", and at end of (2) substituted "the state automated stolen vehicle file" for "the stolen and recovered vehicle index". (For former section text see sec. 28, Ch. 421, L. 1979.)

Chapter 503 substituted reference to department of justice for reference to division of motor vehicles in last sentence of (2).

61-3-107. Identification number for trailers, campers, and other motor vehicles.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in (1) in two places after "semitrailer" inserted "pole trailer"; in (2) in five places, (3) in three places, and (4) in two places substituted references to motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile for references to vehicle; in (3) near middle of second sentence substituted "motor vehicle" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1) in two places after "semitrailer" deleted "housetrailer"; in (2) in first sentence after "issue" deleted "a certificate of ownership or", after "reissue" deleted "a certificate of ownership or", and before "vehicle" inserted "motor"; and in (4) near middle after "application for" deleted "a certificate of ownership or" and near end after "in any" deleted "a certificate of ownership or a". Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in (2) in first sentence in two places and in (4) in two places after "certificate of ownership" inserted "or a certificate of title"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1991 Amendments: Chapter 272 in (1), after "assigned an identification number by the department", deleted "upon registration of such motor vehicle. The owner or other person lawfully in possession of such motor vehicle shall stamp such number so assigned by the department upon the principal right frame member of said motor vehicle near the front end thereof where it may be clearly and readily seen, and said stamping shall be promptly accomplished after notice of the assigned number by the department. The department may withhold registration until satisfactory proof by affidavit of such stamping is filed with it"; inserted (2) relating to special identification number, application, and fee; inserted (3) relating to restoring original identification marks; inserted (4) relating to certificate of inspection; and made minor changes in style.

Chapter 715 in (1), in first sentence after "housetrailer", inserted "or camper" and in second sentence, after "upon the", inserted "entrance of the camper or on the" (latter amendment rendered void by Ch. 272); and made minor changes in style.

Effective Date: Section 1, Ch. 604, L. 1991, amended 1-2-201 to provide that "Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein". The Code Commissioner has determined that pursuant to sec. 1, Ch. 604, L. 1991, the amendment to this section made by Ch. 272, L. 1991, is effective January 1, 1992.

Saving Clause: Section 9, Ch. 715, L. 1991, was a saving clause.

Applicability: Section 10, Ch. 715, L. 1991, provided: "[This act] applies to a newly manufactured camper sold by a recreational vehicle dealer or transferred after September 30, 1991."

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in four places.

61-3-108. Disposition of fees.

Compiler's Comments

1989 Amendment: Near end substituted reference to general fund for reference to a motor vehicle recording account of the state special revenue fund; and deleted former (2) that read: "(2) Funds deposited in the motor vehicle recording account of the state special revenue fund may be expended for the following purposes:

(a) to pay the salaries and operating expenses associated with performing duties under this title, including the manufacture and delivery of license plates;

(b) to fund the forensic science activities of the department of justice;

(c) to fund the Montana law enforcement academy;

(d) to fund the law enforcement teletype system of the department of justice;

(e) to fund the Montana criminal law information center to the extent that all of the above programs have been previously funded and funds remain available." Amendment effective July 1, 1989.

1985 Amendment: In (1) at beginning substituted "department under this title, unless otherwise provided" for "division"; in (2)(a) substituted "associated with performing duties under this title" for "of the division"; in (2)(b) substituted "activities" for "division"; in (2)(c) at end deleted "bureau"; and in (2)(d) deleted "bureau" after "teletype system".

1983 Amendments: Chapter 268 deleted former (3), which read: "Any fund balance remaining in the motor vehicle recording account at the end of a biennium that has not been appropriated for that biennium must be transferred to the general fund."

Chapter 277 substituted references to state special revenue fund for references to earmarked revenue fund.

Composite Section: This section was amended by Ch. 421 and Ch. 654, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Chapter 421 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently, the language usage of Ch. 654 was chosen.

61-3-109. Electronic title, lien filing, and registration.

Compiler's Comments

2021 Amendment: Chapter 566 in (2) at end substituted "the motor vehicle information technology system account provided for in 61-3-550" for "the highway nonrestricted account provided for in 15-70-125". Amendment effective July 1, 2021.

Preamble: The preamble attached to Ch. 566, L. 2021, provided: "WHEREAS, the Legislature is concerned with the delays associated with transferring defendants to state custody after imposition of sentence. When the Department of Corrections does not timely assume custody of defendants after sentencing, local government facilities may lack capacity to hold other persons. It is the expectation of the Legislature that the Department of Corrections will ensure that defendants sentenced for one or more felonies will not remain in a county detention facility for more than 10 business days after sentencing unless unusual circumstances arise; and

WHEREAS, with respect to the Department of Corrections, the Legislature has been advised that the vocational opportunities at the Montana Women's Prison are inadequate, particularly when compared to the offerings at the Montana State Men's Prison. The Legislature is mindful that the campuses may face different limitations in what programming may be offered based on location, footprint, and facilities; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 that the Department of Corrections had drug treatment beds that were not fully utilized in fiscal year 2019, which resulted in a payment for failure to allow the contractor to operate at 75% capacity; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned that the Department of Corrections has yet to fully implement statutory directives to measure the effectiveness of its programs—both those provided by the Department of Corrections employees and those provided by contractors. In 2017, the Legislature directed the Department of Corrections to conduct evaluations of programs to determine their impact on reducing recidivism. This work, in addition to other requirements in Senate Bill No. 59 (2017), appears to be unaddressed or incomplete. Moreover, the Department of Corrections' definition of recidivism is an inadequate measure for the determination of effectiveness of its programming. The Legislature is interested in having data on crimes committed by those discharged from the Department of Corrections' custody, not merely "the rate at which adult offenders return to prison in Montana for any reason within three years of their release from prison", which fails to address reentry outcomes of many individuals committed to the Department of Corrections' custody and evaluates a truncated time period; and

WHEREAS, with respect to the Office of State Public Defender, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 regarding billing practices by contractors, including the failure to require the use of assistants for nonattorney tasks, and allowing contractors to work a number of hours each year that may induce attorneys to be contractors instead of the Office of State Public Defender employees; and

WHEREAS, with respect to the Office of State Public Defender, it is the sense of the Legislature that the Office of State Public Defender expends its appropriation, in part, to perform tasks that are not required by the state or federal constitution or by statutory directive, such as in section 47-1-104(4), MCA. Given limited resources and the demands on the Office of State Public Defender staff, the Legislature believes that it is incumbent on the Office of State Public Defender management to limit the scope of its work to what is required by statute and the constitution; and

WHEREAS, with respect to the Office of State Public Defender, neither through its employees nor its contractors should the Office of State Public Defender impair the Legislature's intent to have defendants share in the costs of counsel provided by the Office of State Public Defender. The Office of State Public Defender employees and contractors should not move the court to waive assessments under section 46-8-113, MCA, unless the defendant can show a compelling reason why they cannot pay this assessment over the course of the sentence; and

WHEREAS, in House Bill No. 640 (2019), the Legislature established a mechanism to ensure that sexual abuse reports generated by those with mandatory reporting responsibilities are provided to county attorneys and that county attorneys report to the Attorney General on the status of the investigations and prosecutions generated from these referrals. It is the sense of the Legislature that the Department of Justice has not undertaken a thorough review of the reports generated pursuant to section 41-3-210(3), MCA, and the Legislature urges the Department of Justice to do so; and

WHEREAS, the Legislature has taken a number of steps to strengthen the laws and investigative response to address human trafficking and sexual exploitation of minors. Given the collective commitment in the legislative and executive branches to combat these crimes, the Legislature needs greater clarity on whether its appropriations and statutory changes are having an impact; and

WHEREAS, the Legislature expresses its concern that the backlog of testing on sexual assault kits must be eliminated as soon as possible; and

WHEREAS, the definition of recidivism utilized by the judicial branch in evaluating the effectiveness of treatment courts is different than the definition used by the Department of Corrections for its programming, making it difficult to compare the effectiveness of treatment courts to in-patient treatment. It is the sense of the Legislature that a single definition of recidivism would make it possible to have a consistent evaluation of effectiveness; and

WHEREAS, the Legislature believes that expungement of a conviction for driving under the influence of drugs or alcohol will impair the correctional and public safety goals that the Legislature aims to achieve through the Section D appropriation."

2013 Amendment: Chapter 358 inserted (1)(f) concerning expedited title services; inserted (2) concerning deposit of expedited title services fee; and made minor changes in style. Amendment effective October 1, 2013.

2005 Amendment: Chapter 596 in (1) substituted "an authorized agent" for "the department's authorized agent" and after "treasurer" inserted "or a person"; in (2) at end inserted "or a person"; in (3) at beginning substituted "production and certification by a court or an authorized agent of a motor vehicle record generated from" for "search of", after "registration" inserted "maintained", and at end deleted "its agents, and county treasurers"; deleted former (2) that read: "(2) The department shall adopt rules to implement the pilot program. The rules must include procedures designed to constitute constructive notice of electronically filed and perfected liens and electronically maintained ownership records to subsequent purchasers, secured parties, or lienholders from the date of a lien's perfection or transfer of ownership"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in (1) in introductory clause before "implement" inserted "develop and"; inserted (1)(a) and (1)(b) pertaining to electronic transmission of data and substantiation of electronic record transactions; in (1)(c) substituted "the search of electronic records of title and registration by the department, its agents, and county treasurers" for "electronic search of motor vehicle titles, electronic filing and perfection of liens on motor vehicles, and electronic registration of motor vehicles"; inserted (1)(d) pertaining to security interests; inserted (1)(e) pertaining to department certification and audit of its agents; in (2) in second sentence near middle after "electronically" substituted "maintained ownership records" for "registered titles", after "purchasers" substituted "secured parties, or lienholders" for "encumbrancers", and at end substituted "transfer of ownership" for "title registration"; and made minor changes in style. Amendment effective January 1, 2004.

Termination Provisions Repealed: Section 81, Ch. 477, L. 2003, repealed sec. 4, Ch. 90, L. 1997, and sec. 2, Ch. 260, L. 1999, which terminated this section June 30, 2008. Effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1999 Amendment: Chapter 260 in (1) after "allowing" inserted "search of motor vehicle titles, electronic" and at end inserted "and electronic registration of motor vehicles"; in (2) in second sentence after "liens" inserted "and electronically registered titles" and at end inserted "or title registration"; and made minor changes in style. Amendment effective April 5, 1999.

Preamble: The preamble attached to Ch. 260, L. 1999, provided: "WHEREAS, under Chapter 90, Laws of 1997, the Department of Justice was authorized and empowered to undertake a pilot program for the electronic filing and perfection of motor vehicle liens; and

WHEREAS, the Department of Justice has established a pilot program and contracted with various parties for electronic and related services with supporting user fees; and

WHEREAS, section 61-3-101(5), MCA, authorizes the Department of Justice to maintain motor vehicle registration by electronic recording and storage; and

WHEREAS, the Legislature recognizes that electronic search, filing and perfection of liens, and registration of title on motor vehicles can result in more efficiency and cost savings; and

WHEREAS, the Legislature desires to expand the scope and duration of the current pilot program to determine feasibility before committing department resources of a more comprehensive and permanent program; and

WHEREAS, the pilot program will be supported by user fees and private capital investment.

THEREFORE, the Legislature of the State of Montana finds it appropriate to expand the scope and extend the duration of the motor vehicle electronic record pilot program."

Extension of Termination: Section 2, Ch. 260, L. 1999, amended sec. 4, Ch. 90, L. 1997, to extend the termination date for this section from June 30, 2000, to June 30, 2008.

1997 Statement of Intent: The statement of intent attached to Ch. 90, L. 1997, provided: "A statement of intent is required for this bill because [section 1] [61-3-109] requires the department of justice to adopt rules implementing a pilot program for the electronic filing and perfection of motor vehicle liens. The rules must provide procedures that will constitute constructive notice of the electronically filed and perfected lien to subsequent purchasers or encumbrancers."

Termination: Section 4, Ch. 90, L. 1997, provided: "[This act] terminates June 30, 2000."

61-3-110. Contract rental price adjustment — not sale or security interest.

Compiler's Comments

2005 Amendment: Chapter 542 in two places after "semitrailer" inserted "pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; and made minor changes in style. Amendment effective January 1, 2006.

Effective Date: This section is effective October 1, 2003.

61-3-111. Motor vehicle division administrative fees.

Compiler's Comments

2019 Amendment: Chapter 295 near middle after "fees" inserted "and donations". Amendment effective January 1, 2020.

2017 Enactment — Coordination: The enactment of this section by sec. 3, Ch. 384, L. 2017, was replaced by sec. 26(2), Ch. 384, L. 2017, a coordination section.

Effective Date: Section 39, Ch. 384, L. 2017, provided that this section is effective January 1, 2018.

Severability: Section 38, Ch. 384, L. 2017, was a severability clause.

61-3-112. Motor vehicle division administration state special revenue account.

Compiler's Comments

Effective Date: Section 39, Ch. 384, L. 2017, provided that this section is effective July 1, 2017.

Severability: Section 38, Ch. 384, L. 2017, was a severability clause.

61-3-115. Customer service accounts — electronic updates or changes to motor vehicle, driver, or dealer licensing records.

Compiler's Comments

2007 Amendment: Chapter 329 inserted (1)(c) concerning electronic record; and made minor changes in style. Amendment effective January 1, 2008.

Effective Date: Section 168(2), Ch. 596, L. 2005, provided that this section is effective July 1, 2005.

61-3-116. Services that may be performed by authorized agent.

Compiler's Comments

2013 Amendment: Chapter 196 in (3) after "shall" inserted "within the time period prescribed in the authorized agent agreement"; and made minor changes in style. Amendment effective July 1, 2013.

2007 Amendments — Composite Section: Chapter 44 in (5) near end after “county where” substituted “the” for “a”. Amendment effective October 1, 2007.

Chapter 329 in (1) near end of first sentence after “under” deleted “Title 23, chapter 2, parts 5, 6, and 8 or”; in (5) in two places before references to a vehicle inserted references to an owner; and deleted former (6) that read: “(6) As used in this section, “person” has the meaning provided in 61-1-101(1)(b).” Amendment effective January 1, 2008.

Effective Date: Section 168(2), Ch. 596, L. 2005, provided that this section is effective July 1, 2005.

61-3-117. Payment of fees by credit card or other commercially acceptable means.

Compiler’s Comments

Effective Date: Section 168(2), Ch. 596, L. 2005, provided that this section is effective July 1, 2005.

61-3-118. Motor vehicle electronic commerce operating account.

Compiler’s Comments

2017 Amendment: Chapter 384 in (2) at beginning inserted “A portion of the”. Amendment effective July 1, 2017.

Severability: Section 38, Ch. 384, L. 2017, was a severability clause.

Effective Date: Section 168(2), Ch. 596, L. 2005, provided that this section is effective July 1, 2005.

61-3-119. Address of record — basis for change — acknowledgment of current address and service — national change of address program.

Compiler’s Comments

Effective Date: Section 168(2), Ch. 596, L. 2005, provided that this section is effective July 1, 2005.

Part 2

Certificates of Title

Part Collateral References

Uniform Motor Vehicle Certificate of Title and Anti-Theft Act, 11 U.L.A. 421 through 476.

61-3-201. Certificate of title required — nonresident title — exclusions.

Compiler’s Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 522, L. 2023. Amendment effective May 18, 2023.

2013 Amendment: Chapter 370 in (2)(c) after “by a nonresident” substituted “or a nonresident who has an interest in real property in Montana who chooses not to register a motor vehicle in this state as provided in 61-3-303” for “of this state”. Amendment effective October 1, 2013.

2011 Amendment: Chapter 209 inserted (2)(l) referring to golf carts; and made minor changes in style. Amendment effective January 1, 2012.

2005 Amendments — Composite Section: Chapter 542 in (1) in two places after “motor vehicle” inserted “trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile”; in (2), (2)(a) in two places, (2)(b), (2)(c), and (2)(d) substituted references to motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile for references to vehicle; in (2)(g) after “equipment” inserted “or a motor vehicle or trailer designed and used to apply fertilizer to agricultural land”; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (2)(b) at beginning inserted exception clause; inserted (2)(j) concerning mobile homes or housetrailers; inserted (2)(k) concerning manufactured home declared an improvement; deleted former (3) that read: “(3) The certificate of title is valid until canceled by the department upon a transfer of any interest shown in the certificate of title, and annual renewal is not needed”; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 deleted former (1) through (6) that read: “(1) Upon a transfer of any interest in a motor vehicle registered under the provisions of this chapter, the person whose interest is to be transferred shall sign the certificate of ownership issued for the vehicle in the appropriate space provided, and the signature must be acknowledged before the county treasurer, a deputy county treasurer, an elected official authorized to acknowledge signatures, an employee of the department, or a notary public.

(2) Within 20 calendar days after endorsement, the transferee shall forward both the endorsed certificate of ownership with the odometer mileage statement required under 61-3-206 and the certificate of registration, together with the information required under 61-3-202, to the county treasurer, who shall forward them to the department. The department may not issue a certificate of ownership or certificate of registration until the outstanding certificates are surrendered to that office or their loss is established to its reasonable satisfaction. Failure to make application within the 20-day grace period subjects the transferee to a penalty of $10. The county treasurer shall collect the penalty at the time of registration and forward the penalty fee to the department of revenue for deposit in the state general fund. The penalty is in addition to the fees otherwise provided by law. If the transferee does not make application within 25 days, a creditor or secured party may pay the fees for the transfer of title and filing of security interest or lien in order to have title transferred to the transferee and have the security interest or lien filed. The creditor or secured party is not liable for the penalty, registration fees, or taxes. The department shall return the certificate of title to the county treasurer as provided in 61-3-103(1). When the certificate of ownership is returned by the department to the county treasurer, the treasurer shall hold the certificate of ownership until the vehicle is properly registered.

(3) In the event of a transfer by operation of law of any interest in a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is transferred, the executor, administrator, receiver, trustee, sheriff, or other representative or successor in interest of the person whose interest is transferred shall forward to the department an application for a certificate of ownership in the form required by the department, together with a verified or certified statement of the transfer of interest. The statement must set forth the reason for the involuntary transfer, the interest transferred, the name of the person to whom the interest is to be transferred, the process of procedure effecting the transfer, and other information requested by the department. Evidence and instruments otherwise required by law to effect a transfer of legal or equitable title to or an interest in chattels must be furnished with the statement. If the department is satisfied that the transfer is regular and that all formalities required by law have been complied with, it shall send to the owner, conditional sales vendor, lessor, mortgagee, and other lienor, as shown by its records, notice of the intended transfer and, not less than 5 days after sending notice, shall issue a new certificate of ownership and certificate of registration to the transferee. The notice required by this section is complied with by deposit in the U.S. mail of the notice, postage prepaid, addressed to the person at the respective address shown on its records.

(4) When the vehicle certificate of ownership that is involuntarily transferred is not registered in this state, the procedure in subsection (3) must be followed in applying for a new certificate of ownership and certificate of registration. However, in lieu of the statement required in subsection (3), the department may accept an affidavit of repossession on the form provided by the state in which a lien has been perfected and the department need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled to the certificates.

(5) (a) If the owner of one or more motor vehicles, trailers, semitrailers, or housetrailers registered under this chapter and not exceeding a combined value of $15,000 dies without leaving other property necessitating the procuring of letters of administration or letters testamentary, the surviving spouse or other heir unless the property is by will otherwise bequeathed may secure transfer of the decedent's certificate of ownership and the certificate of registration for the vehicle.

(b) The person seeking transfer of the certificate of ownership shall file an affidavit with the department setting forth the fact of survivorship and the name and address of any other heirs and other facts as are necessary under subsection (5)(a) to entitle the affiant to a transfer.

(c) The department is authorized to transfer the certificate of ownership and certificate of registration, subject to all security interests shown by its records, upon receipt of an affidavit showing that the affiant is entitled to a transfer under the provisions of subsection (5)(a).

(6) Subsection (5) does not prevent a secured party from assigning the secured party's interest in a motor vehicle registered under the provisions of this chapter to any other person without the consent of and without affecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any assignment by a secured party of the secured party's security interest in any motor vehicle registered under this chapter, a copy of the assignment must be filed with the department and a record of the assignment must be made in its records"; inserted

(1) requiring an owner to apply for a certificate of title; inserted (2) listing vehicles exempt from the requirements of this part; in (3) in two places substituted "certificate of title" for references to certificate of ownership; deleted former (8) that read: "(8) (a) Upon its determination that a certificate of ownership or a registration receipt contains an error or that the applicant has paid the required fees and taxes with an insufficient funds check and if the department has been notified of that fact by the county attorney, the department may cancel the certificate of ownership or receipt and, in the case of an error, issue a replacement for the erroneous certificate or receipt if the owner has returned the certificate or receipt to be canceled. If the owner fails to return to the department the certificate of ownership, the registration receipt, or the license plate, the department shall direct a peace officer or department employee to secure and return the certificate, receipt, or license plate to the department.

(b) Any person who fails to return a certificate of ownership or a registration receipt that contains an error or that has been canceled by the department because of an insufficient funds check, as provided in subsection (8)(a), after receiving actual notice of the department's demand for the return of the certificate or receipt, as required by subsection (8)(a), is guilty of a misdemeanor and upon conviction may be fined an amount not to exceed $500"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2002 Amendment: Chapter 13 in (2) in fourth sentence at end inserted "and forward the penalty fee to the department of revenue for deposit in the state general fund"; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

1991 Amendments: Chapter 604 near end of (1) inserted "an elected official authorized to acknowledge signatures, an employee of the department"; in (3), in last sentence, substituted "U.S. mail" for "post office in Deer Lodge, Montana"; in (8)(a), in four places after reference to certificate of ownership, inserted reference to registration receipt, in first sentence, after "error", substituted "or that the applicant has paid the required fees and taxes with an insufficient funds check and if the department has been notified of that fact by the county attorney" for "caused by the department" and near end, before "issue", inserted "in the case of an error", and inserted second sentence requiring a peace officer or Department employee to secure and return a certificate, receipt, or plate in certain cases; in (8)(b), in two places after reference to certificate of ownership, inserted reference to registration receipt and after "error" substituted "or that has been canceled by the department due to an insufficient funds check, as provided in subsection (8)(a)" for "caused by the department"; and made minor changes in style. Amendment effective July 1, 1991.

Chapter 724 in (1), after "space provided", deleted "upon the reverse side of the certificate"; in (3), near end of first sentence after "form required", substituted "by the department" for "for an original application for a certificate of ownership"; in (4), near middle after "registration", inserted "however, in lieu of the statement required in subsection (3), the department may accept an affidavit of repossession on the form provided by the state in which a lien has been perfected and"; and made minor changes in style.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

1989 Amendments: Chapter 104 inserted (8) providing for cancellation and reissuance of a certificate containing an error caused by Department if owner returns certificate and creating a misdemeanor offense for failure to return certificate following demand for its return; and made minor changes in grammar and phraseology.

Chapter 363 in (1), near end, inserted references to County Treasurer and Deputy County Treasurer; and made minor changes in grammar and phraseology. Amendment effective March 29, 1989.

1985 Amendments: Chapter 324 in (2) near beginning, after "certificate of ownership", inserted "with the odometer mileage statement required under 61-3-206".

Chapter 358 in (2) inserted last four sentences describing proper procedure for title transfer and filing of security interest or lien by creditor or secured party after transferee fails to apply for transfer of interest within 25 days.

Chapter 503 in (2) through (7) substituted references to department of justice for references to division of motor vehicles.

Case Notes

Determination of Vehicle Ownership — Installment Sales Contract Not Indicative of Ownership for Insurance Purposes: Jordet, an adult, jointly purchased a vehicle for the exclusive use of his minor sister-in-law, who made the downpayment, repaid registration and license fees, made the only installment payment, purchased separate insurance, possessed the only keys, and maintained sole use and control of the vehicle. The District Court decided that the term "owned vehicle" in Jordet's automobile policy included the jointly owned vehicle and that Jordet's signature on the installment sales contract conclusively placed the vehicle under his policy. The Supreme Court reversed, noting that the purchase of property and the insurance of property are distinct transactions and that Jordet's signature on the sales contract did not establish ownership for insurance purposes. Implicit in ownership is the ability to control how, when, where, and by whom the property will be used. Since Jordet never exercised any of the indicia of ownership that would be compatible with his insuring the vehicle, it was not an "owned vehicle" under the terms of his policy. Truck Ins. Exch. v. Nelson, 228 M 233, 743 P2d 572, 44 St. Rep. 1482 (1987).

Defrauding Creditor — Elements of Sale Necessary to Establish Ownership: A judgment was entered in favor of the plaintiff, Kovacich, because of failure of Norgaard to make payments for the purchase of farm machinery. Kovacich made an attempt to levy against a truck owned by Norgaard, who, upon learning the truck was going to be seized, removed it from a consignment lot and sold it to McNair, a close friend. McNair did not register the truck in his name or purchase insurance for it. The Department of Justice verified that the truck was registered to Norgaard, and thereafter a Writ of Execution was issued, pursuant to which the truck was seized. Norgaard obtained a Writ of Prohibition preventing sale of the truck. After a hearing, the District Court set aside the Writ of Prohibition, allowing Kovacich to proceed with the sale, and Norgaard appealed, contending District Court error in allowing the sale. The Supreme Court found that resolution of the issue turned on whether the transaction between Norgaard and McNair was an attempt by Norgaard to defraud his creditor. The court held that under 31-2-315 (now repealed), unless the transfer from Norgaard to McNair was accompanied by immediate delivery and followed by an actual and continued change of possession, the transfer "is conclusively presumed to be fraudulent and therefore void against those who are his creditors while he remains in possession". Finding no evidence of immediate delivery or of any actual change of possession, the District Court order allowing sale was upheld. Kovacich v. Norgaard, 221 M 26, 716 P2d 633, 43 St. Rep. 608 (1986).

Transfer of Car Ownership for Purposes of Garage Liability Insurance Policy: In action by insurance company to determine rights and obligations under garage liability insurance policy issued to dealer in relation to vehicle sold by dealership that later was involved in accident without purchaser acquiring registration or certificate of title, the court held that change in ownership occurred under a purchase contract although the certificate of title had not transferred. The presumption in 61-3-105 (now repealed, but see 61-3-435) can be overcome by the facts in a particular case. Section 61-3-201 has no effect on ownership transfer for insurance purposes. Prospector Chevrolet, Inc., delivered the vehicle to Clive Lapp. Under the U.C.C., the sale was complete and Lapp became the owner. Lapp had the right to use or dispose of the automobile as he wished. Prospector had relinquished all its legal rights to the vehicle even though it still had the statutory duties relating to transfer of certificate of ownership. Legal title passed to Lapp on date of delivery. Safeco Ins. Co. v. Lapp, 215 M 196, 695 P2d 1310, 42 St. Rep. 289 (1985).

Coverage of Liability Policy: An automobile dealership failed to comply with this section by failing to send a certificate of ownership, certificate of registration, and application for registration upon sale to the registrar of motor vehicles. The automobile was subsequently involved in an accident. The failure to comply with the terms of this section did not extend the coverage of the automobile dealership's "garage" liability insurance to the buyer of the automobile. Universal Underwriter's Ins. Co. v. St. Farm Mut. Auto. Ins. Co., 166 M 128, 531 P2d 668 (1975).

Pledge of Title Certificate: In action by administratrix to recover amount of automobile purchase loan made by decedent to defendant, it was a question for the jury whether the title certificate was first surrendered as evidence of a pledge and then returned as evidence of payment. Olson v. McLean, 132 M 111, 313 P2d 1039 (1957).

Attorney General's Opinions

Motor Vehicle Dealer Not to Obtain "Title Only" on Vehicle in Inventory: A motor vehicle dealer may not obtain a "title only" (meaning receipt of title without registration or payment of taxes) from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle. 40 A.G. Op. 70 (1984).

61-3-202. Certificate of title — issuance — contents — joint ownership.

Compiler's Comments

2021 Amendment: Chapter 130 in (4) near end after "tenants in common" inserted "and not as transfer on death"; and made minor changes in style. Amendment effective October 1, 2021.

2005 Amendment: Chapter 542 in (1)(c), (1)(e), and (1)(f) in three places substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle"; in (2)(b) after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 deleted former (1) that read: "(1) Upon completion of the application for certificate of ownership, on forms furnished by the department, the county treasurer shall forward one copy of the application to the department, which shall enter the information contained in the application upon the corresponding records of its office and, except as provided in 61-3-103(1) and 61-3-201(2) concerning applications by creditors or secured parties, shall furnish the applicant a certificate of ownership subject to the provisions of 61-3-103"; in (1) in introductory clause after "certificate of" substituted "title issued by the department" for "ownership" and after "contain" deleted "on the face thereof"; in (1)(b) before "address" deleted "mailing and residence" and after "owner" deleted "or the names and addresses of joint owners"; inserted (1)(c) pertaining to mileage disclosure; substituted (1)(d) pertaining to order of names and addresses on certificate for former language that read: "except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the registered vehicle"; deleted former (1)(d) and (1)(e) that read: "(d) a description of the registered vehicle, including the year built and vehicle identification number;

(e) except as provided in 61-3-103, the filing date of any lien against such motor vehicle"; inserted (1)(e) through (1)(g) requiring a certificate of title to contain the title number, jurisdiction where owner resides, and transaction record number; in (1)(h) substituted "any other data that the department prescribes" for "such other statement of facts as may be determined by the department"; inserted (2) pertaining to cancellation of a certificate by the department; inserted (3) pertaining to actions to be taken by the department with respect to a title containing substantial errors; in (4) near middle after "owner" deleted "who are members of the same immediate family" and after "certificate of" substituted "title" for "ownership"; deleted former (4) through (11) that read: "(4) Upon receipt of the application, the department shall recheck the application. If there is any error in the application, it may be returned to the owner or to the county treasurer to effectively secure the correction of such error, who shall return the same to the department.

(5) The certificate of ownership shall contain a notice to the department of a transfer of interest of the owner and such other statements as may be determined by the department.

(6) A salvage vehicle for which a certificate of ownership is sought must be inspected for the vehicle identification number to authenticate the identity of the vehicle before a certificate of ownership can be issued. The inspection may not attest to the roadworthiness or safety condition of the vehicle and must be performed by department employees or peace officers designated by the department.

(7) The department may contract with a person or entity for use of a facility as a regional inspection site for salvage vehicles.

(8) To defray the cost of the vehicle inspection program, the department shall collect a fee of $18.50 for the inspection of each salvage vehicle for which a certificate of ownership is sought. The fee must be distributed as follows:

(a) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the state treasurer for deposit in the general fund.

(b) A portion of the inspection fee for each salvage vehicle must be remitted by the department to the inspection site that has contractually permitted the use of its facility for the inspection.

(9) (a) An authorized inspector may seize and hold a vehicle:

(i) the inspector has probable cause to believe is stolen;

(ii) on which a motor number or vehicle identification number has been defaced, altered, removed, covered, destroyed, or obliterated; or

(iii) that does not conform with the vehicle identification number on the certificate of ownership.

(b) A seized vehicle may be held until the identity of the vehicle is established and arrangements are made for its lawful disposition. An authorized inspector may use any means necessary to identify a vehicle by its vehicle identification number or numbers.

(10) The department may not issue a certificate of ownership for a vehicle until the identity of the vehicle is established.

(11) The department may adopt rules for the implementation and administration of the vehicle inspection program"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1991 Amendments: Chapter 604 in (2)(b), before "address", substituted "mailing and residence" for "complete"; in (4), in second sentence before "county", inserted "owner or to the"; and made minor change in style. Amendment effective July 1, 1991.

Chapter 725 in (2)(d) substituted "vehicle identification number" for "serial number"; inserted (6) concerning issuance of vehicle identification number for salvage vehicle; inserted (7) authorizing a contract for inspection facility; inserted (8) providing for the collection and distribution of a salvage vehicle inspection fee; inserted (9) providing for seizure of certain vehicles; inserted (10) requiring identity of vehicle for issuance of certificate of ownership; and inserted (11) authorizing adoption of rules.

1991 Statement of Intent: The statement of intent attached to Ch. 725, L. 1991, provided: "A statement of intent is necessary for this bill because it grants the department of justice additional rulemaking authority with respect to the implementation and administration of a vehicle identification and inspection program and additional rulemaking authority with respect to salvage vehicles."

Effective Date: Section 1, Ch. 604, L. 1991, amended 1-2-201 to provide that "Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein". The Code Commissioner has determined that pursuant to sec. 1, Ch. 604, L. 1991, the amendment to this section made by Ch. 725, L. 1991, is effective January 1, 1992.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

1985 Amendments: Chapter 341 in (2)(c) and (2)(e) changed "61-3-103(2)" to "61-3-103".

Chapter 358 in (1) near middle after "office and", inserted exception relating to filing of security interests and transfer of interest applications by creditors or secured parties.

Chapter 503 in (1), (2)(f), (4), and (5) substituted references to department of justice for references to division of motor vehicles.

Attorney General's Opinions

Motor Vehicle Dealer Not to Obtain "Title Only" on Vehicle in Inventory: A motor vehicle dealer may not obtain a "title only" (meaning receipt of title without registration or payment of taxes) from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle. 40 A.G. Op. 70 (1984).

61-3-203. Fee for original certificate of title — disposition.

Compiler's Comments

2021 Amendment: Chapter 566 in (1) and (4) near beginning substituted "2028" for "2026"; inserted (3) regarding deposit of the fee for expedited certificates of title; and made minor changes in style. Amendment effective July 1, 2021.

Preamble: The preamble attached to Ch. 566, L. 2021, provided: "WHEREAS, the Legislature is concerned with the delays associated with transferring defendants to state custody after imposition of sentence. When the Department of Corrections does not timely assume custody of defendants after sentencing, local government facilities may lack capacity to hold other persons. It is the expectation of the Legislature that the Department of Corrections will ensure that defendants sentenced for one or more felonies will not remain in a county detention facility for more than 10 business days after sentencing unless unusual circumstances arise; and

WHEREAS, with respect to the Department of Corrections, the Legislature has been advised that the vocational opportunities at the Montana Women's Prison are inadequate, particularly when compared to the offerings at the Montana State Men's Prison. The Legislature is mindful that the campuses may face different limitations in what programming may be offered based on location, footprint, and facilities; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 that the Department of Corrections had drug treatment beds that were not fully utilized in fiscal year 2019, which resulted in a payment for failure to allow the contractor to operate at 75% capacity; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned that the Department of Corrections has yet to fully implement statutory directives to measure the effectiveness of its programs—both those provided by the Department of Corrections employees and those provided by contractors. In 2017, the Legislature directed the Department of Corrections to conduct evaluations of programs to determine their impact on reducing recidivism. This work, in addition to other requirements in Senate Bill No. 59 (2017), appears to be unaddressed or incomplete. Moreover, the Department of Corrections' definition of recidivism is an inadequate measure for the determination of effectiveness of its programming. The Legislature is interested in having data on crimes committed by those discharged from the Department of Corrections' custody, not merely "the rate at which adult offenders return to prison in Montana for any reason within three years of their release from prison", which fails to address reentry outcomes of many individuals committed to the Department of Corrections' custody and evaluates a truncated time period; and

WHEREAS, with respect to the Office of State Public Defender, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 regarding billing practices by contractors, including the failure to require the use of assistants for nonattorney tasks, and allowing contractors to work a number of hours each year that may induce attorneys to be contractors instead of the Office of State Public Defender employees; and

WHEREAS, with respect to the Office of State Public Defender, it is the sense of the Legislature that the Office of State Public Defender expends its appropriation, in part, to perform tasks that are not required by the state or federal constitution or by statutory directive, such as in section 47-1-104(4), MCA. Given limited resources and the demands on the Office of State Public Defender staff, the Legislature believes that it is incumbent on the Office of State Public Defender management to limit the scope of its work to what is required by statute and the constitution; and

WHEREAS, with respect to the Office of State Public Defender, neither through its employees nor its contractors should the Office of State Public Defender impair the Legislature's intent to have defendants share in the costs of counsel provided by the Office of State Public Defender. The Office of State Public Defender employees and contractors should not move the court to waive assessments under section 46-8-113, MCA, unless the defendant can show a compelling reason why they cannot pay this assessment over the course of the sentence; and

WHEREAS, in House Bill No. 640 (2019), the Legislature established a mechanism to ensure that sexual abuse reports generated by those with mandatory reporting responsibilities are provided to county attorneys and that county attorneys report to the Attorney General on the status of the investigations and prosecutions generated from these referrals. It is the sense of the Legislature that the Department of Justice has not undertaken a thorough review of the reports generated pursuant to section 41-3-210(3), MCA, and the Legislature urges the Department of Justice to do so; and

WHEREAS, the Legislature has taken a number of steps to strengthen the laws and investigative response to address human trafficking and sexual exploitation of minors. Given the collective commitment in the legislative and executive branches to combat these crimes, the Legislature needs greater clarity on whether its appropriations and statutory changes are having an impact; and

WHEREAS, the Legislature expresses its concern that the backlog of testing on sexual assault kits must be eliminated as soon as possible; and

WHEREAS, the definition of recidivism utilized by the judicial branch in evaluating the effectiveness of treatment courts is different than the definition used by the Department of Corrections for its programming, making it difficult to compare the effectiveness of treatment courts to in-patient treatment. It is the sense of the Legislature that a single definition of recidivism would make it possible to have a consistent evaluation of effectiveness; and

WHEREAS, the Legislature believes that expungement of a conviction for driving under the influence of drugs or alcohol will impair the correctional and public safety goals that the Legislature aims to achieve through the Section D appropriation."

2017 Amendment: Chapter 323 in (1)(a) and (1)(b) substituted "weighs 1 ton or less" for "weighs less than 1 ton". Amendment effective October 1, 2017.

2015 Amendment: Chapter 398 in (1) at beginning substituted "2026" for "2018"; in (2) substituted "subsection (1)" for "subsection (1)(a)"; in (3) after "July 1" substituted "2026" for "2018"; and made minor changes in style. Amendment effective October 1, 2015.

2007 Amendment: Chapter 50 in (1)(a) at beginning inserted "Until June 30, 2018"; inserted (2) providing for deposit of certain fees in the state general fund; and made minor changes in style. Amendment effective July 1, 2007.

2005 Amendment: Chapter 596 in (1) at end inserted "the department, its authorized agent, or a county treasurer"; substituted (1)(a) concerning fee for title to certain vehicles under 1 ton for former text that read: "$10 for issuance of an original certificate of title"; substituted (1)(b) concerning fee for title to light vehicle or bus or truck weighing less than 1 ton for "The fee must be collected by the county treasurer or by an authorized agent of the department at the time of application. An additional fee of $2 must be paid for light vehicles, trucks and buses weighing less than 1 ton, and logging trucks. The fees must be paid to the county treasurer or agent of the department and, of the $10 fee"; substituted (2) concerning deposit of the fee for "$5 must be forwarded to the department of revenue and deposited in the state general fund. The remaining $5 must be forwarded to the department for deposit in the motor vehicle information technology system account provided for in 61-3-550"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in first sentence at beginning substituted "A person applying for a certificate of title shall pay a fee of $10" for "A charge of $5 must be made", after "certificate of" deleted "ownership of", and after "title" deleted "and for a transfer of registration"; in second sentence after "treasurer" inserted "or by an authorized agent of the department at the time of application"; in fourth sentence near beginning after "must be" inserted "paid to the county treasurer or agent of the department and, of the $10 fee, $5 must be forwarded to the department of revenue"; inserted fifth sentence providing that the remaining $5 be deposited in the motor vehicle information technology system account; and made minor changes in style. Amendment effective January 1, 2004.

The amendments to this section made by sec. 7, Ch. 562, L. 2003, and sec. 51, Ch. 477, L. 2003, were rendered void by sec. 83(1)(a) and (1)(c), Ch. 477, L. 2003, a coordination section.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2001 Amendment: Chapter 574 at beginning of first sentence deleted "Except as provided in subsection (2)", inserted second sentence concerning additional $2 fee on certain vehicles, and in third sentence substituted "deposited in the state general fund" for "distributed as follows:

(a) The amount of $3.50 of each fee must be remitted to the department by the county treasurer, as provided in 15-1-504, for each application for original certificate of ownership or transfer of registration.

(b) Each March, the county commissioners of each county shall divide the fees retained by the county to:

(i) the city road fund of each city and town within the county based on the number of motor vehicles registered inside the corporate limits of each city or town; and

(ii) the county road fund based on the number of motor vehicles registered outside the corporate limits of cities and towns"; deleted former (2) that read: "(2) Upon transfer of any interest in a used motor vehicle by a dealer, broker, or wholesaler as provided in 61-4-111(1), a charge of $5 must be paid to the department"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 342 in (1), at beginning, inserted exception clause; inserted (2) establishing a $5 charge upon transfer of interest in a used motor vehicle; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 6, Ch. 342, L. 1995, provided: "[This act] applies to motor vehicle transfers occurring on or after January 1, 1996."

1989 Amendment: Near beginning of first sentence increased fee from $4 to $5; in (1) increased amount for application from $3 to $3.50; and made minor change in phraseology.

1987 Amendments: Chapter 361 near middle of (1) inserted "as provided in 15-1-504".

Chapter 378 in first sentence of introduction increased fee from $3 to $4; at beginning of (1) substituted "Three dollars" for "Two dollars"; and made minor changes in phraseology. Amendment effective January 1, 1988.

1985 Amendment: In (1) substituted reference to department of justice for reference to division of motor vehicles.

61-3-204. Replacement certificate of title — application.

Compiler's Comments

2015 Amendment: Chapter 398 in (1)(b) at beginning substituted "The amount of" for "Until June 30, 2018"; and in (1)(c) near beginning substituted "2026" for "2018". Amendment effective October 1, 2015.

2007 Amendment: Chapter 50 in (1)(b) at beginning substituted "Until June 30, 2018" for "Of the $10 fee"; inserted (1)(c) providing for deposit of the $5 fee in the state general fund; and made minor changes in style. Amendment effective July 1, 2007.

2005 Amendment: Chapter 542 in (1) near end of third sentence substituted "deposited" for "forwarded to the department for deposit". Amendment effective January 1, 2006.

2003 Amendments — Composite Section: Chapter 477 in (1) in first sentence near beginning after "certificate of" substituted "title" for "ownership", after "lost" inserted "stolen, destroyed", after "illegible" inserted language pertaining to an owner updating personal information or wanting a replacement certificate, and at end after "the owner" substituted "as shown on the electronic record of title, may apply for and request the department to issue a replacement certificate of title" for "shall immediately make application for and obtain a duplicate thereof, upon furnishing", in second sentence at beginning inserted "The application must include", after "facts" inserted "requiring the replacement certificate of title", and at end substituted "be accompanied by a fee of $10" for "upon payment of a fee of $3", and in third sentence substituted language providing for deposit of the $10 fee for former language that read: "Revenue from this fee must be deposited in the general fund"; inserted (2) providing a statement to be included on replacement certificates; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 562 in (1) in second sentence at end increased fee from $3 to $10 and in third sentence substituted text requiring $5 of $10 fee to be deposited in state general fund and remaining $5 to be forwarded to department for deposit in motor vehicle information technology system account for former sentence that read: "Revenue from this fee must be deposited in the general fund"; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2013.

Pursuant to sec. 83(1)(d), Ch. 477, L. 2003, a coordination section, the amendments to this section made by sec. 52, Ch. 477, L. 2003, are void.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1989 Amendment: At end substituted reference to general fund for reference to motor vehicle recording account of the state special revenue fund. Amendment effective July 1, 1989.

1987 Amendment: Increased fee from $2 to $3 and made minor changes in phraseology. Amendment effective January 1, 1988.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Case Notes

Refers Only to Owner or Legal Owner: This section refers only to issuance of duplicate certificates to owner or legal owner of the vehicle, and the registrar has no authority to issue it to anyone else. Anderson v. Commercial Credit Co., 110 M 333, 101 P2d 367 (1940).

61-3-205. Transfer of ownership of vehicles by insurance company.

Compiler's Comments

2019 Amendment: Chapter 197 in (1)(a) near end inserted "an assigned certificate of title by the registered owner or owners to the transferee at the time of transfer" and at end deleted "a certificate of title signed and acknowledged by the registered owner or owners before the county treasurer, a deputy county treasurer, an authorized agent, or a notary public"; in (2)(a) deleted former third sentence that read: "A certificate of title transferred with an electronic signature does not require acknowledgment by the county treasurer, a deputy county treasurer, an authorized agent, or a notary public"; and inserted (3) providing rulemaking authority. Amendment effective July 1, 2019.

2013 Amendment: Chapter 196 in (1)(a) and (2)(a) after "deputy county treasurer" inserted "an authorized agent"; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 74 in (1) at beginning inserted exception clause; inserted (2) regarding use of electronic signatures for titled personal property; and made minor changes in style. Amendment effective March 25, 2011.

2005 Amendment: Chapter 542 in (1) in two places and in (2) after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in (1) and in (2) after "certificate of" substituted "title" for "ownership". Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1991 Amendment: Near end of (1), after "acknowledged", inserted "by the registered owner or owners".

1989 Amendment: In (1), at end, substituted reference to certificate "signed and acknowledged before the county treasurer, a deputy county treasurer, or a notary public" for reference to signed and notarized certificate. Amendment effective March 29, 1989.

61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record.

Compiler's Comments

2021 Amendment: Chapter 109 in (4)(a) after "vehicle" substituted "with a 2010 model year or earlier" for "that is 10 years old or older"; inserted (4)(b) concerning motor vehicles with a 2011 model year or later that are 20 years old or older; and made minor changes in style. Amendment effective October 1, 2021.

2015 Amendment: Chapter 231 in (1) near end after "signed by the seller" deleted "who shall also print the seller's name on the written statement"; in (2) at end deleted "and printing the purchaser's name on the disclosure statement"; inserted (3) regarding odometer disclosure statement in electronic form; and made minor changes in style. Amendment effective October 1, 2015.

2007 Amendment: Chapter 329 in (3)(b) after "pole trailer" inserted "travel trailer"; in (4) near beginning after "dealer" inserted "an auto auction"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1)(e), (3)(c), (3)(d), and (3)(e) substituted "motor vehicle" for "vehicle"; in (3)(b) after "vehicle" inserted "trailer, semitrailer, pole trailer, camper, or sailboat"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in (1) in introductory clause in two places after "certificate of" substituted "title" for "ownership". Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1999 Amendment: Chapter 409 in (4) substituted "chapter 4 of this title" for "61-4-101"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1991 Amendments — Code Commissioner Instruction: The Code Commissioner inserted reference to wholesaler after dealer, pursuant to sec. 12, Ch. 383, L. 1991, that directed the Code Commissioner to change "dealer" to "dealer and wholesaler" or "dealer or wholesaler", as the usage requires.

Chapter 724 near end of (1), after "seller", inserted "who shall also print his name on the written statement"; at end of (2) inserted "and printing his name on the disclosure statement"; and made minor changes in style.

1989 Amendment: In (1)(e) inserted "model"; in (3)(a) increased vehicle age requirement from 6 years to 10 years; inserted (3)(d) relating to vehicle gross weight rating; inserted (3)(e) relating to direct vehicle sale; and inserted (4) requiring dealer recordkeeping.

61-3-208. Affidavit and bond for certificate of title.

Compiler's Comments

2021 Amendment: Chapter 296 in (2)(b)(ii) near beginning substituted "or pole trailer that is 30 years old or older with a value of $1,000 or less" for "or pole trailer with a value of $500 or less", near middle substituted "provide evidence of the value of the motor vehicle, trailer, semitrailer, or pole trailer based on the vehicle condition" for "provide evidence of the average trade-in or wholesale value of the motor vehicle, trailer, semitrailer, or pole trailer", and at end substituted "or pole trailer by providing the bill of sale and a notarized document from the applicant attesting to the value" for "or pole trailer is $500 or less"; in (2)(b)(iii) near beginning of first sentence substituted "or pole trailer that is less than 30 years old with a value that exceeds $1,000" for "or pole trailer with a value that exceeds $500", near middle of first sentence substituted "based on the vehicle condition as determined by" for "based on information from", and at end of first sentence substituted "the applicant shall certify the value of the motor vehicle, trailer, semitrailer, or pole trailer by providing the bill of sale and a notarized document from the applicant attesting to the value" for "according to the applicant's knowledge and belief"; and made minor changes in style. Amendment effective July 1, 2021.

2009 Amendment: Chapter 235 inserted (2)(b)(iv) providing that applicant to title a vehicle sold without manufacturer's certificate of origin may title vehicle upon equipping vehicle, obtaining law enforcement inspection, and purchasing surety bond. Amendment effective April 16, 2009.

2005 Amendments — Composite Section — Coordination: Chapter 171 in (2)(b)(iii) in first sentence at end substituted language requiring an applicant for vehicle certificate of title to provide bond based on amount of vehicle value as determined by the applicant for "as determined by the surety company"; and made minor changes in style. Amendment effective October 1, 2005.

Section 52, Ch. 542, in (1), (2)(a)(i), (2)(a)(ii), and (4)(b) substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle"; in (2)(b)(i) substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat" for "boat"; in (2)(b)(ii) in three places and (2)(b)(iii) in two places substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile" for "vehicle"; in (2)(b)(iii) in second sentence after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat 12 feet in length or longer, or snowmobile"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 243, Ch. 542, L. 2005, and sec. 127, Ch. 596, L. 2005, coordination sections, the code commissioner in (2)(b)(iii) changed references to vehicle to references to motor vehicle, trailer, semitrailer, or pole trailer.

Section 127, Ch. 596, L. 2005, a coordination section, provided that if Senate Bill No. 285 (enacted as Ch. 542, L. 2005) and [this act] were both passed and approved, then 61-3-208 was amended as follows: in (1), (2)(a)(i), (2)(a)(ii), and (4)(b) substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle"; in (2)(b)(i) substituted "camper, off-highway vehicle, motorboat" for "boat"; substituted (2)(b)(ii) concerning application for certificate of title and evidence of value for former text that read: "The applicant shall certify in the affidavit that the value of the vehicle for which the application is made is $500 or less as indicated by the average trade-in or wholesale value of the vehicle as determined by the applicable national appraisal guide for the vehicle as of January 1 for the year in which the application is made or, if a national appraisal guide is not available for a vehicle, according to the applicant's knowledge and belief"; in (2)(b)(iii) in first sentence at beginning inserted "If application is being made for a motor vehicle, trailer, semitrailer, or pole trailer with a value that exceeds $500" and near middle substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle" and in second sentence near beginning after "motor vehicle" inserted "trailer, semitrailer, or pole trailer" and at end substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in (1) near beginning before "certificate" deleted "vehicle", near middle before "to the applicant" substituted "that assigns the prior owner's interest in the vehicle" for "transferred", and at end after "title" substituted "if subsection (2) is complied with" for "for the vehicle if the applicant furnishes an affidavit in a form prescribed by the department"; in (2)(a) at beginning substituted "The applicant shall submit an affidavit in a form prescribed by the department that" for "The affidavit"; in (2)(a)(ii) at beginning substituted "disclose" for "information as required by the department to enable it to determine what" and after "encumbrances" substituted "that are know to the applicant" for "if any"; deleted former (2)(c) that read: "(c) the date and the amount secured by the security interests, liens, and encumbrances, if any"; inserted (2)(b)(i) concerning application for a boat, personal watercraft, sailboat, or snowmobile; in (2)(b)(ii) at beginning substituted "The applicant shall certify in the affidavit that the value of the vehicle for which an application is made is $500 or less as indicated by" for former language that read: "(3) If after examination of the application, affidavit, and any other evidence the department determines that a certificate of title for the vehicle should be issued to the applicant, the department shall require the applicant to file with the department a good and sufficient bond before issuing the certificate of title. The bond must be:

(a) in an amount equal to", near middle after "application" deleted "for certificate of title", and at end after "vehicle" substituted "according to the applicant's knowledge and belief" for "the department shall determine an alternative value for the vehicle"; in (2)(b)(iii) inserted first sentence establishing bond criteria and in second sentence near middle after "damages" inserted "including reasonable attorney fees" and after "certificate" inserted "of title"; deleted former (3)(c) that read: "(c) issued by a surety company authorized to do business in the state"; in (3) near middle after "bond" inserted "furnished under this section"; in (4) in introductory clause after "bond" inserted "furnished under this section"; in (4)(b) near end after "no longer" substituted "required to have a certificate of title" for "registered"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1997 Amendment: Chapter 496 in (1), near beginning, in (2)(a), at end, in (2)(b), at end, in (3)(a), near middle of first clause, in (3)(a), near middle of first sentence, and in (3)(b), near end, before "vehicle", deleted "motor"; in (2)(b), near middle after "and encumbrances", deleted "against the motor vehicle"; in (3)(a), near beginning of first sentence, inserted "average trade-in or wholesale", substituted "by the applicable national appraisal guide for the vehicle as of January 1" for "under the provisions of 61-3-503(1)(c)", and at end inserted "When a national appraisal guide is not available for a vehicle, the department shall determine an alternative value for the vehicle"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1993 Amendment: Chapter 482 inserted (3)(c) requiring bond to be issued by a surety company authorized to do business in the state; and made minor changes in style.

61-3-210. Definitions.

Compiler's Comments

2005 Amendment: Chapter 542 in definition of cab before the first "truck" deleted "common"; in definitions of center structure, component part in two places, salvage certificate, and salvage vehicle substituted "motor vehicle" for "vehicle"; deleted definition of vehicle identification number that read: ""Vehicle identification number" means the number, letters, or combination of numbers and letters assigned by the manufacturer, by the department, or in accordance with the laws of another state or country for the purpose of identifying the vehicle or a component part of the vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in definition of salvage certificate after "certificate of" substituted "title" for "ownership". Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-211. Surrender of certificate of title — issuance of salvage certificate — salvage retitling requirements — insurer or owner unable to supply title to auto auction dealer.

Compiler's Comments

2021 Amendment: Chapter 42 inserted (8) regarding issuance of a salvage certificate or certificate of title to an auto auction dealer; and made minor changes in style. Amendment effective October 1, 2021.

2013 Amendments — Composite Section: Chapter 116 in (1) before "apply for a salvage certificate" deleted "surrender the certificate of title to the department within 15 days after acquiring the certificate of title. If the insurer has not sold the salvage vehicle prior to the time of surrendering the certificate of title", inserted second sentence regarding exceptions to when a certificate of title is required to accompany an application for a salvage certificate, and in the last sentence inserted "or electronic record of title maintained by the department"; in (2) at beginning deleted "Upon receipt of a properly executed certificate of title and a salvage certificate application from an insurer"; in (3) in first sentence substituted "elects to sell a salvage vehicle before a salvage certificate is obtained under subsections (1) and (2)" for "sells a salvage vehicle within the 15-day period established in subsection (1) prior to surrendering the certificate of title", in second sentence substituted "a release has been obtained from each secured party of any security interest in the salvage vehicle" for "obtaining a clear title and lien release", deleted former third sentence that read: "Prior to disposing of the salvage vehicle, the salvage vehicle purchaser shall apply for a salvage certificate by completing the salvage receipt and submitting it to the department", substituted third sentence regarding delivery of documents for "The insurer shall deliver a copy of the salvage receipt with the surrendered certificate of title to the department", in fourth sentence substituted "submission of the original salvage receipt by" for "receipt of the certificate of title from the insurer and the application from", and inserted last sentence regarding disposal of salvage vehicle; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 196 throughout section after "department" inserted "or an authorized agent" (amendment in third sentence of (3) rendered void by Ch. 116). Amendment effective July 1, 2013.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

2011 Amendment: Chapter 78 in first sentence substituted "15 years of age" for "5 years of age". Amendment effective October 1, 2011.

2007 Amendment: Chapter 53 in (7) at end after "provisions of" substituted "61-3-225" for "75-10-513(2)". Amendment effective October 1, 2007.

2005 Amendment: Chapter 542 in (1) near beginning of first sentence and near middle of third sentence substituted "motor vehicle" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 throughout section substituted "certificate of title" for references to certificate of ownership; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-212. Retitling salvage vehicles — penalty.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 throughout section substituted "motor vehicle" for "vehicle". Amendment effective January 1, 2006.

Chapter 596 in (1) in second sentence after "obtain a" deleted "72-hour" and after "permit" substituted "under 61-3-224" for "from the department or its designee". Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 throughout section substituted references to certificate of title for references to certificate of ownership; in (1) at end of first sentence after "inspection" substituted "as provided in 61-3-223" for "at a regional inspection site authorized under 61-3-202(7)"; in (4) near middle after "fee" deleted "for a salvage vehicle" and after "required in" substituted "61-3-203" for "61-3-202(8)"; in (5) in third sentence near middle after "when a" inserted "temporary registration" and at end inserted "as provided in subsection (1)"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1995 Amendment: Chapter 188 at end of (4), after "ownership", inserted "with the words "rebuilt salvage" on the face of the certificate"; and made minor changes in style.

61-3-213. Certificate of title — custom vehicle, street rod, kit vehicle, or specially constructed vehicle.

Compiler's Comments

Effective Date: Section 11, Ch. 458, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 28, 2005.

61-3-214. Certificate of title — custom-built motorcycle.

Compiler's Comments

Effective Date: Section 61, Ch. 329, L. 2007, provided that this section is effective January 1, 2008.

61-3-216. Certificates of title — application — contents — issuance.

Compiler's Comments

2015 Amendment: Chapter 231 in (3) at beginning substituted "The department may require a manufacturer's certificate of origin to be submitted with an application" for "If the application is" and at end deleted "the application must be accompanied by a manufacturer's certificate of origin, properly assigned to the applicant". Amendment effective October 1, 2015.

2007 Amendments — Composite Section: Chapter 180 in (2)(a)(i) near middle after "department" inserted "a tribal government"; and made minor changes in style. Amendment effective October 1, 2007. The amendment by Ch. 329 rendered the amendment by Ch. 180 void.

Chapter 329 throughout section inserted references to travel trailer and off-highway vehicle; substituted (2)(a) concerning owner information for former text that read: "the name, residence, and mailing address of the owner and:

(i) if the owner is the holder of a driver's license or identification card issued by the department or a motor vehicle agency of another jurisdiction, the owner's driver's license number or identification card number and the name of the jurisdiction issuing the license or card; or

(ii) if the owner is a corporation, the name of the corporation's registered agent's and, if the agent is the holder of a driver's license or identification card, the agent's driver's license number or identification card number and the name of the jurisdiction issuing the license or card"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1), (2)(b), (2)(b)(i), (2)(b)(iv), (2)(c) in two places, (2)(d) in two places, (2)(f)(ii) in two places, and (4)(b) substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle"; in (2)(b)(ii) after "reading" and in (2)(b)(iii) after "weight" inserted "if applicable"; in (2)(b)(v) at beginning substituted "for" for "if the vehicle is"; in (3) and (4) after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; in (6) near middle substituted "current registration receipt for the motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle's current registration receipt" and after "sailboat" inserted "or snowmobile"; and made minor changes in style. Amendment effective January 1, 2006.

Effective Date: Section 84, Ch. 477, L. 2003, provided that this section is effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-217. Certificate of title — duties — examination of application — records check — incomplete application.

Compiler's Comments

2007 Amendment: Chapter 44 in (3)(a) near middle of second sentence after "application on the" substituted "electronic" for "electric". Amendment effective October 1, 2007.

2005 Amendments — Composite Section: Chapter 542 in (2)(a) substituted "motor vehicles, trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles" for "vehicles"; in (2)(b) and (3)(a) substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (3)(b) at beginning deleted "Except as provided in 61-3-342"; and made minor changes in style. Amendment effective January 1, 2006.

Effective Date: Section 84, Ch. 477, L. 2003, provided that this section is effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-218. Certificate of title — issuance — delivery.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in (1), (2), and (3)(a) in two places substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle". Amendment effective January 1, 2006.

Chapter 596 in (2) near middle substituted "40-day period" for "20-day period". Amendment effective January 1, 2006.

Effective Date: Section 84, Ch. 477, L. 2003, provided that this section is effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-219. Refusal to issue certificate of title.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) and (4) substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle". Amendment effective January 1, 2006.

Effective Date: Section 84, Ch. 477, L. 2003, provided that this section is effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-220. Certificate of title — voluntary transfer — duties.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 397, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 197 in (2) at beginning inserted "When transfer occurs between individuals"; inserted (6) providing rulemaking authority; and made minor changes in style. Amendment effective July 1, 2019.

2005 Amendments — Composite Section — Code Commissioner Correction: Chapter 542 in (1) and near beginning of (4) after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; in (1)(a), (1)(b)(i), (3)(b), (4) near end, and (5) substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (3) in exception clause deleted "sections 23-2-513, 23-2-619, 23-2-818, or"; in (3)(b) near beginning substituted "40 days" for "20 days" and at end inserted "either"; substituted (3)(b)(i) concerning application for a certificate of title for "mail or deliver the assigned certificate of title or application to the county treasurer of the person's county of residence or, as permitted by the department, its authorized agent"; inserted (3)(b)(ii) concerning registration of vehicle without surrender of title; in (4) in first sentence substituted "comply with the requirements described in subsection (3) within the 40-day grace period" for "submit the application for a certificate of title to the department's authorized agent or a county treasurer within the 20-day grace period described in subsection (3)" and in second sentence after "paid" deleted "by the transferee to the county treasurer when the application for a certificate of title is finally submitted by the transferee or" and after "state" inserted "with or without the surrender of an assigned certificate of title"; in (5) in first sentence substituted "comply with the requirements of subsection (3) within the 40-day grace period" for "apply for a certificate of title within the 20-day grace period"; and made minor changes in style. Amendment effective January 1, 2006.

In (3)(b)(i) and (3)(b)(ii) the code commissioner substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle" to reflect Ch. 542 amendments.

Effective Date: Section 84, Ch. 477, L. 2003, provided that this section is effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-221. Involuntary transfer.

Compiler's Comments

2005 Amendment: Chapter 542 in (1)(a) near beginning after "motor vehicle" inserted "trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile"; in (2)(a) substituted "motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Effective Date: Section 84, Ch. 477, L. 2003, provided that this section is effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-222. Surviving spouse or heir — small estates.

Compiler's Comments

2007 Amendment: Chapter 329 in (1) near beginning substituted "requirements" for "limitations"; and substituted (2)(a) concerning value of estate for former text that read: "the combined value of the interests does not exceed $20,000". Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1) after "motor vehicles" inserted "trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats, or snowmobiles"; and made minor changes in style. Amendment effective January 1, 2006.

Effective Date: Section 84, Ch. 477, L. 2003, provided that this section is effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-223. Salvage vehicles.

Compiler's Comments

2009 Amendment: Chapter 41 in (3) substituted second sentence concerning deposit of fee for former text that read: "The fees collected under this section must be distributed as follows:

(a) $5 must be deposited in the state general fund; and

(b) $13.50 must be deposited in an account in the state special revenue fund to be appropriated only for the inspection of salvage vehicles"; and made minor changes in style. Amendment effective January 1, 2010.

2005 Amendment: Chapter 542 throughout section before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Effective Date: Section 84, Ch. 477, L. 2003, provided that this section is effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-224. Temporary registration permit — issuance — placement — fees.

Compiler's Comments

2021 Amendment: Chapter 389 in (5)(c) at end substituted "61-3-303(4)(b)" for "61-3-303(3)(b)". Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2019 Amendments — Composite Section: Chapter 143 in (5)(a) at end substituted "when the vehicle is registered" for "upon issuance of the temporary registration permit". Amendment effective July 1, 2019.

Chapter 335 deleted former (1) concerning rulemaking (see 2019 Session Law for former text); and made minor changes in style. Amendment effective May 7, 2019.

2017 Amendments — Composite Section — Code Commissioner Change: Chapter 384 in (6)(a) increased fee from $3 to $19.50 and at end substituted "temporary registration permit is issued" for "vehicle is registered"; in (6)(b) increased fee from $8 to $24.50; in (7) in first sentence inserted "as follows"; inserted (7)(a) regarding certain fees to be deposited in the state special revenue account established in 44-10-204; in (7)(b) at beginning inserted "the remainder"; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 435 inserted (1)(i) concerning when new owner cannot surrender previously assigned certificate of title; in (6)(a) near beginning substituted "subsections (6)(b) and (6)(c)" for "subsection (6)(b)" and at end substituted "upon issuance of the permit" for "when the vehicle is registered"; inserted (6)(c) providing for fee of $24 for 90-day temporary registration permit; and made minor changes in style. Amendment effective October 1, 2017.

The code commissioner in (6)(a) at end substituted "upon issuance of the temporary registration permit" for "temporary registration permit is issued" (see Ch. 384 note) and for "upon issuance of the permit" (see Ch. 435 note) to reflect the composite of this section.

Severability: Section 38, Ch. 384, L. 2017, was a severability clause.

2015 Amendment: Chapter 120 inserted (1)(h) regarding temporary registration permit for nonresident owner; in (6)(b)(i) at end after "state" inserted provision regarding temporary use of quadricycle or motorcycle designed for off-road recreational use; and made minor changes in style. Amendment effective January 1, 2016.

2009 Amendment: Chapter 41 in (1) at beginning substituted "The department may adopt rules governing the issuance of temporary registration permits. The rules must specify the purposes for which a temporary registration permit may be issued, including but not limited to issuance to" for "The department, an authorized agent, or a county treasurer may issue a temporary registration permit to"; in (1)(b) near middle substituted "or a vehicle requiring a state-assigned vehicle identification number in order to move" for "for moving" and near end inserted reference to 61-3-107; inserted (1)(g) concerning insurer or agent moving vehicle to auction; inserted (2)(a) concerning issuance of temporary registration permit; substituted (3) concerning use of electronic interface to issue temporary registration permit for any authorized purpose for former text that read: "A person, using a department-approved electronic interface, may issue a temporary registration permit for the specified purposes if the person is:

(a) a Montana resident who acquires a new or used motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle for operation of the vehicle or vessel prior to titling and registration of the vehicle or vessel under this chapter;

(b) the owner of a salvage vehicle for moving the vehicle to and from a designated inspection site prior to applying for a new certificate of title under 61-3-212;

(c) a nonresident of this state who acquires a motor vehicle, trailer, semitrailer, or pole trailer in this state for operation of the vehicle prior to its titling and registration under the laws of the nonresident's jurisdiction of residence; or

(d) a financial institution located in Montana that intends to allow a prospective purchaser to demonstrate a motor vehicle that the financial institution has obtained following repossession"; in (3)(a) after "number" deleted "registration receipt number, or transaction record number"; and made minor changes in style. Amendment effective January 1, 2010.

2007 Amendments — Composite Section: Chapter 44 in (1)(a)(i) and in (2)(a) near end after "vehicle" inserted "or vessel". Amendment effective October 1, 2007.

Chapter 329 inserted (1)(b) concerning issuance of temporary registration permit without use of electronic interface; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment — Coordination: Section 47, Ch. 596, in (1) at beginning inserted "The department, an authorized agent, or", after "treasurer" deleted "or a law enforcement officer", and after "permit" deleted "under the provisions of 61-3-317" and deleted former second sentence that read: "A county treasurer may also issue a temporary registration permit under the provisions of 61-3-342"; inserted (1)(a) through (1)(f) enumerating who may receive a temporary registration permit; substituted (2) concerning issuance of temporary registration permit to certain entities using an electronic interface for "An employee or agent of the department may issue a temporary registration permit only under express authorization from the department and in accordance with the provisions of this chapter"; deleted former (3) that read: "(3) A dealer licensed under Title 23, chapter 2, part 5, 6, or 8, or under Title 61, chapter 4, part 1, may issue a temporary registration permit only as authorized under 23-2-513, 23-2-619, 23-2-818, 61-4-111, or 61-4-112"; in (3) near middle substituted "under this section" for "under subsections (1) through (3)"; in (3)(a) substituted "temporary plate" for "temporary registration permit control"; in (3)(c) near middle after the first "name" deleted "and address", after the second "name" inserted "mailing address", and at end substituted "issuance" for "transfer"; inserted (4) concerning display of temporary registration permit; inserted (5) concerning fees for issuance of permits; inserted (6) concerning deposit of fees; inserted (7) concerning title and registration requirements prior to vehicle transfer; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 138, Ch. 596, L. 2005, a coordination section, in (1)(a), (1)(c), (1)(d), (2)(a), and (2)(c) after "motor vehicle" inserted references to trailer, semitrailer, or pole trailer and in (3)(c) in three places substituted "motor vehicle, trailer, semitrailer, pole trailer, motorboat, personal watercraft, sailboat, or snowmobile" for "vehicle", and the amendments to this section by Senate Bill No. 285 (Ch. 542, L. 2005) were rendered void.

Pursuant to sec. 138, Ch. 596, L. 2005, a coordination section, the amendments to this section made by Ch. 542, L. 2005, were rendered void.

Effective Date: Section 84, Ch. 477, L. 2003, provided that this section is effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-225. Motor vehicle wrecking facility quarterly reports.

Compiler's Comments

2013 Amendment: Chapter 196 in first sentence substituted "shall deliver" for "shall mail" and after "department" inserted "or an authorized agent". Amendment effective July 1, 2013.

Effective Date: This section is effective October 1, 2007.

61-3-226. Certificate of title — transfer on death.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 320, L. 2023. Amendment effective October 1, 2023.

Effective Date: This section is effective October 1, 2021.

61-3-227. Replacement certificate of title — data removed by department — application requirements.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 3
Registration

Part Case Notes

Purpose of Registration Law: The purpose of automobile registration being a police regulation is to provide a method to deter automobile thefts and to apprehend thieves. If it is construed in such fashion as to place onerous burdens on honest men and prevent those lawfully entitled to registry from accomplishing their objects through technicalities or official caprice, it would be better if it had not been enacted. Due process of law extends to proceedings judicial, administrative, or executive in nature. Anderson v. Commercial Credit Co., 110 M 333, 101 P2d 367 (1940).

Part Attorney General's Opinions

State Taxation of Nontribe Member Not Preempted by Federal Concerns: While generally state taxation will be preempted if it impermissibly interferes with a comprehensive federal statutory scheme or established tradition of tribal governance, the simple fact that a particular on-reservation activity may validly be taxed by a tribe does not preclude state taxation of the same activity, and taxation of a nonmember has no effect on federal concerns. A tribe's sovereignty interest does not negate state authority over nonmember activity. Therefore, the interest of a nontribal member in motor vehicles, mobile homes, or personal property (whose tax situs is within the exterior boundaries of the reservation) and which interest is held in joint tenancy or tenancy in common with a tribal member is subject to those state taxes generally applicable to such property. 42 A.G. Op. 11 (1987).

61-3-301. Registration — license plate required — display.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 464, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 118 in (1)(b)(iv) in second sentence after "A certificate of waiver" substituted "must" for "may" and at beginning of third sentence deleted "If a certificate of waiver is issued"; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 110 in (1)(a) at beginning deleted "Except as provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section"; in (1)(b)(i) inserted exception clause; inserted (1)(b)(iv) concerning waiver of front license plate requirement; in (4)(a) after "vehicle" inserted "that is subject to subsection (1)(b)(i) and is" and after "bumpers" deleted "except for a custom vehicle or street rod as provided in subsection (1)(b)"; in (4)(b) after "travel trailer" inserted "or motor vehicle that is subject to subsections (1)(b)(ii) through (1)(b)(iv)"; and made minor changes in style. Amendment effective October 1, 2017.

2011 Amendments — Composite Section: Chapter 209 inserted (1)(d) referring to low-speed electric vehicle or golf cart. Amendment effective January 1, 2012.

Chapter 231 deleted former (3)(c) that read: "(c) display a prior design of standard license plates including military, veteran, and amateur radio license plates, or any license plates that have been issued for 5 or more years after the replacement of the license plates is required under 61-3-332(3)(a), except as provided in 61-3-332(3)(c) and (3)(d), 61-3-448, or 61-3-468"; and made minor changes in style. Amendment effective January 1, 2012.

2009 Amendment: Chapter 413 in (3)(c) after "standard license plates" substituted list of types of license plates that have been issued for 5 years or more after replacement is required for "issued under 61-3-332(3)(a) or special license plates issued under 61-3-332(8) or 61-3-421 more than 18 months after a new design of standard license plates or special license plates has been issued" and near end after "except as provided in" substituted "61-3-332(3)(c) and (3)(d)" for "61-3-332(3)(b) and (3)(c)". Amendment effective January 1, 2010.

2007 Amendments — Composite Section: Chapter 44 throughout section in eight places after "pole trailer" inserted "or travel trailer"; in (1)(a) near middle of first sentence after "displayed" substituted "on" for "one on the front and one on the rear of" and at beginning of second sentence inserted "A license plate must be"; in (1)(b) inserted third sentence requiring that all other motor vehicles have one license plate displayed on the front and one license plate displayed on the rear of the motor vehicle; in (2) near middle after "county where the" deleted "motor" and after "vehicle" inserted "is domiciled or the county where the"; in (4)(a) near middle after "vehicle" deleted "trailer, semitrailer, or pole trailer" and at end after "bumpers" inserted "except for a custom vehicle or street rod as provided in subsection (1)(b)"; in (4)(b) at beginning substituted "a clearly visible location on the rear of a" for "other clearly visible locations on the front and the rear exteriors of a motor vehicle"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 329 in (3)(c) near end substituted references to 61-3-332(3)(b) and (3)(c) for references to 61-3-332(3)(c) and (3)(d). Amendment effective January 1, 2008.

2005 Amendments — Composite Section: Chapter 458 in (1)(a) at beginning of first sentence after "Except as" substituted "provided in subsection (1)(b)" for "otherwise provided in this chapter"; inserted second sentence in (1)(b) allowing display of a single plate on a custom vehicle or street rod; and made minor changes in style. Amendment effective April 28, 2005.

Chapter 542 in (1)(a) near beginning, (2) in second sentence in four places (amendment rendered void by Ch. 596 amendment), (4)(a), and (4)(b) after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (1)(a) in two places, (1)(c), (2), (3)(a) near beginning, and (4) (amendment rendered void by Ch. 596 amendment) substituted references to motor vehicle, trailer, semitrailer, or pole trailer for references to vehicle; in (3)(a) after "any other" inserted "motor" and after "semitrailer" inserted "or pole trailer"; in (4) at end substituted "as provided in 61-3-520" for "or fee in lieu of tax under 61-3-520" (amendment rendered void by Ch. 596 amendment); and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1)(a) at beginning in exception clause substituted "provided in 61-4-120, 61-4-129, and subsection (1)(b) of this section" for "otherwise provided in this chapter", near middle after "proper" substituted "license plates" for "number plates", and at end deleted "except that vehicles authorized to display demonstrator plates under 61-4-125 or 61-4-129 may have only one number plate conspicuously displayed on the rear"; inserted first sentence in (1)(b) concerning vehicles authorized to display a single plate; in (1)(c) deleted former second sentence that read: "A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section"; in (2) near beginning before "vehicle" inserted "motor" and near end after "county" substituted "where the vehicle is domiciled" for "of the person's permanent residence" and deleted former second sentence that read: "However, the owner of a motor vehicle requiring a license plate on a motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued bearing the number assigned to that county may be displayed on the motor vehicle in any other county of the state"; in (3)(a) after "semitrailer" inserted "pole trailer, or travel trailer"; in (3)(c) near beginning substituted "standard license plates issued under 61-3-332(3)(a)" for "number plates issued under 61-3-332(4)(a)", near middle substituted "61-3-332(8)" for "61-3-332(10)", substituted "standard license plates" for "number plates", and near end substituted "61-3-332(3)(c) and (3)(d)" for "61-3-332(4)(c) and (4)(d)"; deleted former (4) and (5) that read: "(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to the registration fee or fee in lieu of tax under 61-3-520.

(5) A person violating these provisions is guilty of a misdemeanor and is subject to the penalty prescribed in 61-3-601"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 280 inserted (3)(c) prohibiting the display of certain plates more than 18 months after a new design has been issued, with some exceptions; inserted (6) defining conspicuously displayed for purposes of this section; and made minor changes in style. Amendment effective October 1, 2003.

2000 Amendment by Referendum: Chapter 515, L. 1999, near end of (4) substituted "the registration fee or fee in lieu of tax" for "taxation"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendment: Chapter 409 near end of first sentence in (1) substituted "vehicles authorized to display demonstrator plates under 61-4-125 or 61-4-129" for "trailers, semitrailers, quadricycles, motorcycles, and vehicles authorized in 61-4-102(6) to display demonstrator plates"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

Repeal of Termination Date: Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated the 1989 amendments to this section effective December 31, 1993. Repealer effective February 18, 1993.

1989 Amendments: Chapter 148 near middle of (1), after "motorcycles", inserted "and vehicles authorized in 61-4-102(6) to display demonstrator plates may"; and made minor changes in phraseology and punctuation. Amendment effective January 1, 1990.

Chapter 525 inserted (4) regarding vehicles exempt from taxation when used in the production of motion pictures or television commercials; and made minor changes in phraseology. Amendment effective April 13, 1989, and terminates December 31, 1993.

1989 Statement of Intent: The statement of intent attached to Ch. 525, L. 1989, provided: "A statement of intent is not technically required for this bill because the rulemaking authority currently authorized in 61-3-506 is merely expanded. However, in adopting this bill, the legislature intends that any rules adopted by the department of revenue be limited to developing forms or procedures for prorating the taxes imposed on property, including vehicles, that is used exclusively in the filming of motion pictures or television commercials. The provisions of the bill are intended to exempt from property taxation all property that is used exclusively in the production of motion pictures or television commercials unless the property is sited in the state for a period exceeding 180 consecutive days in a calendar year. If the property is sited in the state for a period exceeding 180 consecutive days in a calendar year, the property is subject to property taxation in the same manner as other property."

Effective Date — Retroactive Applicability: Section 10, Ch. 525, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988." Approved April 13, 1989.

1985 Amendment: In (1) near middle, after "semitrailers", inserted "quadricycles" (effective January 1, 1986).

Case Notes

License Plate Obscured by Snow and Trailer Hitch Sufficient Cause for Investigatory Stop: The defendant's temporary vehicle license plate was partially obscured by snow and a trailer hitch. Upon approaching the vehicle, officers noticed that the defendant had red, bloodshot eyes, was excitedly smoking, and upon questioning, admitted to drinking. The defendant was later convicted of DUI. On appeal, the Supreme Court held that an obstruction of a license plate in violation of 61-3-301 was enough to give rise to particularized suspicion for an investigatory stop. Furthermore, although the officers could see the full license plate upon approaching the vehicle, they were authorized to speak to the driver and request documentation such as a driver's license and registration. St. v. Haldane, 2013 MT 32, 368 Mont. 396, 300 P.3d 657.

Justifiable Stop for Daytime Check of Temporary Window Sticker Warranted — Further Police Intrusion Not Warranted Once Limited Purpose of Stop Accomplished: Following weeks of surveillance instigated by a confidential tip intimating drug activities, the Billings police observed no suspicious drug-related activities conducted by defendants, but after receiving a tip that defendants would be driving from Billings to Bozeman to sell marijuana, officers stopped defendants' vehicle because there were no license plates displayed, although a temporary sticker could be seen but not read in the tinted rear window. When the officers approached the vehicle, they noticed that the temporary sticker properly displayed in the window was current. Nevertheless, in a short time, additional officers arrived with a drug-sniffing dog. The dog indicated the presence of drugs, the vehicle was searched, marijuana was found, and defendants were arrested. Defendants contended that the evidence should be suppressed because there was no particularized suspicion to make the stop. The Supreme Court agreed that the investigative stop was warranted because the officers' inability to read the expiration date on the temporary sticker provided an objective basis to infer that the sticker was not valid. However, a quick check of the properly displayed sticker in bright daylight confirmed the sticker's validity. Defendants had committed no traffic offense or violated any other criminal law of which the officers were aware. An investigative stop is a temporary detention that may not last longer than necessary to effectuate the purpose of the stop. Once the limited purpose of the investigative stop was accomplished, no further police intrusion was warranted, and the investigative stop related to drug possession was not justified. The District Court committed reversible error in refusing to suppress the evidence of the subsequent vehicle search. St. v. Martinez, 2003 MT 65, 314 M 434, 67 P3d 207 (2003), following St. v. Henderson, 1998 MT 233, 291 M 77, 966 P2d 137 (1998).

Unusual but Legal Driving and Unsupported Tip Insufficient Grounds for Particularized Suspicion to Make Investigative Stop: An officer received a tip concerning suspicious activity in a high crime area of Billings. The officer observed Fisher's car in the area and followed the car. The officer observed that the vehicle had a temporary sticker, which could not be read, but no license plate. The vehicle made several turns and ended up on the street where the officer originally saw it. The officer then stopped the vehicle, and Fisher was subsequently arrested for possession of drugs and drug paraphernalia. Fisher moved to suppress the evidence on grounds that the officer had no particularized suspicion to make the stop. The motion was denied, and Fisher was convicted and appealed. The state initially claimed that the officer had a particularized suspicion that Fisher was in violation of vehicle registration laws, but the state waived that argument when the officer did not testify to that effect. Further, none of the information in the anonymous tip was connected to Fisher; rather, the officer stated that he wanted to obtain the identity of the vehicle occupants for later investigation of the tip. However, under St. v. Anderson, 258 M 510, 853 P2d 1245 (1993), an investigative stop is not justified in order to corroborate a tip. Last, Fisher maintained an appropriate speed, violated no traffic laws, and made no unusual turns, and Fisher's driving was not headlong flight or evasive. The simple fact that Fisher drove back to the original street where the officer saw the vehicle, absent more objective data, was insufficient for the officer to form a particularized suspicion that Fisher was engaged in criminal activity based on operation of the vehicle. Thus, the stop violated Fisher's right to be free from unreasonable search and seizure, and the Supreme Court reversed. St. v. Fisher, 2002 MT 335, 313 M 274, 60 P3d 1004 (2002), distinguishing St. v. Henderson, 1998 MT 233, 291 M 77, 966 P2d 137 (1998), and Ill. v. Wardlow, 528 US 119 (2000), and distinguished in St. v. Flemings, 2008 MT 229, 344 M 360, 188 P3d 1020 (2008).

Display of License Plate in Windshield Rather Than on Bumper in Compliance With Law — Suppression of Evidence Proper Based on Illegal Investigatory Stop: A Deputy Sheriff observed a truck that appeared to have no front license plate pulling onto the highway, and the officer performed an investigatory stop based on a suspected violation of this section, which requires that license plates be conspicuously displayed (see 2003 amendment) and securely fastened on the front and rear of a vehicle. Lacasella's front license plate was secured with duct tape to the inside lower driver's side corner of the windshield, rather than fastened to the bumper. As a result of the stop, Lacasella was arrested for DUI and for driving with a suspended or revoked license. Lacasella pleaded guilty, but reserved the right to appeal the denial of his motion to suppress evidence based on the allegation that the arresting officer had no particularized suspicion to make the stop. The District Court held that the inside of the front windshield did not constitute the front of the vehicle and that the license plate was not unobstructed from plain view when displayed in the window because glare could prevent the license plate from being viewed at night. The court also concluded that even if the officer had seen the license plate in the window, the officer was still permitted to make an investigatory stop to ensure that the license plate was securely fastened to the vehicle. The Supreme Court considered the issue and reversed. Under the plain language of this section, Lacasella's license plate was clearly and conspicuously displayed and unobstructed from plain view. In believing that the license plate must be secured to the bumper, the officer misconstrued this section, and observations made by an officer who does not understand the law are not objectively grounded in law and cannot be the basis of a particularized suspicion. Thus, the officer did not have the objective data necessary to justify the investigatory stop, and the evidence obtained subsequent to the illegal stop should have been suppressed. Further, the District Court's conclusion that even if the officer had seen the license plate in the window, the officer was still permitted to make an investigatory stop to ensure that the license plate was securely fastened to the vehicle was also erroneous. Such a holding would justify an investigatory stop of every vehicle in Montana. Law enforcement is not permitted to make an investigatory stop unless an officer observes objective data that gives rise to an inference that an individual is engaged in wrongdoing, and that objective data did not exist in this case. St. v. Lacasella, 2002 MT 326, 313 M 185, 60 P3d 975 (2002).

"Free Men" Not Free to Ignore State Motor Vehicle Laws: Operation of a motor vehicle on public roads is a privilege and is subject to reasonable regulation by the state in the valid exercise of the

state's police power. Reasonable regulations include mandatory vehicle registration, insurance, and seatbelt usage. The privilege may be revoked for failure to comply with regulations. No one in the state is exempt from the regulations, including appellant, who claims to be a "free man" who is not a 14th amendment citizen and who therefore does not need to obey state or federal law. St. v. Folda, 267 M 523, 885 P2d 426, 51 St. Rep. 1149 (1994).

Power of State to Enact and Courts to Enforce Laws Regulating Motor Vehicles: Appellant, appearing pro se, challenged as unconstitutional laws requiring driver's license, mandatory insurance, and vehicle registration. The Supreme Court held that the issues raised by the appellant were frivolous, unreasonable, and groundless in that the court had previously recognized the state's power to regulate motor vehicles in the interests of public safety at the expense of individual rights. Whitefish v. Hansen, 237 M 105, 771 P2d 976, 46 St. Rep. 657 (1989).

Constitutionality: Enforcement of the provisions of this section requiring license plates is not a violation of constitutional rights. Billings v. Skurdal, 224 M 84, 730 P2d 371, 43 St. Rep. 2036 (1986).

Attorney General's Opinions

Motor Vehicle Taxation Situs: The proper situs for taxation of a motor vehicle is that school district wherein the owner makes his permanent residence at the time of registration. 37 A.G. Op. 139 (1978), overruling 32 A.G. Op. 15 (1968) and 37 A.G. Op. 108 (1978).

61-3-302. Residents operating motor vehicles under licenses issued by any state other than Montana forbidden — vehicles exempt from registration — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 663, L. 2023. Amendment effective October 1, 2023.

2005 Amendments — Composite Section — Coordination: Section 66, Ch. 542, in (1)(a) after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; and made minor changes in style. Amendment effective January 1, 2006.

Section 49, Ch. 596, in (1)(a) after "Montana" inserted "who owns a motor vehicle" and substituted "with license plates" for "under a license"; inserted (1)(b) concerning residency for vehicle titling and registration purposes; inserted (2) concerning exempt vehicles owned by a nonresident; inserted (3) concerning vehicles held for sale; inserted (4) concerning junk vehicles; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 140, Ch. 596, L. 2005, a coordination section, in (1)(a) after "Montana" inserted "who owns a motor vehicle, trailer, semitrailer, or pole trailer"; inserted (1)(b) concerning state residence for 60 days; inserted (2) concerning nonresident exemption from registration; inserted (3) concerning items held for sale as exempt from registration; inserted (4) concerning junk vehicles; and made minor changes in style.

61-3-303. Original registration — process — fees.

Compiler's Comments

2023 Amendments — Composite Section: Section 3, Ch. 663, L. 2023, in (1) inserted last sentence and inserted (4)(c) regarding a person seeking a certificate of title who is serving or retired from serving aboard the USS Montana. Amendment effective October 1, 2023.

Section 9, Ch. 782, L. 2023, inserted (6)(d) regarding donations to support cancer screenings; in (9)(a) inserted final phrase after "anatomical gifts"; inserted (9)(b) and (9)(c) regarding donations being credited to certain special revenue accounts; deleted former (11) that read: "(11) Revenue that accrues from the voluntary donation provided in subsection (6)(c) must be forwarded by the respective county treasurer or an authorized agent to the department for deposit in the state special revenue fund to the credit of the account established in 2-15-2218 to support activities related to education regarding prevention of traumatic brain injury"; and made minor changes in style. Amendment effective July 1, 2023.

Applicability: Section 12, Ch. 782, L. 2023, provided: "[This act] applies to insurance policies, certificates, and contracts issued or renewed on or after January 1, 2024."

2021 Amendments — Composite Section: Chapter 77 in (9) in middle substituted "department of labor and industry" for "department of public health and human services". Amendment effective March 25, 2021.

Chapter 389 in (1) near end of first sentence before "owner" inserted "registering"; inserted (2) concerning a Montana resident registering a vehicle that has a co-owner that would otherwise not qualify to register the vehicle; and made minor changes in style. Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2017 Amendments — Composite Section: Chapter 323 in (9)(a) at end inserted "or unless it was registered under 61-3-701". Amendment effective October 1, 2017.

Chapter 435 in (3)(b) in first sentence substituted "shall collect fees pursuant to 61-3-203 and 61-3-220(4) and issue a 90-day temporary registration permit pursuant to 61-3-224 for a motor vehicle, trailer, semitrailer, pole trailer, motorboat, sailboat that is 12 feet in length or longer, snowmobile, or off-highway vehicle" for "may register a motor vehicle, trailer, semitrailer, or pole trailer", in second sentence substituted "shall request the 90-day temporary registration permit from the authorized agent or county treasurer that originally issued the temporary registration permit" for "may submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312"; and made minor changes in style. Amendment effective October 1, 2017.

2013 Amendments — Composite Section: Chapter 142 in (2) substituted "subsection (3)" for "subsections (3) and (11)"; and in (11) at beginning substituted "The department, an authorized agent of the department, or a" for "Beginning January 1, 2013, the". Amendment effective April 3, 2013.

Chapter 196 in (1) before "in the county" deleted "in the office of the county treasurer"; throughout section following "county treasurer" inserted references to authorized agent; in (11) at beginning deleted "Beginning January 1, 2013"; and made minor changes in style. Amendment effective July 1, 2013.

Chapter 370 in (1) inserted last sentence concerning nonresident registration. Amendment effective October 1, 2013.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

2011 Amendment: Chapter 73 in (11) near beginning substituted "January 1, 2013" for "July 1, 2011" and deleted former second sentence that read: "Unless the verification system is temporarily unavailable, the county treasurer may not issue license plates to a motor vehicle when compliance with 61-6-301 cannot be verified." Amendment effective March 25, 2011.

2009 Amendments — Composite Section: Chapter 41 in (8) and (10) after "department" deleted "of revenue". Amendment effective January 1, 2010.

Chapter 413 in (2) in introductory clause inserted reference to subsection (11); and inserted (11) requiring use of online motor vehicle liability insurance verification system. Amendment effective January 1, 2010.

2007 Amendments — Composite Section: Chapter 44 in (1) near end after "county where the" substituted "vehicle is domiciled or the county where the" for "motor vehicle"; and made minor changes in style. Amendment effective October 1, 2007. The amendment by Ch. 329 rendered the amendment by Ch. 44 void.

Chapter 329 in (1) near end after "owner" deleted "permanently resides or, if the motor vehicle, trailer, semitrailer, or pole trailer is owned by a corporation or used primarily for commercial purposes, in the county where the motor vehicle, trailer, semitrailer, or pole trailer"; and in (5)(a)(i) deleted reference to subsection (2) of 61-3-321. Amendment effective January 1, 2008.

2005 Amendments — Composite Section — Coordination: Section 67, Ch. 542, in (1) in two places near beginning, (3)(a) in first sentence, (3)(b), (4), and (7) in second sentence after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (1) in two places near end, (2)(a), (2)(a)(i), (2)(a)(ii), (2)(b), (3)(a) in second sentence, (5)(b), (6), (6)(b) in two places, and (7) in first sentence substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; in (4) in first sentence, in (5)(b), and (6) substituted "61-3-321(2) or 61-3-562" for "61-3-560 through 61-3-562"; in (5) after "manufactured home" substituted "trailer, semitrailer, or pole trailer" for "as those terms are defined in 15-1-101(1)"; in (5)(b) near beginning before "fees in lieu of tax" deleted "motor vehicle"; in (9)(a) near end of first sentence in two places and near middle of (9)(b) substituted "travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer" for "vehicle"; in (9)(a) in second sentence and (9)(b) near beginning substituted "travel trailer, motorcycle, quadricycle, trailer, semitrailer, or pole trailer" for references to vehicle described in subsection (9)(a); and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 142, Ch. 596, L. 2005, a coordination section, in (1) at beginning inserted exception clause and at end substituted "domiciled" for "permanently assigned"; deleted former (2)(b) that read: "(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data"; in (3)(a) in first sentence near beginning substituted "may" for "shall"; in (3)(b) in first sentence after "cannot" inserted "due to circumstances beyond the new owner's control", substituted "surrender a previously assigned" for "present the previously issued", and at end deleted "only as authorized by the department under 61-3-342" and inserted second sentence concerning application for title; substituted (4) concerning initial registration for former text that read: "The department or the county treasurer shall determine the amount of fees, including local option taxes or fees, to be collected at the time of registration for each light vehicle subject to a registration fee under 61-3-560 through 61-3-562 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-529. The county treasurer shall collect the registration fee, other appropriate fees, and local option taxes or fees, if applicable, on each motor vehicle at the time of its registration"; substituted (5) and (5)(a) concerning fees for former text that read: "A person who seeks to register a motor vehicle, except a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456;

(b) except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle fees in lieu of tax or registration fees under 61-3-560 through 61-3-562 imposed against the vehicle for the current year of registration and the immediately previous year"; in (6) deleted former second sentence and (a) and (b) that read: "Except as provided in 61-3-560 through 61-3-562, the department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) except as provided in subsection (9), the immediately preceding year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated"; and made minor changes in style.

Section 50, Ch. 596, in (1) at beginning inserted exception clause and at end substituted "domiciled" for "permanently assigned"; deleted former (2)(b) that read: "(b) To register a vehicle, the county treasurer shall update the electronic record of title maintained by the department under 61-3-101 by entering the fees paid and recording any changes to the recorded data"; in (3)(a) in first sentence near beginning substituted "may" for "shall"; in (3)(b) in first sentence after "cannot" inserted "due to circumstances beyond the new owner's control", substituted "surrender a previously assigned" for "present the previously issued", and at end substituted "and submit an application for certificate of title, subject to the registration renewal limitations of 61-3-312" for "only as authorized by the department under 61-3-342"; substituted (4) concerning initial registration for former text (see Ch. 596 note); in (5) at beginning inserted "Unless otherwise provided by law" and after "motor vehicle" deleted "except a mobile home or a manufactured home as those terms are defined in 15-1-101(1)"; in (5)(a) substituted "fees, as provided in 61-3-321" for "fee, as provided in 61-3-311 and 61-3-321 or 61-3-456"; in (5)(b) at beginning deleted "except as provided in 61-3-456 or unless it has been previously paid, the motor vehicle" and at end inserted "as required for"; in (5)(b)(i) at beginning inserted "a light vehicle" and at end substituted "in addition to, if applicable, any local option tax or fee under 61-3-537 or 61-3-570" for "imposed against the vehicle for the current year of registration and the immediately previous year"; inserted (5)(b)(ii) through (5)(b)(vi) enumerating motor homes, travel trailers, motorcycles or quadricycles, buses and trucks, and trailers; in (6) deleted former second sentence and (a) and (b) (see Ch. 596 note); and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 142, Ch. 596, L. 2005, a coordination section, if Senate Bill No. 285 (Ch. 542, L. 2005) and [this act] were both passed and approved, then 61-3-303 must read as amended in sec. 142. In (3)(b) inserted second sentence concerning application for title; and substituted (5) and (5)(a) concerning fees for former text (see Ch. 596 note).

The amendment to this section made by sec. 3, Ch. 500, L. 2005, was rendered void by sec. 8, Ch. 500, L. 2005, and sec. 141, Ch. 596, L. 2005, coordination sections.

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendments — Composite Section: Chapter 477 inserted (5)(d) relating to donations for traumatic brain injury; in (8) inserted reference to department of revenue; and inserted (10) relating to use of donations for traumatic brain injury. Amendment effective January 1, 2004.

Chapter 592 in (1) at beginning substituted "A Montana resident who owns" for "Each owner of", after "shall" substituted "register the motor vehicle" for "for each motor vehicle owned, except as otherwise provided in this section, file", near middle after "resides" deleted "at the time of making the application", after "purposes, in" deleted "the taxing jurisdiction of", and at end after "assigned" deleted "an application for registration or reregistration on a form prescribed by the department. The application must contain"; deleted former (1)(a) through (1)(f) that read: "(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;

(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;

(e) a space in which the person registering the vehicle may indicate the person's desire to donate $1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and

(f) other information that the department may require"; inserted (2) concerning registration of vehicles when the owner delivers an application for a certificate of title or the county treasurer confirms the electronic record of title; inserted (3) concerning registration of vehicles for which a certificate of title and registration were issued in another jurisdiction; inserted (4) concerning the determination and collection of fees; in (5) at beginning of introductory clause after "who" substituted "seeks to register" for "files an application for registration or reregistration of" and near end after "shall" deleted "upon the filing of the application"; in (6) at beginning of first sentence of introductory clause after "The" deleted "application may not be accepted by the", after "treasurer" inserted "may not issue a registration receipt or license plates for the vehicle to the owner", after "unless" inserted "the owner makes", and at end after "subsection (5)" deleted "accompany the application"; in (6)(b) at beginning inserted exception clause and after "immediately" substituted "preceding" for "previous"; in (7) in first sentence after "investigation of the" inserted "registration" and substituted second sentence requiring a registrant to provide additional information upon request for former sentence that read: "An applicant for registration or reregistration shall submit proof from appropriate records of the proper county at the request of the department"; inserted (9) concerning the one-time fee; and made minor changes in style. Amendment effective January 1, 2004.

The amendments to this section made by sec. 3, Ch. 449, L. 2003, and sec. 60, Ch. 477, L. 2003, were rendered void by sec. 83(2), Ch. 477, L. 2003, a coordination section, and sec. 47(2)(a), Ch. 592, L. 2003, a coordination section.

Although sec. 47(2)(a), Ch. 592, L. 2003, appears to void all amendments made by Ch. 477, L. 2003, the coordination instruction does not mention Ch. 449, L. 2003, and therefore the code commissioner has codified subsections (5)(d) and (10) to reflect other provisions of Ch. 449.

The amendments to this section made by sec. 28, Ch. 592, L. 2003, were rendered void by sec. 47(2)(a), Ch. 592, L. 2003, a coordination section.

Applicability: Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

2000 Amendment by Referendum: Chapter 515, L. 1999, in (1) near middle after "county treasurer" inserted "in the county"; in (2)(b) substituted "fees in lieu of tax or registration fees under 61-3-560 through 61-3-562" for "taxes or fees in lieu of tax assessed"; deleted former (2)(b)(ii) that read: "(ii) the new motor vehicle sales tax against the vehicle for the current year of registration"; at beginning of second sentence of (3) inserted exception clause; in first sentence of (4) before "status" deleted "tax" and in second sentence after "proof from" deleted "tax or other"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendment: Chapter 94 inserted (1)(e) requiring the application to contain a space for indicating the desire to donate to the promotion of awareness of efforts to procure organ and tissue donations; inserted (2)(c) providing for the payment of donations to promote awareness of efforts to procure organ and tissue donations; inserted (5) providing for deposit of donations into a state special revenue fund to support awareness programs for organ and tissue donations; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendments: Chapter 200 in (2), in introductory clause after "mobile home", inserted "or a manufactured home"; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 496 in (1), near end of first sentence after "on a form", substituted "prescribed" for "to be prepared and furnished"; in (1)(c), in two places before "rated capacity", inserted "the manufacturer's"; in (2)(b)(i) substituted "motor vehicle taxes or fees in lieu of tax assessed or imposed" for "personal property taxes assessed"; in (3), in second sentence after "The department", deleted "of revenue" and after "may not assess" inserted "or impose"; in (4), near beginning of first sentence after "The department" and in second sentence, at end, deleted "of revenue"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendments: Chapter 88 in (1)(c), after "gross weight", inserted "declared weight on all trucks for which the rated capacity is 1 ton or less"; inserted (1)(d) concerning declared weight on trailers; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 257 in (2)(a) inserted reference to 61-3-456; in (2)(b) inserted exception clause; and made minor changes in style.

1993 Special Session Amendment: Chapter 27 in (2), in third sentence, substituted "department of revenue" for "county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Amendment: Deleted former (1)(d) that read: "(d) in case of reregistration, the license number for the preceding year"; and made minor changes in style.

1987 Amendments: Chapter 421 in (2)(b)(ii) inserted reference to fee in lieu of tax (not codified because Ch. 611 returned some vehicles to tax system) and at end inserted "as required by 15-16-202" (not codified due to Ch. 611 deletion); and deleted former (2)(b)(iii) that read: "(iii) in the case of a motorcycle, quadricycle, motor home, travel trailer, or camper, the fee in lieu of property tax for the current year of registration".

Chapter 611 in middle of introductory clause of (1), after "where the", substituted language concerning residence in county of assignment for "motor vehicle is owned or taxable"; in (2)(b)(ii), after "registration", deleted "and/or the license fee imposed by 61-3-532 for the current year of registration and the immediately previous year"; in former (2)(b)(iii) deleted motorcycles and quadricycles from payment of current fee requirement (However, see 15-16-202.); in second sentence of (3), before "county", inserted "department or its agent may not assess and the" and after "may not" deleted "assess or"; and in two places in (4) substituted "department or its agent" for "county treasurer".

1985 Amendments: Chapter 433 in (2)(b)(i) inserted "against the vehicle for the current year of registration and the immediately previous year"; and in (2)(b)(ii) inserted "for the current year of registration and the immediately previous year"; and in (3) inserted second sentence, (a), and (b) prohibiting a county treasurer from assessing or collecting taxes or fees for a period other than for the current year or for the immediately previous year if the vehicle was not registered or operated on state highways. (Amendment effective April 11, 1985, and applicable to vehicles registered or reregistered after December 31, 1984.)

Chapter 503 in first sentence of (1) and in (1)(e) substituted references to department of justice for references to division of motor vehicles.

Chapter 516 in (2)(b)(iii), after "case of a", inserted "motorcycle, quadricycle" (effective January 1, 1986).

1981 Amendment: Added "if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable" at the end of (1)(a); added subsection (2)(b) requiring payment of personal property taxes, new motor vehicle sales tax or license fee, or fee in lieu of property tax for motor home, travel trailer, or camper in addition to registration fee unless personal property taxes, sales taxes or license fees, or fee in lieu have previously been paid; added "and/or the license fee imposed by 61-3-532" at the end of (2)(b)(ii); deleted "unless the same shall have been theretofore paid for the year, before the application for registration or reregistration may be accepted by the county treasurer" from the end of (2)(b)(iii); added subsection (3) prohibiting a county treasurer from accepting an application for registration unless accompanied by payments for registration fee, property taxes, vehicle sales tax, or fee in lieu taxes; and inserted "or other appropriate" before "records" near the end of (4).

Case Notes

Situs of Automobile for Taxation and License:

Tangible property such as an automobile is usually considered to be owned, taxable, and licensable where it is habitually kept when at rest rather than where it is temporarily kept or where it is used during the working hours of the day. Valley County v. Thomas, 109 M 345, 97 P2d 345 (1939).

If a motor vehicle's owner resides on Fort Peck townsite, its situs for license and tax purposes is ordinarily in the county of its owner's actual residence or domicile. Its owner's voting residence or place of habitual or permanent keeping is immaterial. Valley County v. Thomas, 109 M 345, 97 P2d 345 (1939).

Attorney General's Opinions

Proportion of Vehicle-Related Taxes Applicable to Rural Fire Districts: Vehicle-related taxes referred to in subsection (1) of 61-3-509 (see 2001 amendment depositing fees in state general fund) must be distributed proportionately to rural fire districts on the basis of all mill levies applicable to personal property located within the geographical boundaries of the districts. For distribution entitlement purposes, the residence or assignment address appearing on the certificate of registration determines if a particular vehicle is within a district's boundaries. 43 A.G. Op. 4 (1989).

Motor Vehicle Dealer Not to Obtain "Title Only" on Vehicle in Inventory: A motor vehicle dealer may not obtain a "title only" (meaning receipt of title without registration or payment of taxes) from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle. 40 A.G. Op. 70 (1984).

Fees Due Regardless Whether Applicant Has Previously Paid for His License Plates During Current Year: Upon a transfer of title and license plates to a newly acquired vehicle, the County Treasurer must collect from the applicant the registration fees provided for in 61-3-321. 36 A.G. Op. 27 (1975).

Plates Issued to Nonresident Military Personnel Without Payment of Property Taxes: The County Treasurer must register an automobile or issue license plates to nonresident military personnel without requiring the payment of personal property taxes on the automobile. 31 A.G. Op. 22 (1966).

61-3-311. Registration — time periods.

Compiler's Comments

2021 Amendment: Chapter 389 in (3)(c) substituted "61-3-303(4)(b)" for "61-3-303(3)(b)". Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business

in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2013 Amendment: Chapter 196 in (3)(a) and (3)(b) after "county treasurer" inserted "or an authorized agent". Amendment effective July 1, 2013.

2007 Amendment: Chapter 44 in (3)(a) near beginning after "other than" inserted "a registration period beginning in". Amendment effective October 1, 2007.

2005 Amendments — Composite Section — Coordination: Section 68, Ch. 542, in (1) in third sentence in two places after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (2) and (2)(b) substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 143, Ch. 596, L. 2005, a coordination section, substituted (1) concerning registration and assignment of period for former text that read: "Registration must be renewed annually, and registration fees must be paid annually. Except as provided in 61-3-313 through 61-3-316, 61-3-318, 61-3-526, and 61-3-721, all registrations expire on December 31 of the year in which they are issued and must be renewed annually upon payment of all required fees to the county treasurer or the department's agent not later than February 15 of each year. If the ownership of a motor vehicle is transferred during the registration year, the new owner shall apply for a certificate of title and register the motor vehicle as provided by this chapter"; deleted former (2) that read: "(2) The department, its authorized agent, or a county treasurer may not renew the registration of a vehicle whose ownership has been transferred and that was originally registered under the provisions of 61-3-342(3) unless:

(a) the previously issued certificate of title has been surrendered to the department, its authorized agent, or the county treasurer and the process for issuing a certificate of title has been completed; or

(b) the person to whom ownership of the vehicle has been transferred presents an affidavit and bond in support of the application for a certificate of title as permitted in 61-3-208"; inserted (2) concerning registration period; inserted (3) concerning assignment to month other than month of initial registration; inserted (4) concerning permanent registration; and made minor changes in style.

Section 51, Ch. 596, substituted (1) concerning registration and assignment of registration period for former text (see Ch. 542 note); deleted former (2) (see Ch. 542 note); inserted (2) concerning registration period; inserted (3) concerning assignment to month other than month of initial registration; inserted (4) concerning permanent registration; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 143, Ch. 596, L. 2005, a coordination section, if Senate Bill No. 285 (Ch. 542, L. 2005) and [this act] were both passed and approved, then 61-3-311 must read as amended in sec. 143. Throughout section substituted reference to motor vehicle for reference to vehicle; and in (1) after "motor vehicle" inserted "trailer, semitrailer, or pole trailer".

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendment: Chapter 592 in (1) near beginning of first sentence before "fees" substituted "registration" for "license", near middle after "issued and" substituted "must be renewed annually upon payment of all required fees to" for "application for registration or reregistration must be filed with", and after "treasurer" inserted "or the department's agent" and in second sentence after "year" inserted "the new owner shall apply for a certificate of title and register", after "vehicle" deleted "must be reregistered and relicensed", and at end substituted "this chapter" for "statute"; inserted (2) concerning renewal of registration of a vehicle whose ownership has been transferred; and made minor changes in style. Amendment effective January 1, 2004.

The amendments to this section made by sec. 61, Ch. 477, L. 2003, and sec. 29, Ch. 592, L. 2003, were rendered void by sec. 47(2)(b), Ch. 592, L. 2003, a coordination section.

Applicability: Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

1995 Amendment: Chapter 42 near beginning of second sentence inserted references to 61-3-318 and 61-3-721; and made minor changes in style. Amendment effective January 1, 1996.

1989 Amendment: Near beginning inserted reference to 61-3-526; and made minor changes in phraseology.

61-3-312. Renewal of registration — exceptions — grace period.

Compiler's Comments

2021 Amendment: Chapter 389 in (6) substituted "61-3-303(4)(b)" for "61-3-303(3)(b)". Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2019 Amendment: Chapter 335 in (4) at beginning deleted "Except as provided in 61-3-315"; and made minor changes in style. Amendment effective May 7, 2019.

2013 Amendment: Chapter 142 in (2) at beginning deleted "Except as provided in subsection (4)"; in (3) substituted "shall" for "may"; deleted former (4) that read: "(4) Beginning January 1, 2013, and except when the verification system is temporarily unavailable, a registration may not be renewed when compliance with 61-6-301 cannot be determined using the verification system"; in (5) at end deleted "and the department, authorized agent, or county treasurer determines the owner is in compliance with 61-6-301 using the verification system provided in 61-6-157"; and made minor changes in style. Amendment effective April 3, 2013.

2011 Amendments — Composite Section: Chapter 73 in (4) near beginning substituted "January 1, 2013" for "July 1, 2011"; in (6) after "registration period and" deleted "if, beginning July 1, 2011"; and made minor changes in style. Amendment effective March 25, 2011.

Chapter 209 in (2) substituted "61-3-321(13)" for "61-3-321(12)". Amendment effective January 1, 2012.

Chapter 247 in (2) substituted "61-3-321(13)" for "61-3-321(12)". Amendment effective April 22, 2011.

2009 Amendment: Chapter 413 in (2) at beginning inserted exception clause and inserted reference to 61-3-321(12); inserted (3) authorizing use of verification system; inserted (4) prohibiting registration renewal when compliance cannot be determined; in (6) at end after "vehicle's registration period" inserted remainder of sentence concerning determination of compliance with 61-6-301; and made minor changes in style. Amendment effective January 1, 2010.

2005 Amendments — Composite Section — Coordination: Section 69, Ch. 542, in (1) in first sentence in exception clause inserted reference to 61-3-321(2) and deleted reference to 61-3-560; in first sentence in (1) and three places in (2) substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 144, Ch. 596, L. 2005, a coordination section, in (1) in first sentence substituted "61-3-313" for "61-3-311(1), 61-3-314, 61-3-318, 61-3-526, 61-3-560, 61-3-562", before "vehicle" inserted "motor", and after "chapter" substituted "must be renewed on or before the last day of the month of the motor vehicle's registration period following the expiration of the motor vehicle's registration" for "expires on December 31 of each year and must be renewed annually upon payment of registration fees as provided in 61-3-303 and 61-3-321", deleted former second sentence that read: "The renewal takes effect on January 1 of each year", and inserted second and third sentences concerning payment of fees and taxes and retention of registration period; substituted (2) concerning timely registration for former text that read: "The owner of a vehicle registered under the provisions of this section may operate the vehicle between January 1 and February 15 without displaying the registration decal of the current year if, during the period, the owner displays upon the vehicle the number plates or plate assigned for the previous year"; inserted (3) concerning exceptions to nonrenewal; and made minor changes in style.

Section 52, Ch. 596, in (1) in first sentence substituted "61-3-313" for "61-3-311(1), 61-3-314, 61-3-318, 61-3-526, 61-3-560, 61-3-562" and after "chapter" substituted "must be renewed on or before the last day of the month of the motor vehicle's registration period following the expiration of the vehicle's registration" for "expires on December 31 of each year and must be renewed annually upon payment of registration fees as provided in 61-3-303 and 61-3-321", deleted former second sentence that read: "The renewal takes effect on January 1 of each year", and inserted second and third sentences concerning payment of fees and taxes and retention of registration period; substituted (2) concerning timely registration for former text that read: "The owner of a vehicle registered under the provisions of this section may operate the vehicle between January 1 and February 15 without displaying the registration decal of the current year if, during the period, the owner displays upon the vehicle the number plates or plate assigned for the previous year"; inserted (3) concerning exceptions to nonrenewal; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 144, Ch. 596, L. 2005, a coordination section, if Senate Bill No. 285 (Ch. 542, L. 2005) and [this act] were both passed and approved, then 61-3-312 must read as amended in sec. 144. Throughout section substituted references to motor vehicle for references to vehicle.

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendments — Composite Section: Chapter 477 in (1) near middle of first sentence after "upon" substituted "payment of registration fees" for "application and payment of license fees" and at beginning of third sentence substituted "A registration receipt" for "The certificate of registration"; near middle of (2) substituted "registration decal" for "registration certificate"; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 592 in (1) near beginning of first sentence after "provided in" inserted "61-3-311(1)", after "61-3-526" inserted "61-3-560, 61-3-562", and near end after "payment of" substituted "registration" for "license"; in (2) near middle after "registration" substituted "decal" for "certificate"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

1995 Amendment: Chapter 42 in (1), near beginning of first sentence, inserted references to 61-3-318 and 61-3-721; and made minor changes in style. Amendment effective January 1, 1996.

1989 Amendment: Near beginning of (1) inserted reference to 61-3-526; and made minor changes in phraseology.

61-3-313. Motor vehicles exempt from registration renewal.

Compiler's Comments

2005 Amendments — Composite Section — Coordination: Section 70, Ch. 542, in introductory clause substituted motor vehicle for vehicle as defined term and after second "motor vehicle" deleted "as defined in 61-1-102"; in (1), (3), and (8) before "vehicles" inserted "motor"; in (5) inserted "pole trailers"; at end of (6) substituted "a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader" for "as defined in 61-1-104"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 145, Ch. 596, L. 2005, a coordination section, substituted current text concerning exemptions from registration renewal for former text that read: "For purposes of 61-3-313 through 61-3-316, "vehicle" means a motor vehicle, as defined in 61-1-102, that is subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 61-3-411 or 61-3-458(3)(b);
(4) trucks exceeding a 1-ton rated capacity;
(5) trailers, semitrailers, tractors, and buses;
(6) special mobile equipment as defined in 61-1-104;
(7) motor vehicles registered as part of a fleet under 61-3-318; and
(8) apportionable vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733."

Section 53, Ch. 596, substituted current text concerning exemptions from registration renewal for former text that read: "For purposes of 61-3-313 through 61-3-316, "vehicle" means a motor vehicle, as defined in 61-1-102, that is subject to annual registration in this state except:
(1) vehicles owned or leased and operated by the government of the United States or by the state of Montana or a political subdivision of the state;
(2) mobile homes and motor homes;
(3) vehicles that are registered in accordance with or subject to 61-3-411 or 61-3-458(3)(b);
(4) trucks exceeding a 1-ton rated capacity;
(5) trailers, semitrailers, tractors, and buses;
(6) special mobile equipment as defined in 61-1-104;
(7) motor vehicles registered as part of a fleet under 61-3-318; and
(8) apportionable vehicles registered as part of a fleet, as defined in 61-3-712, that is subject to the provisions of 61-3-711 through 61-3-733." Amendment effective January 1, 2006.

Pursuant to sec. 145, Ch. 596, L. 2005, a coordination section, if Senate Bill No. 285 (Ch. 542, L. 2005) and [this act] were both passed and approved, then 61-3-313 must read as amended in sec. 145. Throughout section substituted references to motor vehicle for references to vehicle.

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:
(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;
(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.
(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendments — Composite Section: Chapter 393 in (3) at end after "61-3-411" deleted "or 61-3-421"; and made minor changes in style. Amendment effective April 18, 2003.

Chapter 399 in (3) near end substituted reference to 61-3-458(3)(b) for reference to 61-3-332(10)(c)(i)(A). Amendment effective January 1, 2004.

Chapter 592 in (5) at end after "buses" deleted "motorcycles, quadricycles, and motor-driven cycles"; and made minor changes in style. Amendment effective January 1, 2004.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

Applicability: Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

1995 Amendments: Chapter 42 inserted (8) excepting apportionable fleet vehicles from annual registration requirement; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 88 in (4) substituted "a 1-ton rated capacity" for "a licensed gross vehicle weight of 10,000 pounds". Amendment effective January 1, 1996.

1993 Amendment: Chapter 209 in (3) substituted "61-3-332(10)(c)(i)(A)" for "61-3-332(10)(c)". Amendment effective January 1, 1994.

1991 Amendment: In (3) substituted "61-3-332(10)(c)" for "61-3-451"; and made minor change in style.

1989 Amendment: Inserted (7) relating to fleet vehicles. Amendment effective July 1, 1989.

Applicability: Section 8, Ch. 517, L. 1989, provided: "[This act] applies to fleet vehicles registered after the effective date of [this act]." Effective July 1, 1989.

1985 Amendment: In (5) after "motorcycles", inserted "quadricycles" and after "and", changed "cycle motors" to "motor-driven cycles" (effective January 1, 1986).

61-3-314. Registration period.

Compiler's Comments

2005 Amendments — Composite Section — Coordination: Section 71, Ch. 542, in (1) near beginning inserted "motor" before "vehicle". Amendment effective January 1, 2006.

Pursuant to sec. 146, Ch. 596, L. 2005, a coordination section, deleted former (1) that read: "(1) Except as provided in 61-3-315, each vehicle subject to the provisions of 61-3-313 through 61-3-316 must be registered for a 12-month period based upon the date it is first registered in this state pursuant to 61-3-313 through 61-3-316"; and made minor changes in style.

Section 54, Ch. 596, deleted former (1) that read: "(1) Except as provided in 61-3-315, each vehicle subject to the provisions of 61-3-313 through 61-3-316 must be registered for a 12-month period based upon the date it is first registered in this state pursuant to 61-3-313 through 61-3-316"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 146, Ch. 596, L. 2005, a coordination section, if Senate Bill No. 285 (Ch. 542, L. 2005) and [this act] were both passed and approved, then 61-3-314 must read as amended in sec. 146. Substituted reference to motor vehicle for reference to vehicle.

2000 Amendment by Referendum: Chapter 515, L. 1999, at beginning of (1) substituted exception clause for "Notwithstanding any other provisions of this title regarding the registration of motor vehicles". Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1991 Amendments: Chapter 337 in (1) substituted "each vehicle" for "commencing January 1, 1976, all vehicles"; near beginning of (2) increased registration periods from 10 to 12; inserted (2)(k) creating 11th registration period; inserted (2)(l) creating 12th registration period; deleted (3) that read: "(3) For purposes of 61-3-313 through 61-3-316, the period November 1 through November 30 shall be considered the 10th period preceding and the period December 1 through December 31 shall be considered the first period of the year following"; and made minor changes in style.

Chapter 604 in (1), before "all", deleted "commencing January 1, 1976"; near beginning of (2) increased registration periods from 10 to 12; inserted (2)(k) creating 11th registration period; inserted (2)(l) creating 12th registration period; and deleted (3) that read: "(3) For purposes of 61-3-313 through 61-3-316, the period November 1 through November 30 shall be considered the 10th period preceding and the period December 1 through December 31 shall be considered the first period of the year following". Amendment effective July 1, 1991.

Saving Clause: Section 2, Ch. 337, L. 1991, provided: "[This act] does not affect the dates of reregistration under 61-3-313 through 61-3-316 of motor vehicles that before January 1, 1992, were subject to reregistration in January, the 1st period, and in October, the 10th period."

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

61-3-316. New registrations.

Compiler's Comments

2019 Amendment: Chapter 335 at beginning of last sentence substituted "Except as permitted in 61-3-318 or 61-3-324" for "Except as permitted in 61-3-315, 61-3-318, and 61-3-324"; and made minor changes in style. Amendment effective May 7, 2019.

2005 Amendments — Composite Section: Chapter 542 in three places inserted "motor" before "vehicle". Amendment effective January 1, 2006.

Chapter 596 in first sentence at beginning inserted exception clause; in second sentence in exception clause substituted "permitted" for "provided" and inserted references to 61-3-318 and 61-3-324; and made minor changes in style. Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, at beginning of second sentence inserted exception clause; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

61-3-317. New registration required for transferred motor vehicle — grace period — penalty — display of proof of purchase.

Compiler's Comments

2019 Amendment: Chapter 309 in (2) near end substituted "61-1-101(81)(b)" for "61-1-101(80)(b)". Amendment effective October 1, 2019.

2017 Amendment: Chapter 435 in (2) near end substituted "during the period allowed under 61-1-101(80)(b)" for "during the 40-day period". Amendment effective October 1, 2017.

2005 Amendments — Composite Section — Coordination: Section 74, Ch. 542, in (1) near beginning and (3) near beginning after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (1) near end, (2) near beginning, and (3) near middle and in two places near end substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 147, Ch. 596, L. 2005, a coordination section, in (1) in first sentence at beginning deleted "Except as otherwise provided in this section", increased grace period from 20 days to 40 days, deleted reference to part 5 of chapter 3, and at end deleted "unless the fees and taxes have been paid for the year or for the 24-month period as provided in 61-3-315, as if the vehicle were being registered for the first time in that registration year" and inserted second sentence restricting operation; deleted former (2) that read: "(2) The new owner of a vehicle described in 61-3-303(9) shall make application and pay the registration fees, fees in lieu of tax, and other fees required by part 5 of this chapter and local option taxes, if applicable, whether or not the fees and taxes have been paid previously"; in (2) increased grace period from 20 days to 40 days and after "registration permit" substituted "issued under 61-3-224 is properly displayed" for "obtained from the county treasurer or a law enforcement officer as authorized by the department, is clearly displayed in the rear window of the motor vehicle or, if a durable placard has been issued for the vehicle, the placard is attached to the rear of the vehicle"; deleted former (4) and (5) that read: "(4) Registration fees collected under 61-3-321 are not required to be paid when a license plate is transferred under 61-3-335 and this section.

(5) Failure to make application for a certificate of title within the time provided in this section subjects the purchaser to a penalty of $10. The penalty must be collected by the county treasurer at the time of registration and is in addition to the fees otherwise provided by law. The penalty must be deposited in the state general fund"; and made minor changes in style.

Section 57, Ch. 596, in (1) in first sentence at beginning deleted "Except as otherwise provided in this section", increased grace period from 20 days to 40 days, and at end deleted "unless the fees and taxes have been paid for the year or for the 24-month period as provided in 61-3-315, as if the vehicle were being registered for the first time in that registration year" and inserted second sentence restricting operation; deleted former (2) (see Ch. 542 note); in (2) increased grace period from 20 days to 40 days and after "registration permit" substituted "issued under 61-3-224 is properly displayed" for "obtained from the county treasurer or a law enforcement officer as authorized by the department, is clearly displayed in the rear window of the motor vehicle or, if a durable placard has been issued for the vehicle, the placard is attached to the rear of the vehicle"; deleted former (4) and (5) (see Ch. 542 note); and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 147, Ch. 596, L. 2005, a coordination section, if Senate Bill No. 285 (Ch. 542, L. 2005) and [this act] were both passed and approved, then 61-3-317 must read as amended in sec. 147. Throughout section after "motor vehicle" inserted "trailer, semitrailer, or pole trailer".

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendments — Composite Section: Chapter 477 in (1) near middle after "application" inserted "for a certificate of title"; in (3) near middle after "without a" substituted "current registration receipt or registration decal" for "certificate of registration", after "period, a" substituted "temporary registration permit" for "vehicle purchase sticker in a form prescribed and furnished by the department", near end after "department" deleted "reciting the date of purchase", and at end inserted "or, if a durable placard has been issued for the vehicle, the placard is attached to the rear of the vehicle"; in (5) near beginning of first sentence after "application" inserted "for a certificate of title"; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 592 inserted (2) requiring a new owner to pay applicable taxes and fees whether or not the fees and taxes have been paid previously; in (4) at beginning after "Registration" deleted "and license"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

2002 Amendment: Chapter 13 inserted last sentence relating to deposit in the state general fund. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided: "(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002."

2000 Amendment by Referendum: Chapter 515, L. 1999, in first sentence substituted "registration fees, fees in lieu of tax and other fees required by part 5 of this chapter, and local option taxes, if applicable, unless the fees and taxes have been paid for the year or for the 24-month period as provided in 61-3-315" for "taxes or fees, or both, provided by part 5 of this chapter, unless the tax or fee has been paid for the year"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1985 Amendments: Chapter 503 near end of second sentence substituted references to department of justice for references to division of motor vehicles.

Chapter 529 near end of second sentence, substituted "vehicle purchase sticker in a form prescribed and furnished by the department, obtained from the county treasurer or a law enforcement officer as authorized by the department" for "bill of sale or other proof of purchase".

1981 Amendment: Substituted "pay the taxes, or fees, or both provided by part 5 of this chapter" for "pay the taxes, as provided by part 5 of this chapter or the fee in lieu of tax as provided by 61-3-521" in the middle of the first sentence.

Administrative Rules

ARM 18.8.415 Monthly-quarterly G.V.W. fees.

Case Notes

Unusual but Legal Driving and Unsupported Tip Insufficient Grounds for Particularized Suspicion to Make Investigative Stop: An officer received a tip concerning suspicious activity in a high crime area of Billings. The officer observed Fisher's car in the area and followed the car. The officer observed that the vehicle had a temporary sticker, which could not be read, but no license plate. The vehicle made several turns and ended up on the street where the officer originally saw it. The officer then stopped the vehicle, and Fisher was subsequently arrested for possession of drugs and drug paraphernalia. Fisher moved to suppress the evidence on grounds that the officer had no particularized suspicion to make the stop. The motion was denied, and Fisher was convicted and appealed. The state initially claimed that the officer had a particularized suspicion that Fisher was in violation of vehicle registration laws, but the state waived that argument when the officer did not testify to that effect. Further, none of the information in the anonymous tip was connected to Fisher; rather, the officer stated that he wanted to obtain the identity of the vehicle occupants for later investigation of the tip. However, under St. v. Anderson, 258 M 510, 853 P2d 1245 (1993), an investigative stop is not justified in order to corroborate a tip. Last, Fisher maintained an appropriate speed, violated no traffic laws, and made no unusual turns, and Fisher's driving was not headlong flight or evasive. The simple fact that Fisher drove back to the original street where the officer saw the vehicle, absent more objective data, was insufficient for the officer to form a particularized suspicion that Fisher was engaged in criminal activity based on operation of the vehicle. Thus, the stop violated Fisher's right to be free from unreasonable search and seizure, and the Supreme Court reversed. St. v. Fisher, 2002 MT 335, 313 M 274, 60 P3d 1004 (2002), distinguishing St. v. Henderson, 1998 MT 233, 291 M 77, 966 P2d 137 (1998), and Ill. v. Wardlow, 528 US 119 (2000), and distinguished in St. v. Flemings, 2008 MT 229, 344 M 360, 188 P3d 1020 (2008).

Attorney General's Opinions

Motor Vehicle Dealer Not to Obtain "Title Only" on Vehicle in Inventory: A motor vehicle dealer may not obtain a "title only" (meaning receipt of title without registration or payment of taxes) from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle. 40 A.G. Op. 70 (1984).

61-3-318. Fleet registration period — definition.

Compiler's Comments

2021 Amendment: Chapter 407 in (2) before "automobiles and trucks" deleted "more than 25" and at end after "rental fleet" inserted "in a quantity set by the department pursuant to 61-14-101". Amendment effective October 1, 2021.

2005 Amendments — Composite Section: Chapter 344 in (1)(a) and (1)(b) after "6-month" inserted reference to 9-month registration. Amendment effective October 1, 2005.

Chapter 542 in (1)(a) near middle after "register its" substituted "fleet" for "motor vehicles"; and in (1)(b) at beginning before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Applicability: Section 8, Ch. 517, L. 1989, provided: "[This act] applies to fleet vehicles registered after the effective date of [this act]." Effective July 1, 1989.

Effective Date: Section 9, Ch. 517, L. 1989, provided that this section is effective July 1, 1989.

61-3-319. Registration of custom-built motorcycle — exemptions.

Compiler's Comments

Effective Date: Section 61, Ch. 329, L. 2007, provided that this section is effective January 1, 2008.

61-3-320. Registration — custom vehicle, street rod, originally equipped older vehicle, kit vehicle, or specially constructed vehicle.

Compiler's Comments

2019 Amendment: Chapter 295 in (1)(c)(i) after "subsection (1)(a)(i)" inserted "a custom vehicle or street rod must be assigned", near end inserted "or collector reproduction license plates", and at end substituted "as allowed under 61-3-412" for "as allowed under 61-3-412(1), must be assigned and issued to the custom vehicle or street rod"; and made minor changes in style. Amendment effective January 1, 2020.

2007 Amendment: Chapter 329 inserted (1)(d) concerning originally equipped motor vehicle more than 30 years old. Amendment effective January 1, 2008.

Code Commissioner Correction: In (1)(a)(ii) the code commissioner deleted references to 61-3-522, 61-3-560, and 61-3-561 to reflect the repeal of those sections by Ch. 542, L. 2005. In (2)(a) the code commissioner deleted "the light vehicle registration fee provided for in 61-3-560 and 61-3-561" to reflect the repeal of those sections by Ch. 542, L. 2005. In (3)(a) the code commissioner deleted references to 61-3-522, 61-3-560, and 61-3-561 to reflect the repeal of those sections by Ch. 542, L. 2005.

Effective Date: Section 11, Ch. 458, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 28, 2005.

61-3-321. Registration fees of vehicles and vessels — certain vehicles exempt from registration fees — disposition of fees — definition.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 540, L. 2023. Amendment effective January 1, 2024.

2021 Amendment: Chapter 153 in (11)(b) after "a valid" substituted "winter" for "snowmobile". Amendment effective April 8, 2021.

2019 Amendments — Composite Section — Coordination: Chapter 219 in (19)(a) increased additional fee from $6 to $9, after second sentence deleted "The fee must be deposited in an account in the state special revenue fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities", and at end deleted "the department of fish, wildlife, and parks shall use"; in (19)(a)(i), (19)(a)(ii), (19)(a)(iii), and (19)(a)(iv) substituted current text for former text that read: "$5.37 for state parks, 25 cents for fishing access sites, and 38 cents for the operation of state-owned facilities at Virginia City and Nevada City"; in (19)(b) and (19)(c)(i) increased the additional fee from $6 to $9; and made minor changes in style. Amendment effective January 1, 2020.

Chapter 335 in (3)(a) near beginning substituted "subsections (3)(b) and 15" for "subsection (15)"; in (3)(b) substituted current text concerning the annual registration fee for trailers, semitrailers, or pole trailers for former text that read: "If a trailer, semitrailer, or pole trailer is registered under 61-3-701, the fees required in subsection (3)(a) must be paid annually"; in (23)(b) near end before "account" deleted "motor vehicle division administration"; in (24) inserted definition of manufacturer's suggested retail price; and made minor changes in style. Amendment effective May 7, 2019.

Section 28, Ch. 335, L. 2019, a coordination instruction, in (8)(a)(i) near beginning substituted "subsections (8)(b), (8)(c), and (15)" for "subsection (15)" and near middle inserted text regarding one-time registration fees for motorcycles and quadricycles registered for off-highway use; inserted (8)(b) regarding annual registration fees for motorcycles and quadricycles; inserted (8)(c) regarding summer motorized recreation trail passes; and made minor changes in style. Section 31(2), Ch. 335, L. 2019, provided that the amendments to 61-3-321(8) contained in sec. 5, Ch. 335, are effective January 1, 2020. Section 28, Ch. 335, L. 2019, which replaced the amendments to 61-3-321(8), is effective May 7, 2019.

Chapter 353 in (5)(a) in exception clause substituted "subsections (5)(b) and (15)" for "subsection (15)"; inserted (5)(b) providing registration fee for certain off-highway vehicles affixed with summer motorized recreation trail passes; in (11)(a) in exception clause substituted "subsections (11)(b), (11)(c), and (15)" for "subsections (11)(b) and (15)"; inserted (11)(b) providing registration fee for snowmobiles affixed with snowmobile trail passes; and made minor changes in style. Amendment effective October 1, 2019.

The amendments to subsection (8) of this section made by sec. 5, Ch. 335, L. 2019, and sec. 11, Ch. 353, L. 2019, were replaced by sec. 28, Ch. 335, L. 2019, a coordination instruction.

The amendments to this section made by sec. 4, Ch. 356, L. 2019, were rendered void by sec. 3, Ch. 486, L. 2019, a coordination instruction.

2017 Amendments — Composite Section: Chapter 250 inserted (21) providing for additional optional fee, depositing of the fee, and a statutory appropriation to the department of transportation; and made minor changes in style. Amendment effective July 1, 2017.

Chapter 323 in (2) near end after "trucks and buses" substituted "that weigh 1 ton or less and for logging trucks that weigh 1 ton or less" for "under 1 ton, and logging trucks less than 1 ton"; inserted (3)(b) relating to annual fees for trailer, semitrailer, or pole trailer; and made minor changes in style. Amendment effective October 1, 2017.

Chapter 351 in (19)(a) near end inserted "or as otherwise appropriated by the legislature". Amendment effective May 7, 2017, and terminates June 30, 2019.

Chapter 414 in (20) substituted "an additional fee of $10" for "an additional fee of $5". Amendment effective May 22, 2017.

Chapter 416 in (2)(a) at beginning inserted exception clause; inserted (2)(b) regarding additional annual registration fees for certain light vehicles; in (7)(a) at beginning inserted exception clause; inserted (7)(c) regarding additional annual registration fees for certain motor homes; inserted (23) regarding deposit of fees into the account established in 61-3-112 and requiring the department of justice to deposit certain amounts into the general fund; and made minor changes in style. Amendment effective January 1, 2018.

The amendments to this section made by sec. 19, Ch. 384, L. 2017, were rendered void by sec. 6, Ch. 416, L. 2017, a coordination section.

Preamble: The preamble attached to Ch. 414, L. 2017, provided: "WHEREAS, the Legislature created the Montana Highway Patrol to protect and serve the people of Montana and to ensure their safety when traveling on Montana's roadways; and

WHEREAS, the 2005 Legislature enacted House Bill No. 35, which created a fund to address the recruitment and retention issues within the Highway Patrol; and

WHEREAS, in 2005, the projections for the fund created from House Bill No. 35 predicted the fund to become insolvent in 2014; however, due to the subsequent enactment of permanent registration, the fund was projected to become insolvent by 2010; and

WHEREAS, the Montana Highway Patrol has been a good steward of the fund and has prudently managed it to be solvent longer than initially projected despite the fund receiving reduced revenue due to permanent registration; and

WHEREAS, the fund created by House Bill No. 35 will become insolvent in fiscal year 2017; and

WHEREAS, this act is intended to increase the revenue for the fund created by House Bill No. 35 to allow the Montana Highway Patrol to continue to hire, train, and retain competent officers to ensure that Montana roadways are kept safe for all travelers."

Severability: Section 19, Ch. 351, L. 2017, was a severability clause.

2013 Amendment: Chapter 393 inserted (7)(b)(iv) concerning donation fees; in (13)(b) at beginning deleted "Until January 1, 2015" and after "license plates issued" deleted "on or after January 1, 2006, but"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendments — Composite Section: Chapter 209 inserted (12)(a) and (12)(b) establishing registration fees for low-speed electric vehicles and golf carts; in (15) inserted "or low-speed electric vehicle"; and made minor changes in style. Amendment effective January 1, 2012.

Chapter 247 inserted (12)(c) relating to registration fee for golf carts; and made minor changes in style. Amendment effective April 22, 2011.

Chapter 278 in (14) substituted "15-6-201(1)(a), (1)(d), (1)(e), (1)(g), (1)(h), (1)(i), (1)(k), (1)(l), (1)(n), or (1)(o)" for "15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m)". Amendment effective October 1, 2011.

Chapter 326 in (19)(a) in first sentence substituted "either subsection (19)(b) or (19)(c)" for "subsection (19)(b)" and in last sentence substituted "$5.37" for "$3.50" and substituted "38 cents" for "25 cents"; in (19)(a) in two places and in (19)(b) substituted "$6" for "$4"; and inserted (19)(c) regarding election not to pay additional fee. Amendment effective January 1, 2012.

Applicability: Section 6, Ch. 278, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2009 Amendment: Chapter 413 inserted (7)(b)(ii) requiring payment and deposit of insurance verification fee; in (12)(a) at beginning of first sentence inserted exception clause and in first and second sentences increased license plate fee from $5 to $10; inserted (12)(b) and (12)(c) requiring imposition of additional fees; and made minor changes in style. Amendment effective January 1, 2010.

The amendment to this section by sec. 5, Ch. 387, L. 2009, was rendered void by sec. 28, Ch. 413, L. 2009, a coordination section.

2007 Amendments — Composite Section: Chapter 44 in (5)(b)(vi) at end (amendment rendered void by Ch. 206 amendment), in (7)(b)(ii) at end (amendment rendered void by Ch. 206 amendment), and in (11)(b)(ii) near end substituted "registration fee" for reference to fee in lieu of tax. Amendment effective October 1, 2007.

Chapter 206 in (1) at end substituted "subsections (2) through (19)" for "subsections (2) through (18)"; deleted former (2)(a), (2)(b), and (2)(c) that read: "(a) Except as provided in subsection (2)(b), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(b) The following vehicles are exempt from the registration fee imposed in this subsection (2):

(i) light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520;

(ii) a light vehicle owned by a person eligible for a waiver of registration fees under 61-3-460;

(iii) a light vehicle registered under 61-3-456.

(c) The owner of a light vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied by the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period"; in (2) at beginning of introductory clause inserted "Unless a light vehicle is permanently registered under 61-3-562"; deleted former (2)(e) that read: "(e) The owner of a light vehicle 11 years old or older may permanently register the light vehicle as provided in 61-3-562"; in (3) substituted "subsection (14)" for "subsection (3)(c)"; deleted former (3)(c) that read: "(c) Except as provided in subsection (17), whenever a transfer of ownership of a trailer, semitrailer, or pole trailer described in subsection (3)(a) or (3)(b) occurs, the one-time fee required under subsection (3)(a) or (3)(b) must be paid by the new owner"; in (4) at beginning of introductory clause substituted "Except as provided in subsection (14), the one-time" for "The annual" and near middle after "61-3-411" substituted "based on the weight of the vehicle, is as follows" for "that are for motor vehicles"; in (5) at beginning inserted exception clause and deleted former second and third sentences that read: "This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle. Except as provided in subsection (17), whenever a transfer of ownership of an off-highway vehicle occurs, the one-time fee required under this subsection must be paid by the new owner"; deleted former (5)(b) that read: "(b) The application for registration for an off-highway vehicle must be made to the county treasurer of the county in which the owner resides, on a form furnished by the department for that purpose. The application must contain:

(i) the name and home mailing address of the owner;

(ii) the certificate of title number;

(iii) the name of the manufacturer of the off-highway vehicle;

(iv) the model number or name;

(v) the year of manufacture;

(vi) a statement evidencing payment of the fee in lieu of property tax; and

(vii) other information that the department may require"; deleted former (5)(c) that read: "(c) If the off-highway vehicle was previously registered, the application must be accompanied by the registration certificate for the most recent year in which it was registered. Upon payment of the registration fee, the county treasurer shall sign the application and issue a registration receipt containing the information considered necessary by the department. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer or to a purchaser or subsequent owner pursuant to a transfer of ownership"; in (7)(a) near beginning after "annual" inserted "registration"; deleted former (7)(b)(i) that read: "(i) Except as provided in subsection (7)(b)(ii), the age of a motor home is determined by subtracting the manufacturer's designated model year from the current calendar year"; deleted former (7)(b)(ii) that read: "(ii) If the purchase year of a motor home precedes the designated model year of the motor home and the motor home is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax"; in (7)(b)(i) at beginning after "a" inserted "one-time registration"; in (7)(b)(ii) after "times the" inserted "renewal fees for" and after "license" substituted "plates" for "plate fees"; deleted former (7)(c)(ii) that read: "(ii) The following series of license plates may not be used for purposes of permanent registration of a motor home:

(A) Montana national guard license plates issued under 61-3-458(2)(b);

(B) reserve armed forces license plates issued under 61-3-458(2)(c);

(C) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(9);

(D) amateur radio operator license plates issued under 61-3-422;

(E) collegiate license plates issued under 61-3-465; and

(F) generic specialty license plates issued under 61-3-479"; deleted former (7)(c)(iii) that read: "(iii) Except as provided in subsection (17), whenever a transfer of ownership of a permanently registered motor home occurs, the applicable fees required under this subsection (7) must be paid by the new owner"; in (8)(a) at beginning inserted exception clause and near middle before "registration" inserted "one-time"; in (8)(b) near beginning after "fee" deleted "$5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, an additional fee of"; deleted former (8)(c) that read: "(c) The registration fees in this subsection (8) are a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle"; in (9) at beginning of introductory clause inserted exception clause; in (9)(b) deleted former second sentence that read: "This fee is a one-time fee, except upon transfer of ownership of a travel trailer"; deleted former (9)(b) that read: "(b) Except as provided in subsection (17), whenever a transfer of ownership of a travel trailer occurs, the one-time fee required under subsection (9)(a) must be paid by the new owner"; in (10) at beginning of introductory clause substituted "Except as provided in subsection (14), the one-time registration fee for a" for "The owner of each" and after "pontoon" substituted "required to be numbered under 23-2-512 is" for "requiring numbering by this state shall file an application for number in the office of the county treasurer in the county where the motorboat, sailboat, personal watercraft, or motorized pontoon is owned, on forms prepared and furnished by the department. The application must be signed by the owner of the motorboat, sailboat, personal watercraft, or motorized pontoon and be accompanied by the appropriate registration fee. The owner of a motorboat, sailboat, personal watercraft, or motorized pontoon shall pay a one-time fee"; deleted former (10)(b) that read: "(b) This fee is a one-time fee, except upon transfer of ownership of the motorboat, sailboat, personal watercraft, or motorized pontoon"; in (11)(a) after "provided in" substituted "subsections (11)(b) and (14)" for "subsection (11)(b)"; deleted former (11)(c) that read: "(c) Except as provided in subsection (17), whenever a transfer of ownership of a snowmobile occurs, the applicable fee required under this subsection (11) must be paid by the new owner"; in (12) inserted second and third sentences providing that the $5 fee does not apply when previously issued license plates are transferred under 61-3-335 and that all registration fees must be paid if the vehicle to which the plates are transferred is not currently registered; in (13) at end after "18-8-202" inserted "or to a vehicle or vessel that meets the description of property exempt from taxation under 15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m), 15-6-203, or 15-6-215, except as provided in 61-3-520"; in (14) substituted "Whenever ownership of a trailer, semitrailer, pole trailer, off-highway vehicle, motorcycle, quadricycle, travel trailer, motor home, motorboat, sailboat, personal watercraft, motorized pontoon, snowmobile, or motor vehicle owned and operated solely as a collector's item pursuant to 61-3-411 is transferred, the new owner shall title and register the vehicle or vessel as required by this chapter and pay the fees imposed under this section" for "When the license plates for a registered motor vehicle are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335, the owner of the motor vehicle shall pay a registration fee as follows:

(a) heavy trucks, buses, and logging trucks in excess of 1 ton, 75 cents;

(b) light vehicles, trucks and buses under 1 ton, and logging trucks less than 1 ton:

(i) if the vehicle is 4 years old or less, $195.75;

(ii) if the vehicle is 5 years old through 10 years old, $65.75; and

(iii) if the vehicle is 11 years old or older, $6.75;

(c) motor homes:

(i) less than 2 years old, $250.50;

(ii) 2 years old and less than 5 years old, $192.25;

(iii) 5 years old and less than 8 years old, $100.50; and

(iv) 8 years old and older, $65.50;

(d) motorcycles and quadricycles registered for use on the public highways, $42, and motorcycles and quadricycles registered for both off-road use and for use on the public highways, $103.25. This fee is a one-time fee, except upon transfer of ownership.

(e) travel trailers under 16 feet in length, $50.50, and travel trailers 16 feet in length or longer, $130.50. This fee is a one-time fee, except upon transfer of ownership.

(f) trailers, semitrailers, or pole trailers with a declared weight of less than 6,000 pounds, $52. This fee is a one-time fee, except upon transfer of ownership.

(g) trailers, semitrailers, or pole trailers with a declared weight of 6,000 pounds or more, $139. This fee is a one-time fee, except upon transfer of ownership"; in (18)(a) in fourth sentence after "department" inserted "of fish, wildlife, and parks"; and made minor changes in style. Amendment effective April 17, 2007.

Chapter 329 in (12) near end substituted "or a replacement set of special license plates required" for "provided for"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendments — Composite Section — Coordination — Code Commissioner Correction: Chapters 421 and 596 inserted (19) imposing additional registration fee on certain vehicles to fund salaries and salary increases for highway patrol officers. Amendment effective January 1, 2006.

Pursuant to sec. 9, Ch. 421, L. 2005, a coordination section, in (19) after "(1)" inserted exception clause.

Pursuant to sec. 150, Ch. 596, L. 2005, a coordination section, the amendment made by sec. 9, Ch. 421, L. 2005, was rendered void.

Section 76, Ch. 542, substituted current text establishing registration fees for motor vehicles, snowmobiles, watercraft, trailers, semitrailers, and pole trailers for former text that read: "(1) Except as otherwise provided in this section, registration fees must be paid upon registration or, if applicable, reregistration of motor vehicles, trailers, and semitrailers, in accordance with this chapter, as follows:

(a) light vehicles under 2,850 pounds, $13.75 in calendar year 2004 and, in each subsequent year, $17;

(b) trailers with a declared weight of less than 2,500 pounds and semitrailers, $8.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(c) motor vehicles registered pursuant to 61-3-411 that are:

(i) 2,850 pounds and over, $10; and

(ii) under 2,850 pounds, $5;

(d) off-highway vehicles registered pursuant to 23-2-817, $9 in calendar year 2004 and, in each subsequent year, $19.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle.

(e) light vehicles over 2,850 pounds, trucks and buses less than 1 ton, and heavy trucks in excess of 1 ton, $18.75 in calendar year 2004 and, in each subsequent year, $22;

(f) logging trucks less than 1 ton, $23.75;

(g) motor homes, $22.25;

(h) motorcycles and quadricycles, $9.75 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, $9.75 in calendar year 2004 and, in each subsequent year, $11.25. This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.

(i) trailers and semitrailers between 2,500 and 6,000 pounds, $11.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(j) trailers and semitrailers in excess of 6,000 pounds, other than trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, $16.25. For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer.

(k) travel trailers, $11.75. This fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(l) recreational vehicles, $3.50 in calendar year 2004 and, in each subsequent year, $9.75. If the recreational vehicle is a travel trailer, this fee is a one-time fee, except upon transfer of ownership of a travel trailer.

(2) (a) Except as provided in subsection (2)(b), if a motor vehicle, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration fee for the remainder of the year is one-half of the regular fee.

(b) For a trailer or semitrailer described in 61-3-530(1), the applicable fees must be paid regardless of when the fees were last paid or if the fees were paid at all.

(3) An additional fee of $5 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, $5 in calendar year 2004 and, in each subsequent year, $16 must be collected for the registration of each motorcycle as a safety fee and must be deposited in the state motorcycle safety account provided for in 20-25-1002.

(4) A fee of $5 for each set of new number plates must be collected when number plates provided for under 61-3-332(2) are issued.

(5) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(6) (a) Except as provided in 61-3-562 and subsection (6)(b) of this section, a fee of 25 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The revenue derived from this fee must be forwarded by the county treasurer for deposit in the state general fund for transfer to the credit of the senior citizens and persons with disabilities transportation services account provided for in 7-14-112.

(b) The following vehicles are not subject to the fee imposed in subsection (6)(a):

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement; and

(ii) travel trailers, recreational vehicles, and off-highway vehicles registered pursuant to 23-2-817.

(7) (a) Except as provided in 61-3-562 and subsection (7)(b) of this section, a fee of 50 cents a year for each registration of a vehicle must be collected when a vehicle is registered or reregistered. The county treasurer shall forward revenue derived from this fee to the state for deposit in the general fund.

(b) The following vehicles are not subject to the fee:

(i) trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement;

(ii) off-highway vehicles registered pursuant to 23-2-817; and

(iii) vehicles bearing license plates described in 61-3-458(3)(d).

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(9) A person eligible for a waiver under 61-3-460 is exempt from the fees required under this section.

(10) Except as otherwise provided in this section, revenue collected under this section must be deposited in the state general fund.

(11) (a) Unless a person exercises the option in subsection (11)(b), an additional fee of $4 must be collected for each light vehicle or truck under 8,001 pounds GVW registered for licensing pursuant to this part. The fee must be deposited in the state general fund to be used for state parks, for fishing access sites, and for the operation of state-owned facilities as provided in 15-1-122(3)(c)(vii).

(b) A person who registers a light vehicle or truck under 8,001 pounds GVW may, at the time of annual registration, certify that the person does not intend to use state parks and fishing access sites and may make a written election not to pay the additional $4 fee provided for in subsection (11)(a). If a written election is made, the fee may not be collected." Amendment effective January 1, 2006.

Pursuant to sec. 8, Ch. 500, L. 2005, a coordination section, in (7) inserted (c) concerning permanent registration of motor home 11 years old or older.

Section 58, Ch. 596, in (1) near middle substituted "renewal of registration" for "reregistration"; in (2)(d) before "$17" deleted "$13.75 in calendar year 2004 and, in each subsequent year"; in (5)(a) at end of first sentence before "$19.25" deleted "$9 in calendar year 2004 and, in each subsequent year"; in (6) before "$22" deleted "$18.75 in calendar year 2004 and, in each subsequent year"; in (8)(a) at end of first sentence before "$11.25" deleted "$9.75 in calendar year 2004 and, in each subsequent year"; in (1)(l) at end of first sentence before "$9.75" deleted "$3.50 in calendar year 2004 and, in each subsequent year" (amendment rendered void by Ch. 542 amendment); deleted former (2) (see Ch. 542 note); in (2) near middle before "$16" deleted "$5 in calendar year 2004 and, in each subsequent year" (amendment rendered void by Ch. 542 amendment); in (12) near beginning after "$5" deleted "for each set of new number plates", near middle after "collected when" substituted "a new set of standard license plates or a new single standard license plate" for "number plates", and near end substituted "61-3-332" for "61-3-332(2)"; in (5)(a) and (6)(a) at end of first sentence substituted "when registration is renewed" for "reregistered" (amendment rendered void by Ch. 542 amendment); in (7) in first sentence after "relating to" substituted "new standard license plate fees" for "the payment of registration fees or new number plate fees", near middle substituted "license plates" for "number plates", after "transferred" deleted "to a replacement vehicle", and deleted references to 61-3-317 and 61-3-332 and inserted second sentence concerning payment of fees if vehicle was not previously registered (amendment rendered void by Ch. 542 amendment); in (18)(a) and (18)(b) after "light vehicle" deleted "or truck under 8,001 pounds GVW"; in (18)(b) near middle after "to use" inserted "the vehicle to visit"; and made minor changes in style. Amendment effective January 1, 2006.

Section 149, Ch. 596, L. 2005, a coordination section, provided: "If Senate Bill No. 318 is not passed and approved and Senate Bill No. 285 and [this act] are both passed and approved, then subsection (12) of 61-3-321 contained in [section 148 of this act] is void and internal references must be adjusted and subsection (8) of 61-3-321 contained in [section 148 of this act] must read as follows:

"(8) (a) Except as provided in subsection (15), the one-time registration fee for motorcycles and quadricycles~~, $9.75 for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, $9.75 in calendar year 2004 and, in each subsequent year, $11.25~~ registered for use on public highways is $53.25 and the one-time registration fee for motorcycles and quadricycles registered for both off-road use and for use on the public highways is $114.50. ~~This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle.~~

(b) An additional fee of $16 must be collected for the registration of each motorcycle and quadricycle as a safety fee, which must be deposited in the state motorcycle safety account provided for in 20-25-1002."" Section 148, Ch. 596, L. 2005, a coordination section, provided that if Senate Bill No. 285 (Ch. 542), Senate Bill No. 318 (failed), and [this act] are all passed and approved, then [section 16] of Senate Bill No. 318, a coordination instruction, was void and 61-3-321 was to be amended. The code commissioner has included quadricycles as subject to the $16 fee to reflect the apparent intent of secs. 148 and 149 of Ch. 596.

The amendment to this section made by sec. 4, Ch. 500, L. 2005, was rendered void by sec. 8, Ch. 500, L. 2005, a coordination section.

The code commissioner has not codified the second sentence in (7) because the sentence was rendered meaningless by the changes made in Ch. 542. The sentence read: "Registration fees must be paid if the vehicle to which plates are transferred was not previously registered."

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

Preamble: The preamble attached to Ch. 421, L. 2005, provided: "WHEREAS, it is in the best interests of the citizens of Montana to travel safely on the streets and highways of Montana; and

WHEREAS, the Legislature created the Montana Highway Patrol to protect and serve the people of Montana and to ensure their safety when traveling on Montana's roadways; and

WHEREAS, the population of the State of Montana has increased by 223,412 persons (by 32%) in the past 30 years; and

WHEREAS, the total number of vehicles registered in the State of Montana has increased from 668,717 to 1,059,565 (by 53%) in the past 30 years; and

WHEREAS, economic loss to the citizens of the State of Montana associated with motor vehicle crashes increased from $106.6 million in 1973 to $780 million in 2003 (by 732%); and

WHEREAS, the Montana Highway Patrol had 220 uniformed officers 30 years ago and has only 206 today, despite an increase of 5 billion highway miles a year driven over that same period and despite being given additional statutory law enforcement obligations; and

WHEREAS, the standing House and Senate State Administration Committees of the 58th Legislature, recognizing the unique nature of law enforcement services and the importance of retaining qualified law enforcement personnel, directed the Attorney General to report to the State Administration and Veterans' Affairs Interim Committee on recruitment and retention efforts, to conduct a salary survey, and to develop draft legislation to implement recommendations; and

WHEREAS, in addition to the salary survey conducted by the Attorney General, the Montana Legislative Audit Division conducted a separate salary survey of the Sheriff departments in the eight counties where the Montana Highway Patrol district offices are located, including the headquarters in Helena; and

WHEREAS, an entry-level officer for the Montana Highway Patrol is paid $4.50 an hour ($9,360 a year) less than the average entry-level officer in those eight county Sheriff's departments; and

WHEREAS, the Montana Highway Patrol continues to lose officers to other law enforcement agencies after absorbing the cost of training those officers, which places additional hardships on the patrol; and

WHEREAS, in the past 11 years, 62 of the 80 officers (78%) that left the Montana Highway Patrol for nonretirement purposes went to other law enforcement agencies for higher salaries; and

WHEREAS, Montana Highway Patrol officer positions have been placed into the alternative pay and classification plan, which allows market-based salary survey adjustments, to recruit and retain officers; and

WHEREAS, market-based salary information from county Sheriff departments, which are recruiting and hiring Montana Highway Patrol officers because of higher salaries, is readily available to establish market-based salary rates to compensate Montana Highway Patrol officers and reduce attrition in these positions; and

WHEREAS, this act is intended to allow the Montana Highway Patrol to be in a position to hire, train, and retain competent officers to ensure that Montana roadways are kept safe for all travelers."

2003 Amendments — Composite Section: Chapter 280 in (4) near beginning increased fee for each set of new number plates from $2 to $5; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 399 in (1) at beginning inserted exception clause; in (9) substituted "person eligible for a waiver under 61-3-460" for "person qualifying under 61-3-332(10)(d)"; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 491 inserted (7) imposing, with exceptions, a fee for vehicle registrations, to be deposited in the general fund; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 592 in (1) at beginning of introductory clause after "Registration" deleted "or license" and after "registration or" inserted "if applicable"; in (1)(a) after "$13.75" inserted "in calendar year 2004 and, in each subsequent year, $17"; in (1)(b) after "$8.25" inserted "For a trailer or semitrailer described in 61-3-530(1), this fee is a one-time fee, except upon transfer of ownership of the trailer or semitrailer"; in (1)(d) after "$9" inserted "in calendar year 2004 and, in each subsequent year, $19.25. This fee is a one-time fee, except upon transfer of ownership of an off-highway vehicle"; in (1)(e) after "$18.75" inserted "in calendar year 2004 and, in each subsequent year, $22"; in (1)(h) near beginning after "$9.75" inserted "for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, $9.75 in calendar year 2004 and, in each subsequent year, $11.25. This fee is a one-time fee, except upon transfer of ownership of a motorcycle or quadricycle"; in (1)(i) inserted second sentence providing that the fee is a one-time fee, except upon transfer of ownership; in (1)(j) inserted second sentence providing that the fee is a one-time fee, except upon transfer of ownership; in (1)(k) inserted second sentence providing that the fee is a one-time fee, except upon transfer of ownership; in (1)(l) after "$3.50" inserted "in calendar year 2004 and, in each subsequent year, $9.75. If the recreational vehicle is a travel trailer, this fee is a one-time fee, except upon transfer of ownership of a travel trailer"; in (2)(a) at beginning inserted exception clause and near middle after "registration" deleted "or license"; inserted (2)(b) requiring that applicable fees be paid regardless of when the fees were last paid or if paid at all; in (3) near beginning after "$5" inserted "for a motorcycle or quadricycle with special license plates issued under 61-3-415 and, for a motorcycle or quadricycle under one-time registration, $5 in calendar year 2004 and, in each subsequent year, $16"; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 601 inserted (11) concerning fee for state parks, fishing access sites, and state facilities at Virginia City and Nevada City unless person makes written election. Amendment effective January 1, 2004.

Applicability: Section 19(1), Ch. 280, L. 2003, provided: "[Sections 2, 4, and 6] [61-3-321, 61-3-333, and 61-3-465] apply to the registration of motor vehicles and the display of license plates issued after December 31, 2003."

Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

The preamble attached to Ch. 491, L. 2003, provided: "WHEREAS, the 57th Legislature requested a study of veterans' issues, and the State Administration and Veterans' Affairs Interim Committee conducted numerous hearings, received expert testimony, and examined research during a 14-month period; and

WHEREAS, the Interim Committee found that, using 2000 data, Montana's population of nearly 107,000 veterans and an estimated 170,000 family members of veterans not only ranks Montana second in the nation in the number of veterans per capita (11.9%) but also means that veterans and their family members constitute more than 25% of Montana's total population; and

WHEREAS, the Interim Committee found that more than 80,000 Montana veterans are combat-era veterans (more than 36,000 are Vietnam-era, more than 16,000 are Persian Gulf-era, more than 16,000 are World War II-era, and about 14,000 are Korean-era veterans) and that the largest group of veterans is now between 50 and 65 years of age; and

WHEREAS, the U.S. Department of Veterans Affairs estimates that more than 50% of combat theater veterans suffer from clinically serious and disabling posttraumatic stress disorder, that twice as many veterans as nonveterans experience homelessness, that many veterans have overlapping and complex needs encompassing medical and nursing home care, mental health and chemical dependency counseling, housing, transportation, education and training, job services, and family support services, and that the children and families of veterans who do not get the help that they need are themselves at risk; and

WHEREAS, these complex needs and a maze of federal, state, local, public, and private services demand a high level of interagency coordination and cooperation for effective service delivery to ensure that veterans and their families do not fall through the cracks and to avoid unnecessary cost-shifting from federal to state and local public assistance programs; and

WHEREAS, the Interim Committee found that current statutory language establishing the Board of Veterans' Affairs as the lead agency for veterans' affairs dates back to 1919 and that although the Board's duties and responsibilities have consistently evolved, statutory language has not kept pace; and

WHEREAS, the Board hires and supervises its own classified employees, who make up the Montana Veterans' Affairs Division, but the Board does not have rulemaking authority to implement programs; and

WHEREAS, the Board is administratively attached to the Department of Military Affairs, which has greatly assisted veterans and supported the Board but has no statutory authority over veterans' affairs; and

WHEREAS, a legislative performance audit requested by the Interim Committee revealed that although the Montana Veterans' Affairs Division is to be commended for doing a great job with limited resources and limited statutory guidance, it also revealed that new management tools and updated information management systems are needed to provide more consistency and to track and manage staff workload; and

WHEREAS, the U.S. Department of Veterans Affairs spent about $175 million in Montana during fiscal year 2000, which ranked Montana 37th nationwide in per capita expenditures by the U.S. Department of Veterans Affairs on veterans; and

WHEREAS, the Interim Committee found that a statutory restructuring of powers, duties, and responsibilities for state veterans' affairs programs is essential, not only to address inadvertent statutory shortfalls and elevate the profile of state veterans' affairs, but also to better integrate benefit claims with human services programs so that eligible veterans and family members receive the federal compensation, benefits, and care that they have earned in self-sacrificing service in the armed forces of the United States of America."

Saving Clause: Section 4, Ch. 601, L. 2003, was a saving clause.

Severability: Section 5, Ch. 601, L. 2003, was a severability clause.

2002 Amendment: Chapter 13 in (1)(j) inserted clause relating to trailers and semitrailers registered in other jurisdictions; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

2001 Amendments — Composite Section: Chapter 257 in (5) substituted "The county treasurer shall forward the fee to the department of revenue, as provided in 15-1-504, for deposit in the general fund" for "Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund." Amendment effective July 1, 2001. The amendment by Ch. 574 rendered the amendment by Ch. 257 void.

Chapter 574 in (1) after "trailers" deleted "housetrailers"; substituted (1)(a) concerning light vehicle fee of $13.75 for "motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5"; deleted former (1)(b) through (1)(f) that read: "(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors or trucks, $10;

(f) buses, which are classed as motortrucks, licensed accordingly"; substituted (1)(b) concerning fee of $8.25 for certain trailers for "trailers and semitrailers, less than 2,500 pounds declared weight and housetrailers of all weights, $2"; substituted (1)(c) through (1)(l) establishing fees for vehicles registered pursuant to 61-3-411, off-highway vehicles, light vehicles over 2,850 pounds, logging trucks, motor homes, motorcycles and quadricycles, trailers and semitrailers, travel trailers, and recreational vehicles for former (1)(h) through (1)(j) that read: "(h) trailers and semitrailers over 2,500 up to 6,000 pounds declared weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds declared weight, $10, except trailers and semitrailers registered in other jurisdictions through a proportional registration agreement;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity"; deleted former (2) and (3) that read: "(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers that are not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except a passenger car, that is used for towing a trailer or semitrailer"; in (2) near beginning after "motor vehicle" deleted "housetrailer" and at end deleted "except for trailers or semitrailers registered as provided in 61-3-721(6)"; inserted (3) concerning additional motorcycle safety fee; deleted former (5) that read: "(5) An additional fee of $5.25 a year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department shall pay an amount equal to 25 cents from each motor vehicle registration fee from the general fund to the pension trust fund for payment of supplemental benefits provided for in 19-6-709"; in (4) deleted former last sentence that read: "Revenue from this fee must be deposited as provided in subsection (5)"; inserted (6) concerning 25 cent fee for transportation of senior citizens and persons with disabilities; at end of (8) substituted "this section" for "subsections (1) and (5) of this section"; inserted (9) concerning deposit in general fund; and made minor changes in style. Amendment effective July 1, 2001.

The amendments to this section in sec. 9, Ch. 191, L. 2001, were rendered void by sec. 255(6), Ch. 574, L. 2001, a coordination section.

The amendments to this section in sec. 2, Ch. 337, L. 2001, were rendered void by sec. 255(10)(a), Ch. 574, L. 2001, a coordination section.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1999 Amendment: Chapter 79 inserted (9) concerning exemption for former prisoners of war and their surviving spouses. Amendment effective January 1, 2000.

1997 Amendments: Chapter 72 in (1)(i), after "jurisdictions", deleted "and registered"; at end of (4) inserted exception clause; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 532 in (5), in third sentence after "department shall", substituted "pay an amount equal to" for "distribute", before "motor" substituted "each" for "the", and after "registration fee" inserted "from the general fund to the pension trust fund". Amendment effective July 1, 1997.

1995 Amendments: Chapter 81 at end of (7), after "city", inserted "or special district, as defined in 18-8-202"; and made minor changes in style. Amendment effective March 6, 1995.

Chapter 88 in (1)(g), (1)(h), and (1)(i), after "pounds", substituted "declared weight" for "maximum gross loaded weight". Amendment effective January 1, 1996.

Preamble: The preamble attached to Ch. 81, L. 1995, provided: "WHEREAS, the Legislature has specifically exempted vehicles owned by special districts from various vehicle fees because it considers the use of taxpayer money to pay taxes to other tax entities to be counter to good government; and

WHEREAS, a private business that competes with governmental entities is required to pay fees that the governmental entity does not have to pay, yet when comparing costs of services provided by government and by private business, this consideration is often not factored into the equation.

THEREFORE, the Legislature recognizes the costs and consequences of this situation and encourages all parties, when comparing private versus government costs, to consider costs that are incurred by private business but not by government."

1993 Amendment: Chapter 575 in (1)(i) and (5) inserted "except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement". Amendment effective January 1, 1994.

1991 Amendments: Chapter 567 in (5) increased fee from $5.25 to $5.50 (increase did not become effective pursuant to sec. 5, Ch. 567) and inserted fourth sentence requiring Department to distribute 25 cents from motor vehicle registration fee for payment of supplemental benefits provided in 19-6-709. Amendment effective July 1, 1991.

Chapter 735 in (5) reduced fee from $5.25 to $5 (reduction did not become effective pursuant to sec. 5, Ch. 567) and deleted former third sentence that read: "The department of justice shall distribute 25 cents from each fee collected to the highway patrol retirement fund". Amendment effective July 1, 1991.

Coordination Instruction: Section 5, Ch. 567, L. 1991, a coordination section, amended 61-3-321(5) and provided: "If Senate Bill No. 192 is passed and approved [approved May 1, 1991, as Ch. 735], the motor vehicle registration fee is $5.25, and 25 cents must be distributed to fund the supplemental benefits provided for in [section 1] [19-6-709]."

Contingent Termination — Disposition of Funds: Section 7, Ch. 567, L. 1991, provided: "(1) The provisions of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] terminate upon the death of the last recipient eligible under [section 1(2)] [19-6-709(2)] for the supplemental benefit provided by [section 1] [19-6-709].

(2) Money collected for the purposes of the supplemental payment under [section 1] [19-6-709] that remains in the account, meaning the highway patrol officers' retirement pension trust fund, upon termination of [sections 1 through 6] [19-6-709 and amendments to 17-7-502 and 61-3-321] must be used to amortize unfunded liabilities of the account.

The sentence in 61-3-321(5) concerning disposition of 25 cents for supplemental benefits is the language that terminates upon occurrence of contingency. This language was deleted by Ch. 574, L. 2001, so that the contingent termination is meaningless. The funding for the supplemental payment under 19-6-709 is contained in sec. 3, Ch. 574, L. 2001 (15-1-122).

1989 Amendments — Composite: Chapter 398 near middle of (5) substituted reference to general fund for reference to motor vehicle recording account of the state special revenue fund. Amendment effective July 1, 1989.

Chapter 535 in (5) increased fee from $3 to $5.

Chapter 627 in (5), in first sentence, increased additional fee from $3 to $3.25 and inserted third sentence providing that Department distribute 25 cents of each fee to the highway patrol retirement fund; and made minor changes in phraseology. Amendment effective July 1, 1989.

Chapter 654 inserted (6) regarding a $2 fee for each set of new number plates; in (8), after "registration fees", inserted "or new number plate fees"; corrected internal reference; and made minor changes in phraseology. Amendment effective May 11, 1989.

Chapter 535 raised the fee in subsection (5) from $3 to $5 to make fees for certain documents uniform among motor vehicles, boats, and snowmobiles. Chapter 627 increased the $3 fee to $3.25, the increased amount of 25 cents to be used to fund the highway patrol retirement fund. Both the Ch. 535 and Ch. 627 increases were codified to reflect the intent of each bill, thus raising the fee from $3 to $5.25.

Appropriation: Section 6, Ch. 654, L. 1989, provided an appropriation to the Departments of Institutions (now Corrections) and Justice for purposes of implementing issuance of new motor vehicle number plates. See Session Law for text of appropriation.

Applicability: Section 8, Ch. 654, L. 1989, provided: "[This act] applies to registration of motor vehicles and display of license plates issued after December 31, 1990."

1987 Amendment: In (5) increased fee from $2 to $3. Amendment effective January 1, 1988.

1985 Amendment: In (1)(d) after "motorcycles", inserted "and quadricycles" (effective January 1, 1986).

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Case Notes

Compelling Issuance of License: The duty of the County Treasurer to issue licenses is ministerial and not discretionary. The Treasurer may be compelled by mandamus to issue licenses for logging trailers upon tender of the fee per vehicle. If an applicant's operations did not entitle him to the special logging fee, the applicant would be subject to penalty for operating vehicles without proper license. State ex rel. Sharp v. Cross, 123 M 261, 211 P2d 760 (1949).

Attorney General's Opinions

Transfer of License Plates to Unregistered Vehicle — Vehicle Registration Fees to Be Paid: A conflict arose between the codified version of this section and the version amended in Ch. 596, L. 2005, raising a question whether vehicle registration fees must be paid if the vehicle to which license plates are transferred is not currently registered. The Attorney General invoked 1-11-103 to resolve the inconsistency and to give effect to the amendments in Ch. 596, concluding that the coordination section in Ch. 596 prescribed that all registration fees imposed under this section, as amended, must be paid if the vehicle to which license plates are transferred is not currently registered. (See 2007 amendment.) 51 A.G. Op. 14 (2006).

Imposition Fee on Military Personnel — Nonpayment in Home State: Only the fees required by this section that are essential to the functioning of the state's registration laws can be imposed upon military personnel serving on active duty at a military installation in Montana. That military personnel have not paid any taxes or licensing fees in their home state is of no consequence. 39 A.G. Op. 46 (1982).

Registration Fee Applicable Without License Fee: The registration fee imposed by this section can be applied without the license fee of 61-3-533 (now repealed). 39 A.G. Op. 46 (1982).

Fees Due Regardless Whether Applicant Has Previously Paid for His License Plates During Current Year: Upon a transfer of title and license plates to a newly acquired vehicle, the County Treasurer must collect from the applicant the registration fees provided for in this section. 36 A.G. Op. 27 (1975).

61-3-322. Registration receipts — issuance.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in six places substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1) near beginning after "completion of the" inserted "original", after "registration" inserted "or registration renewal", and before "county treasurer" inserted "department, an authorized agent, or a". Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 substituted (1) concerning issuance of registration receipt for former text that read: "Upon completion of the application for registration on forms furnished by the department, the county treasurer shall file one copy in the treasurer's office and issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Payment Receipt", one of which must be marked "file copy""; substituted (2) concerning content of registration receipt for former text that read: "The certificate of registration must contain upon the face of the certificate the information described in 61-3-202(2)"; in (3) near beginning after "receipt" deleted "a photostatic copy of the receipt acknowledged by the county treasurer or a deputy county treasurer, a notarized photostatic copy, or a duplicate furnished by the department" and near end substituted "peace officer" for "police officer"; and deleted former (4) and (5) that read: "(4) The county treasurer shall daily forward to the department one copy of all applications for registration received that day.

(5) It is not necessary for the county treasurer to segregate the amount of taxes or fees for state, county, school district, and municipal purposes in the receipt." Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1993 Amendment: Chapter 365 in (3) deleted former first sentence requiring owner to sign registration receipt in ink; and made minor changes in style.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1989 Amendment: In (3), near beginning of second sentence, inserted "a photostatic copy of the receipt acknowledged by the county treasurer or a deputy county treasurer"; and made minor changes in phraseology. Amendment effective March 29, 1989.

1985 Amendment: In (1), (3), and (4) substituted references to department of justice for references to division of motor vehicles.

1981 Amendment: Substituted "Owner's Certificate of Registration and Payment Receipt" for "Owner's Certificate of Registration and Tax Receipt" near the end of (1); and inserted "or fees" after "the amount of taxes" in (5).

61-3-323. Definitions.

Compiler's Comments

2021 Amendment: Chapter 407 in definition of fleet near beginning before "motor vehicles" deleted "100 or more" and at end after "pole trailers in this state" inserted "in a quantity set by the department pursuant to 61-14-101". Amendment effective October 1, 2021.

2005 Amendment: Chapter 542 in definition of fleet near beginning after "motor vehicles" inserted "trailers, semitrailers, or pole trailers" and near end substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles". Amendment effective January 1, 2006.

61-3-324. Fleet registration — application — additions to and deletions from fleet.

Compiler's Comments

2021 Amendment: Chapter 407 deleted former (2)(a) that read: "(a) Except as provided in subsection (2)(b), fleet registration information, as prescribed by the department, must be submitted to the department prior to November 1 of each year"; and made minor changes in style. Amendment effective October 1, 2021.

2005 Amendments — Composite Section: Chapter 22 throughout section in five places after "department" deleted "of transportation"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 542 in (1), (2)(c), (3), and (4) after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (2)(b) after "motor vehicles" inserted "trailers, semitrailers, or pole trailers"; in (4) near end of first sentence substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006. The amendment by Ch. 596 rendered the amendments to (2)(b), (2)(c), and (4) near end void.

Chapter 596 in (1) near middle after "fleet may" deleted "apply to the department of transportation to" and after "department" deleted "of transportation"; in (2)(a) at beginning substituted exception clause for "The application for", after "registration" inserted "information, as prescribed by the department", and after "department" deleted "of transportation"; deleted former (2)(b) through (2)(d) that read: "(b) include a list of the motor vehicles in the fleet;

(c) include the current registration receipt for each motor vehicle; and

(d) include any other relevant information required by the department of transportation"; inserted (2)(b) concerning agreement to change registration period; in (3) after "fleet" inserted "at any time during the registration period. If a certificate of title for a vehicle to be added to the fleet has not been issued by the department, the fleet owner or lessor may submit the application for certificate of title directly to the department"; in (4) in first sentence after "if the" substituted "fleet owner or lessor notifies" for "owner of the fleet surrenders to" and after "department of" substituted "its removal" for "transportation the current registration receipt and the license plate for the vehicle no later than December 31" and substituted second sentence concerning cancellation upon receipt of notice for "If the receipt or license plate has been lost or stolen, the owner shall submit an affidavit explaining why he is not able to surrender the receipt or license plate"; and made minor changes in style. Amendment effective January 1, 2006.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-3-325. Fleet registration — license plates.

Compiler's Comments

2021 Amendment: Chapter 407 in (1) after "The department" inserted "or an authorized agent"; deleted former (1)(b) that read: "(b) Unless the fleet's registration period is changed under 61-3-324, all fees and taxes must be paid no later than February 15 each year"; in (2) inserted current language regarding fleet series license plates and deleted former language (see 2021 Session Law for former text); and made minor changes in style. Amendment effective October 1, 2021.

2005 Amendments — Composite Section: Chapter 22 in (1) at beginning of second sentence and in (2)(a) and (2)(b) after "department" deleted "of transportation". Amendment effective January 1, 2006. The amendment by Ch. 596 rendered the amendments by Ch. 22 void.

Chapter 542 in (1), (1)(a), and (2)(b) after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; and made minor changes in style. Amendment effective January 1, 2006. The amendment by Ch. 596 rendered the amendments to (1) and (2)(b) void.

Chapter 596 deleted former (1) that read: "(1) Any motor vehicle in the fleet that is subject to staggered registration under 61-3-313 through 61-3-316 may be registered as part of the fleet on the following fleet renewal date. The department of transportation shall collect the remaining fees and taxes due for the registration year after crediting the registrant for the period that was previously paid"; in (1)(a) near beginning after "department" deleted "of transportation" and inserted reference to part 3; deleted former (2)(b) that read: "(b) The department of transportation shall also collect a registration fee of $7.50 for each motor vehicle in the fleet in lieu of the registration fee provided for in 61-3-321. The department shall retain $4.50 of each registration fee for administrative costs and forward the remaining $3 to the state treasurer for deposit in the general fund"; in (1)(b) at beginning inserted "Unless the fleet's registration period is changed under 61-3-324"; inserted (2) concerning license plates for fleet vehicles; and made minor changes in style. Amendment effective January 1, 2006.

2001 Amendment: Chapter 574 at end of (2)(b) deleted "in lieu of the fee provided in 61-3-321(5)"; and deleted former (2)(d) that read: "(d) The fees and taxes collected must be distributed by the department of transportation as provided in 61-3-321 and part 5 of this chapter, based on the domicile of each motor vehicle." Amendment effective July 1, 2001.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1989 Amendment: Substituted "general fund" for "motor vehicle recording account of the state special revenue fund".

61-3-331. Assignment of license plates.

Compiler's Comments

2013 Amendment: Chapter 196 after "county treasurer" inserted "or an authorized agent". Amendment effective July 1, 2013.

2005 Amendments — Composite Section: Chapter 542 in first sentence after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in second sentence near middle substituted "each county treasurer" for "the various county treasurers by freight" (amendment rendered void by Ch. 596 amendment); and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 near middle after "number, and" inserted "unless the license plates must be specially ordered from the department", after "applicant" inserted "depending on the type of motor vehicle that was registered, a set of", and after "plates" substituted "or one license plate" for "as received from the department"; deleted former second sentence that read: "The department shall ship said license plates to the various county treasurers by freight, so that they will be received by the county treasurer on or before January 1 of each year"; and made minor changes in style. Amendment effective January 1, 2006.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-3-332. Standard license plates.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 252 in (3)(a)(ii)(A) at beginning inserted exception clause; inserted (3)(a)(ii)(B) concerning disabled veteran with a combat-related disability license plates 10 or more years old; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 389 in (2)(b) near beginning substituted "61-3-303(10)" for "61-3-303(9)". Amendment effective April 29, 2021.

Chapter 390 in (9)(a) near beginning and in (9)(b) near end substituted "disability parking permit" for "special parking permit"; in (9)(a) near end and in (9)(c) near middle substituted "disability license plate" for "special license plate"; and in (9)(b) near middle substituted "disability parking laws" for "special parking laws". Amendment effective October 1, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business

in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2019 Amendment: Chapter 335 in (3)(a)(ii) at end of last sentence substituted "61-14-101" for "61-3-315". Amendment effective May 7, 2019.

2017 Amendment: Chapter 275 in (3)(a)(ii) substituted "renewal of registration under 61-3-312" for "renewal of registration under this section". Amendment effective October 1, 2017.

2013 Amendment: Chapter 393 in (3)(a)(i) substituted "in 1989 or later" for "within the last 35 years"; in (3)(a)(iii) at beginning deleted "Until January 1, 2015, and upon payment of the fee required in 61-3-321(13)(b)" and after "license plates issued" deleted "on or after January 1, 2006, but"; in (4)(a) inserted exception clause; in (5) in second sentence inserted "and standard license plates that are 4 inches wide and 7 inches in length"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendments — Composite Section — Coordination: Chapter 127 in (3)(a)(ii) substituted "this section" for "61-3-332"; in (4)(a) deleted former first two sentences that read: "For trailers and motor vehicles, other than motorcycles and quadricycles, plates must be of metal 6 inches wide and 12 inches in length. Except for generic specialty license plates, the outline of the state of Montana must be used as a distinctive border on all license plates, and the word "Montana" must be placed on each license plate", in first sentence inserted "metal and", and inserted second sentence pertaining to placing state name and outline on license plates; inserted (4)(b), (4)(c), and (4)(d) pertaining to sizes of certain license plates; and made minor changes in style. Amendment effective January 1, 2012.

Chapter 209 in (3)(a)(iii) substituted "61-3-321(13)(b)" for "61-3-321(12)(b)"; in (9)(a) after "may" inserted reference to low-speed electric vehicles or golf carts operated by persons with restricted license; and made minor changes in style. Amendment effective January 1, 2012.

Chapter 231 in (3)(a)(i) substituted current first sentence for "Beginning January 1, 2010, and every 5 years after that date, the department shall design standard license plates to replace previously issued standard license plates"; in (3)(a)(ii) in first sentence substituted "with new license plates" for "with the most recent design of standard license plates or a new replacement collegiate or generic speciality license plate"; in (3)(a)(iii) in first sentence substituted "New license plates must be issued" for "License plates issued on or before January 1, 2010, must be replaced with the most recent design of standard license plates or a new replacement collegiate or generic specialty license plate"; and made minor changes in style. Amendment effective January 1, 2012.

Chapter 247 in (3)(a)(iii) substituted "61-3-321(13)(b)" for "61-3-321(12)(b)". Amendment effective April 22, 2011.

The amendment to this section made by sec. 1, Ch. 117, L. 2011, was rendered void by sec. 2, Ch. 127, L. 2011, a coordination section.

2009 Amendment: Chapter 413 in (2)(a) after "plates are not" substituted "reissued for a vehicle" for "issued"; inserted (2)(c) concerning language of permanent registration decal; in (3)(a)(i) in first sentence near beginning substituted "every 5 years" for "every 4 years", after "the department shall" substituted "design" for "manufacture and issue new", at end of first sentence after "plates" deleted "upon renewal", and inserted second sentence regarding treatment of certain license plates as standard license plates; inserted (3)(a)(ii) and (3)(a)(iii) regarding design of certain license plates; inserted (3)(d) and (3)(e) providing for lack of application and application of (3) to certain license plates; deleted former (8)(b) that read: "(b) Beginning January 1, 2008, and every succeeding 4 years, the department shall manufacture and issue a new set of special license plates, bearing the same design and, if requested by the owner, the same plate number to replace, upon renewal of the registration of a motor vehicle under 61-3-314 and payment of the new plate fee provided for in 61-3-321, any special license plates issued prior to the prescribed date. This requirement applies to collegiate license plates authorized under 61-3-461 through 61-3-468, generic specialty license plates authorized under 61-3-472 through 61-3-481, and commemorative centennial license plates authorized under 61-3-448"; and made minor changes in style. Amendment effective January 1, 2010.

2007 Amendments — Composite Section: Chapter 329 in (2)(a) near middle after "must" deleted "be issued for a minimum period of 4 years"; deleted former (3)(a) that read: "(a) Subject to the provisions of this section, the department shall create a new design for standard license plates as provided in this section, and it shall manufacture the newly designed standard license plates for issuance after December 31, 2005, to replace at renewal, as required in 61-3-312, standard license plates that were displayed on motor vehicles before that date"; in (3)(a) near beginning substituted "2010, and every 4 years after that date" for "2006" and at end substituted "to replace previously issued standard license plates upon renewal" for "after the existing plates have been used for a minimum period of 4 years"; in (8)(a) at end of first sentence substituted "design that distinguishes each separate plate series" for "nonremovable design or decal designating the group or organization to which the applicant belongs" and in second sentence near middle after "issuance of" substituted "standard" for "regular"; inserted (1)(b) concerning timing of manufacture of special license plates; and made minor changes in style. Amendment effective January 1, 2008.

Chapter 392 in (4) at beginning substituted "For trailers and motor vehicles, other than motorcycles and quadricycles" for "For passenger motor vehicles and trucks"; and made minor changes in style. Amendment effective January 1, 2008.

Applicability: Section 6, Ch. 392, L. 2007, provided: "[This act] applies to motor vehicles and trailers registered, and license plates that are issued or renewed, on or after [the effective date of this act]." Effective January 1, 2008.

2005 Amendments — Composite Section — Coordination — Code Commissioner Correction: Chapter 500 in (2)(b) near beginning after "provided in" inserted "61-3-522(3)"; and in (3)(d) near beginning after "(3)(b)" inserted "or a motor home". Amendment effective January 1, 2006.

In (2)(b) the code commissioner deleted "61-3-522(3) and" to reflect the repeal of that section by Ch. 542, L. 2005; in (3)(d) near end the code commissioner inserted "or motor home" to reflect the changes made by Ch. 542 and for consistency.

Chapter 507 inserted (9)(c) providing that a person with a permanent condition who has been issued a special license plate upon written application is not required to reapply upon reregistration of the motor vehicle or upon transfer of the special plate; and made minor changes in style. Amendment effective January 1, 2006. The amendment by Ch. 596 rendered the phrase "or upon transfer of the special plate as provided in subsection (8)" meaningless, so it has not been codified.

Section 4, Ch. 507, L. 2005, a coordination section, required that if both House Bill No. 671 and Ch. 507 were passed and approved, the code commissioner change all of the references to vehicle in subsection (9)(c) of 61-3-332 in Ch. 507 to references to motor vehicles. House Bill No. 671 was approved May 6, 2005, as Ch. 596, L. 2005, and the reference in subsection (9)(c) of 61-3-332 was changed accordingly.

Chapter 542 in (1) after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in former (2)(f) after "trailers" inserted "semitrailers, and pole trailers"; in former (2)(h) after "semitrailers" inserted "or pole trailers"; in (2)(a) near beginning after "motor vehicles" inserted "trailers, semitrailers, or pole trailers"; in (2)(b) in first sentence near beginning after "provided in" deleted "61-3-527 or", after "61-3-562 and" inserted "motor", and near end and in second sentence before "vehicle" inserted "motor"; in (3)(a) near end after "motor vehicles" inserted "as described in subsection (2)"; in (3)(c) substituted "61-3-321(2)" for "61-3-560"; in (3)(d) near end before "vehicle" inserted "light"; in (4) near beginning of first sentence after "passenger" inserted "motor"; in (5) in second sentence near middle substituted "motor vehicle, as described in subsection (2)" for "vehicle"; in (6) in two places after "motor vehicles" inserted "trailers, semitrailers, or pole trailers" and substituted "61-3-321" for "61-3-560(2)(a)"; in (6)(a) and (6)(b) at beginning substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; in (6)(b) in second sentence after "motor vehicles" inserted "trailers, semitrailers, or pole trailers"; in former (8) in two places substituted "motor vehicle" for "vehicle" and in two places after "trailer" inserted "semitrailer, pole trailer"; in (8) in second sentence in three places substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; in (9) in three places before "vehicle" inserted "motor"; in (10) after "semitrailer" inserted "or pole trailer"; and made minor changes in style. Amendment effective January 1, 2006. The amendments by Ch. 596 rendered the amendments to (1), (2), (3)(a), (5), (8), and (9) void.

Chapter 596 throughout section substituted references to standard license plates for references to number plates; deleted former (1) that read: "(1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle"; substituted (1) concerning standard license plates in addition to other series of plates for former text that read: "In addition to special license plates, collegiate license plates, and generic specialty license plates authorized under this chapter, a separate series of number plates must be issued, in the manner specified, for each of the following vehicle or dealer types:

(a) passenger vehicles, including automobiles, vans, and sport utility vehicles;

(b) motorcycles and quadricycles, bearing the letters "MC" or "CYCLE";

(c) trucks, bearing the letter "T" or the word "TRUCK";
(d) trailers, bearing the letters "TR" or the word "TRAILER";
(e) dealers of new, or new and used, motor vehicles, including trucks and trailers, bearing the letter "D" or the word "DEALER";
(f) dealers of used motor vehicles only, including trucks and trailers, bearing the letters "UD" or the letter "U" and the word "DEALER";
(g) dealers of motorcycles or quadricycles, bearing the letters "MCD" or the letters "MC" and the word "DEALER";
(h) dealers of trailers or semitrailers, bearing the letters "DTR" or the letters "TR" and the word "DEALER"; and
(i) dealers of recreational vehicles, bearing the letters "RV" or the letter "R" and the word "DEALER""; in (2)(a) near middle after "distinctive marking" inserted "as determined by the department"; in (2)(b) near beginning after "provided in" deleted "61-3-527 or 61-3-315 and"; in (3)(a) after "61-3-312" deleted "and 61-3-314"; in (3)(c) at beginning substituted "motor vehicle" for "light vehicle", after "registered for a" inserted "13-month to a", substituted "61-3-311" for "61-3-315 and 61-3-560", substituted "license plate" for "number plate", and after "entire" deleted "24-month"; in (3)(d) substituted "license plate" for "number plate"; in (4) at end of first sentence before "plate" inserted "license" and at beginning of second sentence substituted "All license plates" for "Registration plates"; in (5) in first sentence near beginning after "numbers" inserted "for standard license plates" and in second sentence after "generic specialty license plates" inserted "and fleet license plates"; in (6)(a) at beginning and in (6)(b) in two places before "vehicles" inserted "motor"; in (6)(b) in last sentence near middle substituted "license plates" for "number plates" and at end before "plates" deleted "number"; deleted former (8) that read: "(8) Number plates issued to a passenger vehicle, truck, trailer, motorcycle, or quadricycle may be transferred only to a replacement passenger vehicle, truck, trailer, motorcycle, or quadricycle. A registration fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335"; in (8) in last sentence near middle before "vehicle" inserted "motor"; in (9) in last sentence in two places before "vehicle" inserted "motor", near middle after "shall" substituted "provide, upon request of a person authorized to enforce special parking laws or ordinances in this or any state" for "maintain", and at end substituted "in the form of a valid special parking permit issued to or renewed by the vehicle owner under 49-4-304 and 49-4-305" for "which must be attached to the registration document in the vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:
(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;
(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.
(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendments — Composite Section: Chapter 280 in (3)(a) near middle of first sentence after "issued for a" substituted "minimum" for "maximum"; in (4)(a) near middle after "December 31" substituted "2005" for "1999"; in (4)(b) near beginning after "January 1" substituted "2006" for "2000" and after "plates" substituted "after the existing plates have been used for a minimum period of" for "every"; and made minor changes in style. Amendment effective April 10, 2003.

Chapter 399 in (10) deleted former third sentence that read: "The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, national guard veterans, legion of valor members, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions"; deleted former (10)(a) through (10)(f) that read: "(a)(i) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement eligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (12).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) Subject to the limitation in 61-3-453, a resident of Montana who is a veteran of the armed forces of the United States and who has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of documentation required in subsection (10)(f)(i) and proof of the required disability, be issued:

(A) a special license plate under this section with the purple heart decal or a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the 50% or more disabled veteran who has been awarded the purple heart or the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i).

(iii) The fee for original or renewal registration for a motor vehicle, as defined in 61-1-102, that is not used for commercial purposes by a 50% or more disabled veteran who has been awarded the purple heart and who meets the criteria in subsection (10)(c)(i) is $5 and is in lieu of other taxes and fees for that vehicle under this chapter, except for the $10 fee required in subsection (10)(f)(iii), regardless of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i). Special license plates issued to a 50% or more disabled veteran who has been awarded the purple heart under subsection (10)(c) may be retained by a surviving spouse, subject to payment of all taxes and fees required under parts 3 and 4 of this chapter as provided in subsection (10)(f)(iii).

(iv) Special license plates issued to a disabled veteran and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart are not transferable to another person.

(v) A 50% or more disabled veteran who has been awarded the purple heart or a disabled veteran is not entitled to a special license plate for more than one vehicle.

(vi) A vehicle that is lawfully displaying a disabled veteran's plate with a design or decal displaying the letters "DV" and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) (i) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(ii) Fees required under 61-3-321(1) and (6) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iv) An ex-prisoner of war is exempt from the registration fees imposed under 61-3-560 through 61-3-562 for one vehicle that displays a set of ex-prisoner of war license plates.

(v) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of 61-3-457.

(e) Except as provided in subsections (10)(c) and (10)(d), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or was offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under subsection (10)(d) and this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided for 100% disabled veterans and ex-prisoners of war in subsections (10)(c) and (10)(d), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10"; deleted former (10)(h) and (10)(i) that read: "(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on each set, to an applicant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(i) An active member of the armed forces of the United States who is a resident of the state or who is stationed outside of Montana may be issued special license plates inscribed as provided in subsection (10)(f)(i)(A). The member's commanding officer may issue a certificate or some other relevant document to show the applicant's qualification and authorizing the issuance of the special license plates in sets of two with a different number on each set. The member is liable for payment of all taxes and fees required by this chapter, except as provided in 61-3-456"; deleted former (12) that read: "(12) Fees collected under this section must be deposited in the state general fund"; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 592 in (3)(a) near beginning of first sentence after "subsections" inserted "(3)(b)" and in second sentence after "provide" substituted "registration decal" for "nonremovable stickers bearing appropriate registration numbers" and at end substituted "rear license plate of the vehicle" for "license plates in use"; in (3)(b) at beginning of first sentence after "For" deleted "motorcycles, quadricycles, and", near middle after "61-3-562" inserted "and vehicles described in 61-3-303(9) that are permanently registered" and after "distinctive" substituted "registration decal" for "nonremovable stickers" and in second sentence at beginning after "The" substituted "registration decal" for "stickers" and at end substituted "rear license plate of the permanently registered vehicle" for "license plates in use"; in (4)(d) at beginning after "A" deleted "motorcycle, quadricycle, or", after "vehicle" inserted "described in subsection (3)(b)", and after "registered" deleted "as provided in 61-3-527 or 61-3-315 and 61-3-562"; in (8) in second sentence after "registration" deleted "or license"; in (10) near middle of second sentence after "them" inserted "with the registration decal affixed to the rear license plate of the vehicle"; in (11) inserted second sentence requiring the vehicle owner to maintain evidence of continued eligibility; and made minor changes in style. Amendment effective January 1, 2004.

The amendment to this section made by Ch. 134, L. 2003, was rendered void by sec. 19, Ch. 399, L. 2003, a coordination section.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated the 2001 amendments to this section June 30, 2005. Effective July 1, 2003.

Applicability: Section 19(3), Ch. 280, L. 2003, provided: "[Sections 3, 5, 9, 11, and 12] [61-3-332, 61-3-424, 61-3-475, 61-3-477, and 61-3-478] apply to applications for sponsorship of a generic specialty license plate submitted to the department on or after [the effective date of sections 3, 5, 9, 11, and 12] [effective April 10, 2003]."

Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

2001 Amendments — Composite Section — Coordination: Chapter 72 at end of (10)(c)(ii) after "chapter" inserted "irrespective of which set of military license plates the veteran is eligible to receive and chooses to display under subsection (10)(c)(i)"; in (10)(c)(vi) after "plate" inserted "with a design or decal displaying the letters "DV""; in (10)(d)(iv) after "light vehicle" substituted "registration fees imposed under 61-3-560 through 61-3-562" for "taxes imposed under 61-3-504"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 167 at beginning of (10)(c)(i) inserted "Subject to the limitation in 61-3-453"; in middle of (10)(c)(ii) substituted "motor vehicle, as defined in 61-1-102, that is not used for commercial purposes" for "passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less"; in (10)(d)(iv) substituted "light vehicle registration fees imposed under 61-3-560 and 61-3-562" for "light vehicle taxes imposed under 61-3-504"; and made minor changes in style. Amendment effective March 30, 2001.

Chapter 191 deleted second and third sentences of (1) that read: "The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates"; inserted (2) specifying different types of vehicle or dealer license plates that may be issued; in (3)(a) at beginning inserted exception clause; in (3)(b) near beginning after "For" inserted "motorcycles, quadricycles, and" and near middle after "61-3-527 or" inserted "61-3-315 and"; inserted (4)(c) relating to light vehicle registered for 24-month period; inserted (4)(d) relating to motorcycle, quadricycle, or light vehicle that is permanently registered; in (5) near beginning after "In the case of" substituted "passenger vehicles" for "motorcars"; deleted former (7) that read: "(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type"; in (8) in first sentence near beginning and near middle substituted "passenger vehicle" for "passenger car"; in (10)(d)(iv) after "is exempt from the" substituted "registration fees imposed under 61-3-560 through 61-3-562" for "light vehicle taxes imposed under 61-3-504"; and made minor changes in style. Amendment effective April 3, 2001.

Pursuant to sec. 16, Ch. 402, L. 2001, a coordination instruction, the code commissioner in (2) has inserted reference to generic specialty license plates. Amendment effective April 28, 2001, and terminates June 30, 2005, pursuant to sec. 21, Ch. 402, L. 2001.

Chapter 249 in (10)(d)(iv) substituted "registration fees imposed under 61-3-560 through 61-3-562" for "light vehicle taxes imposed under 61-3-504"; and inserted (10)(i) concerning active military eligibility for special license plates. Amendment effective January 1, 2002.

Chapter 337 in (10)(d)(ii) inserted reference to 61-3-321(6); and made minor changes in style. Amendment effective April 21, 2001.

(Temporary version) Chapter 402 in (1) in second sentence near end after "the word "DEALER", and one" inserted "each" and at end after "special license plates" inserted "collegiate license plates, and generic specialty plates authorized under this chapter"; (amendments voided by Ch. 191) in (3)(a) at beginning inserted exception clause and near middle after "and be furnished by" substituted "the department" for "the state"; in (5) in second sentence at beginning inserted exception clause and at end after "and the word "Montana"" substituted "must be placed on each plate" for "and the year must be placed across the plates"; in (6) at beginning of second sentence inserted exception clause; in (10) in first sentence near beginning after "authorized in 61-3-463" inserted "and generic specialty license plates authorized in 61-3-472 through 61-3-481"; in (10)(c)(ii) after "100% disabled veteran for a" substituted "light vehicle" for "passenger vehicle or a truck with a GVW rated capacity of 1 ton or less"; in (10)(d)(iv) near middle substituted "registration fees imposed under 61-3-560 through 61-3-562" for "light vehicle taxes imposed under 61-3-504"; and made minor changes in style. Amendment effective April 28, 2001, and terminates June 30, 2005.

The amendment in (10)(c)(ii) was rendered void by sec. 17(2), Ch. 402, L. 2001, a coordination instruction. Section 17(2), Ch. 402, provided that if Senate Bill No. 53 and Ch. 402 were both passed and approved, then the amendment to subsection (10)(c)(ii) of this section was that contained in sec. 17. Senate Bill No. 53 was passed and approved as Ch. 167, L. 2001. Section 17, Ch. 402, substituted "motor vehicle, as defined in 61-1-102, that is not used for commercial purposes" for "passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less". Amendment effective April 28, 2001.

Chapter 539 in (10)(c)(i) near beginning after "United States and who" inserted "has been awarded the purple heart and is 50% or more disabled because of an injury that has been determined by the department of veterans affairs to be service-connected or who" and near end after "department of" substituted "documentation required in subsection (10)(f)(i) and proof of the required disability" for "proof of the 100% disability"; in (10)(c)(i)(A) after "section with" inserted "the purple heart decal or"; in (10)(c)(i)(B) near middle after "plates that the" inserted "50% or more disabled veteran who has been awarded the purple heart or the"; in (10)(c)(ii) near middle after "veteran for a" substituted "motor vehicle, as defined in 61-1-102, that is not used for commercial purposes" for "passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less"; inserted (10)(c)(iii) setting the registration fee for a disabled veteran who has been awarded the purple heart; in (10)(c)(iv) near beginning after "issued to a disabled veteran" inserted "and, except as provided in subsection (10)(c)(iii), to a 50% or more disabled veteran who has been awarded the purple heart"; in (10)(c)(v) at beginning after "A" inserted "50% or more disabled veteran who has been awarded the purple heart or a" and after "special" deleted "disabled veteran's"; in (10)(d)(iv) after "exempt from the" substituted "registration fees imposed under 61-3-560 through 61-3-562" for "light vehicle taxes imposed under 61-3-504"; in (10)(f)(iii) near beginning after "as provided" inserted "for 100% disabled veterans and ex-prisoners of war"; and made minor changes in style. Amendment effective January 1, 2002.

Chapter 574 at end of (10)(a)(ii) substituted "subsection (12)" for "subsection (10)(f)(iii) and (10)(f)(iv)"; in (10)(d)(ii) near beginning deleted reference to 61-3-321(5); in (10)(d)(iv) near middle substituted "registration fees imposed under 61-3-560 through 61-3-562" for "light vehicle taxes imposed under 61-3-504"; at end of (10)(f)(iii) deleted "Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries"; deleted former (10)(f)(iv) that read: "(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C)"; inserted (12) concerning deposit of fees in state general fund; and made minor changes in style. Amendment effective July 1, 2001.

The amendment to this section made by Ch. 414, L. 2001, was rendered void by sec. 17(1), Ch. 402, L. 2001, a coordination section.

Applicability: Section 4, Ch. 167, L. 2001, provided: "[This act] applies to an original or renewal registration of a motor vehicle pursuant to 61-3-332(10)(c) after [the effective date of this act]." Effective March 30, 2001.

Section 11, Ch. 337, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

Effective Date — Applicability: Section 2, Ch. 249, L. 2001, provided: "[This act] is effective January 1, 2002, and applies to registrations of motor vehicles occurring after December 31, 2001."

2000 Amendment by Referendum: Chapter 515, L. 1999, inserted (2)(b) concerning permanently registered vehicles; in (6) substituted "exempt motor vehicles and motor vehicles that are exempt from the registration fee as provided in 61-3-560(2)(a)" for "tax-exempt motor vehicles"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendments — Composite Section: Chapter 79 inserted (10)(d)(i) through (10)(d)(iv) concerning exemption from taxes and fees for former prisoners of war and their surviving spouses; in (10)(e) in two places inserted reference to subsection (10)(d); in (10)(f)(iii) inserted reference to subsection (10)(d); and made minor changes in style. Amendment effective January 1, 2000.

Chapter 344 in third sentence in (10) inserted "national guard veterans, legion of valor members"; inserted (10)(a)(ii) authorizing department to issue national guard veteran license plates, describing plate design requirements, and imposing $10 fee; inserted (10)(h) authorizing department to issue legion of valor license plates upon payment of taxes and fees; and made minor changes in style. Amendment effective January 1, 2000.

Chapter 570 in (2) near middle of first sentence after "issued for a" substituted "maximum" for "minimum"; in (3)(a) at end inserted "and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date"; inserted (3)(b) requiring manufacture and issuance of new number plates every 4 years; and made minor changes in style. Amendment effective July 1, 1999.

Effective Date — Applicability: Section 4, Ch. 344, L. 1999, provided: "[This act] is effective January 1, 2000, and applies to registrations of motor vehicles occurring after December 31, 1999."

Applicability: Section 3, Ch. 570, L. 1999, provided: "[This act] applies to the registration of motor vehicles and the display of license plates issued after December 31, 1999."

1997 Amendments: Chapter 72 inserted (11) concerning motor vehicles, trailers, or semitrailers registered as part of a fleet. Amendment effective January 1, 1998.

Chapter 109 at end of (10)(f)(iii)(C) substituted "cemeteries" for "cemetery"; and made minor changes in style. Amendment effective March 20, 1997.

Chapter 472 in (10), in last sentence of introductory clause, substituted "persons with disabilities" for "handicapped persons"; in (10)(c)(v) substituted "person with a disability's" for "handicapped person's"; in (10)(g) substituted "a person with a disability" for "the handicapped person"; and made minor changes in style.

1995 Amendment: Chapter 81 near beginning of first sentence of (6)(b), after "municipalities", substituted "and special districts, as defined in 18-8-202" for "irrigation districts" and in second sentence, after "municipalities", substituted "and special districts" for "and school districts situated within each of the counties and those of the irrigation districts"; and made minor changes in style. Amendment effective March 6, 1995.

Preamble: The preamble attached to Ch. 81, L. 1995, provided: "WHEREAS, the Legislature has specifically exempted vehicles owned by special districts from various vehicle fees because it considers the use of taxpayer money to pay taxes to other tax entities to be counter to good government; and

WHEREAS, a private business that competes with governmental entities is required to pay fees that the governmental entity does not have to pay, yet when comparing costs of services provided by government and by private business, this consideration is often not factored into the equation.

THEREFORE, the Legislature recognizes the costs and consequences of this situation and encourages all parties, when comparing private versus government costs, to consider costs that are incurred by private business but not by government."

1993 Amendments — Composite Section: (Version effective January 1, 1994) Chapter 83 in (3) deleted requirement that Department "manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date"; in (10)(a), in second sentence, substituted reference to National Guard plates numbered in sets of two with a different number on each set for reference to one set of plates; in (10)(b), in second sentence, substituted reference to special license plates numbered in sets of two with a different number on each set for reference to one set of plates; in (10)(d), near middle after "license", substituted "plates, numbered in sets of two with a different number on each set" for "plate"; in (10)(e), near middle of first sentence after "plates", substituted "numbered in sets of two with a different number on each set" for "for one motor vehicle only"; and made minor changes in style. Amendment effective January 1, 1994.

Chapter 209 in (3) deleted requirement that Department "manufacture the newly designated number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date"; inserted (10)(c)(i)(B) relating to issuance of military-related plates to disabled veterans; in (10)(c)(iv) inserted "disabled veteran's"; in (10)(e) and (10)(f)(iii) inserted exception referring to subsection (10)(c); and made minor changes in style. Amendment effective January 1, 1994.

(Both versions) Chapter 159 in (10)(f), near beginning after "veteran", inserted "or the surviving spouse of a veteran"; in (10)(f)(i), near beginning after "submission of", substituted "a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's" for "proof, in a form prescribed by the department, of his"; in (10)(f)(ii), in two places, and near beginning of (10)(f)(iii) inserted reference to a veteran's surviving spouse; in (10)(f)(iii)(C), after "revenue", substituted "account established in 10-2-603 for administration" for "fund to the credit of the department of military affairs to be appropriated by the legislature"; and made minor changes in style. Amendment effective July 1, 1993.

Style and gender neutral changes were slightly different in the chapters. In each case, the codifier chose the most appropriate.

Section 4, Ch. 654, L. 1989, provided that certain amendments terminated July 1, 1996. The amendments made by Ch. 83, L. 1993, made the version effective January 1, 1994, identical to the version to be effective July 1, 1996, except for minor style differences. The Code Commissioner has not codified the July 1, 1996, version.

1991 Amendment: Section 2, Ch. 632, L. 1991, a coordination instruction with other bills providing for special license plates, amended this section as follows: in (1), in second sentence, increased number of series of plates from 8 to 10 and at end inserted "one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates"; in (6)(b) inserted last sentence providing for replacement of plates only when physical condition requires; inserted (10) providing that special plates are subject to general rules and providing designations for plates for the national guard, reserve armed forces, disabled veterans, prisoners of war, Pearl Harbor survivors, veterans, veterans awarded the purple heart, and handicapped persons; and made minor changes in style.

Effective Date: Section 1, Ch. 604, L. 1991, amended 1-2-201 to provide that "Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein". The Code Commissioner has determined that pursuant to sec. 1, Ch. 604, L. 1991, the amendment to this section is effective January 1, 1992.

Coordination Instruction: The amendment to this section in sec. 8, Ch. 724, L. 1991, was voided by sec. 2, Ch. 632, L. 1991, a coordination instruction.

1989 Amendment: Inserted (3) regarding creation and manufacture of new number plates for issuance after January 1, 1991; and made minor changes in phraseology and punctuation. Amendment effective May 11, 1989, and terminates July 1, 1996.

Extension of Termination Date: Section 4, Ch. 654, L. 1989, amended sec. 5, Ch. 674, L. 1985, by extending the validity of the law regarding commemorative centennial license plates from July 1, 1991, to July 1, 1996. Effective May 11, 1989.

Appropriation: Section 6, Ch. 654, L. 1989, provided an appropriation to the Departments of Institutions (now Corrections) and Justice for purposes of implementing issuance of new motor vehicle number plates. See Session Law for text of appropriation.

Applicability: Section 8, Ch. 654, L. 1989, provided: "[This act] applies to registration of motor vehicles and display of license plates issued after December 31, 1990."

1987 Amendment: In (5), after "vehicles", and in (6), after "tax-exempt trucks", deleted "that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of 61-3-532".

1985 Amendments: Chapter 503 in (1) through (5) and (8) substituted references to department of justice for references to division of motor vehicles.

Chapter 516 in (1) in second sentence, inserted "or quadricycle" after "motorcycle" in two places; in (6) at end, after "motorcycle", inserted "or quadricycle"; and in (7) in first sentence near beginning, after "motorcycle", inserted "or quadricycle" and near end after "motorcycle", inserted "- or quadricycle-" (effective January 1, 1986).

Chapter 674 in (3), in first sentence deleted "number" before "plates", in second sentence at beginning deleted "For number plates issued after 1976" and at end deleted "the bottom of" before "the plate"; and in (4) deleted from end of first sentence "and be numbered consecutively for each series of plates".

1981 Amendment: Inserted "that are also exempt from the light vehicle license fee as provided in subsection (2)(a) of 61-3-532" after "For the use of tax-exempt motor vehicles" at the beginning of (5) and after "other than tax-exempt trucks" near the beginning of (6); inserted "tax exempt" after "provided in subsection (2)(a) of 61-3-532 and" in the middle of (6).

Administrative Rules

Title 23, chapter 3, subchapter 7, ARM Vehicle registration and license plates.

Attorney General's Opinions

Fees Due Regardless Whether Applicant Has Previously Paid for License Plates During Current Year: Upon a transfer of title and license plates to a newly acquired vehicle, the County Treasurer must collect from the applicant the registration fees provided for in 61-3-321. 36 A.G. Op. 27 (1975).

61-3-333. Replacing license plates or decals.

Compiler's Comments

2009 Amendment: Chapter 413 at end of (1) increased replacement fee from $5 to $10; in (2) at end increased replacement fee from $5 to $15; and inserted (3) concerning deposit of fees. Amendment effective January 1, 2010.

2005 Amendment: Chapter 596 in (1) at beginning substituted "Except as provided in subsection (2), if one or both license plates registered to a motor vehicle, quadricycle, travel trailer, trailer, semitrailer, or pole trailer or the registration decal for the motor vehicle, quadricycle, travel trailer, trailer, semitrailer, or pole trailer is mutilated or destroyed" for "If loss, mutilation, or destruction of number plates or a motor vehicle's registration decal occurs", near middle after "motor vehicle" inserted "or trailer", and after "obtain" substituted "a set of replacement license plates, a replacement license plate" for "from the department replacements of the number plates" and deleted former second sentence that read: "If loss, mutilation, or destruction of pioneer plates occurs, duplicates may be obtained in the same manner upon payment of a fee of $5"; inserted (2) concerning replacement license plates bearing the same background and license plate number; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 151, Ch. 596, L. 2005, a coordination section, the amendment made by Ch. 542 was rendered void.

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendments — Composite Section: Chapter 280 at end of first sentence increased replacement fee from $2 to $5; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 592 near beginning of first sentence after "plates" substituted "or a motor vehicle's registration decal occurs" for "and/or validation devices", after "department" deleted "duplicates or" and near middle after "plates" inserted "or a duplicate registration decal"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 19(1), Ch. 280, L. 2003, provided: "[Sections 2, 4, and 6] [61-3-321, 61-3-333, and 61-3-465] apply to the registration of motor vehicles and the display of license plates issued after December 31, 2003."

Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

1991 Amendment: Near middle of first sentence, after "duplicates", inserted "or replacements of the number plates"; and made minor changes in style.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

61-3-334. Transfer of ownership of motor vehicle — duty to remove plates.

Compiler's Comments

2005 Amendments — Composite Section — Coordination: Section 84, Ch. 542, in two places after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; at end substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 152, Ch. 596, L. 2005, a coordination section, near middle after "motor vehicle" deleted "the registration of the motor vehicle shall expire and it shall be the duty of"; and made minor changes in style.

Section 65, Ch. 596, near middle after "motor vehicle" deleted "the registration of the motor vehicle shall expire and it shall be the duty of"; after "transferor" inserted "shall"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 152, Ch. 596, L. 2005, a coordination section, near middle after "motor vehicle" inserted "trailer, semitrailer, or pole trailer" and at end substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle".

Attorney General's Opinions

Ownership Must Be Transferred: The registered owner of a motor vehicle may not transfer registration of the license plates from the vehicle to which such plates are registered to another motor vehicle without transferring ownership of the first vehicle. 36 A.G. Op. 23 (1975).

61-3-335. Transfer of license plates to another motor vehicle.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in three places after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (2) substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1) deleted former first sentence that read: "Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year as shown on the original certificate of registration, he may file an application in the office of the county treasurer where the motor vehicle is registered, upon a form to be prepared and furnished by the department, accompanied by the original certificate of registration, for the transfer of the license plates" and at beginning of first sentence substituted "A person may request the" for "The application for", after "license plates" inserted "removed", after "motor vehicle" substituted "under 61-3-334" for "for which originally issued", after "acquired" inserted "or owned", and after "person" deleted "in whose name the original license plates were issued shall be made within 20 days from date of acquiring the vehicle"; in (3) deleted former second sentence that read: "The certificate of registration for such vehicle must be surrendered to the county treasurer with the application for transfer"; and made minor changes in style. Amendment effective January 1, 2006.

1985 Amendment: In first sentence of (1) substituted reference to department of justice for reference to division of motor vehicles.

1981 Amendment: Substituted "where the motor vehicle is registered" for "where the motor vehicle is taxable" in the middle of the first sentence of (1).

Attorney General's Opinions

License Plate Transfer to Include Ownership Transfer: A registered owner of a motor vehicle may not transfer registration of license plates from the vehicle to another vehicle without transferring ownership of the first vehicle. 36 A.G. Op. 23 (1975).

61-3-336. Recycling license plates.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

61-3-337. Permanently registered motor homes — plate restriction.

Compiler's Comments

2013 Amendment: Chapter 393 deleted former (4) and (5) that read: "(4) collegiate license plates issued under 61-3-465; and

(5) generic specialty license plates issued under 61-3-479"; and made minor changes in style. Amendment effective May 6, 2013.

Effective Date: Section 168(1), Ch. 596, L. 2005, provided that this section is effective January 1, 2006.

61-3-338. Contract for manufacture and distribution of license plates.

Compiler's Comments

2013 Amendment: Chapter 196 in (2) after "county treasurer" inserted "an authorized agent". Amendment effective July 1, 2013.

Effective Date: Section 29(1), Ch. 413, L. 2009, provided that this section is effective October 1, 2009.

61-3-341. Lost certificates.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Refers Only to Owner or Legal Owner: This section refers only to issuance of duplicate certificates to owner or legal owner of the vehicle, and the registrar has no authority to issue it to anyone else. Anderson v. Commercial Credit Co., 110 M 333, 101 P2d 367 (1940).

61-3-344. Out-of-state USS Montana vehicles — compliance with local state safety and emissions laws.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

61-3-345. Motor vehicle computer system.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 after "motor vehicles" deleted "boats" and inserted "trailers, semitrailers, pole trailers, campers, motorboats, personal watercraft, sailboats". Amendment effective January 1, 2006. The amendment by Ch. 596 rendered the amendment to former (2) void.

Chapter 596 after "used to" substituted "title and register" for "register and reregister"; deleted former (2) through (6) that read: "(2) The department shall establish the user advisory group to assist in the development of policies governing the registration and reregistration of motor vehicles, boats, snowmobiles, and off-highway vehicles. The user advisory group must be appointed by the attorney general and must include:

(a) an employee of the department of administration selected by the director of the department of administration;

(b) two county treasurers, selected by the Montana county treasurers association;

(c) one county motor vehicle section supervisor, selected by the Montana county treasurers association;

(d) an employee of the department of revenue who is engaged in property assessment, selected by the director of the department of revenue;

(e) an employee of the department of justice, data processing division, selected by the division administrator;

(f) an employee of the department of justice, motor vehicle division, registrar's bureau, selected by the division administrator;

(g) an employee of the department of justice, motor vehicle division, driver services bureau, selected by the division administrator;

(h) a member of the Montana bankers' association, selected by the association director;

(i) a member of the Montana automobile dealers association, selected by the association director; and

(j) a member or employee of the Montana American automobile association, selected by the association director.

(3) Committee members who are not employees of the state of Montana shall serve a term of 2 years, and state employee members shall serve at the pleasure of the attorney general.

(4) Travel and per diem expenses for the committee must be charged to the motor vehicle division.

(5) Secretarial and support services for the committee must be provided by the motor vehicle division.

(6) The committee shall meet no more than four times a year unless specifically called by the attorney general"; and made minor changes in style. Amendment effective January 1, 2006.

2001 Amendment: Chapter 313 in (2)(a) deleted reference to the data processing division and substituted "director of the department of administration" for "division administrator". Amendment effective July 1, 2001.

1993 Special Session Amendment: Chapter 27 in (2)(d) substituted "an employee of the department of revenue who is engaged in property assessment" for "a county assessor"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1991 Statement of Intent: The statement of intent attached to Ch. 604, L. 1991, provided: "A statement of intent is required for this bill because it grants additional rulemaking authority to the department of justice. The department shall adopt rules to develop a procedure for the registration or reregistration of motor vehicles, boats, snowmobiles, travel trailers, campers, motor homes, and off-highway vehicles. The department shall create a users' advisory group to assist the department in creating and operating a county motor vehicle computer system to be used jointly by the department and county treasurers and their employees. The department shall make policy decisions necessary to develop and implement the computer system jointly with the county motor vehicle computer committee."

Appropriation: Section 16, Ch. 604, L. 1991, provided: "There is appropriated from the general fund to the department of justice $639,300 in fiscal year 1992 and $837,900 in fiscal year 1993 to fund the continued development and operation of the statewide motor vehicle computer system."

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

61-3-346. County motor vehicle computer committee.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 26, Ch. 365, L. 2023. Amendment effective October 1, 2023.

2001 Amendment: Chapter 313 in (3)(a) deleted reference to the information service division of the department of administration; and made minor changes in style. Amendment effective July 1, 2001.

1991 Statement of Intent: The statement of intent attached to Ch. 604, L. 1991, provided: "A statement of intent is required for this bill because it grants additional rulemaking authority to the department of justice. The department shall adopt rules to develop a procedure for the registration or reregistration of motor vehicles, boats, snowmobiles, travel trailers, campers, motor homes, and off-highway vehicles. The department shall create a users' advisory group to assist the department in creating and operating a county motor vehicle computer system to be used jointly by the department and county treasurers and their employees. The department shall make policy decisions necessary to develop and implement the computer system jointly with the county motor vehicle computer committee."

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

61-3-347. Duties of county motor vehicle computer committee — definition.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 27, Ch. 365, L. 2023. Amendment effective October 1, 2023.

2005 Amendment: Chapter 596 in (1)(a) near end after "register and" substituted "renew the registration of" for "reregister"; in (1)(b) after "registration and" substituted "renewal of registration" for "reregistration"; and made minor changes in style. Amendment effective January 1, 2006.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

Part 4
Special Registration

Part Attorney General's Opinions

State Taxation of Nontribe Member Not Preempted by Federal Concerns: While generally state taxation will be preempted if it impermissibly interferes with a comprehensive federal statutory scheme or established tradition of tribal governance, the simple fact that a particular on-reservation activity may validly be taxed by a tribe does not preclude state taxation of the same activity, and taxation of a nonmember has no effect on federal concerns. A tribe's sovereignty interest does not negate state authority over nonmember activity. Therefore, the interest of a nontribal member in motor vehicles, mobile homes, or personal property (whose tax situs is within the exterior boundaries of the reservation) and which interest is held in joint tenancy or tenancy in common with a tribal member is subject to those state taxes generally applicable to such property. 42 A.G. Op. 11 (1987).

61-3-401. Definition of personalized license plates.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 at end before "vehicle" inserted "passenger motor"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 near middle substituted "are specially produced and display a specific" for "have displayed upon them the registration number assigned to the passenger motor vehicle for which such registration number was issued in a" and before "requested" inserted "expressly"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-402. Personalized license plates authorized.

Compiler's Comments

2005 Amendment: Chapter 596 in first sentence near beginning before "trailer" deleted "camping" and after "personal use" deleted "registered with the department or who makes application for original registration of a motor vehicle"; in second sentence before "vehicle" deleted "motor" and at end substituted "license plates numbered as provided in 61-3-332" for "regular license plates provided for in this chapter"; and made minor changes in style. Amendment effective January 1, 2006.

1985 Amendments: Chapter 503 substituted reference to department of justice for reference to division of motor vehicles in two places.

Chapter 516 near beginning after "motorcycle", inserted "quadricycle" (effective January 1, 1986).

61-3-403. Color and design of personalized license plates — exception.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 130 in (2) near middle after "provide" substituted "registration decals" for "nonremovable stickers"; and made minor changes in style. Amendment effective October 1, 2005. The amendment by Ch. 596 rendered this amendment void.

Chapter 542 in (1) near end after "passenger" and "commercial" inserted "motor vehicle" and after "trailer" inserted "semitrailer, pole trailer"; and made minor changes in style. Amendment effective January 1, 2006. The amendment by Ch. 596 rendered this amendment void.

Chapter 596 in first sentence at beginning in exception clause inserted reference to 61-3-407, after "design as" substituted "standard license plates" for "regular passenger motor vehicle license plates", and near end substituted "standard" for "passenger, commercial, trailer, motorcycle, quadricycle"; inserted second sentence concerning display of registration decal; deleted former (2) that read: "(2) Upon the issuance of personalized license plates or upon the reregistration of any motor vehicle assigned personalized license plates that do not bear a county designation or no longer bear the correct county designation, the department shall provide nonremovable stickers bearing the appropriate county designation, which must be affixed to the license plates in use in accordance with instructions by the department"; and made minor changes in style. Amendment effective January 1, 2006.

1989 Amendment: At beginning of (1) inserted exception clause; and made minor changes in phraseology.

1985 Amendments: Chapter 503 in (2) substituted reference to department of justice for reference to division of motor vehicles in two places.

Chapter 516 in (1) near end, after "motorcycle", inserted "quadricycle" (effective January 1, 1986).

61-3-404. Personalized license plates restricted to registered owner.

Compiler's Comments

2005 Amendment: Chapter 542 near middle before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-405. Application for personalized plates.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-3-406. Fees for personalized plates — disposition.

Compiler's Comments

2001 Amendment: Chapter 574 at end of (2) substituted "deposited in the state general fund" for "deposited as follows:

(a) $5 of the application fee and $5 of the transfer or renewal fee in the county general fund; and

(b) $20 of the application fee and $5 of the transfer or renewal fee in the state general fund"; and made minor changes in style. Amendment effective July 1, 2001.

1989 Amendments: Chapter 141 in (1) increased fees for original personalized license plate from $20 to $25 and for transfer or renewal from $5 to $10; in (2) designated $5 of application fee and $5 of transfer or renewal fee to the county general fund and $20 of application fee and $5 of transfer or renewal fee to the state special revenue fund; and made minor changes in style and form. Amendment effective March 18, 1989.

Chapter 398 at end of (2)(b) substituted reference to general fund for reference to motor vehicle recording account of the state special revenue fund. Amendment effective July 1, 1989.

Applicability: Section 3, Ch. 141, L. 1989, provided: "[This act] applies to an application for personalized plates after [the effective date of this act]." Effective March 18, 1989.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

61-3-407. Personalized license plates for disabled — military, veteran, and generic specialty license plates.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 233 in first sentence near middle after "under" substituted "61-3-458(4)" for "61-3-458(3)". Amendment effective January 1, 2010. The amendment by Ch. 413 rendered the amendment by Ch. 233 void.

Chapter 413 near middle of first sentence inserted "military or" and substituted "61-3-458" for "61-3-458(3)". Amendment effective April 28, 2009.

2005 Amendment: Chapter 596 in first sentence near middle after "application for" inserted "standard license plates bearing a wheelchair as the symbol of a person with a disability under 61-3-332(9)"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 399 in first sentence after "application" substituted "for special veteran license plates under 61-3-458(3) or generic specialty license plates under" for "for veterans', national guard veterans', legion of valor members' or generic specialty license plates under 61-3-332(10)(a)(ii), (10)(f), or (10)(h) or" and in second sentence after "application" deleted "for personalized veterans', national guard veterans', legion of valor members', or generic specialty license plates"; and made minor changes in style. Amendment effective January 1, 2004.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated the 2001 amendments to this section June 30, 2005. Effective July 1, 2003.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

2001 Amendment: Chapter 402 in (1) and (2) near middle after "legion of valor members'" inserted "or generic specialty"; in (1) near end after "or (10)(h)" inserted "or 61-3-472 through 61-3-481"; and made minor changes in style. Amendment effective April 28, 2001, and terminates June 30, 2005.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

1999 Amendment: Chapter 344 in (1) and (2) inserted "national guard veterans', or legion of valor members'"; in (1) substituted "61-3-332(10)(a)(ii), (10)(f), or (10)(h)" for "61-3-332(10)(f)"; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date — Applicability: Section 4, Ch. 344, L. 1999, provided: "[This act] is effective January 1, 2000, and applies to registrations of motor vehicles occurring after December 31, 1999."

Applicability: Section 3, Ch. 126, L. 1995, provided: "[Section 1] [61-3-407] applies to registrations of motor vehicles occurring after December 31, 1995."

61-3-411. Registration of motor vehicle owned and operated solely as collector's item.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 197 in (1) deleted former second sentence that read: "The application must be sworn to before an officer authorized to administer oaths." Amendment effective July 1, 2019.

Chapter 295 in (2) near end substituted "an option" for "the option". Amendment effective January 1, 2020.

2005 Amendments — Composite Section — Coordination: Chapter 458 in (4) deleted former second sentence that read: "Upon sale of the motor vehicle, the purchaser shall renew the registration and pay a license renewal fee of $10 for a vehicle weighing more than 2,850 pounds and $5 for a vehicle weighing 2,850 pounds or less"; and made minor changes in style. Amendment effective April 28, 2005.

Section 10, Ch. 458, L. 2005, a coordination section, provided: "If both Senate Bill No. 285 and [this act] are passed and approved, then subsection (1)(b) of 61-3-411 in [this act] must read as follows: "(b) the name and address of the person from whom the motor vehicle, trailer, semitrailer, or pole trailer was purchased;"." Senate Bill No. 285 was approved as Ch. 542, L. 2005. Amendment effective April 28, 2005.

Chapter 542 in (1) in two places, in (1)(c), in (2), in (2)(a), in (2)(b), and in (4) at beginning of first sentence and at beginning of second sentence (amendment rendered void by Ch. 458 amendment) after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (1)(d) and in (4) near middle substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in (2) near beginning after "fees" inserted "including fees in lieu of tax" and near end substituted "61-3-303" for "61-3-101"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2001 Amendment: Chapter 574 deleted former (2) that read: "(2) The registration fee for a motor vehicle registered under subsection (1) is:

(a) for a vehicle weighing 2,850 pounds or less, $5; and

(b) for a vehicle weighing more than 2,850 pounds, $10"; in (4) at end of first sentence inserted "and owned by the initial registrant" and at end of second sentence substituted "a license renewal fee of $10 for a vehicle weighing more than 2,850 pounds and $5 for a vehicle weighing 2,850 pounds or less" for "the license fees provided in subsection (2)"; and made minor changes in style. Amendment effective July 1, 2001.

1989 Amendment: After first sentence of (1) inserted "The application must be sworn to before an officer authorized to administer oaths. The application must state:"; in (1)(c), after "the make", deleted "of the motor vehicle" and after "serial number" inserted "of the motor vehicle"; in (1)(d), at beginning, deleted "setting forth a specific statement" and after "purposes" deleted "The application shall be sworn to before an officer authorized to administer oaths"; near end of (3), before "shall deliver", inserted "unless the applicant chooses to exercise the option allowed in 61-3-412"; and made minor changes in phraseology, punctuation, and form.

Applicability: Section 4, Ch. 150, L. 1989, provided: "[Sections 1 through 3] apply to motor vehicle registrations occurring after December 31, 1989."

1985 Amendment: In (1) and (3) substituted references to department of justice for references to division of motor vehicles.

Attorney General's Opinions

Authority of Local Government to Levy Additional Mills to Make Up Difference Between Light Vehicle Tax Reimbursement and Amount Assessed for Fiscal Year 2001: In enacting 15-1-121, the Legislature provided for a reimbursement of an average of 88% of the amount lost by counties in light vehicle fee collections compared to the amount that the counties actually received in combined fees and property taxes in fiscal year 2001. The legislative intent was to simplify the collection and disbursement of county revenue while maintaining rough revenue neutrality for the counties. Under 15-10-420, the Legislature also provided an inflation adjustment to the mill levy cap and allowed for an increase in mill levy capacity for a decrease in reimbursements, in effect enabling local governments to maintain for fiscal year 2002 the amount of revenue collected in fiscal year 2001. Thus, a local government was authorized to levy additional mills sufficient to make up the difference between the amount reimbursed by the state for light vehicle fees and taxes under 15-1-121 and the amount of fees and taxes assessed by the local government for fiscal year 2001. 49 A.G. Op. 4 (2001).

Definition of "General Transportation Purposes": As used in this section, the term "general transportation purposes" includes driving related to employment, education, maintenance of a household, and similar activities, but does not include activities associated with the vehicle's status as a collector's item, such as driving to and from car club activities, exhibits, parades, or the display of a private collection. 44 A.G. Op. 24 (1992).

61-3-412. Display of original Montana license plates or collector reproduction license plates on collector's item and general transportation collector's item motor vehicles — definitions — validation.

Compiler's Comments

2019 Amendment: Chapter 295 in (1) at end inserted "the following definitions apply"; in (1)(a) inserted definition of collector reproduction license plate; in (2) in introductory clause after "Montana license plates" inserted "or collector reproduction license plates"; in (2)(b) after "Montana license plate" inserted "or collector reproduction license plate"; and made minor changes in style. Amendment effective January 1, 2020.

2013 Amendment: Chapter 106 inserted (3) permitting use of single license plate; and made minor changes in style. Amendment effective October 1, 2013.

2005 Amendments — Composite Section: Chapter 542 in (1), (2), (2)(b), (2)(c), (3)(a), (4) near beginning and middle, and (5) in two places after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (3), (3)(b)(ii)(A), (3)(b)(ii)(B), and (4) at end substituted references to motor vehicle, trailer, semitrailer, or pole trailer for references to vehicle; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (3) after "vehicle" deleted "registered under the provisions of 61-3-314"; in (3)(a) at beginning deleted "file the application and" and after "register" deleted "information on"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendments — Composite Section: Chapter 143 in (1) near beginning before "this section" inserted "61-3-413 and"; in (2) in introductory clause in two places inserted "61-3-413"; inserted (2)(a)(ii) requiring a general transportation collector's item license plate to be visible at night; in (2)(c) at end inserted "61-3-413"; inserted (2)(d) providing for certification that a current duplicate license plate number does not exist in the case of a general transportation collector's item license application; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 477 in (3)(a) substituted "61-3-303" for "61-3-101". Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2001 Amendment: Chapter 574 in (3)(b)(ii)(A) substituted "61-3-411(2)(a)" for "61-3-411(3)(a)"; in (3)(b)(ii)(B) substituted "61-3-411(2)(b)" for "61-3-411(3)(b)"; and made minor changes in style. Amendment effective July 1, 2001.

1989 Amendment: In (2)(b) substituted "patrol officer" for "patrolman".

Applicability: Section 4, Ch. 150, L. 1989, provided: "[Sections 1 through 3] apply to motor vehicle registrations occurring after December 31, 1989."

61-3-413. Registration of motor vehicle as general transportation collector's item — definition — permanent registration required.

Compiler's Comments

2019 Amendment: Chapter 295 in (2) after "Montana license plates" inserted "or collector reproduction license plates"; in (3) near beginning after "collector's item" inserted "that will display an original Montana license plate"; inserted (4) providing procedure when application for registration of a general transportation collector's item is received; inserted (5) regarding purchase of collector reproduction license plate"; inserted (6) regarding application fee for collector reproduction license plate; and made minor changes in style. Amendment effective January 1, 2020.

2005 Amendment: Chapter 542 in (1), (2) in two places, (2)(c), (3) at end of third sentence, and (4) near middle and end after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (3) at end of first sentence substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles" and at end of second sentence substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; in (4) near end after "motor vehicle's" inserted "trailer's, semitrailer's, or pole trailer's"; and made minor changes in style. Amendment effective January 1, 2006.

Effective Date: This section is effective October 1, 2003.

61-3-414. Special motorcycle license plates for military personnel, veterans, and spouses — department to design — fees — disposition.

Compiler's Comments

2019 Amendment: Chapter 335 in (1) at end substituted "61-3-458" for "61-3-458(2)(d) and (3)". Amendment effective May 7, 2019.

2013 Amendment: Chapter 196 in (2)(b) after "county treasurer" inserted "or an authorized agent". Amendment effective July 1, 2013.

Effective Date: Section 6, Ch. 337, L. 2009, provided: "[This act] is effective January 1, 2010."

61-3-415. Special motorcycle license plates — department to design — fees — distribution.

Compiler's Comments

2019 Amendment: Chapter 335 deleted former (5) that read: "(5) The department shall adopt rules to identify the entity or entities that may qualify for grants under this section and to establish the criteria that an entity must meet to receive grant funds"; and made minor changes in style. Amendment effective May 7, 2019.

2013 Amendment: Chapter 196 in (2) and (3) after "county treasurer" inserted "or an authorized agent". Amendment effective July 1, 2013.

2005 Amendment — Code Commissioner Correction: Chapter 596 in (1) after "issued a" deleted "set of" and substituted "plate" for "plates"; in (2) at beginning inserted "In addition to the fee required in 61-3-527" (deleted by code commissioner), after "requesting a" deleted "set of", and substituted "plate" for "plates"; in (2)(a) before "issuance" deleted "initial" and at end substituted "plate, to be deposited in the county general fund" for "plates"; inserted (2)(b) establishing $5 license plate fee; in (2)(c) at beginning deleted "an annual" and after "$20" deleted "upon initial issuance, renewal, or transfer of the special license plates"; in (3) in first sentence substituted reference to subsections (2)(b) and (2)(c) for reference to subsection (2) and after "department" deleted "of revenue"; in (3) in second sentence at beginning substituted "special plate" for "set of plates" and after "department" deleted "of revenue"; and made minor changes in style. Amendment effective January 1, 2006.

In (2) at beginning the code commissioner deleted "In addition to the fee required in 61-3-527" to reflect the repeal of that section by Ch. 542, L. 2005.

Effective Date: Section 8(2), Ch. 533, L. 2003, provided that this section is effective January 1, 2004.

Administrative Rules

Title 23, chapter 3, subchapter 10, ARM Chrome for kids.

61-3-421. Amateur radio operators — special license plate.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in first sentence at beginning after "motor vehicle" inserted "trailer, or pole trailer"; and made minor changes in style. Amendment effective January 1, 2006. The amendment by Ch. 596 rendered this amendment void.

Chapter 596 in first sentence at beginning after "A" deleted "motor vehicle owner and", after "upon" deleted "written application on a form prescribed by the department, accompanied by", near middle substituted "may be issued a set of license plates displaying" for "must be issued lettered license plates in pairs (two identically lettered plates), in lieu of the regular license plates prescribed by law. There must be stamped or impressed upon the special license plates in clear lettering", and at end inserted "for a light vehicle or motor home owned by and registered to the resident"; in second sentence after "plates" deleted "so lettered"; and made minor changes in style. Amendment effective January 1, 2006.

1989 Amendment: Near end of first sentence substituted "in lieu of" for "in addition to"; at end substituted "renewed as provided in 61-3-312" for "renewed concurrently with, and at the time of, the issuance of the regular motor vehicle license plates"; and made minor changes in phraseology.

Applicability: Section 5, Ch. 635, L. 1989, provided: "[This act] applies to registrations of motor vehicles for years beginning after December 31, 1989."

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

61-3-422. Issuance — application — additional fee.

Compiler's Comments

2005 Amendments — Composite Section — Code Commissioner Correction: Chapter 542 in (2) at end after "motor vehicles" inserted "trailers, semitrailers, or pole trailers"; in (3) near end after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; and made minor changes in style. Amendment effective January 1, 2006. Because the amendment was intended to merely reflect the use of the defined term "motor vehicle", the code commissioner has not codified the amendment because of the Ch. 596 amendment.

Chapter 596 in introductory clause substituted "license plates with the official amateur radio call letters" for "lettered license plates as provided in 61-3-421"; in (2) after "state" substituted "laws relating to titling and registration of light vehicles and motor homes" for "motor vehicle laws relating to registration and licensing of motor vehicles"; in (3) after "applicable to" substituted "the light vehicle or motor home" for "regular motor vehicle license plates"; and made minor changes in style. Amendment effective January 1, 2006.

1989 Amendment: Near beginning substituted "lettered license plates as provided in 61-3-421" for "said lettered license plates"; in (3) substituted "all other fees and taxes applicable to regular motor vehicle license plates" for "the regular license fee for license plates as provided by law"; and made minor changes in form and phraseology.

Applicability: Section 5, Ch. 635, L. 1989, provided: "[This act] applies to registrations of motor vehicles for years beginning after December 31, 1989."

1985 Amendment: In lead-in language substituted reference to department of justice for reference to division of motor vehicles.

61-3-423. Limit of one identical pair of plates for each operator.

Compiler's Comments

2019 Amendment: Chapter 335 deleted former first sentence that read: "The department shall adopt rules to procure compliance with all the laws of the state regulating the issuance of motor vehicle, trailer, semitrailer, or pole trailer licenses relating to the use and operation of motor vehicles, trailers, semitrailers, or pole trailers before issuing the lettered license plates." Amendment effective May 7, 2019.

2005 Amendment: Chapter 542 in first sentence near beginning substituted "adopt rules" for "make such rules as may be necessary", near middle after "motor vehicle" inserted "trailer, semitrailer, or pole trailer", and near end after "motor vehicles" inserted "trailers, semitrailers, or pole trailers"; and made minor changes in style. Amendment effective January 1, 2006.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-3-425. Special plates — sale or transfer of auto — revocation or expiration of radio license.

Compiler's Comments

2005 Amendment: Chapter 596 in first sentence at beginning substituted "license plates issued under 61-3-422 may be renewed as long as" for "lettered license plates, as herein provided, are in lieu of the regular license plates on the motor vehicle owned by the amateur radio licensee for the period of time that" and at end deleted "but no longer"; in second sentence after "owner of the" substituted "light vehicle or motor home" for "motor vehicle" and at end substituted "standard license plates numbered as provided in 61-3-332" for "regular license plates"; in third sentence at beginning substituted "light vehicle or motor home" for "motor vehicle" and after "transfer the" substituted "amateur radio license plates to another light vehicle or motor home owned by the holder as provided in 61-3-335" for "lettered plates to another motor vehicle owned by him upon such reasonable conditions as may be prescribed by the department"; in fourth sentence near middle substituted "license plates issued under 61-3-422" for "lettered license plates as issued"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 153, Ch. 596, L. 2005, a coordination section, the amendment made by Ch. 542 was rendered void.

1989 Amendment: Near beginning of first sentence substituted "in lieu of" for "to replace"; at end of second sentence substituted "it is the responsibility of the owner to then obtain regular license plates" for "the regular plates again placed or mounted on the motor vehicle as in other cases"; and made minor changes in phraseology.

Applicability: Section 5, Ch. 635, L. 1989, provided: "[This act] applies to registrations of motor vehicles for years beginning after December 31, 1989."

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-3-426. Combined license plates.

Compiler's Comments

2021 Amendment: Chapter 390 in (1) near end substituted "disability license plates" for "special license plates". Amendment effective October 1, 2021.

2009 Amendment: Chapter 233 in (1) and in (3) substituted "61-3-458(4)" for "61-3-458(3)". Amendment effective January 1, 2010.

2005 Amendment: Chapter 596 in (1) at end and (3) near end substituted "61-3-332(9)" for "61-3-332(11)"; and in (3) in two places substituted "display" for "be stamped with". Amendment effective January 1, 2006.

2003 Amendment: Chapter 399 in (1) after "issued" substituted "under 61-3-458(3)" for "to veterans of the armed services who comply with the provisions in 61-3-332(10)(d), (10)(e), and (10)(f)" and at end substituted "61-3-332(11)" for "61-3-332(10)(g)"; in (2) substituted "Issuance of combined license plates is subject to 61-3-422" for "The applicant for the combined license plates is liable for the payment of all taxes and fees applicable to regular motor vehicle license plates and shall pay an additional fee of $5 for the original issuance as provided in 61-3-422"; deleted former (2) and (3) that read: "(2) An application for license plates for amateur radio operators may be combined with an application for license plates for disabled veterans as provided in 61-3-332(10)(c). The fees for the registration of the combined license plates are the fees provided for in 61-3-332(10)(c) and in 61-3-422. The fees are in lieu of all other fees and taxes for that vehicle under this chapter.

(3) An application for license plates for amateur radio operators may be combined with an application for license plates for ex-prisoners of war as provided in 61-3-332(10)(d). The fees required under 61-3-321(1) and (6) may not be assessed upon one set of combination license plates issued to an ex-prisoner of war. An ex-prisoner of war receiving combination license plates under this section is liable for the fees required under 61-3-422"; in (3) in second sentence after "decal" substituted "provided for in 61-3-332(11) or 61-3-458(3)" for "provided for in 61-3-332(10)(c), (10)(d), (10)(e), (10)(f), or (10)(g)"; and made minor changes in style. Amendment effective January 1, 2004.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

2001 Amendments — Composite Section: Chapter 337 in (3) inserted reference to 61-3-321(6); and made minor changes in style. Amendment effective April 21, 2001.

Chapter 574 in (3) near beginning of second sentence deleted reference to 61-3-321(5). Amendment effective July 1, 2001.

Applicability: Section 11, Ch. 337, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

1999 Amendment: Chapter 79 inserted (3) concerning combined application for amateur radio operators and former prisoners of war; and made minor changes in style. Amendment effective January 1, 2000.

Effective Date: Section 10, Ch. 489, L. 1995, provided: "[This act] is effective January 1, 1996."

61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification decal — temporary registration permit — publicly owned special mobile equipment.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 89, L. 2023. Amendment effective April 18, 2023.

2005 Amendments — Composite Section: Chapter 542 in (1) near beginning after "special mobile equipment" substituted "a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader" for "as defined in 61-1-104"; in (1)(a) near end in exception clause substituted "motor vehicles or trailers designed and used to apply fertilizer to agricultural land" for "equipment referred to in 61-1-104(2)"; in (1)(b) near beginning substituted "motor vehicle or trailer designed and used to apply fertilizer to agricultural land" for "piece of equipment referred to in 61-1-104(2)"; in (2)(a) in fourth sentence after "special mobile equipment" inserted "a motor vehicle or trailer designed and used to apply fertilizer to agricultural land, or a log loader" and after "before" substituted "an identification plate" for "a special mobile equipment plate"; in (3), (4)(a), (4)(b), and (5) after "equipment" inserted references to a motor vehicle or trailer designed and used to apply fertilizer to agricultural land or a log loader; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 throughout section substituted "decal" for "plate" and "temporary registration permit" for "special demonstration permit"; in (2)(b) in second sentence substituted "an authorized agent" for "a weigh station" and in third sentence at end inserted "in addition to the fee required under 61-3-224"; in (4)(a) in first sentence reduced time from 45 days to 40 days; and made minor changes in style. Amendment effective January 1, 2006.

2001 Amendments — Composite Section: Chapter 526 in (1)(a) at end after "equipment" inserted exception clause; inserted (1)(b) requiring special mobile equipment brought into state for demonstration purposes to have special demonstration permit displayed; in (2)(a) in third sentence after "equipment plate" inserted "or for which a special demonstration permit" and at end inserted "or the date determined pursuant to subsection (4)" and at end of fifth sentence inserted exception clause; inserted (2)(b) regarding application for special demonstration permit and establishing $50 permit fee; inserted (4) providing for expiration of permit 45 days after issuance, subjecting equipment in state after expiration date of permit to personal property taxes, and invalidating permit and subjecting equipment to taxes if equipment leased or sold during term covered by permit; and made minor changes in style. Amendment effective May 1, 2001.

Chapter 574 in (2)(a) near end of last sentence substituted "must be deposited in the state general fund" for "belong to the county road fund"; and made minor changes in style. Amendment effective July 1, 2001.

Retroactive Applicability: Section 3, Ch. 526, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2000."

2000 Amendment by Referendum: Chapter 515, L. 1999, in (1) near end of first sentence deleted reference to 61-3-502; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

Purported Amendment: Although sec. 23, Ch. 611, L. 1987, purported to amend 61-3-431, no change was made to the section.

1985 Amendment: In first sentence of (1) substituted "61-1-104" for "61-1-104(2)".

Administrative Rules

ARM 18.8.428 Fertilizer vehicles.

Case Notes

Dump Truck Not Implement of Husbandry — No Exemption: An old dump truck used in a ranching operation was not exempt from registration and payment of fees as an implement of husbandry because it was not designed for agricultural purposes. St. v. Patton, 227 M 167, 737 P2d 498, 44 St. Rep. 983 (1987).

61-3-432. Exemptions of vehicles not capable of operation on highways.

Compiler's Comments

1999 Amendment: Chapter 409 near end substituted "chapter 4, part 1" for "61-4-101 through 61-4-106"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-3-433. Issuance of identification decal and receipt — contents.

Compiler's Comments

2005 Amendment: Chapter 596 in first sentence substituted "identification decal a single decal" for "identification plate a single metal plate"; in second sentence substituted "decal" for "plate"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-434. Attaching receipt to equipment — inspection.

Compiler's Comments

1989 Amendment: Changed "patrolman" to "patrol officer".

61-3-435. Certificate of title — transaction summary receipt — prima facie evidence.

Compiler's Comments

Effective Date: Section 84, Ch. 477, L. 2003, provided that this section is effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

Case Notes

Vehicle Forfeiture — Sham Ownership Improperly Determined Unilaterally — Personal Service Required for Joint Owners Listed on Title: Although a vehicle title serves as prima facie evidence of ownership, police unilaterally determined that a mother listed jointly with her son on a vehicle's title registration was a sham owner and did not name or serve her in the vehicle's forfeiture proceedings. The District Court dismissed the mother's claim that she was not served with the forfeiture petition and summons under 44-12-201 (now repealed) because it determined that she became a party to the forfeiture action when she voluntarily appeared in the forfeiture action to request the release of the vehicle. On appeal, however, the Supreme Court reversed, holding that the mother's presumed knowledge of the subsequent forfeiture hearing was not a substitute for timely service of the summons and petition and that the forfeiture proceeding was ineffective in terminating her interest in the vehicle. Muir v. Bilderback, 2015 MT 181, 379 Mont. 468, 353 P.3d 479.

61-3-446. Retention of special license plates.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 near end before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Chapter 596 near middle substituted "61-3-332(8)" for "61-3-332(10)", substituted "transfer" for "affix", and at end inserted "under 61-3-335". Amendment effective January 1, 2006.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated the 2001 amendments to this section June 30, 2005. Effective July 1, 2003.

2001 Amendment: Chapter 402 after "61-3-332(10)" inserted "or generic specialty license plates issued as provided in 61-3-472 through 61-3-481" and after "holder" substituted "may" for "shall"; and made minor changes in style. Amendment effective April 28, 2001, and terminates June 30, 2005.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

1999 Amendment: Chapter 344 substituted "61-3-332(10)" for "61-3-332(10)(b) through (10)(g)". Amendment effective January 1, 2000.

Effective Date — Applicability: Section 4, Ch. 344, L. 1999, provided: "[This act] is effective January 1, 2000, and applies to registrations of motor vehicles occurring after December 31, 1999."

1997 Amendment: Chapter 42 substituted "61-3-332(10)(b) through (10)(g)" for "61-3-332(10)(b) through (10)(f)"; and made minor changes in style. Amendment effective March 12, 1997.

1991 Amendment: Substituted "61-3-332(10)(b) through (10)(f)" for "61-3-444, 61-3-445, 61-3-447, or 61-3-451".

Coordination Instruction: The amendment to this section in sec. 2, Ch. 31, L. 1991, was voided by sec. 15, Ch. 724, L. 1991, a coordination instruction.

1985 Amendments: Chapter 159 substituted "61-3-451" for "61-3-443" and made minor change in phraseology.

Chapter 494 near middle, after "61-3-445", inserted "61-3-447".

61-3-448. Commemorative centennial license plates — continued use authorized.

Compiler's Comments

2007 Amendment: Chapter 329 at beginning inserted "Subject to the limitation set forth in 61-3-332" and at end substituted "as long as the motor vehicle is registered under this chapter" for "after that date as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later"; deleted former (2) that read: "(2) The department shall authorize the continued display of commemorative centennial license plates after June 30, 1996, as provided for in subsection (1), and shall replace commemorative centennial license plates for persons who owned and displayed the plates on or before June 30, 1996, as long as replacement stock owned by the department on October 1, 1993, remains available and usable"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1) near middle before "vehicle" inserted "motor". Amendment effective January 1, 2006.

1999 Amendment: Chapter 51 in (1) near beginning after "license plates" deleted "issued under Title 2, chapter 89, part 3 [now terminated]". Amendment effective March 15, 1999.

61-3-455. Violation a misdemeanor.

Compiler's Comments

2009 Amendment: Chapter 337 in two places in list of statutes inserted reference to 61-3-414; and made minor changes in style. Amendment effective January 1, 2010.

2003 Amendment: Chapter 399 near beginning substituted "61-3-458 or 61-3-460" for "61-3-452 or 61-3-453" and after "61-3-332" inserted "61-3-458, or 61-3-460"; and made minor changes in style. Amendment effective January 1, 2004.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

1991 Amendments: Chapter 500 near middle, after "secure", deleted "free" and substituted "61-3-332" for "61-3-451", pursuant to coordination instruction contained in sec. 5, Ch. 500; and made minor change in style. Amendment effective April 20, 1991.

Chapter 724 substituted "61-3-332(10)(c)" for "61-3-451". The Code Commissioner has codified the broader reference provided for in Ch. 500.

Coordination Instruction — Code Commissioner Instruction: Section 5, Ch. 500, L. 1991, a coordination section, provided: "If Senate Bill No. 191, including amendments incorporating into 61-3-332 provisions allowing a disabled veteran the option of receiving a handicapped license plate or, if qualified, an ex-prisoner of war license plate, is passed and approved:

(1) [sections 1 and 2 of this act] [61-3-444 and 61-3-451 (both repealed)] are void; and

(2) in 61-3-455, the code commissioner shall change "61-3-451" to "61-3-332"." Senate Bill No. 191 was approved May 3, 1991, as Ch. 724, L. 1991, and included amendments to 61-3-332 that satisfied the conditions of the coordination instruction; therefore, subject to subsection (2) of the coordination instruction, the reference near the middle of this section to 61-3-451 was changed by the Code Commissioner to 61-3-332.

61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 173, L. 2023. Amendment effective April 19, 2023.

2021 Amendment: Chapter 389 in (3)(a) substituted "61-3-303(6)" for "61-3-303(5)". Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business

in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2005 Amendments — Composite Section — Code Commissioner Correction: Chapter 228 in (1) in first sentence near middle after "from Montana" inserted "including a national guard or reserve member"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 542 in (1) in two places, (1)(b), and (2) after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (1)(c) and (3) substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; in (3)(b) near end substituted "61-3-321(2) or" for "61-3-560 through"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (2) near end deleted reference to 61-3-311; in (3)(a) after "taxes" inserted "or fees"; in (3)(b) at beginning deleted "assessment under 15-8-202 or 61-3-503"; and made minor changes in style. Amendment effective January 1, 2006.

In (3)(a) in reference to 61-3-303(5) the code commissioner deleted a reference to subsection (b) to reflect the changes made to that section by Ch. 596.

2003 Amendment: Chapter 477 in (3)(a) substituted "61-3-303(5)(b)" for "61-3-303(2)(b)". Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2000 Amendment by Referendum: Chapter 515, L. 1999, at end of (3)(b) inserted "or the registration fee under 61-3-560 through 61-3-562"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendments: Chapter 496 in (3)(b) inserted "or the fee in lieu of tax under 61-3-529". Amendment effective January 1, 1998.

Chapter 509 in (1), at beginning of first sentence, inserted "As an incentive for military service", near middle, after "who is a Montana resident", substituted "who entered" for "on", and after "active military duty" inserted "from Montana"; in (1)(c) inserted "meets the qualifications of subsection (1) and"; and made minor changes in style. Amendment effective May 1, 1997.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

Applicability: Section 2, Ch. 509, L. 1997, provided: "[This act] does not apply to military registrations under 61-3-456 that were issued by the department of justice prior to [the effective date of this act] [effective May 1, 1997]. Military registrations issued under 61-3-456 that no longer qualify expire December 31, 1997."

61-3-458. Special plates for military personnel, veterans, spouses, and gold star families.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 303, L. 2023. Amendment effective October 1, 2023.

2013 Amendment: Chapter 219 in (1)(b) at beginning inserted "As provided in subsection (3)" and at end inserted "or who have received"; in (1)(b)(i) after "plates" deleted "as provided in subsection (3)"; inserted (1)(b)(ii) concerning next-of-kin license plates; in (1)(c) in two places after "gold star family" inserted "or next-of-kin"; in (3)(a) near middle after "eligible to receive" inserted "or who has received"; inserted (3)(b) concerning documentation for next-of-kin license plates; and made minor changes in style. Amendment effective October 1, 2013.

2009 Amendments — Composite Section: Chapter 233 inserted (1)(b) providing for issuance of gold star family license plates; in (1)(c) in second and third sentences after "veteran" inserted "or gold star family"; inserted (3) providing for issuance of gold star family license plates upon presentation of proper documentation; and made minor changes in style. Amendment effective January 1, 2010.

Chapter 337 in (1)(c) in second sentence before "quadricycle" deleted "motorcycle" and inserted fourth sentence allowing issuance of military or veteran license plates for motorcycles; and made minor changes in style. Amendment effective January 1, 2010.

2007 Amendments — Composite Section: Chapter 37 in (1)(b) in second sentence after "quadricycle" deleted "travel trailer, trailer"; and made minor changes in style. Amendment effective January 1, 2008.

Chapter 59 inserted (3)(i) concerning combination license plates and associated parking privileges; and in (4) at end inserted "or the combination plates provided for in subsection (3)(i)". Amendment effective October 1, 2007.

2005 Amendments — Composite Section: Chapter 542 in (2)(a) and (3)(a) substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1)(b) inserted second sentence restricting issuance of special military or veteran license plates and third sentence concerning disability plates. Amendment effective January 1, 2006.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

Effective Date: Section 20, Ch. 399, L. 2003, provided: "[This act] is effective January 1, 2004."

61-3-459. Veterans' cemetery fee for special veteran license plates — disposition.

Compiler's Comments

2009 Amendment: Chapter 233 in (1) near middle after "under" substituted "61-3-458(4)" for "61-3-458(3)". Amendment effective January 1, 2010.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

Effective Date: Section 20, Ch. 399, L. 2003, provided: "[This act] is effective January 1, 2004."

61-3-460. Motor vehicle registration fee and veterans' cemetery fee waivers.

Compiler's Comments

2019 Amendment: Chapter 327 inserted (3) concerning eligibility criteria for applying the fee waiver to other specified special license plates. Amendment effective January 1, 2020.

2005 Amendments — Composite Section — Coordination: Chapter 116 in (1) near middle before "of special" substituted "two sets" for "one set" and near end after "chapter for" substituted "two vehicles" for "one vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 542 in (1) in two places before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Pursuant to sec. 244, Ch. 542, L. 2005, a coordination section, the code commissioner in (1) changed references to vehicle to references to motor vehicle.

Preamble: The preamble attached to Ch. 399, L. 2003, provided: "WHEREAS, the State Administration and Veterans' Affairs Interim Committee (SAIC) closely examined property tax, vehicle registration, and special license plate benefits available to veterans or their surviving spouses; and

WHEREAS, the SAIC finds that state statutory language providing disabled veterans with certain benefits based on a 100% disability rating from the U.S. Department of Veterans Affairs needs to be updated to account for veterans with less than a 100% disability rating but entitled to receive compensation at the 100% disability rate; and

WHEREAS, veterans and surviving spouses have requested closer parity between the vehicle registration and special license plate benefits available to various classes of veterans and inclusion of the surviving spouses of veterans killed while on active duty or who died as a result of a service-connected disability; and

WHEREAS, statutory provisions related to vehicle registration and special license plate fees should be simplified to the extent possible to streamline administration and address various other disparities."

Effective Date: Section 20, Ch. 399, L. 2003, provided: "[This act] is effective January 1, 2004."

61-3-461. Short title.

Compiler's Comments

2007 Amendment: Chapter 44 near beginning after "through" substituted "61-3-468" for "61-3-467". Amendment effective October 1, 2007.

61-3-462. Definitions.

Compiler's Comments

2007 Amendment: Chapter 44 in introductory clause after "through" substituted "61-3-468" for "61-3-467". Amendment effective October 1, 2007.

61-3-463. Collegiate license plates.

Compiler's Comments

2007 Amendment: Chapter 329 in (1) near beginning substituted "61-3-332(8)" for "61-3-332(3)". Amendment effective January 1, 2008.

2005 Amendment: Chapter 596 in (1) near beginning substituted "61-3-332(3)" for "61-3-332(4)"; and in (3)(b) substituted "as provided in" for "denoting the correct county designation under". Amendment effective January 1, 2006.

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendment: Chapter 592 in (3)(b) at beginning after "bear a" substituted "registration decal" for "nonremovable sticker". Amendment effective January 1, 2004.

Applicability: Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

2001 Amendment: Chapter 191 near beginning of (1) after "provisions of" substituted "61-3-332(4)" for "61-3-332(3)". Amendment effective April 3, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

1997 Amendment: Chapter 42 in (3) substituted "subsection (2)" for "subsection (1)"; and made minor changes in style. Amendment effective March 12, 1997.

61-3-464. Application for collegiate license plates.

Compiler's Comments

2005 Amendment: Chapter 596 inserted second sentence concerning combined application. Amendment effective January 1, 2006.

Applicability: Section 12, Ch. 661, L. 1989, provided: "[Sections 4 through 7] apply to registrations of motor vehicles occurring after December 31, 1990."

61-3-465. Issuance — application — additional fee — disposition.

Compiler's Comments

2013 Amendment: Chapter 196 in (1)(b) after "county treasurer" inserted "or an authorized agent". Amendment effective July 1, 2013.

2009 Amendment: Chapter 413 in (1)(b)(i) increased fee from $5 to $10; and inserted (4) concerning deposit of fee. Amendment effective January 1, 2010.

2005 Amendment: Chapter 542 in (2) and (3) after "to the" substituted "state" for "department of revenue"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendments — Composite Section: Chapter 250 in (1)(b)(ii) increased donation from $20 to $30. Amendment effective July 1, 2003.

Chapter 280 in (1)(b)(i) increased initial application and manufacturing fee from $2.50 to $5. Amendment effective January 1, 2004.

Applicability: Section 19(1), Ch. 280, L. 2003, provided: "[Sections 2, 4, and 6] [61-3-321, 61-3-333, and 61-3-465] apply to the registration of motor vehicles and the display of license plates issued after December 31, 2003."

2001 Amendments — Composite Section: Chapter 257 in (2) inserted reference to 15-1-504 and substituted reference to department of revenue for reference to state treasurer; in (3) in two places substituted references to department of revenue for references to state treasurer; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 574 in (2)(a) at end substituted "state general fund" for "Montana state prison industries account in the proprietary fund for appropriation by the legislature to pay the cost of manufacturing collegiate license plates". Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1991 Amendment: In (1)(a) deleted reference to 61-3-304.

Applicability: Section 12, Ch. 661, L. 1989, provided: "[Sections 4 through 7] apply to registrations of motor vehicles occurring after December 31, 1990."

61-3-466. Personalized collegiate license plates.

Compiler's Comments

Applicability: Section 12, Ch. 661, L. 1989, provided: "[Sections 4 through 7] apply to registrations of motor vehicles occurring after December 31, 1990."

61-3-467. Authorization to receive and transmit donations.

Compiler's Comments

2013 Amendment: Chapter 196 in (1) after "county treasurer" inserted "or an authorized agent" and substituted "transmit the donations to the state as provided in 15-1-504 or 61-3-116" for "once each month transmit, as provided in 15-1-504, those donations to the state"; and in (2) after "county treasurers'" inserted "and authorized agents'". Amendment effective July 1, 2013.

2005 Amendment: Chapter 542 in (1) at end substituted "state" for "department of revenue"; and in (2) at beginning substituted "appropriate agency" for "department of revenue". Amendment effective January 1, 2006.

2001 Amendment: Chapter 257 in (1) inserted reference to 15-1-504 and substituted reference to department of revenue for reference to state treasurer; in (2) substituted reference to department of revenue for reference to state treasurer; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

Applicability: Section 12, Ch. 661, L. 1989, provided: "[Sections 4 through 7] apply to registrations of motor vehicles occurring after December 31, 1990."

61-3-468. Collegiate license plates — continued use with institution's former name authorized.

Compiler's Comments

2007 Amendment: Chapter 329 at beginning inserted "Subject to the limitation set forth in 61-3-332" and at end substituted "motor vehicle is registered under this chapter" for "plates remain legible or as long as replacement plates are available from the department, whichever is later"; deleted former (2) that read: "(2) The department may issue or replace a collegiate license plate bearing the former name of an institution, as defined in 61-3-462, as long as replacement stock owned by the department of corrections is available"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1) near beginning before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Retroactive Applicability: Section 3, Ch. 462, L. 1997, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to collegiate license plates issued after December 31, 1989."

Effective Date: Section 4, Ch. 462, L. 1997, provided: "[This act] is effective on passage and approval." Approved April 30, 1997.

61-3-472. Short title.

Compiler's Comments

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated this section June 30, 2005. Effective July 1, 2003.

Effective Date: Section 19, Ch. 402, L. 2001, provided that this section is effective on passage and approval. Approved April 28, 2001.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Termination: Section 21, Ch. 402, L. 2001, provided that this section terminates June 30, 2005.

61-3-473. Definitions.

Compiler's Comments

2005 Amendment: Chapter 223 in definition of sponsor near middle after "body" inserted "the governmental body's successor"; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 280 in definition of generic specialty license plate at end after "department" deleted "to a person who is entitled to a special certificate of registration"; deleted definition of special certificate of registration that read: ""Special certificate of registration" means the certificate of motor vehicle registration issued in accordance with 61-3-479"; and made minor changes in style. Amendment effective July 1, 2003.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated this section June 30, 2005. Effective July 1, 2003.

Applicability: Section 19(2), Ch. 280, L. 2003, provided: "[Sections 7, 8, and 13 through 16] [61-3-473, 61-3-474, 61-3-479, 61-3-480, 61-3-481, and 61-3-562] apply to the registration of motor vehicles and the display of license plates issued after June 30, 2003."

Effective Date: Section 19, Ch. 402, L. 2001, provided that this section is effective on passage and approval. Approved April 28, 2001.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Termination: Section 21, Ch. 402, L. 2001, provided that this section terminates June 30, 2005.

61-3-474. Responsibility for design of generic specialty license plates — numbering — approval — registration decal — listing of plate sponsors.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 295 in (1)(a) inserted "including ensuring the readability of a generic specialty license plate design"; in (5) substituted "shall revoke" for "may, in its discretion, revoke"; in (5)(b) at beginning inserted "within 3 years of the date of the initial distribution of the sponsored generic specialty license plate" and at end deleted "in the 12-month period immediately preceding the third anniversary of the date of initial distribution of the sponsored generic specialty license plate"; inserted (5)(c) requiring revoking approval of a specialty plate after 3 years if fewer than 400 sets of the plate are registered; and made minor changes in style. Amendment effective January 1, 2020.

Chapter 335 deleted former (1)(d) (see 2019 Session Law for former text); and made minor changes in style. Amendment effective May 7, 2019.

2009 Amendment: Chapter 41 in (6)(a) at end deleted "and a donation fee may not be charged or collected upon registration renewal of a motor vehicle displaying previously issued generic specialty license plates affiliated with that sponsor"; in (6)(b) at end substituted "until the motor vehicle's registration is renewed" for "if the motor vehicle's registration is properly renewed in subsequent years and the plates remain legible"; and in (6)(c) at end deleted "if the license plates are destroyed or mutilated". Amendment effective January 1, 2010.

2005 Amendments — Composite Section: Chapter 542 in (6)(a) and in (6)(b) in three places before "vehicle" and before "vehicle's" inserted "motor". Amendment effective January 1, 2006.

Chapter 596 in (3) near middle after "specialty license plates" deleted "the department shall provide registration decals bearing the appropriate county designation as provided in 61-3-332" and at end substituted "as provided in 61-3-332" for "in use in accordance with instructions by the department"; in (6)(c) after "issue" inserted "replacements or" and after "sponsor" substituted "if the license plates are" for "that are lost"; and made minor changes in style. Amendment effective January 1, 2006.

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendments — Composite Section: Chapter 280 in (4) near beginning of first sentence after "list of the" substituted "sponsors that have been approved to promote the sale and issuance" for "organizations that it has approved as sponsors" and at end substituted "the initial distribution date for sale of each sponsored generic specialty license plate, and the donation fee established by the sponsor for each sponsored generic specialty license plate" for "including the name and address of a generic specialty license plate liaison for each organization"; in (5) near middle of introductory clause after "approval of" substituted "a sponsor's" for "an organization's"; in (5)(a) at beginning substituted "sponsor" for "organization"; inserted (5)(b) allowing revocation of previous approval if fewer than 400 sets of a sponsor's generic specialty license plate have been sold or renewed in the 12-month period immediately preceding the third anniversary of the date of initial distribution of the sponsored generic specialty license plate; in (5)(c) after "information that the" substituted "sponsor is no longer qualified" for "organization may no longer be qualified"; inserted (6) concerning revocation of a sponsor's generic specialty license plate sponsorship status; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 592 in (3) near middle of first sentence after "provide" substituted "registration decals" for "nonremovable stickers" and at beginning of second sentence after "The" substituted "registration decal" for "stickers". Amendment effective January 1, 2004.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated this section June 30, 2005. Effective July 1, 2003.

Applicability: Section 19(2), Ch. 280, L. 2003, provided: "[Sections 7, 8, and 13 through 16] [61-3-473, 61-3-474, 61-3-479, 61-3-480, 61-3-481, and 61-3-562] apply to the registration of motor vehicles and the display of license plates issued after June 30, 2003."

Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

Effective Date: Section 19, Ch. 402, L. 2001, provided that this section is effective on passage and approval. Approved April 28, 2001.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Termination: Section 21, Ch. 402, L. 2001, provided that this section terminates June 30, 2005.

61-3-475. Qualifications and approval of organization as sponsor.

Compiler's Comments

2019 Amendment: Chapter 295 in (1)(e)(i) substituted current text for "the organization is a nonprofit organization as demonstrated in its charter or bylaws or by an internal revenue service ruling. The department may request copies of an internal revenue service ruling to verify an organization's nonprofit status"; inserted (1)(e)(ii) requiring the organization to hold tax-exempt status for at least 1 year before submitting an application for a specialty license plate; inserted (1)(e)(vi) requiring the organization to be a Montana entity; inserted (1)(e)(viii) requiring 75% of the donation fees to be spent in Montana; and made minor changes in style. Amendment effective January 1, 2020.

2003 Amendment: Chapter 280 in (1)(c) at end after "department" deleted "for the purposes provided for in 61-3-474(4)"; inserted (1)(d) requiring an organization to specify in its application the donation fee proposed by the organization for initial purchase of the organization's generic specialty license plate and for renewal of the organization's generic specialty license plate if the fee is required on renewal; inserted (4) allowing an organization to apply for and be approved to sponsor only one generic specialty license plate design at any time; inserted (5) providing that if the department approves the organization's new generic specialty license plate design, issuance and renewal of the previously approved generic specialty license plate must be discontinued; and made minor changes in style. Amendment effective April 10, 2003.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated this section June 30, 2005. Effective July 1, 2003.

Applicability: Section 19(3), Ch. 280, L. 2003, provided: "[Sections 3, 5, 9, 11, and 12] [61-3-332, 61-3-424, 61-3-475, 61-3-477, and 61-3-478] apply to applications for sponsorship of a generic specialty license plate submitted to the department on or after [the effective date of sections 3, 5, 9, 11, and 12] [effective April 10, 2003]."

Effective Date: Section 19, Ch. 402, L. 2001, provided that this section is effective on passage and approval. Approved April 28, 2001.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Termination: Section 21, Ch. 402, L. 2001, provided that this section terminates June 30, 2005.

Law Review Articles

The States, a Plate, and the First Amendment: The "Choose Life" Specialty License Plate as Government, Hake, 85 Wash. U.L. Rev. 409 (2007).

61-3-476. Qualification and approval of governmental body as sponsor.

Compiler's Comments

2005 Amendment: Chapter 223 inserted (2) providing that the legislature may appoint a governmental body to succeed a terminated governmental body; and made minor changes in style. Amendment effective July 1, 2005.

2003 Amendment: Chapter 280 in (3) at end after "department" deleted "for the purposes provided for in 61-3-474(4)". Amendment effective July 1, 2003.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated this section June 30, 2005. Effective July 1, 2003.

Effective Date: Section 19, Ch. 402, L. 2001, provided that this section is effective on passage and approval. Approved April 28, 2001.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Termination: Section 21, Ch. 402, L. 2001, provided that this section terminates June 30, 2005.

61-3-477. Generic specialty license plate liaison — responsibilities.

Compiler's Comments

2005 Amendment: Chapter 223 in (1) near middle after "61-3-475(1)(c) and" substituted "61-3-476(1)(c)" for "61-3-476(3)". Amendment effective July 1, 2005.

2003 Amendment: Chapter 280 in (2)(a) near middle substituted "sponsor's" for "sponsoring organization's"; inserted (2)(b) requiring the liaison to confirm, in writing, the donation fee established by the sponsor for initial purchase of the sponsor's generic specialty license plate and for renewal of the sponsor's generic specialty license plate if the fee is required on renewal; deleted former (3) that read: "(3) Subject to the provisions of 61-3-479, the generic specialty license plate liaison shall determine a person's eligibility to receive a generic specialty license plate and shall provide, on behalf of the sponsor, a written certificate of eligibility to an eligible person who has paid the required donation as determined by the sponsor and as provided in 61-3-480"; inserted (3) providing that once a sponsor's generic specialty license plate has been approved for manufacture and distribution, the donation fee established by the sponsor and confirmed by the liaison may not be changed unless a new plate design is authorized; and made minor changes in style. Amendment effective April 10, 2003.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated this section June 30, 2005. Effective July 1, 2003.

Applicability: Section 19(3), Ch. 280, L. 2003, provided: "[Sections 3, 5, 9, 11, and 12] [61-3-332, 61-3-424, 61-3-475, 61-3-477, and 61-3-478] apply to applications for sponsorship of a generic specialty license plate submitted to the department on or after [the effective date of sections 3, 5, 9, 11, and 12] [effective April 10, 2003]."

Effective Date: Section 19, Ch. 402, L. 2001, provided that this section is effective on passage and approval. Approved April 28, 2001.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Termination: Section 21, Ch. 402, L. 2001, provided that this section terminates June 30, 2005.

61-3-478. Generic specialty license plate sponsor fee.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 312 near end after "fee" substituted "to the department of corrections Montana correctional enterprises prison industries training program enterprise fund" for "to reimburse the department of corrections for the prison industries training program". Amendment effective October 1, 2009.

Chapter 413 in (1) at beginning of first sentence deleted "Except as provided in subsection (2)", after "$4,000 fee to" deleted "reimburse", and near end of sentence substituted "Montana correctional enterprises prison" for "for the prison"; in second sentence at beginning inserted "The fee covers" and after "incurred" inserted "by Montana correctional enterprises"; in (2) substituted current language concerning deposit of fee for former sentence that read: "In lieu of the fee required in subsection (1), a minimum of 400 applications for a sponsor's generic specialty license plates must be filed and prepaid with the department before the generic specialty license plates may be manufactured and issued"; and made minor changes in style. Amendment effective April 28, 2009.

Retroactive Applicability: Section 8, Ch. 312, L. 2009, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any money that Montana correctional enterprises collected from inmates for room and board reimbursement before October 1, 2009."

2003 Amendment: Chapter 280 in (1) near middle increased the reimbursement fee from $1,200 to $4,000, after "department" inserted "of corrections for the prison industries training program", and at end substituted "sponsor" for "sponsoring organization"; and in (2) near middle substituted "sponsor's" for "sponsoring organization's". Amendment effective April 10, 2003.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated this section June 30, 2005. Effective July 1, 2003.

Applicability: Section 19(3), Ch. 280, L. 2003, provided: "[Sections 3, 5, 9, 11, and 12] [61-3-332, 61-3-424, 61-3-475, 61-3-477, and 61-3-478] apply to applications for sponsorship of a generic specialty license plate submitted to the department on or after [the effective date of sections 3, 5, 9, 11, and 12] [effective April 10, 2003]."

Effective Date: Section 19, Ch. 402, L. 2001, provided that this section is effective on passage and approval. Approved April 28, 2001.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Termination: Section 21, Ch. 402, L. 2001, provided that this section terminates June 30, 2005.

61-3-479. Issuance of generic specialty license plates — qualifications.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 663, L. 2023. Amendment effective October 1, 2023.

2007 Amendment: Chapter 392 in (2) after "except" deleted "a trailer of any size"; and made minor changes in style. Amendment effective January 1, 2008.

Applicability: Section 6, Ch. 392, L. 2007, provided: "[This act] applies to motor vehicles and trailers registered, and license plates that are issued or renewed, on or after [the effective date of this act]." Effective January 1, 2008.

2005 Amendments — Composite Section: Chapter 542 in (1)(b) near beginning of first sentence after "published by the" substituted "state" for "department of revenue"; and in (2) near middle before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Chapter 596 in (3)(a), (3)(b), and (3)(c) substituted "standard license plates" for "number plates"; and in (4) at end substituted "61-3-332(9)" for "61-3-332(11)". Amendment effective January 1, 2006.

The amendment to this section made by sec. 6, Ch. 500, L. 2005, was rendered void by sec. 8, Ch. 500, L. 2005, a coordination section.

2003 Amendments — Composite Section: Chapter 248 inserted (4) allowing the combining of applications for a generic specialty license plate and a plate with a design of a wheelchair as the symbol of a disabled person. Amendment effective October 1, 2003.

Chapter 280 in (1)(a) at beginning inserted exception clause, after "issue a" substituted "set of" for "special certificate of registration and", and at end substituted "for a particular style of generic specialty license plates and pays the donation fee established by the plate sponsor and the administrative fee required in 61-3-480" for "if the person presents written certification, in a form prescribed by the department, from the sponsoring organization indicating that the person is eligible to receive the generic specialty license plates"; deleted former (2) that read: "(2) If the sponsor is a governmental body that has a written agreement with the county treasurer pursuant to 61-3-480, the department shall issue a special certificate of registration and generic specialty license plates to an eligible person who applies if the person pays the donation specified by the governmental body to the county treasurer at the time of application"; inserted (1)(b) requiring the department to require the sponsor to collect the initial donation fee from an eligible person if the sponsor is not listed on the county collection report as of the initial distribution date for the sale of plates; in (2) at beginning substituted "set of" for "special certificate of registration and" and after "issued" substituted "for any vehicle, except a trailer of any size, a motorcycle, or a quadricycle" for "only for a light vehicle"; deleted former (4) that read: "(4) The department may issue a special certificate of registration and generic specialty license plates to joint owners of a motor vehicle if one of the owners is determined by the sponsor to be eligible and if the eligible owner's name appears on the vehicle's special certificate of registration"; in (3)(a) after "61-3-481" inserted "and 61-3-562" and after "receives" deleted "a special certificate of registration and"; in (3)(b) after "61-3-481" inserted "and 61-3-562"; in (3)(c) at end after "subject to" substituted "any maximum issuance or use limitation that may be imposed on number plates" for "the maximum 4-year limitation provided in 61-3-332(3)(a)"; and made minor changes in style. Amendment effective July 1, 2003.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated this section June 30, 2005. Effective July 1, 2003.

Applicability: Section 19(2), Ch. 280, L. 2003, provided: "[Sections 7, 8, and 13 through 16] [61-3-473, 61-3-474, 61-3-479, 61-3-480, 61-3-481, and 61-3-562] apply to the registration of motor vehicles and the display of license plates issued after June 30, 2003."

Effective Date: Section 19, Ch. 402, L. 2001, provided that this section is effective on passage and approval. Approved April 28, 2001.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Termination: Section 21, Ch. 402, L. 2001, provided that this section terminates June 30, 2005.

61-3-480. Fees for generic specialty license plates — disposition.

Compiler's Comments

2013 Amendment: Chapter 196 in (2) and (3) after "county treasurer" inserted "or an authorized agent". Amendment effective July 1, 2013.

2009 Amendment: Chapter 413 in (1) near end, in (2)(a), and in (2)(c)(i) increased fee from $15 to $20; in (2)(c)(i) after "administrative fee" substituted reference to deposit in specified account for "to the state general fund"; inserted (2)(c)(ii) requiring deposit in state general fund; and made minor changes in style. Amendment effective January 1, 2010.

2005 Amendments — Composite Section: Chapter 223 in (4) near middle after "61-3-475(1)(c) or" substituted "61-3-476(1)(c)" for "61-3-476(3)". Amendment effective July 1, 2005.

Chapter 542 in (2)(c), (3) near end, and (4) near beginning substituted "state" for "department of revenue". Amendment effective January 1, 2006.

2003 Amendment: Chapter 280 in (1) at end substituted "$15 and, except as provided in 61-3-479(1)(b), the donation fee specified by the sponsor" for "$10"; in (2)(a) after "deposit" substituted "$5 of the $15 administrative fee" for "$2 of the fee"; inserted (2)(b) requiring the county treasurer to accept the donation fee; in (2)(c) substituted the requirement that the county treasurer transmit $10 of the administrative fee and all donation fees to the department of revenue monthly for former requirement that the treasurer remit $8 to the state general fund; deleted former (2) that read: "(2) An applicant for a generic specialty license plate sponsored by a state agency shall pay to the county treasurer the donation required by the state agency. The county treasurer shall remit the entire amount of the donation to the department of revenue for deposit in either the state general fund or the state special revenue fund to the credit of the sponsoring state agency"; in (3) at beginning after "If" substituted "the donation fee" for "an additional donation", after "by a" substituted "sponsor upon" for "state agency for", near middle after "plates" substituted "the fee" for "sponsored by the state agency, the additional donation", and after "renewal" substituted "of registration and transmitted to the department of revenue" for "and remitted to the state agency"; deleted former (4) that read: "(4) The county treasurer shall also collect from an applicant any donation required by a sponsoring local government, school district, or political subdivision if a written agreement exists between the county treasurer and the sponsoring local government, school district, or political subdivision. The agreement must:

(a) authorize the collection of the donations by the county treasurer;

(b) specify the amount of donation required for issuance and renewal of the generic specialty license plates; and

(c) provide for the disbursement of the revenue"; inserted (4) requiring the department to distribute to the liaison on a monthly basis an amount equal to the total donations credited to that sponsor and transferred to the department of revenue by the county treasurers during the preceding month; and made minor changes in style. Amendment effective July 1, 2003.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated this section June 30, 2005. Effective July 1, 2003.

Applicability: Section 19(2), Ch. 280, L. 2003, provided: "[Sections 7, 8, and 13 through 16] [61-3-473, 61-3-474, 61-3-479, 61-3-480, 61-3-481, and 61-3-562] apply to the registration of motor vehicles and the display of license plates issued after June 30, 2003."

Code Commissioner Instruction: Pursuant to sec. 47, Ch. 257, L. 2001, in (2) the code commissioner changed "state treasurer" to "department of revenue".

Effective Date: Section 19, Ch. 402, L. 2001, provided that this section is effective on passage and approval. Approved April 28, 2001.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Termination: Section 21, Ch. 402, L. 2001, provided that this section terminates June 30, 2005.

61-3-481. Generic specialty license plates — restrictions on use.

Compiler's Comments

2007 Amendment: Chapter 392 in (1) in first sentence after "except" deleted "a trailer of any size"; and made minor changes in style. Amendment effective January 1, 2008.

Applicability: Section 6, Ch. 392, L. 2007, provided: "[This act] applies to motor vehicles and trailers registered, and license plates that are issued or renewed, on or after [the effective date of this act]." Effective January 1, 2008.

2005 Amendments — Composite Section: Chapter 542 in (1) near middle of first sentence before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Chapter 596 in (2) substituted "official license plates" for "official number plates". Amendment effective January 1, 2006.

2003 Amendment: Chapter 280 in (1) after "registration of" substituted "any vehicle, except a trailer of any size, a motorcycle, or a quadricycle" for "a light vehicle"; and made minor changes in style. Amendment effective July 1, 2003.

Termination Provision Repealed: Section 17, Ch. 280, L. 2003, repealed sec. 21, Ch. 402, L. 2001, which terminated this section June 30, 2005. Effective July 1, 2003.

Applicability: Section 19(2), Ch. 280, L. 2003, provided: "[Sections 7, 8, and 13 through 16] [61-3-473, 61-3-474, 61-3-479, 61-3-480, 61-3-481, and 61-3-562] apply to the registration of motor vehicles and the display of license plates issued after June 30, 2003."

Effective Date: Section 19, Ch. 402, L. 2001, provided that this section is effective on passage and approval. Approved April 28, 2001.

Applicability: Section 20, Ch. 402, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Termination: Section 21, Ch. 402, L. 2001, provided that this section terminates June 30, 2005.

Part 5
Taxes, Fees, and Fees in Lieu of Taxes

Part Compiler's Comments

Severability Clause: Section 10, Ch. 296, L. 1967, was a severability clause.

Part Case Notes

County Miscalculation of Amount of Loss Per Vehicle — State Reimbursement: When a County Treasurer miscalculated the amount the county would have received under the loss-per-vehicle provisions of section 61-3-536 (now repealed) after repeal of the former property tax system and the state refused to accept a corrected figure submitted after the mistake was realized, it was not error for the District Court to order the state to reimburse the county for revenue lost under the erroneous calculation. The Supreme Court found that the legislative intent was clear that enactment of the flat fee system was intended as a tax relief measure and that counties were not supposed to lose any revenue under the law. Lewis & Clark County v. St., 224 M 223, 728 P2d 1348, 43 St. Rep. 2150 (1986).

Part Attorney General's Opinions

Light Vehicle Registration Fee Not Assessable Against Certain Indian-Owned Vehicles or Vehicles Owned by Nonresident Active Duty Military Personnel: Although designated as a fee, the light vehicle registration fee enacted by referendum in 1999 actually functions as a three-tiered, value-based annual motor vehicle tax. The fee is not related to the cost of administering the vehicle registration system, and fee revenue is distributed in essentially the same manner as the sales taxes and value taxes that it replaced. Thus, sharing many of the salient characteristics of and being substantively indistinguishable from the taxes that it replaced, the fee is functionally a tax and, like the taxes that it replaced, may not be levied against tribally owned vehicles or vehicles owned by enrolled tribal members residing on their reservations or against the personal vehicles of nonresident active duty military personnel stationed in Montana. 48 A.G. Op. 24 (2000). See also 39 A.G. Op. 45 (1981).

Property Tax Freeze Inapplicable to Light Vehicle Tax: Although Ch. 211, L. 1987, replaced the fee in lieu of tax on light vehicles with a property tax, the property tax freeze instituted by Initiative No. 105 applies only to property described in Title 15, ch. 6, part 1, and is inapplicable to items of personal property such as light vehicles, motorcycles, motor homes, quadricycles, travel trailers, and campers. 42 A.G. Op. 21 (1987).

State Taxation of Nontribe Member Not Preempted by Federal Concerns: While generally state taxation will be preempted if it impermissibly interferes with a comprehensive federal statutory scheme or established tradition of tribal governance, the simple fact that a particular on-reservation activity may validly be taxed by a tribe does not preclude state taxation of the same activity, and taxation of a nonmember has no effect on federal concerns. A tribe's sovereignty interest does not negate state authority over nonmember activity. Therefore, the interest of a nontribal member in motor vehicles, mobile homes, or personal property (whose tax situs is within the exterior boundaries of the reservation) and which interest is held in joint tenancy or tenancy in common with a tribal member is subject to those state taxes generally applicable to such property. 42 A.G. Op. 11 (1987).

Payment Into State Special Revenue Fund — When Proper: State aid received pursuant to section 61-3-536 (now repealed) during March 1984 is, as to any county whose public assistance programs and protective services were assumed on July 1, 1983, by the Department of Social and Rehabilitation Services (now Department of Public Health and Human Services), properly paid into the state special revenue fund under 53-2-813 (now repealed) in such amount as determined by fiscal year 1984 mill levies. 41 A.G. Op. 26 (1985).

Motor Vehicle Dealer Not to Obtain "Title Only" on Vehicle in Inventory: A motor vehicle dealer may not obtain a "title only" (meaning receipt of title without registration or payment of taxes) from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle. 40 A.G. Op. 70 (1984).

Military Personnel Exempt: Because the money generated by the former light vehicle license fee is to be used primarily for revenue purposes, section 574 of the federal Soldiers' and Sailors' Civil Relief Act of 1940 exempts military personnel on active duty at a military installation in Montana from payment of the fee. 39 A.G. Op. 46 (1982).

Purpose of Fee System: Although the title to the new licensing system has changed, the underlying purpose has not. The fee system is more akin to a property tax than a registration fee as the money generated is to be used primarily for revenue purposes. 39 A.G. Op. 46 (1982).

Indian Persons Exempt From Vehicle License Fee: An Indian person residing on his or her tribe's reservation is not required to pay the vehicle license fee imposed by 61-3-533 (now repealed). 39 A.G. Op. 45 (1981). See also 48 A.G. Op. 24 (2000), which held that the light vehicle registration fee enacted by referendum in 1999 may not be levied against tribally owned vehicles or vehicles owned by enrolled tribal members residing on their reservations.

Motor Vehicle Licenses for Disabled Veterans: A disabled veteran who qualifies under 10-2-301 (renumbered 61-3-451, now repealed) may receive free license plates for a new motor vehicle upon payment of 1% personal property tax and without payment of a new motor vehicle sales tax imposed under 61-3-502 (now repealed). 38 A.G. Op. 21 (1979).

61-3-501. When motor vehicle taxes and fees are due.

Compiler's Comments

2005 Amendments — Composite Section — Code Commissioner Correction: Chapter 542 throughout section before references to vehicle inserted "motor". Amendment effective January 1, 2006. The amendment by Ch. 596 rendered the amendment by Ch. 542 void.

Chapter 596 in (1) at beginning substituted "Motor vehicle" for "Light vehicle" and at end substituted "renewal of registration of the motor vehicle" for "reregistration of the vehicle"; deleted former (2) and (3) that read: "(2) (a) If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, light vehicle registration fees, local option vehicle taxes or fees, or fees in lieu of tax abate on the vehicle properly reported with the county treasurer until the vehicle is the subject of a retail sale. After the sale, the purchaser shall pay the pro rata balance of the light vehicle registration fees, local option vehicle taxes or fees, or fees in lieu of tax due and owing on the vehicle.

(b) A person selling a vehicle or trading a vehicle to a dealer shall disclose to the purchaser any amount of taxes or fees in lieu of tax that are due or past due on the vehicle at the time the person sells a vehicle or trades a vehicle to a dealer. If the disclosure is not made, the person selling the vehicle or trading the vehicle to the dealer shall pay the taxes or fees. Taxes or fees in lieu of tax that are due or past due on a vehicle at the time that a person sells or trades the vehicle to a dealer must be paid by the person who sold or traded the vehicle to the dealer, unless the person who purchases the vehicle from the dealer agrees in writing to assume the payment of those taxes or fees. This subsection (2)(b) does not apply to fleet vehicles, leased vehicles, or rental return vehicles.

(c) For the purposes of this subsection (2), a retail sale does not include a transfer between any of the following:

(i) a licensed new motor vehicle or used motor vehicle dealer;
(ii) another licensed new motor vehicle or used motor vehicle dealer;
(iii) a licensed wholesaler; or
(iv) a licensed auto auction.

(3) In the event that a vehicle's registration period is changed under 61-3-315, all light vehicle registration fees, local option vehicle taxes or fees, fees in lieu of tax, and other fees due must be prorated and paid from the last day of the old period until the first day of the new period in which the vehicle is registered. The light vehicle registration fees, local option vehicle taxes or fees, fees in lieu of tax, and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, light vehicle registration fees, local option vehicle taxes or fees, and other fees must be prorated and paid based on the same tax year as the original registration period. Thereafter, during the appropriate anniversary registration period, each vehicle must again be registered or reregistered and all light vehicle registration fees, local option vehicle taxes or fees, and other fees must be paid for a 12-month period"; inserted (2) limiting accrual of taxes and fees; and inserted (3) concerning purchase year for motor home. Amendment effective January 1, 2006.

In (2) near end before "vehicle" the code commissioner inserted "motor" to reflect the Ch. 542 amendment. In (3)(b) at end the code commissioner deleted "under 61-3-522" to reflect the repeal of that section by Ch. 542, L 2005.

2001 Amendments — Composite Section: Chapter 191 in (1) at beginning substituted "Light vehicle registration fees, local option vehicle taxes or fees, fees in lieu of tax, and other fees" for "Motor vehicle taxes, fees in lieu of tax, new car taxes, and fees"; in (2)(a) in first sentence near middle after "used car dealer" substituted "light vehicle registration fees, local option vehicle taxes or fees" for "motor vehicle taxes" and in second sentence substituted "light vehicle registration fees, local option vehicle taxes or fees" for "taxes"; in (3) in four places substituted "light vehicle registration fees, local option vehicle taxes or fees" for "taxes" and in third and fourth sentences before "fees must be" inserted "other"; and made minor changes in style. Amendment effective April 3, 2001.

Chapter 261 inserted (2)(b) requiring a person selling or trading a vehicle to a dealer to disclose any taxes or fees in lieu of tax that are due or past due, providing for payment of the taxes or fees in lieu of tax, and providing that the subsection does not apply to fleet, leased, and rental return vehicles; and made minor changes in style. Amendment effective October 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

Applicability: Section 2, Ch. 261, L. 2001, provided: "[This act] applies to a motor vehicle sold or traded to a new or used car dealer on or after October 1, 2001."

1999 Amendment: Chapter 409 in (2)(a) substituted "is the subject of a retail sale" for "is sold"; inserted (2)(b) providing exclusions from definition of retail sale; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1997 Amendment: Chapter 496 in (1), near beginning, and in (2), near middle of first sentence, substituted reference to motor vehicle taxes and fees in lieu of tax for reference to property taxes; in (2), near end of first sentence, substituted "county treasurer" for "department of revenue" and in second sentence, near end, inserted "or fees in lieu of tax"; in (3), in first and second sentences, inserted "or fees in lieu of tax"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1987 Amendment: In (1), after "car taxes", deleted "light vehicle license fees" and after "and fees" deleted "in lieu of tax on a motorcycle, quadricycle, motor home, or travel trailer"; and in (2), after "property taxes", deleted "light vehicle license fees, or the fee in lieu of property taxes" and near end, after "taxes", deleted "or the fee in lieu of tax".

1985 Amendment: In (1) near middle, after "tax on a", inserted "motorcycle, quadricycle" (effective January 1, 1986).

1981 Amendment: Inserted "light vehicle license fees" after "new car taxes" in (1) and after "property taxes" in (2).

Administrative Rules

ARM 18.8.101 Definitions.

ARM 23.3.806 Proration of vehicle taxes or fees while in dealer inventory.

ARM 23.3.807 General provisions.

Attorney General's Opinions

Motor Vehicle Dealer Not to Obtain "Title Only" on Vehicle in Inventory: A motor vehicle dealer may not obtain a "title only" (meaning receipt of title without registration or payment of taxes) from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle. 40 A.G. Op. 70 (1984).

61-3-503. Assessment — definition.

Compiler's Comments

2007 Amendment: Chapter 329 in (1)(b) deleted former first sentence that read: "A lien for taxes and fees due on the motor vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid." Amendment effective January 1, 2008.

2005 Amendments — Composite Section: Chapter 542 in (1)(a), (1)(b) in two places, and (3)(c) before "vehicle" inserted "motor"; in (2)(a), (2)(c) in three places, (2)(d), and (3)(b) before "vehicle" inserted "light"; in (4) at end deleted "as those terms are defined in 15-1-101(1)" (amendment rendered void by Ch. 596 amendment); and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1)(a) after "61-3-520" deleted "and subsection (4) of this section, the following apply to the taxation of motor vehicles:

(a) For the purposes of imposing the local option vehicle tax under 61-3-537" and after "subject to" substituted "a local option vehicle tax under 61-3-537" for "the provisions of 61-3-313 through 61-3-316"; in (2)(b) at end substituted "under 61-3-501" for "by subtracting the manufacturer's model year of the vehicle from the calendar year for which the tax is due"; deleted former (4) that read: "(4) The provisions of subsections (1) through (3) do not apply to buses, trucks having a manufacturer's rated capacity of more than 1 ton, truck tractors, motorcycles, motor homes, quadricycles, travel trailers, campers, mobile homes or manufactured homes as those terms are defined in 15-1-101(1)"; and made minor changes in style. Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, at beginning of (1)(a) substituted "For the purposes of imposing the local option vehicle tax under 61-3-537, light vehicles" for "Vehicles". Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendments — Composite Section: Chapter 200 in former (2), near middle after "mobile homes", inserted "or manufactured homes"; and made minor changes in style. The codifier inserted the changes in subsection (4) that correspond to former subsection (2). Amendment effective January 1, 1998.

Chapter 496 substituted current text requiring assessment of vehicles using depreciated value of manufacturer's suggested retail price and formula for computing depreciated value of manufacturer's suggested retail price for former provisions requiring submission of application for registration to Department of Revenue, requiring Department of Revenue to assess vehicle using average trade-in wholesale value as provided in National Association of Automobile Dealers Official Used Car Guide or other appraisal guide approved by Department of Revenue, providing two alternate methods for appraisal of quadricycles, providing for depreciation of f.o.b. factory list price for vehicles not listed in appraisal guide, and providing for minimum valuation of $500 (see 1997 Session Law for former text); adjusted subsection references; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendment: Chapter 580 at beginning of (1)(d) deleted "Motorcycles and"; in (2) extended exemption to motorcycles; and made minor changes in style. Amendment effective January 1, 1996.

1993 Special Session Amendment: Chapter 27 in (1)(a), in two places, and in (1)(c) substituted "department of revenue" for "county assessor"; in (1)(e), after "revenue", deleted "or its agent"; in (1)(g) substituted "of revenue" for "or its agent"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

Repeal of Termination Date: Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated the 1989 amendments to this section effective December 31, 1993. Repealer effective February 18, 1993.

1991 Amendment: In (1)(c) and (1)(d)(ii), after second "Guide", inserted "or another nationally published used vehicle or appraisal guide approved by the department of revenue"; in (1)(e), (1)(e)(ii), and (1)(g), after reference to N.A.D.A. guide, inserted reference to other approved guides; and made minor changes in style. Amendment effective July 1, 1991.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

1989 Special Session Amendment: Near middle of (1)(c) inserted "but including additions or deductions, whether or not one of the preceding guides is used, for diesel engines". Amendment effective January 1, 1990.

1989 Amendments: Chapter 349 near middle of (1)(c), after "Older Used Car Guide", substituted "a vehicle that was never listed in any edition of the preceding guides, the retail value of the vehicle as determined by the county assessor, and thereafter depreciated 10% per year until a value of $500 is reached" for "vehicles not listed in the preceding guides, the low value listed in The Value Guide to Cars of Particular Interest" and in last sentence decreased value from $1,000 to $500 in two places. Amendment effective March 28, 1989.

Chapter 525 near beginning of (1) inserted reference to 61-3-520; and made minor changes in phraseology. Amendment effective April 13, 1989, and terminates December 31, 1993.

1989 Statement of Intent: The statement of intent attached to Ch. 525, L. 1989, provided: "A statement of intent is not technically required for this bill because the rulemaking authority currently authorized in 61-3-506 is merely expanded. However, in adopting this bill, the legislature intends that any rules adopted by the department of revenue be limited to developing forms or procedures for prorating the taxes imposed on property, including vehicles, that is used exclusively in the filming of motion pictures or television commercials. The provisions of the bill are intended to exempt from property taxation all property that is used exclusively in the production of motion pictures or television commercials unless the property is sited in the state for a period exceeding 180 consecutive days in a calendar year. If the property is sited in the state for a period exceeding 180 consecutive days in a calendar year, the property is subject to property taxation in the same manner as other property."

Effective Date — Applicability: Section 4, Ch. 349, L. 1989, provided: "(1) [This act] is effective on passage and approval [approved March 28, 1989] and applies to motor vehicles that are required to be registered on or after July 1, 1989.

(2) The assessment requirements contained in 61-3-503(1)(c), as amended by [this act], apply to a vehicle that is required to be registered on or after July 1, 1989, including an assessment for any delinquent taxes due on the vehicle."

Effective Date — Retroactive Applicability: Section 10, Ch. 525, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988." Approved April 13, 1989.

1987 Amendment: In (1)(a) changed reference to subsection (1)(c) to reference to subsections (1)(c) through (1)(e); in (1)(c), after "using the", substituted "average trade-in or wholesale value" for "market value", after "Association" inserted "(N.A.D.A.)", after "Car Guide" inserted language relating to older used car guides or value guide to cars, and inserted second sentence concerning minimum value; inserted (1)(d) through (1)(g) relating to tax assessment of motor vehicles; and in (2) changed reference to subsection (1)(c) to reference to subsection (1)(g) and after "do not apply to" substituted "motor homes, travel trailers, campers, or" for "automobiles and trucks having a rated capacity of three-quarters of a ton or less, motorcycles, quadricycles, motor homes, travel trailers, or".

1985 Amendment: In (2) near middle, after "ton or less", inserted "motorcycles, quadricycles" (effective January 1, 1986).

1981 Amendments: Chapter 262 inserted "Except as provided in subsection (1)(c)" at the beginning of (1)(a); substituted "as of January 1 of" for "for" after "vehicle" in the last sentence of (1)(a); inserted "using the market value as of January 1 of the year of assessment of the vehicle as contained in the most recent volume of the Mountain States Edition of the National Automobile Dealers Association Official Used Car Guide" in (1)(c).

Chapter 614 renumbered subsections (1) through (3) as (1)(a)(b)(c) and added the language in subsection (1) before subsection (1)(a); deleted "other than a motor home, travel trailer, or a mobile home as defined in 15-1-101(1)," after "or reregistration of a motor vehicle" near the beginning of (1)(a) and after "motor vehicles" near the beginning of (1)(b); changed "subsection (3)" to "subsection (1)(c)" near the beginning of (1)(b); and added subsection (2) exempting from taxation automobiles and trucks having rated capacity of three-quarters of a ton or less, motor homes, travel trailers, or mobile homes.

Applicability: Section 3, Ch. 262, L. 1981, provided: "This act applies to the assessment of motor vehicles on or after January 1, 1981."

Administrative Rules

ARM 23.3.701 Expiration of registration periods.

Title 23, chapter 3, subchapter 8, ARM Vehicle taxation.

Case Notes

Application to Indian Tribes and Individuals: The Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation and the enrolled members of those tribes residing on that reservation are exempt from payment of the personal property tax imposed by this section; and Indians residing on that reservation and not enrolled in either of the tribes are subject to the tax. The Assiniboine & Sioux Tribes v. Mont., 568 F. Supp. 269, 40 St. Rep. 1318 (D.C. Mont. 1983).

Purpose of Act: The intent and purpose of this section were to insure the collection of the current property taxes on automobiles authorized to use the highways. While this section fixed the first day of January as the time of assessment of "motor vehicles in stock, in dealers' possession or in dead storage, as well as in use" (prior to amendment), the obvious purpose of this provision was to make it possible to carry out the other provisions of this act coupling the registration and issuance of license plates with the payment of taxes. State ex rel. Sadler v. Evans, 106 M 286, 77 P2d 394 (1938).

Constitutionality: Assertion that Legislature in amending this section by enacting Ch. 72, L. 1937, and making special provision for taxing automobiles included in class 2 of section 84-301, R.C.M. 1947 (now repealed), among other property without first amending such section, unlawfully discriminated against motor vehicles, was not well made. The Legislature may properly go even to the extent of placing identical articles in the hands of different owners, and different uses resulting in different productivity in different classes, and the amendment did not violate Art. XII, sec. 11 (similar to Art. VIII, sec. 1, 1972 Mont. Const.), and Art. III, sec. 27, 1889 Mont. Const. Wheir v. Dye, 105 M 347, 73 P2d 209 (1937).

Attorney General's Opinions

Motor Vehicle Dealer Not to Obtain "Title Only" on Vehicle in Inventory: A motor vehicle dealer may not obtain a "title only" (meaning receipt of title without registration or payment of taxes) from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle. 40 A.G. Op. 70 (1984).

61-3-507. Exemption.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning and end substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle". Amendment effective January 1, 2006.

2001 Amendment: Chapter 191 after "is exempt from taxation" inserted "and registration fees". Amendment effective April 3, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

1997 Amendment: Chapter 496 deleted(1) that read: "(1) A motor vehicle subject to anniversary date registration as provided in 61-3-313 through 61-3-316 is exempt from the provisions of 61-3-503(1)(b)"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

Repeal of Termination Date: Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated the 1989 amendments to this section effective December 31, 1993. Repealer effective February 18, 1993.

1991 Amendment: (Temporary version) At end of (1) deleted "and 61-3-505".

(Version effective January 1, 1994) At end deleted reference to 61-3-505.

1989 Amendment: Inserted (2) relating to vehicles exempt from taxation when used in production of motion pictures or television commercials; and made minor changes in phraseology. Amendment effective April 13, 1989, and terminates December 31, 1993.

1989 Statement of Intent: The statement of intent attached to Ch. 525, L. 1989, provided: "A statement of intent is not technically required for this bill because the rulemaking authority currently authorized in 61-3-506 is merely expanded. However, in adopting this bill, the legislature intends that any rules adopted by the department of revenue be limited to developing forms or procedures for prorating the taxes imposed on property, including vehicles, that is used exclusively in the filming of motion pictures or television commercials. The provisions of the bill are intended to exempt from property taxation all property that is used exclusively in the production of motion pictures or television commercials unless the property is sited in the state for a period exceeding 180 consecutive days in a calendar year. If the property is sited in the state for a period exceeding 180 consecutive days in a calendar year, the property is subject to property taxation in the same manner as other property."

Effective Date — Retroactive Applicability: Section 10, Ch. 525, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988." Approved April 13, 1989.

1981 Amendment: Changed internal reference from 61-3-503(2) to 61-3-503(1)(b) to reflect renumbering of 61-3-503.

61-3-509. Disposition of fees — responsibility for dishonored payments.

Compiler's Comments

2017 Amendment: Chapter 250 in (1) at beginning inserted exception clause; and made minor changes in style. Amendment effective July 1, 2017.

2015 Amendment: Chapter 231 in (1) near middle of first sentence after "sought" deleted "and an original application for title that includes a manufacturer's statement of origin is made". Amendment effective October 1, 2015.

2009 Amendment: Chapter 41 inserted (2) concerning remedies for dishonored payments and period for making adjustments; and made minor changes in style. Amendment effective January 1, 2010.

2005 Amendment: Chapter 542 in first sentence near beginning substituted "fees imposed by 61-3-321 on light vehicles, motor homes, motorcycles, quadricycles, buses" for "fees imposed by 61-3-561 from light vehicles, all registration fees imposed by 61-3-522 from motor homes, all fees in lieu of tax imposed by 61-3-527 from motorcycles and quadricycles, and all fees imposed by 61-3-529 from buses" and near end substituted "state as provided in 15-1-504" for "department of revenue"; and in second sentence substituted "The payments must be deposited in" for "The department of revenue shall credit the payments to". Amendment effective January 1, 2006.

2001 Amendments — Composite Section: Chapter 257 in (1) in two places and in (3) in two places substituted references to department of revenue for references to state treasurer. Amendment effective July 1, 2001. The amendment by Ch. 574 rendered the amendment in (3) by Ch. 257 void.

Chapter 574 at end substituted "state general fund" for "highway restricted state special revenue account"; deleted former (2) and (3) that read: "(2) Except as provided in subsections (1) and (3), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles, registration fees on light vehicles, and fees in lieu of tax on motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 61-3-560 through 61-3-562 to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund. Except for registration fees collected under 61-3-560 through 61-3-562, the county treasurer shall distribute the money in the fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. For money in the fund collected under 61-3-527 and 61-3-560 through 61-3-562, the county treasurer shall disregard the statewide mills levied for the university system, county elementary and high school equalization under 20-9-331 and 20-9-333, the mills levied for state equalization aid under 20-9-360, and the mills levied for state assumption of public assistance under 53-2-813 in determining distribution proportions of the money and may not distribute money collected under 61-3-527 and 61-3-560 through 61-3-562 to the state for those levies.

(3) The county treasurer shall deduct as a district court fee 10% of the amount of the registration fee collected on light vehicles under 61-3-560 through 61-3-562. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes money from the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901"; and made minor changes in style. Amendment effective July 1, 2001.

The amendments to this section in sec. 15, Ch. 191, L. 2001, were rendered void by sec. 255(6), Ch. 574, L. 2001, a coordination section.

The amendment to this section made by Ch. 585, L. 2001, was rendered void by sec. 255(3), Ch. 574, L. 2001, a coordination section.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

2000 Amendment by Referendum Revised: Chapter 515, L. 1999, amended this section, but the amendments were revised by sec. 16(2), Ch. 11, Sp. L. May 2000, prior to approval of Ch. 515 by the electorate.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

2000 Amendment by Referendum: Section 16(2), Ch. 11, inserted (1) concerning handling of registration fees; in (2) in first sentence in exception clause substituted "subsections (1) and (3)" for "subsection (2)", near middle inserted "registration fees on light vehicles, and", and near end deleted reference to 61-3-504 and inserted reference to 61-3-560 through 61-3-562, near beginning of third sentence substituted "registration fees" for "taxes" and substituted "61-3-560 through 61-3-562" for "61-3-504", near beginning of fourth sentence substituted "61-3-527 and 61-3-560 through 61-3-562" for "61-3-504", after "university system" inserted "county elementary and high school equalization under 20-9-331 and 20-9-333", after "20-9-360" inserted "and the mills levied for state assumption of public assistance under 53-2-813", and at end substituted "collected under 61-3-527 and 61-3-560 through 61-3-562 to the state for those levies" for "from 61-3-504 to the state for either levy", and deleted former last two sentences that read: "If the distribution of money collected under 61-3-504 to a school district general fund results in a lower revenue than the district received in fiscal year 1999 and the district has, for all years after fiscal year 1999, received less revenue than in fiscal year 1999, then the district general fund is entitled to state reimbursement for the amount of the difference between the fiscal year 1999 revenue and the prior school fiscal year revenue under 61-3-504. Prior to January 31, the office of public instruction shall distribute to each school district an amount equal to the state reimbursement for the prior school year"; in first sentence of (3) substituted "registration fee collected on light vehicles under 61-3-560 through 61-3-562" for "the tax collected on light vehicles under 61-3-504(1)"; and made minor changes in style. Amendment effective January 1, 2001.

The amendments to this section made by sec. 11, Ch. 11, Sp. L. May 2000, were rendered void by sec. 16(2), Ch. 11, Sp. L. May 2000, a coordination section.

2000 Amendment: Chapter 11 in (2) at beginning inserted exception clause, in middle of first sentence inserted references to 20-9-331 and 20-9-333, and substituted second sentence providing that money collected under 61-3-504 previously distributed pursuant to levies imposed by 20-9-331 and 20-9-333 is a local government reimbursement for purposes of 15-10-420 for former second and third sentences that read: "If the distribution of money collected under 61-3-504 to a school district general fund results in a lower revenue than the district received in fiscal year 1999 and the district has, for all years after fiscal year 1999, received less revenue than in fiscal year 1999, then the district general fund is entitled to state reimbursement for the amount of the difference between the fiscal year 1999 revenue and the prior school fiscal year revenue under 61-3-504. Prior to January 31, the office of public instruction shall distribute to each school district an amount equal to the state reimbursement for the prior school year"; and made minor changes in style. Amendment effective May 25, 2000, and terminates January 1, 2001, if Ch. 515, L. 1999, is approved by the electorate on November 7, 2000.

Effective Date — Applicability: Section 18(1), Ch. 11, Sp. L. May 2000, provided: "Except as provided in subsection (2), [this act] is effective on passage and approval [approved May 25, 2000], and [sections 6 through 13] [15-10-420, 20-9-141, 20-9-306, 20-9-367, 20-9-368, and 61-3-509 and amendments to secs. 167 and 169, Ch. 584, L. 1999] apply to fiscal years beginning on or after July 1, 2000, and to school budgets for school fiscal years beginning on or after July 1, 2000."

1999 Amendment: Chapter 584 at beginning of third sentence in (1) inserted exception clause and language requiring county treasurer to distribute money in fund and inserted fourth, fifth, and sixth sentences requiring county treasurer to disregard statewide mills for university system and state equalization aid in determining distribution and prohibiting distribution for either levy, providing that district general fund is entitled to state reimbursement under certain circumstances, and requiring office of public instruction to distribute amount equal to state reimbursement for prior school year; and in first sentence in (2) increased district court fee from 7% to 10% and after "vehicles" inserted "under 61-3-504(1)". Amendment effective May 10, 1999.

The amendments to this section made by Ch. 180, L. 1999, were rendered void by sec. 170(2), Ch. 584, L. 1999, a coordination section.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1997 Amendments — Composite Section: Chapter 121 in (1), after "campers", inserted "trailers, pole trailers, and semitrailers"; and made minor changes in style. Amendment effective January 1, 1998.

Chapter 422 in (2), in last sentence, substituted "state special revenue fund" for "general fund". Amendment effective July 1, 1997.

Chapter 496 in (1), near middle of first sentence, inserted "quadricycles", inserted "buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors", and near end inserted "61-3-529, and"; in (2), at end of first sentence, substituted "light vehicles" for "an automobile or truck having a rated capacity of 1 ton or less"; and made minor changes in style. Amendment effective January 1, 1998.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendment: Chapter 580 in (1), after "fees in lieu of tax on", inserted "motorcycles" and inserted reference to 61-3-527; and made minor changes in style. Amendment effective January 1, 1996.

1993 Amendment: Chapter 330 in (2) deleted former last sentence that read: "Any amount forwarded to the state treasurer under this subsection that is not used for district court expenses must be refunded to the counties in the proportion that the amount collected from each county bears to the total amount collected." Amendment effective April 13, 1993.

1991 Amendment: In first sentence of (2) substituted "1 ton" for "three-quarters of a ton".

1987 Amendments: Chapter 416 in (2) substituted "as provided in 3-5-901" for "enumerated in 3-5-901".

Chapter 611 at beginning of (1) inserted exception clause, after "treasurer shall" inserted "after deducting the district court fee", after "motor vehicles" substituted "and fees in lieu of tax on motor homes, travel trailers, and campers" for "light vehicle license fees provided for in 61-3-532, and fees in lieu of tax on motorcycles, quadricycles, motor homes, and travel trailers", and after "collected" inserted "under 61-3-504, 61-3-521, and 61-3-537"; and inserted (2) requiring County Treasurer to deduct fee equal to 7% of the 2% tax on vehicles rated three-quarter ton or less to fund District Court expenses.

1985 Amendments: Chapter 516 near beginning after "tax on", inserted "motorcycles, quadricycles" (effective January 1, 1986).

Chapter 685 in (1) at beginning inserted exception clause; and inserted (2) requiring county treasurer to credit fee for District Courts from light vehicle license fee to separate suspense account and to forward account to state treasurer for credit into general fund for use in funding District Court expenses.

Chapter 702 in (1) at beginning inserted exception clause; and inserted (3) requiring county treasurer to credit light vehicle license fee into separate suspense fund for distribution to state treasurer for deposit in the local government block grant account.

Chapter 1, Sp. L. 1985, near beginning of (3) substituted "block grant fee" for "additional light vehicle license fee".

Amendments terminate July 1, 1987 (sec. 4, Ch. 685, L. 1985; sec. 4, Ch. 702, L. 1985; sec. 12, Ch. 1, Sp. L. 1985).

1981 Amendment: Inserted "light vehicle license fees provided for in 61-3-532" after "all taxes on motor vehicles" near the beginning of the section; and deleted "other" before "personal property taxes" near the end of the section (subsection (1) of temporary version).

Attorney General's Opinions

Authority of Local Government to Levy Additional Mills to Make Up Difference Between Light Vehicle Tax Reimbursement and Amount Assessed for Fiscal Year 2001: In enacting 15-1-121, the Legislature provided for a reimbursement of an average of 88% of the amount lost by counties in light vehicle fee collections compared to the amount that the counties actually received in combined fees and property taxes in fiscal year 2001. The legislative intent was to simplify the collection and disbursement of county revenue while maintaining rough revenue neutrality for the counties. Under 15-10-420, the Legislature also provided an inflation adjustment to the mill levy cap and allowed for an increase in mill levy capacity for a decrease in reimbursements, in effect enabling local governments to maintain for fiscal year 2002 the amount of revenue collected in fiscal year 2001. Thus, a local government was authorized to levy additional mills sufficient to make up the difference between the amount reimbursed by the state for light vehicle fees and taxes under 15-1-121 and the amount of fees and taxes assessed by the local government for fiscal year 2001. 49 A.G. Op. 4 (2001).

Proportion of Vehicle-Related Taxes Applicable to Rural Fire Districts: Vehicle-related taxes referred to in subsection (1) of this section must be distributed proportionately to rural fire districts on the basis of all mill levies applicable to personal property located within the geographical boundaries of the districts. For distribution entitlement purposes, the residence or assignment address appearing on the certificate of registration determines if a particular vehicle is within a district's boundaries. 43 A.G. Op. 4 (1989).

Distribution of Motor Vehicle Fees: Motor vehicle fees subject to distribution under this section are properly allocated in the same manner as personal property taxes (see 1999 amendment). Consequently, for fiscal year 1984 the state special revenue fund is entitled to receive, under 53-2-813, the appropriate proportional share of such money collected between January 1, 1984, and December 31, 1984, from counties whose public assistance programs and protective services were assumed on July 1, 1983. 41 A.G. Op. 26 (1985).

61-3-520. Fees on motor vehicles used exclusively in filming motion pictures or television commercials.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in (1) in two places and in (2)(b) substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; in (1) near middle substituted "61-3-321" for "61-3-560 and 61-3-561 or a fee in lieu of tax" and near end after "fee" deleted "or fee in lieu of tax"; in (2)(a) after "fees" deleted "or the fees in lieu of tax"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1) near middle after "subject to" substituted "applicable registration fees, including one-time registration fees for vehicles subject to permanent registration" for "a registration fee under 61-3-560 and 61-3-561" and inserted "under this chapter"; and made minor changes in style. Amendment effective January 1, 2006.

2000 Amendment by Referendum: Chapter 515, L. 1999, near middle of (1) substituted "a registration fee under 61-3-560 and 61-3-561" for "assessment" and near end substituted "registration fee" for "assessment"; near beginning of (2)(a) substituted "registration fees" for "taxes assessed"; deleted former (3)(a) that read: "(a) Taxes on a vehicle imposed pursuant to this section must be collected as provided in Title 15, chapter 16, part 1, for the collection of personal property taxes generally"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendment: Chapter 496 in (1), in two places, inserted reference to fee in lieu of tax; in (2), after "The taxes assessed", inserted "or the fees in lieu of tax imposed"; inserted (3)(b) concerning collection of fees imposed on vehicle; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date —Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

Repeal of Termination Date: Section 1, Ch. 55, L. 1993, repealed sec. 11, Ch. 525, L. 1989, which terminated this section effective December 31, 1993. Repealer effective February 18, 1993.

1989 Statement of Intent: The statement of intent attached to Ch. 525, L. 1989, provided: "A statement of intent is not technically required for this bill because the rulemaking authority currently authorized in 61-3-506 is merely expanded. However, in adopting this bill, the legislature intends that any rules adopted by the department of revenue be limited to developing forms or procedures for prorating the taxes imposed on property, including vehicles, that is used exclusively in the filming of motion pictures or television commercials. The provisions of the bill are intended to exempt from property taxation all property that is used exclusively in the production of motion pictures or television commercials unless the property is sited in the state for a period exceeding 180 consecutive days in a calendar year. If the property is sited in the state for a period exceeding 180 consecutive days in a calendar year, the property is subject to property taxation in the same manner as other property."

Effective Date — Retroactive Applicability: Section 10, Ch. 525, L. 1989, provided: "[This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1988." Approved April 13, 1989.

61-3-529. Schedule of fees for buses, motor vehicles having rated capacity of more than 1 ton, and truck tractors — proration — exemption.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in (2) in two places, in (3), and in (5) before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Chapter 596 in (1)(a) near beginning substituted "an annual fee" for "a fee"; in (3) after "determined" substituted "under 61-3-501" for "by subtracting the manufacturer's model year of the vehicle from the calendar year for which the fee in lieu of tax is due"; deleted former (5) that read: "(5) A motor vehicle brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from the fee in lieu of tax if the vehicle does not remain in the state for a period in excess of 180 consecutive days in a calendar year"; in (5) near end after "prorated" substituted "as determined and paid under 61-3-701" for "according to the ratio that the remaining number of months in the year bears to the total number of months in the year"; deleted former (7) that read: "(7) (a) The fee in lieu of tax on a vehicle subject to this section that is registered in the state for the first time must be prorated as provided in subsection (6).

(b) The fee in lieu of tax on a vehicle subject to this section that is reregistered in the state is for a full year"; and made minor changes in style. Amendment effective January 1, 2006.

2001 Amendment: (Version effective January 1, 2003) Chapter 500 in (2) reduced fees for all vehicle ages for all rated capacities (see 2001 Session Law for text). Terminates December 31, 2003.

(Version effective January 1, 2004) In (2) reduced fees for all vehicle ages for all rated capacities (see 2001 Session Law for text). Terminates December 31, 2004.

(Version effective January 1, 2005) In (2) reduced fees for all vehicle ages for all rated capacities (see 2001 Session Law for text).

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

Administrative Rules

Title 23, chapter 3, subchapter 8, ARM Vehicle taxation.

61-3-535. Motor vehicle registration renewal — reminder notice and renewal by mail.

Compiler's Comments

2019 Amendment: Chapter 335 in (2) at end of introductory clause substituted "may" for "must"; in (2)(b) at end substituted "or" for "and"; and in (2)(c) substituted "reminder notice" for "written reminder notice by mail". Amendment effective May 7, 2019.

2009 Amendment: Chapter 413 in (1) in three places and in (2)(c) after "motor vehicle" deleted "trailer, semitrailer, or pole trailer"; in (2)(a) after "mail renewal" inserted reference to inclusion of issuance of replacement plates; inserted (2)(b) requiring procedure to verify compliance; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendments — Composite Section: Chapter 542 in (1) near beginning after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (1) in two places and in (2) substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 in (1) at beginning after "The" deleted "department may allow the", after "motor vehicle" inserted "subject to renewal of registration under 61-3-312 may", and after "by mail" inserted "or by electronic methods"; in (2) in two places substituted "renewal" for "reregistration" and at end substituted "renew the vehicle's registration" for "reregister the owner's vehicle with the county treasurer or to apply for the annual registration decal"; deleted former (3) that read: "(3) The department shall adopt rules to implement the mail reregistration and registration decal application procedure"; and made minor changes in style. Amendment effective January 1, 2006.

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendment: Chapter 592 in (2) near middle after "reregistration" deleted "or recertification" and at end after "annual" substituted "registration" for "camper"; and in (3) near end before "decal" inserted "registration". Amendment effective January 1, 2004.

Applicability: Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

1997 Amendments: Chapter 121 in (1)(b), after "motorcycles", inserted "trailers, pole trailers, semitrailers" (voided by Ch. 496 amendment); and made minor changes in style. Amendment effective January 1, 1998.

Chapter 496 substituted current text concerning motor vehicle registration renewal for former provisions allowing registration by mail for only certain types of vehicles, allowing registration by mail only for vehicles registered at close of previous registration period, requiring Department to develop procedure to facilitate registration by mail, and requiring that procedure provide for reminder notice (see 1997 Session Law for former text); and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendment: Chapter 580 in (1)(a), after "light vehicles", deleted "motorcycles"; and in (1)(b), at beginning, inserted "motorcycles" and at end inserted reference to 61-3-527. Amendment effective January 1, 1996.

1993 Amendment: Chapter 365 deleted former (4) requiring, in the case of light vehicles, the form returned to the County Treasurer by the applicant with the appropriate tax and fees to contain statement of compliance with financial liability requirements of 61-6-301; and made minor changes in style.

1991 Amendments: Chapter 450 in (1), near middle of first sentence after "61-3-504(2)", inserted language concerning reregistration of motor homes and travel trailers and camper decal applications (language not codified because of rearrangement of section by Ch. 604; the substance of the language is contained in subsection (1)(b) inserted by Ch. 604); in (2), after "vehicles", inserted "motor homes, and travel trailers"; at beginning of (4) inserted "In the case of light vehicles"; in (5), near middle after "reregistration" and at end, inserted language concerning camper decal application; in (6) inserted language concerning decal application; and made minor change in style.

Chapter 604 at beginning of (1) substituted exception clause for "The department shall permit the reregistration of"; in (1)(a), after "light vehicles", inserted "motorcycles, quadricycles" and after "61-3-504(2)" deleted "with the county treasurer by mail at the option of the owner of the vehicle"; inserted (1)(b) regarding reregistration of travel trailers, campers, and motor homes; in (2), at end after "reregistration", inserted "and only if the value, age, length, or other criteria used to determine the tax or fee is available to the department"; inserted (3) requiring development of a mail reregistration procedure; in (5), near middle before "vehicle owner", deleted "light"; and made minor changes in style. Amendment effective July 1, 1991.

Effective Date — Applicability: Section 17, Ch. 604, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to motor vehicles, boats, snowmobiles, and off-highway vehicles that must be registered or reregistered on or after July 1, 1991."

1987 Amendments: Chapter 420 in (1), near beginning after "The department shall", deleted "develop a procedure to"; substituted present language in (3) for "The procedure for mail reregistration must be in effect by January 1, 1982" (also deleted by Ch. 611); and in (4) substituted "shall" for "may".

Chapter 611 in (1), after "light vehicles", inserted "and other vehicles subject to tax under 61-3-504(2)"; and in (2), after "appropriate", inserted "tax and".

1985 Amendments: Chapter 32 at beginning of (1) and (4) substituted "division" for "department of revenue".

Chapter 503 at beginning of (1) and (4) substituted reference to department of justice for reference to division of motor vehicles.

1985 Statement of Intent: The statement of intent attached to Ch. 32, L. 1985, provided: "This amendment to 61-3-535 transfers rulemaking authority to the division of motor vehicles for the purpose of administering laws relating to light vehicle reregistration by mail. This section currently grants this rulemaking authority to the department of revenue.

The office of the legislative auditor recommended in April 1984, in a performance audit, to request the change of rulemaking authority. The motor vehicle division has been and is currently performing the function described in 61-3-535. It is the intent of this amendment to correct this situation by clearly placing rulemaking authority for light vehicle reregistration by mail with the division of motor vehicles. Rules adopted should implement the procedure currently being used by the division performing reregistration by mail."

1983 Statement of Intent: The statement of intent attached to SB 355 (Ch. 614, L. 1981), provided: "It is the purpose of this act to replace the present property tax on automobiles and light trucks (three-quarter ton capacity or less) by a license fee based on the age and weight of the vehicle. It is intended that this system commence with registration of vehicles on January 1, 1982.

In order to facilitate registration and to reduce energy consumption, the Department of Revenue is mandated to develop a procedure for mail registration. More precisely, the procedure relates to reregistration. Registration for the first time, as well as transfers of registration, will still be done in person at the office of the county treasurer. It is anticipated that the reregistration procedure will involve mailing to the vehicle owner an application specifying the vehicle and the various fees that are due for registration. The owner will sign the application and return the signed application and the fee to the county treasurer. Upon receipt of the signed application, the treasurer shall send the applicant a valid registration and tabs to be attached to the license plates. The rules to be adopted by the Department of Revenue should provide the details to implement the above described procedure. The emphasis should be on the convenience of the vehicle owner.

The financial aid provisions of the bill are designed to provide a mechanism to give financial relief to local governments due to the loss of revenue from automobile and light truck property tax."

61-3-537. Local option motor vehicle tax.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) before "vehicles" inserted "motor"; in (1) in two places and in (2) substituted "61-3-321(2) or" for "61-3-560 through"; and in (1), (2), and (3) in first and second sentences substituted "local option motor vehicle tax" for "local vehicle tax". Amendment effective January 1, 2006.

2002 Amendment: Chapter 13 in (2) in second sentence substituted "The tax or fee is distributed" for "The first priority of the local vehicle tax or flat fee is for district court funding, and the tax or fee is distributed". Amendment effective August 16, 2002.

Termination Provision Repealed: Section 34, Ch. 13, Sp. L. August 2002, repealed sec. 4, Ch. 749, L. 1991, sec. 1, Ch. 217, L. 1993, and secs. 2 and 3, Ch. 217, L. 1995, which terminated the 1991 amendments to this section July 1, 2005. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided: "(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002."

2001 Amendment: Chapter 191 in version effective July 1, 2005, in (2) after "distributed in the same manner" inserted "as provided in 61-3-509(1)(b)". The code commissioner has deleted the subsection reference to reflect the composite version of 61-3-509. Amendment effective April 3, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

2000 Amendment by Referendum Revised: Chapter 515, L. 1999, amended this section, but the amendments were revised by sec. 16(3), Ch. 11, Sp. L. May 2000, prior to approval of Ch. 515 by the electorate.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

2000 Amendment by Referendum: (Temporary version) Section 16(3), Ch. 11, in (1) substituted "the registration fee imposed under 61-3-560 through 61-3-562" for "a tax under 61-3-504", after "61-3-503" inserted "or a local flat fee", and at end substituted "fee imposed under 61-3-560 through 61-3-562" for "tax imposed under 61-3-504"; in (2) in first sentence after "tax" inserted "or flat fee" and at end substituted "fee imposed under 61-3-560 through 61-3-562" for "tax imposed under 61-3-504" and in second sentence after "vehicle tax" inserted "or flat fee" and after "tax" inserted "or fee"; and in (3) in two places after "vehicle tax" inserted "or flat fee" and in two places after "tax" inserted "or fee". Amendment effective January 1, 2001.

(Version effective July 1, 2005) Section 16(3), Ch. 11, in (1) substituted "the registration fee imposed under 61-3-560 through 61-3-562" for "a tax under 61-3-504" and at end substituted "fee imposed under 61-3-560 through 61-3-562" for "tax imposed under 61-3-504"; and in (2) after "tax" inserted "or flat fee" and near middle substituted "fee imposed under 61-3-560 through 61-3-562" for "tax imposed under 61-3-504".

1999 Amendment: (Temporary version) Chapter 180 in (1) increased rate from 0.5% to 0.7%; and in (3) substituted language imposing, revising, or revoking a local vehicle tax for former language that read: "(3) The governing body of a county may impose, revise, or revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution. The resolution may provide for the distribution of the local vehicle tax." Amendment effective January 1, 2000.

(Version effective July 1, 2005) In (1) increased rate from 0.5% to 0.7%; in (3) substituted language imposing, revising, or revoking a local vehicle tax for former language that read: "(3) The governing body of a county may impose, revise, or revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution."

Applicability: Section 6, Ch. 180, L. 1999, provided: "[This act] applies to registration periods beginning after December 31, 1999, and to fleet registrations after December 31, 1999."

1997 Amendment: (Both versions) Chapter 496 in (1) and (2), in three places after "61-3-504", deleted "(2)"; and in (1), near middle before "tax", deleted "property". Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendment: Chapter 217 in (2) of temporary version, in second sentence after "The", inserted "first priority of the" and after "tax" inserted "is for district court funding, and the tax"; and in (3) of both versions, after "impose", inserted "revise, or revoke", after "tax" deleted "for a fiscal year", and after "July 1" deleted "of the fiscal year". Amendment effective March 24, 1995.

Extension of Termination Date: (1) Section 2, Ch. 217, L. 1995, amended sec. 1, Ch. 217, L. 1993, by extending the termination date imposed by that section to June 30, 2005. Effective March 24, 1995.

(2) Section 3, Ch. 217, L. 1995, amended sec. 4, Ch. 749, L. 1991, by extending the termination date imposed by that section to June 30, 2005. Effective March 24, 1995.

Extension of Termination Date: Section 1, Ch. 217, L. 1993, amended sec. 4, Ch. 749, L. 1991, by extending the termination date imposed by that chapter. Effective March 29, 1993.

1991 Amendment: In (2), at beginning of second sentence, inserted "The local vehicle tax" and after "is distributed" deleted "in the same manner, based on the registration address of the owner of the motor vehicle"; inserted (2)(a) and (2)(b) providing the percentages of distribution of the local vehicle tax; in (3) inserted second sentence allowing the resolution to provide for distribution of the tax; and made minor changes in style. Amendment effective July 1, 1991, and terminates June 30, 1993.

Effective Date — Applicability: Section 3, Ch. 749, L. 1991, provided: "[This act] is effective July 1, 1991, and applies to district court expenditures made after June 30, 1991."

Termination: Section 4, Ch. 749, L. 1991, provided: "[This act] terminates June 30, 1993."

Termination Date Repealed: Section 40, subsection (3)(a), Ch. 611, L. 1987, which provided that the local option vehicle tax terminated July 1, 1989, was repealed by sec. 2, Ch. 349, L. 1989, making 61-3-537 a permanent provision.

61-3-550. Motor vehicle information technology system account.

Compiler's Comments

2015 Amendment: Chapter 398 in (2)(a) substituted "2019" for "2016"; and in (2)(b) substituted "2026" for "2018". Amendment effective October 1, 2015.

2007 Amendment: Chapter 50 inserted (2)(a) providing that until June 30, 2016, $4 of the fee for a security interest or other lien be deposited in the account; in (2)(b) at beginning inserted "Until June 30, 2018" and after "pursuant to" substituted "61-3-103(9)" for "61-3-103"; and made minor changes in style. Amendment effective July 1, 2007.

Termination Provision Repealed: Section 8, Ch. 50, L. 2007, repealed sec. 15, Ch. 562, L. 2003, which would have terminated the 2003 amendments to this section June 30, 2013. Effective July 1, 2007.

2003 Amendments — Composite Section: Chapter 562 in (2) after "department" deleted "of revenue" and after "61-3-103" inserted "and $5 of each fee received under 61-3-203 or 61-3-204 for a certificate of title". Amendment effective July 1, 2003, and terminates June 30, 2013.

Chapter 610 inserted (3)(c) relating to transfers to the general fund; and made minor changes in style. Amendment effective July 1, 2003, and terminates June 30, 2005.

The amendments to this section made by sec. 9, Ch. 562, L. 2003, were rendered void by sec. 12(2), Ch. 562, L. 2003, a coordination section.

Termination Provision Repealed: Section 81, Ch. 477, L. 2003, repealed sec. 9, Ch. 394, L. 2001, which terminated this section June 30, 2011. Effective January 1, 2004.

Code Commissioner Instruction: Pursuant to sec. 47, Ch. 257, L. 2001, in (2) the code commissioner changed "state treasurer" to "department of revenue".

Deposit of Loan Proceeds — Capital Projects Appropriation: Section 5, Ch. 394, L. 2001, provided: "(1) The proceeds of any loan from the board of investments to the department of justice for creation of a new motor vehicle information technology system must be deposited in the capital projects fund.

(2) There is appropriated from the capital projects fund to the department of justice up to $4.5 million for the motor vehicle information technology system described in 17-5-2001.

(3) The department of justice is prohibited from using any of the proceeds from the loan for the motor vehicle information technology system authorized by 17-5-2001 for agency current level operating expenses.

(4) The appropriation continues until the project is completed in accordance with 17-7-212."

Effective Date: Section 8(1), Ch. 394, L. 2001, provided that this section is effective July 1, 2001.

Termination: Section 9, Ch. 394, L. 2001, provided that this section terminates June 30, 2011.

61-3-562. Permanent registration — transfer of light vehicle ownership — rules.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 562, L. 2023. Amendment effective January 1, 2024.

2013 Amendment: Chapter 393 in (1)(a) inserted "or collegiate license plates under 61-3-465"; deleted former (1)(b)(iv) that read: "(iv) collegiate license plates issued under 61-3-465"; and made minor changes in style. Amendment effective May 6, 2013.

2009 Amendment: Chapter 413 in (1)(a) in introductory clause near end after "as applicable" deleted "when personalized plates under 61-3-406 are being issued or renewed"; inserted (1)(a)(ii) regarding insurance verification fee; and made minor changes in style. Amendment effective January 1, 2010.

2007 Amendments — Composite Section: Chapter 329 in (1)(a) near middle deleted "the applicable fees imposed for each of the following" and after "applicable" inserted "when personalized plates under 61-3-406 are being issued or renewed, either"; inserted (1)(a)(i) concerning original fee and four times renewal fee; in (1)(a)(ii) at beginning inserted "five times the" and at end deleted "under 61-3-406"; and made minor changes in style. Amendment effective January 1, 2008.

Chapter 392 in (1)(a) at beginning deleted "Except as provided in subsection (1)(b)" and near end after "61-3-412" inserted "if applicable, the administrative fee and the annual one-time only donation fee for a generic specialty license plate under 61-3-480"; deleted former (1)(b)(v) that read: "(v) generic specialty license plates issued under 61-3-479"; and made minor changes in style. Amendment effective January 1, 2008.

Applicability: Section 6, Ch. 392, L. 2007, provided: "[This act] applies to motor vehicles and trailers registered, and license plates that are issued or renewed, on or after [the effective date of this act]." Effective January 1, 2008.

2005 Amendments — Composite Section — Code Commissioner Correction: Chapter 464 in (1)(a) in introductory clause near middle increased fee from $50 to $52 (amendment rendered void by Ch. 542 amendment); deleted former (1)(b) that read: "(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709"; in (4)(a) increased fee from $50 to $52 (amendment rendered void by Ch. 542 amendment); and made minor changes in style. Amendment effective July 1, 2005.

Chapter 542 in (1)(a) near middle after "provided in" substituted "61-3-321(2)" for "61-3-561", before "vehicle" inserted "light", increased fee from $50 to $87.50, and near end after "under" deleted "61-3-321 and"; deleted former (1)(a)(i) and (1)(a)(ii) that read: "(i) junk vehicle disposal fees under 15-1-122(3)(a);

(ii) weed control fees under 15-1-122(3)(b)"; in (1)(a)(i) before "vehicle" inserted "motor"; deleted former (1)(a)(vi) and (1)(b) that read: "(vi) senior citizens and persons with disabilities transportation services fees as provided in 61-3-321(6).

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709"; in (1)(b) before "vehicle" inserted "light"; in (3) near middle substituted "registration fees" for "fees under 61-3-561"; deleted former (4)(a) that read: "(a) distribute the $50 registration fee collected under this section as provided in 61-3-509"; in (4) near beginning after "remit to" substituted "the state" for "the department of revenue" and in two places before "vehicle" inserted "motor"; in (5)(a) in three places and in (5)(b) before "vehicle" inserted "light"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 deleted former (1)(a)(i) through (1)(a)(iii) that read: "(i) junk vehicle disposal fees under 15-1-122(3)(a);

(ii) weed control fees under 15-1-122(3)(b);

(iii) the former county motor vehicle computer fees under 61-3-511;"; in (1)(a)(ii) after "applicable" deleted "special license plate fees under 61-3-332 and"; deleted former (1)(c)(iii) that read: "(iii) license plates bearing a wheelchair design as a symbol of a person with a disability issued under 61-3-332(11)"; in (3), (5)(a), and (5)(b) near beginning substituted "motor vehicle" for "vehicle"; in (4) in first sentence near end substituted "61-3-321(2)" for "61-3-321(3)"; in (5)(b) near end substituted "and 61-3-216 and register the motor vehicle" for "and file an application for registration"; and made minor changes in style. Amendment effective January 1, 2006.

In (5)(b) the code commissioner substituted "light vehicle" for "motor vehicle" in the insertion made by Ch. 542 in order to reflect the changes made by Ch. 596.

Contingent Termination — Ineffective: Section 24, Ch. 191, L. 2001, provided: "The provisions of 61-3-321(5)(b) and (5)(c) [deleted by sec. 255(6), Ch. 574, L. 2001], 61-3-527(4)(b) [now repealed], and 61-3-562(1)(b) terminate upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709." The deletion of subsection (1)(b) by Ch. 464, L. 2005, rendered this provision ineffective.

2003 Amendments — Composite Section: Chapter 143 in (1)(a) near end of introductory clause after "61-3-321" inserted "and 61-3-412". Amendment effective October 1, 2003.

Chapter 280 in (1) at beginning inserted exception clause; in (1)(a)(v) at beginning after "applicable" inserted "special"; deleted former (1)(a)(vi) and (1)(a)(vii) that read: "(vi) if applicable, the amateur radio operator license plate fee under 61-3-422;

(vii) if applicable, the annual scholarship donation fee under 61-3-465"; inserted (1)(c) prohibiting certain series of license plates from use for permanent vehicle registration; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 477 in (5)(b) substituted "title" for "ownership". Amendment effective January 1, 2004.

Applicability: Section 19(2), Ch. 280, L. 2003, provided: "[Sections 7, 8, and 13 through 16] [61-3-473, 61-3-474, 61-3-479, 61-3-480, 61-3-481, and 61-3-562] apply to the registration of motor vehicles and the display of license plates issued after June 30, 2003."

Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2002 Amendment: Chapter 13 in (4)(b) in first sentence inserted exception for the local option vehicle tax or flat fee and inserted last sentence on retention of the local option tax or flat fee. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

2001 Amendments — Composite Section: Chapter 191 in (4)(b) after "this section for the purposes of" substituted "61-3-321(3)" for "61-3-121(5)"; and made minor changes in style. Amendment effective April 3, 2001.

Chapter 337 inserted (1)(a)(viii) concerning senior citizens and persons with disabilities transportation services fees; and made minor changes in style. Amendment effective April 21, 2001.

Code Commissioner Instruction: Pursuant to sec. 47, Ch. 257, L. 2001, in (4)(b) the code commissioner changed "state treasurer" to "department of revenue".

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

Applicability: Section 11, Ch. 337, L. 2001, provided: "[This act] applies to registrations of motor vehicles occurring after December 31, 2001."

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

Attorney General's Opinions

Light Vehicle Registration Fee Not Assessable Against Certain Indian-Owned Vehicles or Vehicles Owned by Nonresident Active Duty Military Personnel: Although designated as a fee, the light vehicle registration fee enacted by referendum in 1999 actually functions as a three-tiered, value-based annual motor vehicle tax. The fee is not related to the cost of administering the vehicle registration system, and fee revenue is distributed in essentially the same manner as the sales taxes and value taxes that it replaced. Thus, sharing many of the salient characteristics of and being substantively indistinguishable from the taxes that it replaced, the fee is functionally a tax and, like the taxes that it replaced, may not be levied against tribally owned vehicles or vehicles owned by enrolled tribal members residing on their reservations or against the personal vehicles of nonresident active duty military personnel stationed in Montana. 48 A.G. Op. 24 (2000). See also 39 A.G. Op. 45 (1981).

61-3-570. Local option flat fee.

Compiler's Comments

Applicability: Section 2, Ch. 325, L. 2005, amended sec. 50, Ch. 592, L. 2003, to read: "Section 50. Applicability. [This act] applies to:

(1) registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004;

(2) vehicle counts for the purposes of 15-1-122(4), regardless of whether a vehicle was registered or reregistered prior to January 1, 2004."

Retroactive Applicability: Section 4, Ch. 325, L. 2005, provided: "(1) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to the registration, reregistration, fees, and taxes on vehicles and vessels registered on or after January 1, 2004.

(2) [Section 2] [not codified] applies retroactively, within the meaning of 1-2-109, to vehicle counts made after January 1, 2004."

2003 Amendments — Composite Section: Chapter 114 in (1) in first sentence and in (2) before "flat fee" inserted "local option"; and in (1) in second sentence before "fee" inserted "local option flat". Amendment effective October 1, 2003.

Chapter 592 in (1) at beginning of first sentence after "A" inserted "local option" and after "each" inserted "light"; inserted (2)(a) and (2)(b) concerning applicability of the one-time fee; in (3) at beginning inserted "Fees collected under this section must be"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 50, Ch. 592, L. 2003, provided: "[This act] applies to vehicles and vessels registered on or after January 1, 2004."

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

61-3-571. Definitions.

Compiler's Comments

Effective Date: Section 5, Ch. 164, L. 2023, provided: "[This act] is effective July 1, 2023."

Applicability: Section 6, Ch. 164, L. 2023, provided that this section applies to electric vehicles that must be registered or reregistered after June 30, 2023.

61-3-572. Additional electric vehicle registration fees — disposition.

Compiler's Comments

Effective Date: Section 5, Ch. 164, L. 2023, provided: "[This act] is effective July 1, 2023."

Applicability: Section 6, Ch. 164, L. 2023, provided that this section applies to electric vehicles that must be registered or reregistered after June 30, 2023.

61-3-573. Gross vehicle weight permanent registration fee — electric vehicles — plug-in hybrid electric vehicles.

Compiler's Comments

Effective Date: Section 5, Ch. 562, L. 2023, provided: "[This act] is effective January 1, 2024."

2023 Enactment — Coordination: The enactment of this section by sec. 1, Ch. 562, L. 2023, was replaced by sec. 4, Ch. 562, L. 2023, a coordination section.

Part 6
Penalties — Enforcement

61-3-601. Penalty for violations.

Compiler's Comments

1991 Amendment: Increased maximum fine from $25 to $500; and made minor changes in style.

Case Notes

Power of State to Enact and Courts to Enforce Laws Regulating Motor Vehicles: Appellant, appearing pro se, challenged as unconstitutional laws requiring driver's license, mandatory insurance, and vehicle registration. The Supreme Court held that the issues raised by the appellant were frivolous, unreasonable, and groundless in that the court had previously recognized the state's power to regulate motor vehicles in the interests of public safety at the expense of individual rights. Whitefish v. Hansen, 237 M 105, 771 P2d 976, 46 St. Rep. 657 (1989).

61-3-602. Enforcement.

Compiler's Comments

1999 Amendment: Chapter 409 at end substituted "chapter 4, part 1" for "61-4-101 through 61-4-105". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-3-603. Penalty for alteration or forgery of certificate of ownership or certificate of title — assignment.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning after "motor vehicle" inserted "trailer, semitrailer, or pole trailer". Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 in first sentence after "ownership" inserted "or certificate of title"; in second sentence after "imprisonment" deleted "in any penal institution within the state" and at end deleted "in the discretion of the court"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

61-3-604. Penalty for altering identification number.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; and in (2) in first sentence near beginning substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle" and near middle substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles". Amendment effective January 1, 2006.

1991 Amendments: Chapter 272 at end of (1), after "is", substituted final clause relating to fine amount and imprisonment term for "guilty of a misdemeanor"; and in (2), in first sentence after "electrically propelled vehicles", inserted "and vehicles bearing a state-assigned identification number in accordance with 61-3-107" and after "is" substituted "punishable" for "guilty of a misdemeanor and upon conviction thereof shall be punished" and at end of last sentence, after "both", deleted "such fine and imprisonment".

Chapter 724 in (2), near middle of first sentence after "defaced", deleted "with the exception of electrically propelled vehicles" (The Code Commissioner has retained the language "with the exception of" to reflect the inclusion of electrically propelled vehicles and the exclusion of vehicles bearing a state vehicle identification number.); and made minor change in style.

1981 Amendment: Pursuant to sec. 7, Ch. 198, L. 1981, inserted language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment.

Case Notes

Stolen Property Released Prior to Trial — No Violation of Due Process: The defendant was charged with stealing a customized motorcycle after it was found on his property with the vehicle identification number scratched off. The motorcycle was later released to its owner, but before the defendant was charged. At trial, the defendant filed a motion to dismiss the charge, alleging that the state had violated his right to due process by preventing him from obtaining exculpatory evidence. However, the District Court denied the motion and the defendant was convicted. On appeal, the Supreme Court affirmed, agreeing that the defendant had not set forth a theory under which the return of the motorcycle would have produced any exculpatory evidence. St. v. Fillion, 2020 MT 283, 402 Mont. 84, 475 P.3d 725.

61-3-607. Penalty for tampering with odometer or violating odometer statement requirements.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) in second sentence before "vehicle" inserted "motor". Amendment effective January 1, 2006.

1991 Amendment: In (2), at end of first sentence after "is", substituted final clause relating to fine amount and imprisonment term for "guilty of a misdemeanor" and in middle of second sentence, after "shall", deleted "place the dealer in a 1-year probationary license status upon a first conviction. For a second or subsequent conviction of a violation of 61-3-206 or subsection (1) of this section, the department may suspend or".

1985 Amendment: In (2) substituted reference to department of justice for reference to division of motor vehicles in three places.

Part 7
Registration of Foreign Vehicles

Part Compiler's Comments

Severability Clause: Section 25, Ch. 206, L. 1963, was a severability clause.

Part Administrative Rules

Title 18, chapter 8, subchapter 2, ARM Proportional registration.
ARM 18.8.202 Motor carriers operating interstate.
Title 18, chapter 8, subchapter 3, ARM Reciprocity.

61-3-701. Out-of-state vehicles used in gainful occupation to be registered — reciprocity — decal fee.

Compiler's Comments

2017 Amendment: Chapter 323 in (2) in second sentence near middle substituted "be displayed on the rear of the motor vehicle" for "be displayed upon the motor vehicle" and at end inserted "and may not be obstructed from plain view"; inserted (4)(b) concerning motor vehicle registered by insurance company to conduct business in the state; inserted (5) concerning fee for registration decals; and made minor changes in style. Amendment effective May 4, 2017.

2015 Amendment: Chapter 153 in (2) in first sentence after "receipt" deleted "license plates" and in second sentence before "registration decal" deleted "license plates, with attached"; and made minor changes in style. Amendment effective January 1, 2016.

2005 Amendments — Composite Section — Coordination: Section 125, Ch. 542, in (1) near beginning of first sentence after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (1) in five places, (2) in two places, (3), and (4) substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; in (1) in second sentence near middle inserted reference to 61-3-321(2) and deleted references to 61-3-560 and 61-3-561; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 157, Ch. 596, L. 2005, a coordination section, in (1) at beginning of first sentence substituted "A person may not operate" for "Before", substituted "on the highways of this state if the vehicle is used" for "may be operated on the highways of this state", after "profit or" deleted "before the owner or user of the vehicle uses the vehicle", substituted "person" for "owner or user", near middle substituted "unless the motor vehicle, trailer, semitrailer, or pole trailer is registered" for "the owner of the vehicle shall register", and near end substituted "61-3-321, 61-3-529, or 61-3-537" for "15-8-201, 15-8-202, 15-24-301, 61-3-529, 61-3-537, or 61-3-560 and 61-3-561" and inserted second sentence concerning quarterly payment; in (2) at end of first sentence substituted "license plates and a registration decal indicating the calendar quarter and year for which the motor vehicle, trailer, semitrailer, or pole trailer is registered" for "and the proper license plates or other identification markers" and in second sentence substituted "with attached registration decal" for "or identification markers"; and in (4) before "vehicle" inserted "motor".

Section 99, Ch. 596, in (1) in first sentence substituted "person" for "owner or user", in second sentence inserted reference to 61-3-321 and deleted references to 15-8-201, 15-8-202, and 15-24-301, and inserted third sentence concerning quarterly payment of taxes and fees; in (2) in first and second sentences substituted "motor vehicle" for "vehicle", in first sentence at end substituted "license plates, and a registration decal indicating the calendar quarter and year for which the motor vehicle is registered" for "and the proper license plates, or other identification markers", and in second sentence near beginning after "license plates" substituted "with attached registration decal" for "or identification markers"; in (3) in second sentence and in (4) substituted "motor vehicle" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 157, Ch. 596, L. 2005, a coordination section, in (1) at beginning of first sentence substituted "A person may not operate" for "Before", after "profit or" deleted "before the owner or user of the vehicle uses the vehicle", substituted "person" for "owner or user", near middle substituted "unless the motor vehicle, trailer, semitrailer, or pole trailer is registered" for "the owner of the vehicle shall register", and near end substituted "61-3-321, 61-3-529, or 61-3-537" for "15-8-201, 15-8-202, 15-24-301, 61-3-529, 61-3-537, or 61-3-560 and 61-3-561" and inserted second sentence concerning quarterly payment; in (2) at end of first sentence substituted "license plates and a registration decal indicating the calendar quarter and year for which the motor vehicle, trailer, semitrailer, or pole trailer is registered" for "and the proper license plates or other identification markers" and in second sentence substituted "with attached registration decal" for "or identification markers"; and in (4) before "vehicle" inserted "motor".

2003 Amendment: Chapter 477 in (1) at beginning of first sentence substituted "motor vehicle that is registered in another jurisdiction" for "foreign licensed motor vehicle" and at end substituted "register the vehicle at the office of a county treasurer or an authorized agent of the department" for "apply to a county treasurer for registration upon an application form furnished by the department" and in second sentence near beginning after "treasurer" inserted "or the department's authorized agent" and at end substituted "or authorized agent shall enter the vehicle for registration purposes only on the electronic registry maintained by the department under 61-3-101" for "shall accept the application for registration and shall collect the regular license fee required for the vehicle"; in (2) in first sentence after "treasurer" substituted "or the department's authorized agent shall issue to the vehicle owner a registration receipt and" for "shall issue to the applicant a copy of the certificate entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the department. The treasurer shall at the same time issue to the applicant" and at end of second sentence substituted "registration period indicated on the receipt" for "effective period of the license"; in (3) in second sentence substituted "title" for "ownership" and at end substituted "a vehicle registered under this section" for "this type of registration"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2000 Amendment by Referendum: Chapter 515, L. 1999, in (1) in second sentence after "payment of" deleted "motor vehicle taxes", after "taxes" inserted "or registration fees", deleted reference to 61-3-504, and inserted reference to 61-3-560 and 61-3-561; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1997 Amendment: Chapter 496 in (1), in second sentence near middle, substituted "motor vehicle taxes or fees in lieu of taxes" for "property taxes" and after "61-3-504" inserted "61-3-529, or"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1987 Amendment: In second sentence of (1), after "15-24-301", inserted "61-3-504, or 61-3-537" and deleted "or the payment of the light vehicle license fee as provided by 61-3-532 or the fee in lieu of tax as provided by 61-3-541".

1985 Amendments: Chapter 140 in (1) in last sentence, after "15-8-201", substituted "15-8-202" for "through 15-8-203"; and in (2) in first sentence, substituted "copy of the certificate" for "copy of the application".

Chapter 503 in (1) and (2) substituted references to department of justice for references to division of motor vehicles.

Chapter 516 in (1) near end of second sentence, after "61-3-532", inserted "or the fee in lieu of tax as provided by 61-3-541" (effective January 1, 1986).

1981 Amendment: Inserted "if appropriate" after "the payment of property taxes" near the end of (1); inserted "or the payment of the light vehicle license fee as provided by 61-3-532" after "15-8-203 or 15-24-301" near the end of (1); substituted "Owner's Certificate of Registration and Payment Receipt" for "Owner's Certificate of Registration and Tax Receipt" in the first sentence of (2).

61-3-702. Foreign vehicles to display license plates.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning after "motor vehicles" inserted "trailers, semitrailers, or pole trailers"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-703. Purpose.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; after "set forth" inserted "in 61-3-701 and 61-3-702"; near end substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "automobiles"; and made minor changes in style. Amendment effective January 1, 2006.

1981 Amendment: Inserted "taxation" after "for the purpose of" near the beginning of the section.

61-3-704. Penalty.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-707. Health care professional exception.

Compiler's Comments

2005 Amendment: Chapter 596 deleted former (1) that read: "(1) (a) Before a motor vehicle that has been assessed a fee pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of fees shall apply for and obtain a window decal provided by the department.

(b) Decals must be color-coded to distinguish the four quarterly registration periods of the year.

(c) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

(d) There is a $2 fee for each decal, and money collected from this fee must be deposited to the state general fund. The $2 fee is in addition to the registration fee.

(e) A current window decal must be displayed on the lower right-hand corner of the windshield"; in (1) inserted second sentence concerning decal fee; in (3) in first sentence near middle substituted "renewal of registration" for "reregistration"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 158, Ch. 596, L. 2005, a coordination section, the Ch. 542 amendments were rendered void.

2001 Amendments — Composite Section: Chapter 436 in (2)(b) before "health care facility" inserted "Montana" and after "facility" substituted "that is located in an area that has been" for "in a rural, medically underserved area that experiences difficulty in recruiting and retention of health care professionals"; inserted (2)(b)(i) requiring verification that person is employed by facility located in area designated by secretary of federal department of health and human services as health professional shortage area; inserted (2)(b)(ii) requiring verification that person is employed by facility determined to have critical shortage of nurses; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 574 in (1)(d) at end of first sentence substituted "state general fund" for "county general fund"; and made minor changes in style. Amendment effective July 1, 2001.

2000 Amendment by Referendum — Code Commissioner Correction: Chapter 515, L. 1999, in (1)(a) after "motor vehicle" substituted "assessed a fee" for "taxed" and after "payment of" substituted "fees" for "taxes"; in (1)(d) at end of second sentence substituted "registration fee" for "tax"; and made minor changes in style. Amendment effective November 7, 2000. The amendments made by Ch. 515 were originally made in subsections (1) and (4), which became subsections (1)(a) and (1)(d) after the codification of Ch. 246, L. 1999.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

1999 Amendment: Chapter 246 at end of (1)(a) inserted "provided by the department"; inserted (2) requiring health care professional vehicle exempted from taxation to display current window decal, requiring employer verification, providing reregistration timeline, and specifying correct placement of decal; and made minor changes in style. Amendment effective July 1, 1999.

61-3-708. Cooperative or reciprocal registration — filing of insurance — fee.

Compiler's Comments

2007 Amendment: Chapter 400 in (1) near middle after "registration of" inserted "intrastate", after "international motor carriers" inserted "private motor carriers, and freight forwarder and broker industries", and after "and" inserted "may"; in (2)(a) in first sentence near middle after "rule on" substituted "a motor carrier or freight forwarder or broker industry registered under an agreement entered into as provided in" for "an interstate or international motor carrier for the administration of"; in (2)(b) at end substituted "state special revenue fund for use by the department for motor carrier safety assistance" for "general fund"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 542 in (2)(a) in second sentence near middle after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; and made minor changes in style. Amendment effective January 1, 2006.

1995 Statement of Intent: The statement of intent attached to Ch. 358, L. 1995, provided: "A statement of intent is required for this bill because [section 5] [61-3-710] grants rulemaking authority to the department of transportation. It is the intent of [section 1] [61-3-708] to transfer the administration of the single-state registration system for interstate motor carriers from the public service commission to the department of transportation. At a minimum, the rules must address:

(1) the implementation of the single-state registration system currently administered by the public service commission; and

(2) imposition of a fee to defray the costs of administering the single-state registration permit."

Effective Date: Section 13, Ch. 358, L. 1995, provided: "[This act] is effective July 1, 1995."

Administrative Rules

ARM 18.8.202 Motor carriers operating interstate.

61-3-710. Rulemaking authority.

Compiler's Comments

2021 Amendment: Chapter 89 at end after "61-3-708" deleted "and 61-3-709". Amendment effective October 1, 2021.

2009 Amendment: Chapter 16 near middle after "administration of" substituted "cooperative or reciprocal vehicle registration" for "the single-state registration system". Amendment effective March 17, 2009.

1995 Statement of Intent: The statement of intent attached to Ch. 358, L. 1995, provided: "A statement of intent is required for this bill because [section 5] [61-3-710] grants rulemaking authority to the department of transportation. It is the intent of [section 1] [61-3-708] to transfer the administration of the single-state registration system for interstate motor carriers from the public service commission to the department of transportation. At a minimum, the rules must address:

(1) the implementation of the single-state registration system currently administered by the public service commission; and

(2) imposition of a fee to defray the costs of administering the single-state registration permit."

Effective Date: Section 13, Ch. 358, L. 1995, provided: "[This act] is effective July 1, 1995."

Administrative Rules

ARM 18.8.202 Motor carriers operating interstate.

61-3-711. Declaration of policy.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning after "execution of" deleted "motor vehicle"; near middle substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-712. Definitions.

Compiler's Comments

2005 Amendment: Chapter 542 substituted apportionable motor vehicle for apportionable vehicle as defined term; in definitions of apportionable motor vehicle and properly registered in six places substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; in definition of fleet before "vehicles" inserted "motor"; in definition of preceding year at end substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; in definition of properly registered in (a)(ii) near beginning and in (a)(iii) before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

1995 Amendment — Phrase Change: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in (6)(b). Amendment effective July 1, 1995.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: In first sentence of (5), substituted "18 months" for "16 months".

1981 Amendment: Substituted "Apportionable" for "Commercial", "used or intended for use" for "operated", and "jurisdiction" for "state" in (1); substituted "one" for "two" in (2) and "apportionable" for "commercial" in (2), (6)(a)(ii), and (6)(a)(iii).

Administrative Rules

ARM 18.8.101 Definitions.

61-3-713. Authority of department of transportation.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-3-714. Authority for reciprocity agreements, provisions, reciprocity standards.

Compiler's Comments

2005 Amendment: Chapter 542 in five places substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; and made minor changes in style. Amendment effective January 1, 2006.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Administrative Rules

Title 18, chapter 8, subchapter 2, ARM Proportional registration.
Title 18, chapter 8, subchapter 3, ARM Reciprocity.

61-3-715. Base state registration reciprocity.

Compiler's Comments

2005 Amendment: Chapter 542 in three places substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-716. Proportional registration of fleet motor vehicles.

Compiler's Comments

2005 Amendment: Chapter 542 in six places substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; in last sentence in (1) in two places substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

1995 Amendment: Chapter 42 in (2) inserted second sentence allowing adoption of rules regarding a change of registration for a fleet under certain circumstances; and made minor changes in style. Amendment effective January 1, 1996.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Administrative Rules

Title 18, chapter 8, subchapter 2, ARM Proportional registration.
ARM 18.8.205 Change of registration period.
Title 18, chapter 8, subchapter 3, ARM Reciprocity.

61-3-717. Declarations of extent of reciprocity.

Compiler's Comments

2005 Amendment: Chapter 542 in two places substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-718. Extension of reciprocal privileges to lessees authorized.

Compiler's Comments

2005 Amendment: Chapter 542 near middle substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-719. Automatic reciprocity.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning of first sentence substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle" and near end and in second sentence substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-720. Proportional registration not exclusive.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles" and near middle substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-721. Proportional registration of motor fleet vehicles, registration periods, application, fee formula, and payment — permanent registration of trailer and semitrailer fleets — transfer of ownership — transfer of license plates — definition.

Compiler's Comments

2007 Amendment: Chapter 44 in (6) at end of second sentence and in (8) near middle of second sentence substituted "registration decal" for "sticker". Amendment effective October 1, 2007.

2005 Amendments — Composite Section — Coordination: Section 141, Ch. 542, in (1) in second sentence and (5)(b) substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; in (4) in two places before "vehicles" inserted "motor"; in (5)(a) after "applicable agreement" inserted "arrangement, or declaration"; in (6)(a), (6)(b), (6)(c), (6)(d), (7) in two places, (8)(a) in two places, (8)(b), (8)(c) in two places, and (8)(d) in two places after "semitrailer" inserted reference to pole trailer; in (6)(b) at end substituted "of $82.50" for "equal to five times the amount prescribed by 61-3-321"; and made minor changes in style. Amendment effective January 1, 2006.

Section 101, Ch. 596, in (1) inserted third sentence concerning processing of application for certificate of title by department of transportation. Amendment effective January 1, 2006.

Pursuant to sec. 159, Ch. 596, L. 2005, a coordination section, in (1) in second sentence and (5)(b) substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; in (4) in two places before references to vehicle inserted "motor"; in (5)(a) after "applicable agreement" inserted "arrangement, or declaration"; deleted former (6) through (8) that read: "(6) (a) Each trailer and semitrailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.

(b) Each trailer and semitrailer in the fleet for which registration is requested must be assessed a registration fee equal to five times the amount prescribed by 61-3-321.

(c) Each trailer or semitrailer must be issued a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.

(d) Registration of a trailer or semitrailer must be renewed on or before the last day of the month for the designated 5-year registration period.

(7) Upon the transfer of ownership of a trailer or semitrailer, the registration of the trailer or semitrailer expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.

(8) (a) If the transferor applies for the registration of another trailer or semitrailer at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with the department of transportation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name the original license plates to the trailer or semitrailer were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.

(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer or semitrailer for which the license plates were originally issued.

(c) Upon transfer of the license plates, the registration of the trailer or semitrailer from which the license plates were transferred expires. The registration for the trailer or semitrailer must be surrendered to the department of transportation with the application for transfer.

(d) License plates issued for a trailer or semitrailer under this section may be transferred only to a replacement trailer or semitrailer. A license plate fee may not be assessed upon transfer of a license plate"; inserted (6) concerning permanent registration of trailer, semitrailer, and pole trailer fleets; inserted (7) concerning one-time fee; inserted (8) concerning trailers, semitrailers, and pole trailers removed from fleet; and made minor changes in style.

Sections 1 and 2, Ch. 315, L. 2005, were rendered void by sec. 159, Ch. 596, L. 2005, a coordination section.

1999 Amendment: Chapter 51 in (6)(a) and (6)(b) at beginning deleted "Subject to section 4, Chapter 72, Laws of 1997"; and made minor changes in style. Amendment effective March 15, 1999.

1997 Amendment: Chapter 72 in (2), in exception clause, inserted reference to subsection (6); inserted (6) concerning 5-year registration; inserted (7) concerning expiration of registration upon transfer of ownership; inserted (8) concerning application for transfer of license plates; in two places in (9) and two places in (10), after "department", inserted "of transportation" ; and made minor changes in style. Amendment effective January 1, 1998.

Staggered Implementation — Termination: Section 4, Ch. 72, L. 1997, provided: "The transition from annual trailer and semitrailer registrations to a 5-year registration for trailers and semitrailers must be accomplished in the first registration year after January 1, 1998. One-fifth of the trailer and semitrailer fleets proportionally registered must be registered for 1 year. One-fifth of the trailer and semitrailer fleets must be registered for 2 years. One-fifth of the trailer and semitrailer fleets must be registered for 3 years. One-fifth of the trailer and semitrailer fleets must be registered for 4 years. One-fifth of the trailer and semitrailer fleets must be registered for 5 years. Fees under 61-3-721 must be prorated to reflect the registration period." Section 5, Ch. 72, L. 1997, provided that section 4 terminates December 31, 1998.

1995 Amendments: Chapter 42 in (1), near beginning after "owner", substituted "of" for "engaged in operating", after "may" deleted "instead of registration of vehicles under other sections of this title", and in two places inserted reference to Department of Transportation; inserted (2) through (4) regarding registration of apportionable fleet vehicles; adjusted subsection references; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 88 at beginning of (5) inserted exception clause; inserted (6) providing that each trailer and semitrailer in a fleet for which registration is requested will be assessed annual license or registration fees; and made minor changes in style. Amendment effective January 1, 1996.

1983 Amendment: At end of (1), substituted "the information pertinent to vehicle registration that is required by the department." for "the following information and any other information pertinent to vehicle registration the department requires:" and deleted former (1)(a) through (1)(c), which read: "(a) total fleet miles which is the total number of miles operated in all jurisdictions during the preceding year by the vehicles in the fleet during the year;

(b) in-state miles which is the total number of miles operated in this state during the preceding year by the vehicles in the fleet during the year; and

(c) a description and identification of each vehicle of the fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested."; and in (2)(a), inserted "as defined in the applicable agreement entered into pursuant to 61-3-711 through 61-3-733".

1981 Amendment: Substituted "may be recomputed" for "shall be recomputed" in (3).

Administrative Rules

Title 18, chapter 8, subchapter 2, ARM Proportional registration.

61-3-722. Registration and identification of proportionally registered motor vehicles — fees — effect of registration.

Compiler's Comments

2023 Purported Amendment: Although sec. 2, Ch. 540, L. 2023, purported to amend this section, the final version of the text remained unamended.

2005 Amendments — Composite Section: Chapter 130 in (1) in four places substituted references to registration decals for references to stickers. Amendment effective October 1, 2005.

Chapter 542 throughout section substituted references to motor vehicle, trailer, semitrailer, or pole trailer for references to vehicle and references to decal for references to sticker; in (2) after "fleet" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

1995 Amendment: Chapter 42 in (1), in second sentence after "sticker", substituted "and" for "or"; and made minor changes in style. Amendment effective January 1, 1996.

1993 Amendment: Chapter 32 in (1) inserted third sentence establishing a fee for temporary registration of proportionally registered vehicles; and made minor changes in style. Amendment effective July 1, 1993.

61-3-723. Proportional registration not applicable in a single jurisdiction.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; and near middle substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-724. Registration of additional fleet motor vehicles.

Compiler's Comments

2005 Amendment: Chapter 542 at beginning substituted "Motor vehicles, trailers, semitrailers, or pole trailers" for "Vehicles" and near end substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle". Amendment effective January 1, 2006.

1995 Amendment: Chapter 42 in two places substituted reference to registration period for reference to registration year; and made minor changes in style. Amendment effective January 1, 1996.

61-3-725. Withdrawal of fleet motor vehicles — procedure, credits, and accounting.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) in seven places and in (2) in four places substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle"; and made minor changes in style. Amendment effective January 1, 2006.

1995 Amendment: Chapter 42 in (1), in four places, substituted reference to registration period for reference to registration year; and made minor changes in style. Amendment effective January 1, 1996.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: Inserted (2) allowing the transfer of the gross vehicle weight fees from a vehicle withdrawn from a fleet to a replacement vehicle of the same or of a lesser weight category.

1981 Amendment: In third sentence from end of (1), substituted "additional fees due" for "subsequent additions to be prorated".

Administrative Rules

ARM 18.8.204 Fleet transfers.

61-3-727. Fleet registration — denial when no reciprocity.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning and end substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles" and near middle after "based in" inserted "another jurisdiction"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-728. Preservation of proportional registration records.

Compiler's Comments

2005 Amendment: Chapter 542 near end after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-729. Relation to other state laws.

Compiler's Comments

2005 Amendment: Chapter 542 near middle substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; at end deleted "except as in this section expressly provided"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-730. Suspension of reciprocity benefits.

Compiler's Comments

2005 Amendment: Chapter 542 near end after "motor vehicles" inserted "trailers, semitrailers, or pole trailers"; and made minor changes in style. Amendment effective January 1, 2006.

1981 Amendment: Deleted "Agreements, arrangements, or declarations made under 61-3-711 through 61-3-733 may include provisions authorizing" from beginning of section and rewrote remainder to reflect the deletion. (See 1981 Session Law for text.)

Administrative Rules

Title 18, chapter 8, ARM Motor Carrier Services Division.

Title 23, chapter 3, ARM Motor Vehicle Division.

61-3-732. Continued validity of existing reciprocity agreements.

Compiler's Comments

2005 Amendment: Chapter 542 near middle substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; at end inserted "or declarations"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-733. Laws supplemental to motor vehicle, trailer, semitrailer, or pole trailer registration laws.

Compiler's Comments

2005 Amendment: Chapter 542 after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; and made minor changes in style. Amendment effective January 1, 2006.

61-3-736. Assessment of proportionally registered interstate motor vehicle fleets — payment of fees required for registration.

Compiler's Comments

2005 Amendment: Chapter 542 in (1)(a) in first sentence near beginning after "provided in" deleted "61-3-528 and" and after "fee under" substituted "61-3-321(2)" for "61-3-560 and 61-3-561" and in third sentence after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (1)(b) near middle substituted "motor vehicles, trailers, semitrailers, or pole trailers" for "vehicles"; in (1)(c) at beginning before "vehicles" inserted "Motor" and near end before "vehicle" inserted "motor"; in (2) in second sentence near middle after "motor vehicles" inserted "trailers, semitrailers, or pole trailers"; in (3) at beginning substituted "Motor vehicles, trailers, semitrailers, or pole trailers" for "Vehicles"; and in second sentence substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle" and at end after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; in (4) after "motor vehicle" inserted "trailer, semitrailer, or pole trailer"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 114 in (1)(c) near end before "tax" inserted "vehicle". Amendment effective October 1, 2003.

2001 Amendments — Composite Section: Chapter 191 in (1)(b) after "for the purpose of the fee in lieu of tax" inserted "or registration fee"; in (1)(c) at beginning substituted "Vehicles subject to the light vehicle registration fee" for "Vehicles taxed"; in (2) after "fee in lieu of tax" inserted "and the light vehicle registration fee"; in (3) in second sentence after "fees in lieu of tax" inserted "light vehicle registration fees"; and made minor changes in style. Amendment effective April 3, 2001.

Chapter 500 in (2) inserted second sentence requiring proration of the 61-3-529 fee in lieu of tax for fleet motor vehicles proportionally registered under 61-3-721 when the annual registration period is not a calendar year. Amendment effective January 1, 2002.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

2000 Amendment by Referendum: Chapter 515, L. 1999, at beginning of first sentence of (1)(a) deleted "Except as provided in subsection (2)" and near middle after "61-3-529" inserted "and the registration fee under 61-3-560 and 61-3-561 on light vehicles" and near beginning of second sentence after "tax" inserted "or registration fee"; in (1)(b) near middle after "tax" inserted "or registration fee"; deleted former (2) that read: "(2) For the purpose of taxation, the department of transportation shall assess light vehicles, as defined in 61-1-139, that are part of an interstate motor vehicle fleet as follows:

(a) The value of each vehicle is determined in the same manner as provided in 61-3-503.

(b) The value determined under subsection (2)(a) multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, is the market value.

(c) The sum of the market value of all vehicles subject to tax under this subsection (2) multiplied by 2% is the tax for the entire fleet.

(d) With respect to an original application for a fleet that has a situs in Montana for the purpose of taxation under this part or any other provision of the laws of Montana, the taxes on taxable vehicles are determined as provided in subsection (2)(b)"; in (1)(c) after "tax" inserted "or flat fee" and at end inserted "or 61-3-570"; in (2) after "fleet" deleted "taxable vehicles are assessed and taxed for a full year and for all other vehicles"; in (3) in first sentence after "current" substituted "fees" for "taxes or fees, or both" and near end after "payment of" substituted "fees" for "taxes, fees, or both" and in second sentence after "fleet vehicle" deleted "taxes"; in (4) after "All" deleted "taxes and"; and made minor changes in style. Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

61-3-737. Situs in state of proportionally registered fleets — collection of fees.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) near beginning before "vehicle" inserted "motor"; and in (2) near middle substituted "motor vehicle, trailer, semitrailer, or pole trailer" for "vehicle". Amendment effective January 1, 2006.

2001 Amendment: Chapter 191 in (1) near end after "for the purposes of" inserted "the light vehicle registration fee or"; and in (2) after "shall collect the fleet vehicle" inserted "registration fees". Amendment effective April 3, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

2000 Amendment by Referendum: Chapter 515, L. 1999, near end of (1) after "purposes of" deleted "taxation or"; and in (2) after "vehicle" deleted "taxes, the". Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

61-3-738. Deposit and distribution of fees on proportionally registered fleets.

Compiler's Comments

2017 Amendment: Chapter 267 at end inserted "provided for in 15-70-125". Amendment effective July 1, 2017.

2001 Amendments — Composite Section: Chapter 191 in introductory clause at beginning inserted "light vehicle registration fees"; in (1) near beginning after "for fleet vehicle" inserted "registration fees and"; (amendment in subsection (1) rendered void by Ch. 574) and made minor changes in style. Amendment effective April 3, 2001.

Chapter 574 at end substituted "in the highway nonrestricted account" for "for distribution to the general fund of each county on the following basis:

(1) for fleet vehicle fees in lieu of tax, according to the ratio of the taxable valuation of each county to the total state taxable valuation; and

(2) for fleet vehicle license fees, according to the ratio of vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all fleet vehicle fees collected in all the counties". Amendment effective July 1, 2001.

Retroactive Applicability: Section 23, Ch. 191, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to motor vehicles registered after December 31, 2000."

2000 Amendment by Referendum: Chapter 515, L. 1999, at beginning of introductory clause after "The" deleted "taxes"; and in (1) after "vehicle" deleted "taxes and". Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000."

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

CHAPTER 4
SALES AND DISTRIBUTION OF MOTOR VEHICLES

Part 1
Dealers

61-4-101. Types of licenses and terms — common application — bonds — zoning.

Compiler's Comments

2019 Amendment: Chapter 143 in (6)(e) inserted "with no more than three other wholesale, broker, auction, or retail vehicle dealers in the same building or at the same location"; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 323 inserted (3) concerning staggered dealer license expiration dates; and made minor changes in style. Amendment effective January 1, 2018.

2007 Amendment: Chapter 329 in (1) at beginning in exception clause after "provided in" inserted "61-4-120 and", after "broker of a" deleted "new", after "motor vehicle" deleted "or used motor vehicle, new or used recreational vehicle, motor home", after "trailer" deleted "(except a trailer having an unloaded weight of less than 500 pounds)", after "quadricycle" inserted "motorboat, personal watercraft, snowmobile, off-highway vehicle", and after "holder of a" deleted "dealer's"; in (2)(a) near middle substituted "new dealer's license, a used dealer's license, a broker's license, an auto auction license, or a wholesaler license" for "dealer's license for one or more specified vehicle types"; substituted (2)(b) through (2)(f) concerning specific types of licenses for former second sentence of (2)(a) and (2)(a)(i) through (2)(a)(vii) that read: "A dealer's license may be issued for and restricted to one or more of the following vehicle types:

(i) new motor vehicles, including new trucks, buses, and light vehicles covered under the franchise the dealer holds as franchisee and used trucks, buses, recreational vehicles, light vehicles, and trailers;

(ii) used motor vehicles, including used trucks, buses, and light vehicles;

(iii) new recreational vehicles, including new motor homes and travel trailers covered under the franchise the dealer holds as franchisee and used motor homes and travel trailers;

(iv) used recreational vehicles, including used motor homes and travel trailers;

(v) trailers, including semitrailers and pole trailers, but excluding travel trailers;

(vi) special mobile equipment; or

(vii) motorcycles or quadricycles, including new or used motorcycles or quadricycles, but excluding new off-highway vehicles unless the dealer is licensed under Title 23"; deleted former (2)(b) and (2)(c) that read: "(b) The department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and 61-4-129.

(c) A dealer licensed for a particular type of vehicle may sell, trade, or accept on consignment only vehicles of the type for which the license is authorized under subsection (2)(a)"; in (3) inserted references to 61-4-120 and 61-4-125 and before "license" deleted "dealer's"; in (3)(a) substituted "licensee's" for "dealer's"; in (3)(b) at end inserted "power sports vehicles, or trailers"; in (4)(a) in first sentence after "for a" inserted "new", after "license" inserted "a used dealer's license, a broker's license, an auto auction license, or a wholesaler license", after "application" deleted "for a dealer's license", and at end deleted "specifying the type or types of dealer's license sought"; in (5) after "licensure" deleted "as a dealer" and at end inserted "information"; in (5)(a) at end substituted "applicant's name, the street address and, if different, mailing address for the business, and customer identification number" for "name, address, date of birth"; in (5)(b) at beginning inserted "the name, date of birth"; inserted (5)(b)(ii) concerning corporate officer or managing member; substituted (5)(b)(iii) concerning designation by applicant for former text that read: "If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership"; in (5)(c)(i) in two places inserted reference to auto auction and near middle substituted "any other state" for "another jurisdiction"; in (5)(d) in second sentence near beginning before "vehicle" inserted "motor" and after "plates" inserted "and any motorboat, snowmobile, or off-highway vehicle displaying a dealer's identification card"; in (5)(e) near beginning after "sale" inserted "if applicable"; in (5)(g) near beginning after "dimensions" inserted "if applicable"; deleted former (4)(g) that read: "(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, new recreational vehicles, used recreational vehicles, motor homes, travel trailers, trailers, semitrailers, pole trailers, motorcycles, quadricycles, or special mobile equipment"; in (5)(h)(i) near middle and at end inserted references to power sports vehicles or trailers and near middle after "agreement" inserted "the term of the agreement"; in (5)(h)(ii) near middle and at end inserted references to power sports vehicles or trailers; deleted former (4)(i) that read: "(i) if the applicant is applying for a new recreational vehicle dealer's license, new travel trailer dealer's license, or new motor home dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles, new motor homes, or new travel trailers"; in (6) near beginning after "applicant" deleted "for a new motor vehicle or used motor vehicle, new or used recreational vehicle, new or used motor home, new or used travel trailer, or trailer dealer's license"; in (7) at end substituted "the following fees" for "an application fee of $5 and one or more of the following license fees based on the type of dealer's license being sought"; substituted (7)(a) concerning $30 licenses for former text that read: "(a) $25 for a new motor vehicle dealer's license"; deleted former (2)(b) through (2)(d) that read: "(b) $25 for a used motor vehicle dealer's license;

(c) $25 for a new or used recreational vehicle, motor home, or travel trailer dealer's license; or

(d) $25 for a motorcycle or trailer, semitrailer, or pole trailer dealer's license"; inserted (7)(b) concerning auto auction license; substituted (8)(a) concerning bond for former text that read: "The applicant for a dealer's license shall also file with the application a bond of $50,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a new or used recreational vehicle, motor home, or travel trailer dealer, or a trailer dealer. Applicants for a motorcycle dealer's license shall file a bond in the sum of $15,000"; inserted (8)(b) concerning bond for specified recreational vehicles; in (8)(c) deleted former second sentence that read: "The bond may extend to any other type of dealer license issued to the applicant at the same geographic location if all types of licenses are indicated on the face of the bond"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendments — Composite Section: Chapter 542 in (1) after "recreational vehicle" inserted "motor home" and after "500 pounds)" inserted "travel trailer, semitrailer, pole trailer"; in (2)(a)(iii) and (2)(a)(iv) at end inserted "motor home, or travel trailer"; in (2)(a)(v) after "trailer" inserted "semitrailer, pole trailer"; in (4)(g) after "recreational vehicles" inserted "motor homes, travel trailers" and after "trailers" inserted "semitrailers, pole trailers"; in (4)(j) after "recreational vehicle dealer's license" inserted "new travel trailer dealer's license, or new motor home dealer's license" and at end inserted "new motor homes, or new travel trailers"; in (5) near middle after "recreational vehicle" inserted "new or used motor home, new or used travel trailer"; in (6)(c) inserted "motor home, or travel trailer"; in (6)(d) inserted "semitrailer, or pole trailer"; in (7) near end of first sentence after "recreational vehicle" inserted "motor home, or travel trailer"; and made minor changes in style. Amendment effective January 1, 2006.

Chapter 596 substituted (2)(a)(i) through (2)(a)(viii) enumerating and excluding various vehicle types for former text that read: "(i) new motor vehicle;
(ii) used motor vehicle;
(iii) new recreational vehicle;
(iv) used recreational vehicle;
(v) trailer or special mobile equipment; or
(vi) motorcycle or quadricycle"; in (2)(c) at beginning deleted "With the exception of a licensed new motor vehicle dealer" and after "authorized" substituted "under subsection (2)(a)" for "unless the dealer's license specifically refers to more than one vehicle type, such as a motorcycle or quadricycle license" and deleted former second sentence that read: "A new motor vehicle dealer is authorized to sell, trade, or accept on consignment new motor vehicles or used motor vehicles"; in (4)(g) near middle inserted "new recreational vehicles"; and made minor changes in style. Amendment effective January 1, 2006.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

2003 Amendment: Chapter 299 in (2)(b) at beginning deleted "For each type of dealer's license authorized"; substituted (2)(d) concerning the validity of a dealer's license for former (2)(d) that read: "(d) Regardless of vehicle type, a dealer's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year"; in (4)(c) near beginning after "acquired" substituted "general" for "garage"; in (7) in first sentence increased amount of dealer's license bond from $35,000 to $50,000 and in second sentence at end increased motorcycle dealer's bond from $10,000 to $15,000; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

2001 Amendments — Composite Section: Chapter 201 in (5) after "proposed" deleted "established"; in (7) increased bond amount from $25,000 to $35,000; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 385 in (1) near middle after "trailer" inserted "(except a trailer having an unloaded weight of less than 500 pounds)" and after "mobile equipment" deleted "for which a certificate of ownership has not been issued and"; in (2)(a)(v) after "trailer" deleted "of any size"; in (4)(c) near beginning of first sentence after "garage" deleted "keepers" and after "liability insurance" inserted "naming the department as a certificate holder of the policy", and at end of second sentence inserted "and must be for a minimum of 1 year"; in (4)(h)(iii) at beginning inserted "verification that the applicant"; and made minor changes in style. Amendment effective April 28, 2001.

1999 Amendments — Composite Section: Chapter 51 in (2)(c) near middle of second sentence after "business" substituted "shall" for "may". Amendment effective March 15, 1999. The amendment by Ch. 409 rendered the amendment by Ch. 51 void.

Chapter 409 substituted current text concerning dealer's license, types of licenses and terms, plates, bonds, and zoning for former text that read: "(1) (a) A verified application for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:

(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in 61-1-104; or

(ii) business as a wholesaler as defined in 61-1-319.

(b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

(c) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

(d) Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department before the expiration of the license, the licensee may operate the business and display dealer or demonstrator plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as provided in this subsection, the applicant shall furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant shall:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) identify other dealerships owned by the applicant, identify all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclose whether the applicant or other person with interest in a dealership owned by the applicant has been convicted of a felony;

(iv) certify that the applicant has acquired and shall maintain motor vehicle liability insurance, pursuant to 61-6-301, for any vehicle offered for demonstration or loan to a customer;

(v) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(vi) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(vii) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(viii) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates; or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set forth in subsections (2)(a)(i) through (2)(a)(iv), provide:

(i) a statement that the:

(A) applicant has an established place of business consisting of one or more lots located within 200 feet of each other upon which motor vehicles may be displayed and a permanent nonresidential building on or within 1,000 feet of the lot or lots where records are kept and sales are made; or

(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;

(ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that the person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) If two or more vehicle dealers or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's established place of business may display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's or wholesaler's license shall also file with the application a bond of $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the $25,000 surety bond only if special mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers are sold. All other trailer dealer, motorcycle dealer, or wholesaler license applicants shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same place of business, provided that all types of licenses are indicated on the face of the bond. All bonds must run to the state of Montana, must be approved by the department, must be filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1997 Amendments: Chapter 220 in (2)(b)(i)(A) substituted "consisting of one or more lots located within 200 feet of each other" for "that includes a lot or lots" and substituted "within 1,000 feet of" for "contiguous to"; and made minor changes in style. Amendment effective April 8, 1997.

Chapter 221 in (2)(a)(ii) inserted requirement for date of birth and Social Security number; inserted (2)(a)(iii) and (2)(a)(iv) concerning interest in other dealerships and liability insurance; in (2)(b) inserted reference to subsections (2)(a)(iii) and (2)(a)(iv); in (3)(a) inserted fourth sentence allowing bond to extend to other dealer licenses issued to applicant; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

1993 Amendment: Chapter 482 near beginning of (1)(a), after "application", inserted "for licensure as a dealer or wholesaler"; in (1)(a)(i), after "semitrailers", inserted "mobile homes" and after "61-1-104" deleted "for licensure as a dealer"; in (1)(a)(ii), after "61-1-319", deleted "in order to be licensed as a wholesaler"; inserted (1)(b) providing that licensed real estate broker or agent lawfully buying, selling, exchanging, taking for consignment, or acting as broker of mobile homes is exempt from licensure under this section; and made minor changes in style.

1991 Amendments: Chapter 383 throughout section, after "dealer", inserted reference to wholesaler; at beginning of (1)(a) inserted language requiring verified application to be filed by each person; in (1)(a)(i), after "exchanging", deleted "offering", after "consignment" deleted "soliciting, advertising the sale of", after "61-1-104" deleted "shall file, by mail or otherwise, in the office of the department a verified application", and after "dealer" deleted "on a blank to be furnished by the department for that purpose and containing the information required"; inserted (1)(a)(ii) requiring filing of application by wholesaler defined in 61-1-319; inserted (1)(b) relating to prima facie evidence as dealer and use of demonstrator license plates; in (1)(c), at end of first sentence after "patrol", inserted language authorizing application verification by Department representative on Department form and in third sentence, before "may", substituted "licensee" for "dealer" and before "plates" inserted "or demonstrator"; in (2)(b), before "trailer", inserted "dealer and for the use of "RV" plates; as a" and after ""MCD" plates" inserted "or as a wholesaler and for the use of demonstrator plates"; in (2)(b)(i)(A), after "has", substituted language requiring applicant to provide statement that he has a business that displays motor vehicles and has a building where sales are made for "a building or lot and a sign readable at a minimum distance of 150 feet indicating the firm name as the principal place of business and that vehicles are offered for sale"; inserted (2)(b)(i)(B) requiring wholesaler applicant to provide statement that business includes permanent nonresidential building or office where records are kept for inspection; inserted (2)(c) requiring two or more dealer or wholesaler businesses that share location to segregate records, facilities, and inventory and to display signs visible at 150 feet; in (2)(e) changed internal reference; in (3)(a), before "bond", deleted "good and sufficient" and after "bond" substituted language establishing the dollar amount of licensee's surety bonds for "in the sum of $5,000, and the bond"; in (3)(b), at end of first sentence, substituted "on the bond" for "the judgment from the department" and at beginning of second sentence substituted "The judgment must determine" for "The department is responsible for payment under this section, in an amount not to exceed the maximum bond amount, only if the judgment on which the payment is based determines", before "unlawful" substituted "licensee's" for "dealer's", and after "damage" inserted "before payment on the bond is required"; and made minor changes in style.

Chapter 724 in (1)(c), substituted "department" for "Montana highway patrol"; in (2)(b), after "recreational vehicle", inserted "dealer and for the use of "RV" plates, as a"; and made minor changes in style.

1989 Amendments: Chapter 179 in (1), at end of third sentence, inserted reference to 61-4-102; inserted (3)(b) providing a procedure for person harmed by unlawful conduct of licensed motor vehicle dealer to take action against dealer's bond; and made minor changes in grammar.

Chapter 523 near beginning of (1), after "exchanging", inserted "offering, taking for consignment, soliciting, advertising the sale of"; and made minor changes in phraseology and punctuation.

1985 Amendments: Chapter 282 near middle of (2)(b)(i) after "firm name", deleted "and headquarters" and at end of (2)(b)(i) inserted "and that vehicles are offered for sale".

Chapter 503 in (1) in three places and (3) substituted reference to department of justice for reference to division of motor vehicles.

Chapter 516 in (2)(b) near middle, after "motorcycle", inserted "or quadricycle"; and in (2)(b)(ii) near middle after "motorcycles", inserted "or quadricycles" (effective January 1, 1986).

1981 Amendment: Added "recreational vehicles" to the list of vehicles near the beginning of subsection (1), near the beginning of subsection (2)(b), and in the middle of subsection (2)(b)(ii); added "RV" to the list of plate types near the beginning of subsection (2); and added the last sentence to subsection (2)(b)(ii) requiring applicant for recreational vehicle dealer license to indicate on certificate that he is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

Attorney General's Opinions

Automobile Leasing: Automobile leasing companies which sell automobiles must either be licensed as motor vehicle dealers under this section or registered as branch establishments of licensed motor vehicle dealers pursuant to 61-4-102. 38 A.G. Op. 2 (1979).

61-4-102. Dealer plates — restriction of use — fees.

Compiler's Comments

2007 Amendment: Chapter 329 in (1) at beginning inserted exception clause, deleted "Upon the licensing of a dealer", after "shall" deleted "assign to the dealer a distinctive serial license number as a dealer and", and after "dealer" inserted "licensed under this part"; deleted former (2)(a) that read: "(a) Dealer plates designed by the department must be similar to the standard license plates furnished to owners of motor vehicles under 61-3-332, but they must bear:

(i) the license number assigned to the dealer;

(ii) an abbreviation for the vehicle type of the dealer's license issued, as follows:

(A) the letter "D" for a new motor vehicle dealer;

(B) the letters "UD" for a used motor vehicle dealer; or

(C) the letters "RV" for a new or used recreational vehicle, motor home, or travel trailer dealer; and

(iii) the actual number of sets of dealer plates issued to the dealer"; in (2) at end substituted "new or used dealer whose business is restricted to the sale of motorcycles, power sports vehicles, or trailers" for "motorcycle or trailer dealer or a wholesaler"; deleted former (3) that read: "(3) Dealer plates must contain the prefix of the county in which the dealer's established place of business is located, followed by the dealer's license type abbreviation, the dealer's license number, and the number of sets of dealer plates issued to that dealer. For example, new motor vehicle dealer number 4 in Lewis and Clark County would be numbered 5D-4, and if the dealer were issued three sets of dealer plates, they would be numbered consecutively as follows, 5D-4-1, 5D-4-2, and 5D-4-3"; in (4)(a) after "vehicle" inserted "except a motorcycle"; deleted former (8) that read: "(8) (a) All numbered dealer plates expire on December 31 of the year of issue and must be renewed annually.

(b) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use dealer plates assigned and registered for the prior calendar year through the last day of February of the following year, as provided in 61-4-124(5)"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendments — Composite Section: Chapter 542 in (2)(a)(ii)(C) inserted "motor home, or travel trailer"; in (4)(b)(ii)(A), (4)(b)(ii)(B), (4)(b)(ii)(C), and (5)(b)(ii) in two places before "vehicle" inserted "motor"; and in (6) before "vehicles" inserted "motor". Amendment effective January 1, 2006.

Chapter 596 in (2)(a) near middle substituted "standard license plates" for "numbered plates". Amendment effective January 1, 2006.

2003 Amendment: Chapter 299 in (7)(a) near beginning after "issued and" inserted exception clause and after "file" substituted "an annual" for "a quarterly"; substituted (7)(b) requiring the dealer to notify the department of the person to whom the plates were assigned within 15 days of reassignment for former (7)(b) that read: "(b) A dealer who fails to submit an accountability report within 30 days of the end of the calendar quarter may be subject to the imposition of a civil penalty under 61-4-105"; in (8)(a) at end substituted "must be renewed annually" for "are subject to renewal in accordance with the provisions of 61-4-124 and this section"; inserted (8)(b) allowing a dealer who files the annual report on or before December 31 of the calendar year to display or use dealer plates assigned and registered for the prior calendar year through the last day of February of the following year; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

1999 Amendment: Chapter 409 substituted current text concerning distinctive license numbers and plates, types of plates, county where dealer is located, fee and number of dealer plates, use of dealer plates, accountability for dealer plates, and expiration of dealer plates for former text that read: "(1) Upon making such application, the applicant shall pay to the department, in addition to the fees required of dealers and wholesalers under the provisions of subsection (2), a fee of $5. Upon receipt of the application, fee, and bond, as provided above, the department shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after investigation, to issue a license to an applicant as allowed by law.

(2) Registration or license fees shall be paid upon registration or reregistration of dealers in motor vehicles, recreational vehicles, or trailers as follows:

(a) (i) all dealers in motor vehicles and recreational vehicles, a fee of $25, which shall entitle such dealer to one set of number plates, and $25 additional fee for each additional set of number plates, subject to the following limitations on the number of additional sets allowed a dealer:

(A) 5% of the first 100 vehicle sales for the previous year; plus

(B) 3% of the next 100 vehicle sales for the previous year; plus

(C) 2% of vehicle sales in excess of 200 for the previous year; and

(D) any additional sets upon a showing of good cause by the applicant dealer to the department.

(ii) in addition to the dealer plates allowed under subsection (2)(a)(i), a dealer who has purchased one or more sets of dealer plates or a licensed wholesaler is entitled to purchase demonstrator plates at a cost determined by the department to offset the cost of production. Demonstrator plates must be used in lieu of a dealer plate but only as set forth in subsection

(6) and must be distinguished from dealer plates in a manner determined by the department. Wholesaler demonstrator plates must be distinguished from dealer demonstrator plates in a manner determined by the department.

(b) dealers in motorcycles, quadricycles, and trailers, including housetrailers, $45; and

(c) wholesalers in used motor vehicles, recreational vehicles, trailers (including semitrailers and special mobile equipment), and motorcycles (including quadricycles), $30.

(3) If a dealer or wholesaler is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee above given.

(4) A dealer or wholesaler in motor vehicles, recreational vehicles, or trailers who maintains more than one place of business or who maintains a branch establishment or establishments shall register and pay a registration or license fee for each place of business or establishment. A dealer may sell vehicles only from his licensed place of business unless the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises sale. Except for recreational vehicle dealers, an off-premises sale must be conducted within the city limits of the city of the dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that is within the county of the dealer's licensed location. The sale may not exceed 10 consecutive business days, and a licensed dealer may not conduct more than 10 off-premises sales during any 1 calendar year.

(5) A new applicant for a used motor vehicle dealer or wholesaler license shall pay $300 to the department in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer or wholesaler license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional $300 before he may be licensed.

(6) Demonstrator plates provided for in subsection (2)(a)(ii) may be used only as follows:

(a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

(i) to demonstrate, for no more than 72 hours, an authorized vehicle held for sale, when operated by an individual holding a valid operator's license;

(ii) on authorized vehicles owned by the firm when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) on authorized vehicles being tested for repair;

(iv) on authorized vehicles being moved to or from a dealer's place of business for sale;

(v) on authorized vehicles being moved to or from service and repair facilities before sale;

(vi) on authorized vehicles being moved to or from exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer dealer demonstrator plates may be used:

(i) on units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes hauled to a customer's location for setup after sale;

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer owning any such motor vehicle;

(v) on vehicles being moved to or from vehicle exhibitions within the state, provided any such exhibition does not exceed a period of 20 days". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1991 Amendment: Throughout section, after reference to dealer, inserted reference to wholesaler; in (1), in third sentence before "license", deleted "dealer's" and inserted last sentence authorizing Department to refuse license after investigation; in (2)(a)(ii), in first sentence after "plates", inserted "or a licensed wholesaler" and inserted last sentence requiring wholesaler plates to be distinguished from dealer plates; inserted (2)(c) establishing $30 fee for certain wholesalers; in (4) inserted second, third, and fourth sentences relating to procedures for sale of vehicles by dealers; and made minor changes in style.

1985 Amendments: Chapter 503 in (1), (2)(a)(i)(D), (2)(a)(ii), and (5) substituted references to department of justice for references to division of motor vehicles.

Chapter 516 in (2)(b) after "motorcycles", inserted "quadricycles" (effective January 1, 1986).

1981 Amendment: Added "recreational vehicle" to the list of vehicles near the beginning of subsection (2), near the beginning of subsection (2)(a)(i), and near the beginning of subsection (4); reduced from $45 to $25 the fee that all dealers must pay; reduced from two to one the number of dealer plates a dealer is entitled to upon payment of the fee, and increased from $5 to $25 the cost of each additional set of plates near the beginning of subsection (2)(a)(i); added the limitations in subsection (2)(a)(i) on the number of additional sets allowed a dealer; added subsection (2)(a)(ii) allowing dealer who has purchased one or more sets of dealer plates to purchase demonstrator plates at a cost determined by the division to offset cost of production; and added subsection (6) establishing the proper use of demonstrator plates.

Case Notes

Dealer's Plates: Fact that dealer-transferor placed dealer's plates on automobile sold on Saturday in order that transferee might drive the vehicle over the weekend did not estop dealer and his insurer from denying ownership of vehicle at time of accident later that day. Phoenix Ins. Co. v. Newell, 329 F. Supp. 172 (D.C. Mont. 1971), distinguished in Am. States Ins. Co. v. Angstman Motors, Inc., 343 F. Supp. 576 (D.C. Mont. 1972).

Constitutionality: This section was not open to the constitutional objection that it is a revenue measure, but it may be justified as a reasonable police regulation. St. v. Pepper, 70 M 596, 226 P 1108 (1924).

Attorney General's Opinions

Automobile Leasing: Automobile leasing companies which sell automobiles must either be licensed as motor vehicle dealers under 61-4-101 or registered as branch establishments of licensed motor vehicle dealers pursuant to this section. 38 A.G. Op. 2 (1979).

Dealers' Plates Not Restricted to Sales Area: Section 53-118(g), R.C.M. 1947 (61-4-103, now repealed), did not restrict use of dealers' license plates to the immediate sales area of motor vehicle dealers but did require use only in the dealers' business of selling or demonstrating. 33 A.G. Op. 8 (1969).

61-4-104. Record of purchase or sale.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 231 in (4)(a) in first sentence substituted "61-3-206(5)" for "61-3-206(4)". Amendment effective October 1, 2015.

Chapter 254 in (1)(a)(ii) at beginning inserted "for each used vehicle"; in (1)(b) substituted "vehicle" for "trailer, semitrailer, pole trailer, or special mobile equipment"; in (1)(c) after "vehicle identification number" deleted "and engine number"; in (2)(a) and (4)(a) at beginning inserted exception clause; in (2)(a) substituted "the actual or a readily accessible photocopy, electronic copy, or digital copy of the actual assigned certificate of ownership, certificate of title, or manufacturer's certificate of origin from the owner of each vehicle in which the dealer, wholesaler, or auto auction acquires a property interest that transfers ownership of the vehicle" for "an assigned certificate of ownership or certificate of title from the owner of the motor vehicle, power sports vehicle, or trailer"; inserted (2)(b) concerning documentation; in (3)(a) substituted "dealer, wholesaler, or auto auction" for "licensee"; in (3)(b) at end substituted "any vehicle sold in which the dealer, wholesaler, or auto auction has a property interest" for "motor vehicles sold"; in (4)(a) after "maintained" inserted "at or readily accessible"; inserted (4)(b) concerning readily accessible documentation; inserted (4)(c) providing a definition of readily accessible; and made minor changes in style. Amendment effective October 1, 2015.

2007 Amendment: Chapter 329 throughout section after reference to wholesaler inserted reference to auto auction; in (1)(a) near beginning substituted "this part" for "61-4-101"; in (2) in first sentence near beginning after "motor vehicle" inserted "power sports vehicle, or trailer"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1)(b) in two places after "semitrailer" inserted "pole trailer"; in (2) in second sentence in two places before "vehicles" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendments — Composite Section: Chapter 299 in (1)(a) in introductory clause near middle after "together with the" inserted "date of purchase, sale, or consignment and the" and at end after "address of" substituted (1)(a)(i) through (1)(a)(iii) outlining persons who must be named in the book or record for "the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be"; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 477 in (2) in three places after reference to certificate of ownership inserted reference to certificate of title; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1999 Amendment: Chapter 409 at end of sixth sentence deleted reference to subsection (2)(b)(i) of 61-4-101. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1997 Amendment: Chapter 221 in second sentence inserted reference to vehicle identification number and after "engine number, if any" deleted "maker's number, if any, chassis number, if any, and other numbers or identification marks that appear on the motor vehicle"; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

1991 Amendment: At beginning of first sentence, after "dealer", inserted "or wholesaler", in fourth sentence, after "dealer", inserted "or wholesaler must", after "possession" inserted clause requiring certificate from delivery until disposal, and after "vehicle" substituted "to the dealer or wholesaler" for "from the time the motor vehicle is delivered to him until it has been disposed of by him", and inserted fifth and sixth sentences providing that failure of dealer or wholesaler to take assignment of certificates constitutes a violation and requiring records to be kept and maintained in a permanent nonresidential building; and made minor changes in style.

1985 Amendments: Chapter 282 inserted last sentence permitting authorized department representative, upon presentation of credentials, to inspect, have access to, and copy any required records of purchases or sales of used vehicles.

Chapter 503 in last sentence substituted reference to department of justice for reference to division of motor vehicles.

61-4-105. Criminal penalty — civil penalty imposed by agency.

Compiler's Comments

2007 Amendment: Chapter 329 in (1) in second sentence near middle before "vehicle" deleted "motor"; in (2)(b) and (2)(c) after "of the" deleted "motor vehicle" and after "dealer" inserted "broker"; and made minor changes in style. Amendment effective January 1, 2008.

2003 Amendment: Chapter 299 in (2)(b) at end substituted "7 days" for "5 working days"; and in (2)(c) at beginning after "revocation" deleted "or denial". Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

2001 Amendment: Chapter 385 throughout section in three places substituted "this part" for "61-3-501, 61-4-101, 61-4-102, 61-4-104, 61-4-120, or 61-4-123 through 61-4-126"; in (1) at beginning inserted exception clause; in (2) at beginning of second sentence inserted exception clause; in (2)(b) increased civil penalty from $200 to $1,000 for each violation; and made minor changes in style. Amendment effective April 28, 2001.

1999 Amendment: Chapter 409 in two places in (1) and in (2) inserted reference to 61-3-501, deleted reference to 61-4-103, and inserted references to 61-4-123 through 61-4-126; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1991 Amendment: In three places, after "61-4-104", inserted "or 61-4-120"; and in (2)(b) and (2)(c), after "dealer", inserted "wholesaler, or auto auction".

1989 Amendment: Made minor changes in phraseology.

1985 Amendments: Chapter 282 inserted (2) authorizing department to take appropriate enforcement action on its own initiative.

Chapter 503 in (2) substituted reference to department of justice for reference to division of motor vehicles.

61-4-106. Transfer of license.

Compiler's Comments

2019 Amendment: Chapter 143 inserted current section text for former text that read: "A registered dealer or wholesaler who sells or disposes of the dealer's or wholesaler's entire business to another person may have the dealer's or wholesaler's certificate of registration transferred to the purchaser upon filing with the department a statement containing the name of the registered dealer or wholesaler, the number under which the business is registered, the name of the purchaser, and the location of the place of business sold. Upon the filing of the statement, accompanied by a filing fee of $2, the department shall note upon the registration record of the dealer or wholesaler the change of ownership. A certificate of registration may not be transferred unless the entire business of the dealer or wholesaler holding the certificate of registration is sold and disposed of, and a certificate of registration may not be transferred to any person other than the purchasers of the business." Amendment effective July 1, 2019.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: In four places, after "dealer", inserted "or wholesaler"; and made minor changes in style.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-4-107. Cease and desist order.

Compiler's Comments

2021 Amendment: Chapter 535 in (1) near end after "in the district court of" substituted "the county in which the conduct occurred" for "Lewis and Clark County". Amendment effective October 1, 2021.

2003 Amendment: Chapter 299 in (1) near middle of first sentence after "required" inserted "or if a dealer licensed under this part is conducting an off-premises sale without a permit, as required by 61-4-123(4)", after "upon the person" inserted "in person or", and at end inserted "or from conducting an off-premises sale without a permit"; deleted former (2) that read: "(2) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the certificates of ownership are not held in the offeror's name, in any calendar year is prima facie evidence that the offeror is engaged in the business of dealing motor vehicles and must be licensed under this chapter"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

1999 Amendment: Chapter 409 inserted (2) concerning evidence of business of dealing motor vehicles; inserted (3) concerning improper licensure; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-108. Exemptions.

Compiler's Comments

1999 Amendment: Chapter 409 inserted (3) concerning real estate brokers and agents. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-109. Privileges incident to license — withdrawal upon certain conditions.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 44 in (1) near middle after "issue a" substituted "temporary registration" for "20-day"; and in (2) near beginning after "plates, and" substituted "temporary registration" for "20-day" (amendment rendered void by Ch. 329 amendment). Amendment effective October 1, 2007.

Chapter 329 in (1) near middle after "vehicle" inserted "or trailer", after "dealer" inserted "to use and display an identification card on a power sports vehicle held for sale", after "issue a" substituted "temporary registration" for "20-day", after "motor vehicle" inserted "a power sports vehicle, or a trailer", and deleted reference to subsection (7) of 61-4-101; in (2) in first sentence near middle after "plates, and" substituted "identification cards" for "20-day permits assigned or", after "dealer" inserted "are subject to immediate confiscation and the dealer's authority, as an authorized agent, to issue temporary registration permits", and after "withdrawal" deleted "and confiscation" and at beginning of second sentence inserted "The dealer plates, demonstrator plates, and identification cards"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1) near middle before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Effective Date: Section 17, Ch. 299, L. 2003, provided: "[This act] is effective January 1, 2004."

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

61-4-110. Obligation of dealer to pay off liens on motor vehicles accepted in trade, purchase, or consignment — duties of dealer and secured party.

Compiler's Comments

2019 Amendment: Chapter 143 in (1)(a) near beginning substituted "in trade or purchase from a customer" for "in trade from a retail customer as part of the sale of another motor vehicle" and in three places after "traded" inserted "or purchased". Amendment effective July 1, 2019.

2005 Amendment: Chapter 542 throughout (1) before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Effective Date: Section 17, Ch. 299, L. 2003, provided: "[This act] is effective January 1, 2004."

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

61-4-111. Used vehicles — transfer to and from dealers.

Compiler's Comments

2021 Amendment: Chapter 389 in (2)(a) near beginning substituted "61-3-303(4)(b)" for "61-3-303(3)(b)". Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2017 Amendment: Chapter 435 in (2)(a) after first "trailer" inserted "or within 120 calendar days if a temporary registration permit is issued pursuant to 61-3-303(3)(b)"; in (2)(c) substituted "the dealer is subject to the provisions of 61-4-119" for "because the certificate of title is lost, is in the possession of third parties, or is in the process of reissuance in this state or elsewhere, the dealer shall comply in all other respects with the provisions of subsection (2)(a) and shall forward the missing document or documents to the county treasurer or an authorized agent within 3 days after receipt"; and made minor changes in style. Amendment effective October 1, 2017.

2013 Amendment: Chapter 196 in (1)(b) near end substituted "or an authorized agent to an authorized agent or the department" for "to the department"; in (2)(a) after "forward to" inserted "an authorized agent or to"; in (2)(b) after "county treasurer" inserted "or an authorized agent"; in (2)(c) after "county treasurer" substituted "or an authorized agent" for "either personally or by first-class mail"; and made minor changes in style. Amendment effective July 1, 2013.

2007 Amendment: Chapter 329 in (1) in two places, (1)(b) in two places, and (2)(a) near end inserted "power sports vehicle, or trailer"; in (2) in two places, (2)(a) near middle, (2)(a)(i), and (3) in two places inserted "power sports vehicle"; in (1) near beginning after "61-4-124(6), a" deleted "licensed", after "dealer" deleted "broker", and after "operates the" inserted "motor"; in (1)(a) inserted references to 23-2-515, 23-2-616, and 23-2-804; in (1)(b) in second sentence near middle before "vehicle" inserted "motor"; in (2) in first sentence near beginning after "other than a" deleted "licensed" and after "dealer" deleted "broker"; in (2)(a) near end after "where the" inserted "owner of the motor"; deleted former (4) that "read: "(4) Upon receipt from the county treasurer of the documents required under subsection (2), the department shall:

(a) update the electronic record of the title maintained by the department under 61-3-101; or

(b) issue a certificate of title if requested under 61-3-216(2)(f); and

(c) comply with the applicable provisions of Title 61, chapter 3, parts 1 through 3"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment — Coordination: Section 104, Ch. 596, in (1)(a) substituted "61-3-302(3)" for "61-3-201(2)"; in (2) at end of first sentence inserted language concerning issuance of temporary registration permit when dealer is an authorized agent; deleted former (2)(a) that read: "(a) Prior to delivery of the vehicle to the purchaser, the dealer shall issue a temporary registration permit for the vehicle and affix the temporary registration permit to the vehicle in a manner prescribed by the department. The temporary registration permit issued by the dealer is valid for 20 days from the date of issuance. There must be imprinted on the temporary registration permit in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER". Unless a durable license plate style placard is issued, one copy of the temporary registration permit must be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2)(b), and a copy must be retained by the dealer for the dealer's file. If a durable placard is issued, the dealer shall create and retain the relevant records as prescribed by the department. It is unlawful for the dealer to issue more than one 20-day temporary registration permit for each vehicle sale"; in (2)(a) near beginning increased time to 30 calendar days from 4 working days, substituted "motor vehicle" for "vehicle", and at end substituted "vehicle is domiciled" for "purchaser resides"; in (2)(a)(ii) at end substituted "61-3-216 and 61-3-220" for "61-3-221 and 61-3-322"; deleted former (2)(b)(iii) that read: "(iii) a copy of the temporary registration permit affixed to the vehicle by the dealer"; in (2)(b) at end substituted "or by electronic means, as authorized by the department" for "in which event they are considered to have been delivered at the time of mailing"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 160, Ch. 596, L. 2005, a coordination section, throughout section after "motor vehicle" inserted "or trailer"; deleted former (5) that read: "(5) For purposes of this section, "motor vehicle" includes a trailer as defined in 61-1-111"; and made minor changes in style.

Pursuant to sec. 160, Ch. 596, L. 2005, a coordination section, the Ch. 542 amendments to this section were rendered void.

2003 Amendments — Composite Section: Chapter 299 in (1) at beginning of introductory clause inserted exception clause; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 477 throughout section substituted "certificate of title" for "certificate of ownership"; in (2)(a) in first sentence after "issue" substituted "a temporary registration permit for the vehicle and affix the temporary registration permit to the vehicle" for "and affix to the rear window of the vehicle a 20-day permit" and at end deleted "and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number", inserted second sentence concerning duration of temporary permit, in third and fourth sentences before "permit" inserted "temporary registration"; at beginning of fourth sentence inserted "Unless a durable license plate style placard is issued", inserted fifth sentence concerning durable placard, and in sixth sentence after "one" inserted "20-day temporary registration"; substituted (2)(b)(i) concerning assigned certificate of title or current registration receipt for former text that read: "the certificate of ownership and certificate of registration (if the certificates are then in the dealer's possession), with an application for registration"; in (2)(b)(ii) at beginning inserted "an application for a certificate of title" and inserted reference to 61-3-221; in (2)(b)(iii) before "permit" inserted "temporary registration" and deleted former sentence that read: "The department, upon receipt of the documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration, together with a statement of any conditional sales contract, mortgage, or other lien as provided in 61-3-202"; in (2)(d) near beginning after "or" substituted "if applicable, registration receipt" for "certificate of registration"; inserted (4) concerning department action upon receipt of appropriate documents; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1995 Amendment: Chapter 342 substituted present (1) regarding used motor vehicle registration exemption and ownership transfer for former language that read: "The provisions of 61-3-201(2) shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle, but upon his transfer of ownership thereof to a person other than a licensed motor vehicle dealer"; at beginning of (2) inserted "Upon the transfer of a used motor vehicle to a person other than a licensed dealer, broker, or wholesaler"; throughout (2)(a) and (2)(b) substituted reference to 20-day permit for reference to a sticker; inserted (4) including trailer in definition of motor vehicle; adjusted subsection references; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 6, Ch. 342, L. 1995, provided: "[This act] applies to motor vehicle transfers occurring on or after January 1, 1996."

1985 Amendment: In (1)(a) and (1)(b) substituted references to department of justice for references to division of motor vehicles.

1981 Amendment: Added the last sentence in (1)(a) declaring it unlawful for a dealer to issue more than one sticker per vehicle sale.

Case Notes

Delivery to Buyer: Delivery to buyer at the time of an accident arising out of operation of the vehicle by buyer's employee, the vehicle had been delivered to buyer but buyer had not executed an application for certificate of title. The title had not passed under subsection (d) (deleted in 1971), section 53-109, R.C.M. 1947 (now 61-3-201), and the subsequent registration of the transfer could not cause the transfer to relate back to the time the vehicle was delivered to the buyer but only to the time that buyer executed an application for certificate of title. Liability arising out of the accident was covered by seller's insurance. Am. States Ins. Co. v. Angstman Motors, Inc., 343 F. Supp. 576 (D.C. Mont. 1972).

Execution of Application — Delivery on Next Business Day: A buyer took possession of vehicle and executed application for certificate of title on Saturday and dealer-seller endorsed the old certificate and delivered the documents to the County Treasurer on Monday, the next day of business for that office. The requirements of section 53-109, R.C.M. 1947 (now 61-3-201), were met and title passed as of Saturday, despite subsection (d) (deleted in 1971) of section 53-109 and despite death of buyer later on Saturday. Seller's insurance policy did not cover liability for accident arising out of operation of vehicle with buyer's consent occurring on Saturday after delivery of vehicle to buyer. Phoenix Ins. Co. v. Newell, 329 F. Supp. 172 (D.C. Mont. 1971), distinguished in Am. States Ins. Co. v. Angstman Motors, Inc., 343 F. Supp. 576 (D.C. Mont. 1972).

Attachment of Vehicle: Where plaintiff assignee of vehicle had not recorded the title in her name even though she had possession of the vehicle and endorsed documents of title, she was a stranger to the title under subsection (d) (deleted in 1971) of section 53-109, R.C.M. 1947 (now 61-3-201), and had no standing to complain of a wrongful attachment for the debt of the supposed owner, her former husband. Ott v. Fidelity Fin. Co., 158 M 91, 488 P2d 1148 (1971).

No Endorsement on Title — Liability on Dealer's Insurance: A certificate of title had not been endorsed by dealer-seller and there had been no application for a certificate in buyer's name. The failure to meet the requirements of section 53-109, R.C.M. 1947 (now 61-3-201), invalidated the sale under the terms of subsection (d) (deleted in 1971), section 53-109. The seller was still legally in possession, and buyer was not excluded by an exclusion of persons to whom possession had been delivered pursuant to a contract of sale despite the fact that the vehicle and the documents of title had been physically delivered to buyer. Dealer's insurance covered liability for an accident involving buyer's brother's operation of the vehicle. Glen Falls Ins. Co. v. Irion, 323 F. Supp. 1164 (D.C. Mont. 1970).

No New Title: None of the parties had taken any steps to have a new certificate of title issued to buyer of a vehicle. Title remained in the dealer-seller under subsection (d) (deleted in 1971), section 53-109, R.C.M. 1947 (now 61-3-201), even though the vehicle and the executed documents of title had been delivered to the buyer by a third-party nondealer who had purchased from the dealer. Liability for an accident arising out of the buyer's brother's operation of the vehicle was covered by the insurance of the dealer and the third party rather than by the insurance of the buyer. Irion v. Glen Falls Ins. Co., 154 M 156, 461 P2d 199 (1969), explained in Glen Falls Ins. Co. v. Irion, 323 F. Supp. 1164 (D.C. Mont. 1970), and distinguished in Phoenix Ins. Co. v. Newell, 329 F. Supp. 172 (D.C. Mont. 1971).

Installment Sale: Dealer-seller retained possession of the certificate of registration of a vehicle pending payment of the final installments of the purchase price. The title remained in the seller under the provisions of subsection (d) (deleted in 1971), section 53-109, R.C.M. 1947 (now 61-3-201), even though the vehicle had been delivered to buyer. Liability for an accident involving buyer's son's driving of the car was covered by the seller's insurance rather than by the 30-day automatic coverage for a new car under buyer's policy or by uninsured motorist coverage of injured parties. Ostermiller v. Parker, 152 M 337, 451 P2d 515 (1968), explained in Glen Falls Ins. Co. v. Irion, 323 F. Supp. 1164 (D.C. Mont. 1970), and distinguished in Phoenix Ins. Co. v. Newell, 329 F. Supp. 172 (D.C. Mont. 1971).

Exercise of Control Overtime: Purchaser of vehicle had exercised complete dominion over a vehicle for over 3 years, had taken possession of the seller's certificate of registration, had purchased license plates for it in his own name for 2 years, had purchased insurance for it, and had repaired it. He was the owner of the vehicle for purposes of the nonowned clause of his insurance policy, despite the fact that there had been no compliance with section 53-109, R.C.M. 1947 (now 61-3-201), and no certificate of registration had been issued to him as required by subsection (d) (deleted in 1971), section 53-109. Nat'l Farmers Union Property & Cas. Co. v. Colbrese, 368 F2d 405 (9th Cir. 1966), reversing Colbrese v. Nat'l Farmers Union Property & Cas. Co., 227 F. Supp. 978 (D.C. Mont. 1964), certiorari denied 386 US 991, 87 S Ct 1306 (1961), questioned in Irion v. Glen Falls Ins. Co., 154 M 156, 461 P2d 199 (1969).

Insurance Coverage: Buyer of a vehicle had not executed an application for registration in his name and neither party had filed any documents relating to the transfer with the registrar of motor vehicles. Title had not passed to the buyer even though the parties had agreed on the price and buyer had taken possession. Liability from an accident while buyer was driving was covered by dealer-seller's insurance rather than by the owned-replacement clause of buyer's insurance. Safeco Ins. Co. of Am. v. NW. Mut. Ins. Co., 142 M 155, 382 P2d 174 (1963), distinguished in Nat'l Farmers Union Property & Cas. Co. v. Colbrese, 368 F2d 405 (9th Cir. 1966), and in Phoenix Ins. Co. v. Newell, 329 F. Supp. 172 (D.C. Mont. 1971).

Contract for Purchase: Registrar never issued certificate of registration to purchaser of a vehicle, so that under subsection (d) (deleted in 1971), section 53-109, R.C.M. 1947 (now 61-3-201), title did not pass to the purchaser. A nonnegotiable promissory note given by the purchaser was without consideration and was therefore voidable against an assignee of the note. Sonnek v. Universal C.I.T. Credit Corp., 140 M 503, 374 P2d 105 (1962).

Attorney General's Opinions

Motor Vehicle Dealer Not to Obtain "Title Only" on Vehicle in Inventory: A motor vehicle dealer may not obtain a "title only" (meaning receipt of title without registration or payment of taxes) from the Registrar's Bureau on a motor vehicle that is part of his inventory. If a dealer wishes to obtain a title on such a vehicle, he must also register the vehicle and pay any taxes or fees due on the vehicle. 40 A.G. Op. 70 (1984).

61-4-112. New motor vehicles — transfers by dealers.

Compiler's Comments

2013 Amendment: Chapter 196 in (1) after "forward to" inserted "an authorized agent or"; in (2) after "agent" deleted "as defined in 61-1-101"; and made minor changes in style. Amendment effective July 1, 2013.

2007 Amendment: Chapter 329 throughout section inserted references to power sports vehicle or trailer; in (1) at beginning after "When a" deleted "motor vehicle" and near end after "where the" inserted "owner of the"; in (1)(b) near end after "other than a" deleted "new motor vehicle", after "agreement from" deleted "a new car", and after "importer" inserted "of the new motor vehicle"; deleted former (2) that read: "(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of title if requested under 61-3-216(2)(f) and otherwise comply with the provisions of Title 61, chapter 3, parts 1 through 3, as applicable"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment — Coordination: Section 105, Ch. 596, deleted former (1)(a) that read: "(a) issue and affix a temporary registration permit, as prescribed in 61-4-111(2)(a), for transfers of used motor vehicles and retain a copy of the temporary registration permit or, if a durable license-plate style placard is issued, affix the placard and create and retain all other relevant records prescribed by the department"; in (1)(a) near middle extended time to 30 calendar days from 4 working days and at end substituted "vehicle is domiciled" for "purchaser or recipient resides"; deleted former (1)(b)(i) that read: "(i) one copy of the temporary registration permit issued under subsection (1)(a) or a copy of the information described in the records concerning a placard"; inserted (1)(b) concerning temporary registration permit when dealer is an authorized agent; and made minor changes in style. Amendment effective January 1, 2006.

Section 161, Ch. 596, L. 2005, a coordination section, in (1)(a) near end and in (1)(a)(ii) before "vehicle" inserted "motor".

Pursuant to sec. 161, Ch. 596, L. 2005, a coordination section, the Ch. 542 amendments to this section were rendered void.

2003 Amendment: Chapter 477 in (1)(a) in two places and in (1)(b)(i) before "permit" inserted "temporary registration"; at end of (1)(a) inserted language concerning durable placard and record retention; in (1)(b)(i) at end inserted language concerning copy of information relating to durable placard; in (1)(b)(iii) at beginning substituted "manufacturer's certificate of origin" for "statement of origin" and after "person" deleted "firm, corporation, or association"; in (2) at end substituted "title if requested under 61-3-216(2)(f) and otherwise comply with the provisions of Title 61, chapter 3, parts 1 through 3, as applicable" for "ownership and certificate of registration, together with a statement of lien as provided in 61-3-202"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2000 Amendment by Referendum: Chapter 515, L. 1999, at end of (1)(b)(iii) substituted "that shows that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person, firm, corporation, or association other than a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer" for "as prescribed in 61-3-502(8)". Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000.".

1995 Amendments: Chapter 342 in (1)(a), in two places, and in (1)(b)(i) substituted "permit" for "sticker" and substituted "61-4-111(2)(a)" for "61-4-111(1)(a)"; and made minor changes in style. Amendment effective January 1, 1996.

Chapter 509 in (1)(b)(iii) substituted "61-3-502(8)" for "61-3-502(8)(b)". Amendment effective July 1995.

Applicability: Section 6, Ch. 342, L. 1995, provided: "[This act] applies to motor vehicle transfers occurring on or after January 1, 1996."

1989 Amendment: Corrected internal reference to 61-3-502. Amendment effective July 1, 1989.

Applicability: Section 8, Ch. 517, L. 1989, provided: "[This act] applies to fleet vehicles registered after the effective date of [this act]." Effective July 1, 1989.

1985 Amendments: Chapter 428 substituted (1) and (2), relating to procedures for proper transfer by dealer of new motor vehicle to purchaser or other recipient, for "The provisions of subsection (1)(a) of 61-4-111, pertaining to the issuance of a sticker by the dealer, placement thereof upon the rear windshield of the vehicle prior to delivery, and transmission of a copy of said sticker to the county treasurer, either personally or by first class mail within 10 days following delivery of said vehicle, shall be applicable to sales of new motor vehicles as well as to sales of used motor vehicles."

Chapter 503 in (2) substituted reference to department of justice for reference to division of motor vehicles.

61-4-113. New motor vehicles towed into state to be labeled.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) in first sentence near middle after "other new" inserted "motor" and near end after "number of miles the" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

1985 Amendment: In first sentence of (1) substituted reference to department of justice for reference to division of motor vehicles.

61-4-119. Penalty.

Compiler's Comments

1991 Amendment: Increased minimum fine from $25 to $250 and maximum fine from $100 to $500; and made minor changes in style.

61-4-120. Auto auction — restrictions — annual report — issuance, use, and fees for demonstrator plates.

Compiler's Comments

2019 Amendment: Chapter 143 in (2)(a) at beginning of second sentence deleted "The report must contain information concerning owner identity, other ownership interests, felony conduct, general liability insurance status, surety bond filings"; inserted (2)(b) requiring that an auto auction provide a new license application form when making certain changes and that the department examine the license application; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 323 in (2) near beginning substituted "the 15th day of the month prior to the dealer license expiration month" for "December 31 of each year". Amendment effective January 1, 2018.

2007 Amendment: Chapter 329 substituted (1)(a) prohibiting auto auction sale of used vehicles at retail for former text that read: "A person that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including street address, city, county, and state, where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that motor vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license"; in (1)(b) in first sentence at beginning inserted reference to this part and after "vehicle" substituted "only if the auto auction is" for "except when"; deleted former (1)(b) that read: "(b) Each application must be accompanied by a bond of $50,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually"; substituted (2) concerning annual report for former text that read: "An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers"; substituted (3) concerning issuance of registration permit for former text that read: "Auto auctions that are licensed under this section and that hold a current license number may issue temporary registration permits, which may be displayed and used by a buyer to operate an unregistered motor vehicle purchased from the auto auction. The temporary registration permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a motor vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary registration permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, the date of sale, the name, address, license number, and authorized signature of the auto auction, and a description of the motor vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary registration permit, and the auto auction may charge a motor vehicle purchaser no more than $10 for the issuance of each temporary registration permit to offset the cost of the temporary registration permit. It is unlawful for the auto auction to issue more than one temporary registration permit for each motor vehicle sale"; in (4) (a) at beginning substituted "Upon the issuance of an auto auction license and payment of a $5 fee for each plate, the department shall furnish to the auto auction one or more demonstrator plates that may be used" for "A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates"; deleted former (5)(a) that read: "(a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary registration permit issued to a motor vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the vehicle identification number and engine number, if any; and

(ii) a statement that a number has been obliterated, defaced, or changed, if it has"; in (5)(a) in first sentence and at end of (5)(a)(i) inserted references to power sports vehicle or trailer; deleted former (5)(d) that read: "(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment for the buyer under the provisions of 61-3-206"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1)(a)(i) in first sentence near end before "vehicles" inserted "motor"; in (3) in five places before "vehicle" inserted "motor"; in (4) in first sentence in three places before "vehicles" inserted "motor" and in second and third sentences before "vehicle" inserted "motor"; and in (5)(a) in first sentence near middle, (5)(b)(i), and (5)(b)(iv) before "vehicle" inserted "motor". Amendment effective January 1, 2006.

2003 Amendments — Composite Section: Chapter 299 in (1)(b) near middle of first sentence increased bond amount from $35,000 to $50,000; in (4) in second sentence after "inventory vehicles" inserted "to and" and after "this state" inserted "and" and after "to" inserted "and from"; and made minor changes in style. Amendment effective January 1, 2004.

Chapter 477 throughout section substituted references to temporary registration permit for references to temporary permit; in (1) at beginning after "person" deleted "firm, association, or corporation"; in (4) in fourth sentence after "persons" deleted "partnerships, corporations"; in (5)(b) in four places substituted "certificate of title" for references to certificate of ownership; in (5)(c) substituted "certificate of title" for "certificate of ownership"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

2001 Amendment: Chapter 201 in (1)(b) increased bond amount from $25,000 to $35,000; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 409 in (1)(b) deleted former second sentence that read: "A person who suffers loss or damage due to the unlawful conduct of an auto auction licensed under this section may proceed in the same manner as provided for licensed dealers and wholesalers in 61-4-101(3)(b)"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1997 Amendment: Chapter 221 deleted former (5)(a)(ii) that read: "other numbers or identification marks on the motor vehicle"; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

1993 Amendment: Chapter 10 in (1)(a), in first sentence after "verified by the", substituted "department" for "Montana highway patrol"; and made minor changes in style.

61-4-121. Temporary registration permit — limitation on issuance and transfer — violation — penalty.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 542 in (1) near end before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Chapter 596 in (1) at beginning inserted "If the dealer is an authorized agent, as defined in 61-1-101" and after "one" deleted "20-day"; deleted former (1)(b) that read: "(b) A dealer may not transfer 20-day temporary registration permits to another dealer unless the dealer:

(i) notifies the department within 3 days of the transfer;

(ii) identifies to the department the dealer to whom any temporary registration permits have been transferred;

(iii) informs the department of the date of the transfer and the quantity and serial numbers of the transferred temporary registration permits"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 477 throughout section before references to permit inserted "temporary registration"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1997 Amendment: Chapter 221 inserted (1)(b) listing conditions for transfer of 20-day permits; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

61-4-122. Compliance specialists as peace officers.

Compiler's Comments

2007 Amendment: Chapter 329 in (2)(e) after "inspections of" deleted "a dealer's", after "business and" inserted "if applicable", before "vehicle" deleted "motor", and at end inserted "of a dealer, broker, wholesaler, or auto auction"; in (2)(f) near middle after "motor vehicle" inserted "power sports vehicle, or trailer", after "previously in" deleted "a dealer's", and near middle and near end after "dealer" inserted references to a broker, wholesaler, or auto auction; deleted former (3) that read: "(3) For purposes of this section, the term "dealer" includes a dealer of any motor vehicle type, a wholesaler, or an auto auction, any of which is subject to licensure by the department under this chapter"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (2)(e), (2)(f), and (3) before "vehicle" inserted "motor"; and in (3) near middle after "auction" inserted "any of which is". Amendment effective January 1, 2006.

Effective Date: Section 33(1), Ch. 409, L. 1999, provided that this section is effective on passage and approval. Approved April 21, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that subsections (1) through (3), (4)(b), (4)(c), and (5) of this section apply to license terms beginning after December 31, 1999.

Section 34(2), Ch. 409, L. 1999, provided that subsections (4)(a) and (4)(d) of this section do not apply to used motor vehicle dealers licensed by the department of justice on or before December 31, 1999.

61-4-123. Dealer requirements and restrictions.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 20 inserted (3)(b) establishing when a dealer may park a motor vehicle in a storage lot; and made minor changes in style. Amendment effective March 16, 2007.

Chapter 218 in (4)(a) in third sentence at beginning deleted "Except for", near middle after "dealer" inserted "may conduct", and after "sale" substituted "in a county other than" for "must be conducted within" (Ch. 329 amendments voided the amendments to this sentence), inserted fourth sentence concerning off-premises display and sale in certain counties, and in fifth sentence near beginning after "sale" inserted "authorized by this subsection (4)(a)"; and made minor changes in style. Amendment effective October 1, 2007.

Chapter 329 substituted (1) concerning prohibiting used dealer from selling new vehicles for former text that read: "A dealer may not offer for sale, trade, or consignment any motor vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a motor vehicle of a type for which the dealer is not licensed"; in (3), (4)(b), (4)(c), (4)(c)(i), (4)(c)(ii), (5), and (9) after reference to motor vehicle inserted reference to power sports vehicle or trailer; in (4)(a) at beginning of first sentence inserted "Upon prior notice to the department" and near middle after "dealer" deleted "notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises display and sale and" and at beginning of third sentence deleted "Except for recreational vehicle, motor home, or travel trailer dealers" and at end inserted "unless the off-premises display and sale are restricted to recreational vehicles or power sports vehicles"; in (4)(c)(ii) at end of second sentence inserted "in a calendar year"; in (5) near middle substituted "at the same geographic location as another dealer's established place of business" for "maintains an established place of business at the same geographic location" and after "that all" deleted "motor vehicle"; in (6) at end inserted "or if a cellular service is used, the dealer's cell phone number must be posted at the dealer's established place of business"; in (8)(a) near middle after "demonstrator plate" inserted "and any power sports vehicle displaying a dealer's identification card"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1) in two places, (2) in three places, (4)(c), (4)(c)(i), (4)(c)(ii), (5) near middle, (8)(a), and (8)(c) before "vehicle" inserted "motor"; in (4)(b), (5) near beginning, and (9) before "vehicles" inserted "motor"; in (4)(a) in third sentence near beginning after "recreational vehicle" inserted "motor home, or travel trailer"; in (8)(a) near middle after "loan to" inserted "a customer"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 299 inserted (8)(a) requiring a dealer to maintain liability insurance; in (8)(b) near middle after "any" substituted "general" for "garage"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

2001 Amendment: Chapter 385 in (3) at beginning inserted exception clause and after "sell" substituted "or display a motor vehicle offered for sale at any" for "vehicles from a"; in (4)(a) at beginning of first sentence inserted "A dealer may conduct an off-premises display and sale at a geographic location other than that of the dealer's established place of business as listed on the dealer's license if", near end after "off-premises" inserted "display and", and after "sale" inserted "and obtains a permit from the department", inserted second sentence regarding proof that the location of an off-premises display and sale is in compliance with local zoning ordinances, in third sentence after "off-premises" inserted "display and" and after "within" deleted "the city limits of the city of the dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that is within", and in fourth sentence at beginning after "The" inserted "display and", after "consecutive" deleted "business", and after "off-premises" inserted "displays and"; inserted (4)(b) regarding display of vehicles inside an airport terminal or shopping mall; inserted (4)(c) regarding display of one vehicle at a geographic location other than that of the dealer's established place of business; in (8)(a) after "ensure that" substituted "the department is named as a certificate holder on any garage liability insurance policy held by the dealer, that the minimum term of the policy is 1 year, and that a lapse of insurance" for "a lapse in required garage keepers legal liability insurance"; and made minor changes in style. Amendment effective April 28, 2001.

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-124. Annual report — filing fees — grace period for dealer and demonstrator plates — restrictions imposed upon failure to file.

Compiler's Comments

2019 Amendment: Chapter 143 in (1) near middle substituted "changes that may have occurred in that calendar year affecting the information originally filed under 61-4-101" for "changes concerning owner identity, other ownership interests, felony conduct, general liability insurance status, and surety bond filings, as originally required under 61-4-101, that may have occurred in that calendar year"; inserted (2)(b) requiring that a dealer provide a new license application form when making certain changes and that the department examine the license application; inserted (6)(c) prohibiting the issuance of a temporary registration permit for a dealer who has not filed the annual report and paid the fees due under this section; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 323 in (1) substituted "the 15th day of the month prior to the dealer license expiration month" for "December 31 of each year"; in (5) substituted "the 15th day of the month prior to the dealer license expiration month" for "December 31 of the calendar year" and at end substituted "until the dealer license expiration date" for "for the prior calendar year through the last day of February of the following year"; in (6) substituted current text concerning department duties following dealer license expiration for former text that read: "(6)(a) On or after January 1 of the year following the calendar year for which an annual report and filing and registration fees are due under this section, the department may not renew dealer or demonstrator plates or identification cards for a dealer who has not filed the annual report and paid the fees due under this section.

(b) On or after March 1 of the year following the calendar year for which an annual report and filing and registration fees are due under this section, the department may not issue or transfer a title under the provisions of 61-4-111 (1) to or from a dealer who has not filed the annual report and paid the fees, and the department"; and made minor changes in style. Amendment effective January 1, 2018.

2007 Amendment: Chapter 329 in (3) after "accompanied by" substituted "a $30 filing fee" for "a $5 filing fee and one or more of the following dealer registration fees, based on the type of license held by the dealer:

(a) $25 for a new motor vehicle, used motor vehicle, new recreational vehicle, or used recreational vehicle dealer's license; and

(b) $25 for a motorcycle or trailer dealer's license"; in (4)(a) in first and second sentences before "dealer" deleted "motor vehicle" and after reference to motor vehicle inserted reference to power sports vehicle or trailer; deleted former (4)(b) that read: "(b) The minimum retail sales requirements of this subsection (4) do not apply to a dealer filing an annual report for a used motor vehicle dealer's license and either a new motor vehicle dealer's license or a new recreational vehicle dealer's license"; in (4)(b)(i) near beginning before "dealer" deleted "motor vehicle" and near end before "fee" deleted "registration"; in (4)(b)(ii) near beginning before "dealer" deleted "motor vehicle", near middle after "motor vehicles" inserted "power sports vehicles, or trailers", and near end before "fee" deleted "registration"; in (4)(b)(iii) after "requirements of" deleted "subsection (4)(a), as well as the lower minimum sales requirements of"; in (5), (6)(a), and (6)(b) after "demonstrator plates" inserted "or identification cards"; and made minor changes in style. Amendment effective January 1, 2008.

2003 Amendment: Chapter 299 in (1) near beginning after "dealer shall" substituted "submit an annual report, in a form or manner prescribed by the department, to the department to advise the department of any changes" for "apply to the department for renewal of the dealer's license for an additional 1-year period.

(2) (a) To qualify for renewal, a dealer shall submit a completed application, in a form prescribed by the department, updating prior submitted information", near middle after "felony conduct" substituted "general" for "garage", after "insurance" inserted "status", and after "61-4-101" inserted "that may have occurred in that calendar year"; in (2)(a) after "require a" substituted "dealer" for "renewal applicant" and at end inserted "with the dealer's annual report"; in (3) near beginning of introductory clause after "subsection (4)(c)" substituted "the annual report" for "a license renewal application", after "$5" substituted "filing" for "application", after "following" substituted "dealer registration" for "license", and at end substituted "held by the dealer" for "renewal being sought"; in (4)(a) near beginning of first sentence after "dealer" deleted "seeking license renewal" and at end substituted "calendar year for which the annual report is filed" for "expiring license term" and in second sentence after "year in the" substituted "year for which the report is filed" for "expiring license term" and near end before "license" deleted "expiring"; in (4)(b) after "dealer" substituted "filing an annual report" for "seeking to renew"; inserted (4)(c)(i) requiring a dealer who cannot certify to the number of retail sales to pay an additional $25 fee; in (4)(c)(ii) at beginning deleted "To qualify for renewal", after "61-8-903" substituted "and who, in the dealer's annual report, cannot" for "shall", near middle after "during the" substituted "calendar year for which the report is filed, shall" for "expiring license term or", and near end after "addition to the" substituted "filing and registration fees" for "application and license fee"; in (4)(c)(iii) at beginning substituted "dealer" for "renewal applicant", near middle after "sales" inserted "reporting", and after "as well as the" deleted "additional renewal or the"; deleted former (4)(c)(iii), (4)(c)(iv), and (4)(d) that read: "(iii) If a used motor vehicle dealer also qualified as a tow truck operator loses the status of a qualified tow truck operator under 61-8-903, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).

(iv) If a used motor vehicle dealer also licensed as a motor vehicle wrecking facility ceases to do business as a wrecking facility and surrenders the wrecking facility license to the department of environmental quality, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).

(d) A dealer who fails to meet the retail sales requirements for license renewal under subsection (4)(a) is not eligible for license renewal and may not submit an application for another used motor vehicle dealer's license or a wholesaler's license for a period of 12 months from the expiration of the dealer's most recent license term"; in (5) near beginning after "whose" substituted "annual report" for "completed renewal application", after "December 31 of the" substituted "calendar year may" for "expiring license term may, if necessary, continue dealership operations and", and after "plates" substituted "assigned and registered for the prior calendar year" for "under the expired license"; inserted (6) concerning nonrenewal of dealer or demonstrator plates when an annual report has not been filed or fees paid; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

2001 Amendment: Chapter 385 in (2)(a) near middle after "garage" deleted "keeper"; and in (5) near end substituted "the last day of February" for "February 15". Amendment effective April 28, 2001.

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-125. Wholesaler restrictions — demonstrator plates — annual report.

Compiler's Comments

2019 Amendment: Chapter 143 inserted (3)(b) requiring that a wholesaler provide a new license application form when making certain changes and that the department examine the license application; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 323 in (3)(a) near beginning substituted "the 15th day of the month prior to the dealer license expiration month" for "December 31 of each year". Amendment effective January 1, 2018.

2007 Amendment: Chapter 329 substituted (1) prohibiting retail sale of used vehicles by wholesalers for former text that read: "(1) (a) The department is authorized to issue a wholesaler's license to any person it determines is qualified to hold a license under the provisions of this section.

(b) A wholesaler is authorized to sell used motor vehicles, used recreational vehicles, used motor homes, used travel trailers, trailers, motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a motor vehicle, recreational vehicle, trailer, motorcycle, quadricycle, or special mobile equipment only to a dealer, an auto auction, or another wholesaler. Retail sale of motor vehicles, recreational vehicles, motor homes, travel trailers, trailers, motorcycles, quadricycles, or special mobile equipment by a wholesaler is not allowed.

(c) A wholesaler's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(d) The department shall design and issue wholesaler demonstrator plates of a similar sequence to demonstrator plates issued to dealers but that conspicuously display the term "wholesaler" or the abbreviation "W""; deleted former (2) and (3) and read: "(2) To qualify for a wholesaler's license, an applicant shall submit a completed application, in a form prescribed by the department, that provides the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (2)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership.

(b) for each person subject to the provisions of subsection (2)(a), information concerning whether the person has:

(i) an ownership interest in a motor vehicle dealership or wholesaler business in Montana or another jurisdiction and, if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of or pleaded guilty to a felony in this or any other jurisdiction and, if so, the applicant shall provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any judicial proceeding pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired general liability insurance, naming the department as a certificate holder under the policy, and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any motor vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business and must be for a minimum of 1 year.

(d) the street address of the permanent nonresidential building or office where business records will be kept and will be made available for inspection by the department; and

(e) a bond of $50,000 filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.

(3) The application fee for a wholesaler's license is $5, and the license fee is $25. Both fees must accompany an original or renewal wholesaler's license application"; in (2) in second sentence after "issued" deleted "and is authorized to display and use a wholesaler", after "plates" inserted "as provided in 61-4-129, for use", and after "motor vehicle" inserted "or trailer" and deleted former third sentence that read: "The fee for a wholesaler demonstrator plate is $5"; substituted (3)(a) concerning annual report for former text that read: "(a) A wholesaler's license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.

(b) To qualify for renewal of a wholesaler's license, a wholesaler shall submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2)"; in (3)(b) in first sentence after "that" inserted "the wholesaler sold", after "motor vehicles" substituted "power sports vehicles, or trailers" for "of the type authorized under the license were sold by the wholesaler", and at end substituted "calendar year for which the annual report is filed" for "expiring license term" and in second sentence after "motor vehicle" inserted "power sports vehicle, or trailer" and near end before "license" deleted "expiring"; in (3)(c) near end substituted "filing fee" for "fees" and at end substituted "subsection (3)(a)" for "subsection (3)"; deleted former (6) that read: "(6) A wholesaler whose completed renewal application has been received by the department on or before December 31 of the expiring license term may, if necessary, operate the business and display wholesaler demonstrator plates under the expired license through the last day of February of the following year"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1)(b) in first sentence near beginning after "recreational vehicles" inserted "used motor homes, used travel trailers", in second sentence after "sell a" substituted "motor vehicle, recreational vehicle, trailer, motorcycle, quadricycle, or special mobile equipment" for "vehicle", and in third sentence near beginning after "sale of" substituted "motor vehicles, recreational vehicles, motor homes, travel trailers, trailers, motorcycles, quadricycles, or special mobile equipment" for "vehicles"; in (2)(b)(i), (2)(c) near beginning of second sentence, (4) near end of second sentence, (5)(c) near middle of second sentence, and (5)(d) before "vehicle" inserted "motor"; in (5)(c) near middle of first sentence before "vehicles" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 299 in (2)(c) near beginning of first sentence after "acquired" substituted "general" for "garage"; in (2)(e) near beginning increased bond amount from $35,000 to $50,000; in (5)(d) near beginning after "who" substituted "cannot, under penalty of law, certify the number of vehicle sales required under subsection (5)(c) shall pay a fee of $25 in addition to the fees required in subsection (3)" for "fails to meet the sales requirements for license renewal under this section is not eligible for license renewal and may not submit an application for another wholesaler's license or a used motor vehicle dealer's license for a period of 12 months from the expiration of the wholesaler's most recent license term"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

2001 Amendments — Composite Section: Chapter 201 in (2)(e) increased bond amount from $25,000 to $35,000. Amendment effective October 1, 2001.

Chapter 385 in (2)(c) in first sentence after "garage" deleted "keepers" and after "liability insurance" inserted "naming the department as a certificate holder under the policy" and at end of second sentence inserted "and must be for a minimum of 1 year"; in (6) near end substituted "the last day of February" for "February 15"; and made minor changes in style. Amendment effective April 28, 2001.

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-126. Claims against dealer, broker, wholesaler, or auto auction bonds.

Compiler's Comments

2007 Amendment: Chapter 329 in (1) in two places and (2) in two places after "dealer" inserted "broker"; and made minor changes in style. Amendment effective January 1, 2008.

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-127. Broker requirements — restrictions — annual report — fees.

Compiler's Comments

2019 Amendment: Chapter 143 inserted (4)(b) requiring that a broker provide a new license application form when making certain changes and that the department examine the license application; and made minor changes in style. Amendment effective July 1, 2019.

2017 Amendment: Chapter 323 in (4) near beginning substituted "the 15th day of the month prior to the dealer license expiration month" for "December 31 of each year". Amendment effective January 1, 2018.

Effective Date: Section 61, Ch. 329, L. 2007, provided that this section is effective January 1, 2008.

61-4-128. Common standards — dealer plates — demonstrator plates — loaner plates — identification cards — fees.

Compiler's Comments

2021 Amendment: Chapter 389 throughout section inserted "loaner"; and made minor changes in style. Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2017 Amendment: Chapter 323 in (5)(a) substituted "are expired on the first day following the dealer license expiration date" for "expire on December 31"; in (5)(b) after "61-4-125" deleted "on or before December 31 of the calendar year" and at end substituted "until the dealer license expiration date" for "through the last day of February of the following year"; and made minor changes in style. Amendment effective January 1, 2018.

2009 Amendment: Chapter 2 in (1)(b) in second sentence after "alphanumeric" inserted "identification mark". Amendment effective October 1, 2009.

Effective Date: Section 61, Ch. 329, L. 2007, provided that this section is effective January 1, 2008.

61-4-129. Assignment of demonstrator plates.

Compiler's Comments

2021 Amendment: Chapter 389 in (2)(a)(i) after "offered for sale" deleted "or loaned". Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2013 Amendment: Chapter 86 in (2)(a)(i) after "sale" inserted "or loaned to a dealership customer"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 129 in (2)(a) substituted "or on a truck, truck tractor, truck tractor pulling a laden or unladen semitrailer, or travel trailer" for "or a travel trailer". Amendment effective October 1, 2011.

2007 Amendment: Chapter 329 substituted (1)(b) prohibiting issuance of plates for business restricted to sale of power sports vehicles for former text that read: "Demonstrator plates must be issued for each motor vehicle type for which a dealer's license is required under 61-4-102. Demonstrator plates must be designed by the department in a manner that distinguishes demonstrator plates from dealer plates"; in (2)(a) after exception clause deleted "new and used motor vehicle, recreational vehicle, motor home, or travel trailer", before "vehicle" inserted "motor", and after "61-4-123(2)" inserted "or a travel trailer"; in (2)(b) at beginning deleted "Mobile home and trailer"; in (2)(b)(i) at beginning substituted "trailers" for "units"; deleted former (2)(b)(ii) that read: "(ii) on mobile homes being hauled to a customer's location for setup after sale"; in (2)(b)(ii) after "motor vehicle" deleted "provided that a dated demonstration permit, valid" and at end deleted "is carried with the motor vehicle at all times"; in (2)(b)(iii) after "move" deleted "mobile homes and travel trailers legally bearing mobile home and" and after "travel trailer" substituted "that is in the dealer's inventory" for "dealer's license plates of the dealer owning the motor vehicle"; in (2)(b)(iv) at beginning substituted "trailers" for "units"; deleted former (3) that read: "(3) A dealer who files the annual report required under 61-4-124 on or before December 31 of the calendar year may display or use demonstrator plates assigned and registered for the calendar year through the last day of February of the following year, as provided in 61-4-124(5)"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendments — Composite Section — Coordination: Chapter 258 in (2) at beginning inserted exception clause; inserted (2)(c) providing for extra demonstrator plates that dealers eligible for them can give to service repair facilities for motor vehicles moved between the dealer and a service repair facility before sale and providing that those plates need not have a Monroney label or buyer's guide label; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 542 in (1) in second sentence, (2)(b)(iii) in two places, and (2)(c) in two places before "vehicle" inserted "motor"; in (2)(a) after "recreational vehicle" inserted "motor home, or travel trailer"; in (2)(b)(iv) after "move" substituted "mobile homes and travel trailers" for "vehicles"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 2, Ch. 258, L. 2005, a coordination section, in (2)(c) before "vehicles" and before "vehicle" the code commissioner inserted "motor". Amendment effective October 1, 2005.

2003 Amendment: Chapter 299 in (1) in first sentence increased fee from $3 to $5 a plate; in (2)(a) after "used" inserted "on a vehicle displaying a Monroney label or a buyer's guide label, as required by 61-4-123(2), that is"; in (2)(a)(i) at beginning substituted "being demonstrated and offered for sale" for "to demonstrate" and after "72 hours" deleted "a vehicle held for sale"; inserted (3) allowing a dealer who files the annual report on or before December 31 of the calendar year to display or use demonstrator plates assigned and registered for the calendar year through the last day of February of the following year; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

Effective Date: Section 33(2), Ch. 409, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

61-4-130. Courtesy license plates — issuance — restrictions on use.

Compiler's Comments

2007 Amendment: Chapter 329 deleted former (1) that read: "(1) The department may design courtesy license plates to be issued to a new or used motor vehicle dealer for use in accordance with this section. The plates must bear the license number assigned to the dealer, an abbreviation for the vehicle type of the dealer's license, and the word "COURTESY""; and made minor changes in style. Amendment effective January 1, 2008.

Effective Date: Section 10, Ch. 385, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 28, 2001.

61-4-131. Definitions.

Compiler's Comments

2017 Amendments — Composite Section: Chapter 93 in (2)(b) deleted reference to 61-4-141. Amendment effective March 23, 2017.

Chapter 323 in definition of established place of business in (b) substituted "61-4-101(6)(e)" for "61-4-101(5)(e)". Amendment effective January 1, 2018.

2007 Amendment: Chapter 329 in definition of broker in (a) and two places in (b) inserted "a trailer, a semitrailer, a pole trailer, a travel trailer, a motorboat, a personal watercraft, a snowmobile, or an off-highway vehicle" and in (b) after "ownership of" deleted "any vehicles for the purpose of selling"; in definition of dealer inserted (a) concerning new dealer and used dealer and in (b) at beginning inserted "For purposes of 61-4-132 through 61-4-135, 61-4-137, 61-4-141, and 61-4-150, the term is limited to"; in definition of designated family member near end substituted "new motor vehicle dealer, as defined in 61-4-201" for "dealer"; in definition of established place of business in (a) at end of first sentence substituted "person licensed under this part" for "dealer" and in second sentence after "occupied" deleted "by a dealer" and in two places substituted "licensee's" for "dealer's", in (b) at beginning substituted "licensee's" for "dealer's" and substituted "61-4-101(5)(e)" for "61-4-101(4)(d)", and in (c) substituted "licensee" for "dealer"; inserted definitions of new, power sports vehicle, trailer, and used; deleted definition of trailer dealer that read: ""Trailer dealer" means any person, firm, or corporation engaged in whole or in part in the business of buying or selling trailers or semitrailers, with facilities for displaying one or more trailers or semitrailers"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in introductory clause substituted "this part" for "61-4-131 through 61-4-137, 61-4-141, and 61-4-150"; inserted definitions of broker, established place of business, parking, and trailer dealer; deleted definition of motor vehicle that read: ""Motor vehicle" has the same meaning as provided in 61-4-201"; deleted definition of new motor vehicle that read: ""New motor vehicle" has the same meaning as provided in 61-4-201"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 335 in introductory clause inserted reference to 61-4-141 and 61-4-150; inserted definition of dealer; in definition of designated family member at end of (a)(i)(A) inserted reference to laws of intestate succession of this state and at beginning of (a)(ii) deleted "under the laws of intestate succession of this state or who"; inserted definitions of motor vehicle and new motor vehicle; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 221 deleted definition of Department as Department of Commerce; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

1981 Amendment: Substituted "department of commerce" for "department of business regulation" in (1).

61-4-132. Right of designated family member to succeed in dealership ownership.

Compiler's Comments

2019 Amendment: Chapter 283 in (1) near beginning of first sentence after "family member of a" inserted "retiring", near middle inserted "retiring dealer or the", substituted "of a deceased or incapacitated dealer giving" for "gives", and substituted "succeed the dealer in the ownership or operation of the dealership" for "do so", near end inserted "expected date of retirement or within 120 days after the", and at end substituted "incapacity of the dealer" for "incapacity and unless there exists good cause for refusal to honor the succession on the part of the manufacturer, factory branch, distributor, or importer", and inserted second sentence regarding refusal to honor the notice of succession; in (2) inserted second sentence regarding family member meeting the written requirements to be a dealer and inserted third sentence regarding family member lack of experience, a reasonable amount of time to meet requirements, and a general manager to manage day-to-day operations; and made minor changes in style. Amendment effective May 3, 2019.

Preamble: The preamble attached to Ch. 283, L. 2019, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business

in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 19, Ch. 283, L. 2019, was a severability clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-4-133. Refusal to honor succession to ownership — notice required.

Compiler's Comments

2019 Amendment: Chapter 283 in (1) near middle substituted "by a designated family member under" for "by a family member of a deceased or incapacitated dealer under" and after "existing franchise agreement" inserted "as provided for in this part"; in (3) near beginning after "served upon the" inserted "designated" and near middle after "in favor of the" substituted "designated family member" for "complainant"; and inserted (4) regarding refusal to honor the family member's succession to the ownership, a proceeding for declaratory judgment, an order that the right to succession be recognized, and burden of proof, rights, and remedies in the action. Amendment effective May 3, 2019.

Preamble: The preamble attached to Ch. 283, L. 2019, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 19, Ch. 283, L. 2019, was a severability clause.

1997 Amendment: Chapter 221 near end of (1) and (2) extended effective date of notice of intent to dishonor transfer of dealership from 60 days to 90 days from date of service; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

61-4-134. Procedure to determine right to succeed.

Compiler's Comments

2019 Amendment: Chapter 283 in (1) at end after "90-day period" substituted current text regarding a written complaint as to whether good cause exists for refusal to honor the designated family member's succession for "file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance"; in (2) near middle inserted "the designated family member failed to comply with the provisions of 61-4-132(2) or that" and at end deleted "or to the representation of the manufacturer, factory branch, distributor, or importer"; in (3) near middle of first sentence substituted "written complaint" for "verified complaint" and near end of second sentence inserted "adjudication by the department and"; in (4) in middle after "affording the" substituted "designated family member" for "complainant"; and made minor changes in style. Amendment effective May 3, 2019.

Preamble: The preamble attached to Ch. 283, L. 2019, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 19, Ch. 283, L. 2019, was a severability clause.

1997 Amendment: Chapter 221 in (1), near middle, increased time for filing verified complaint from 60 days to 90 days; in (3), in first sentence after "until the final", substituted current language requiring adjudication and exhaustion of remedies for "determination of the issues raised in the complaint" and inserted second sentence requiring compliance with franchise agreement and laws; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

61-4-135. Written designation of succession unaffected.

Compiler's Comments

2007 Amendment: Chapter 329 at beginning deleted reference to 61-4-131 and before "dealer" inserted "new"; and made minor changes in style. Amendment effective January 1, 2008.

61-4-136. Violation — penalty.

Compiler's Comments

2007 Amendment: Chapter 329 near middle deleted reference to 61-4-131. Amendment effective January 1, 2008.

61-4-137. Civil damages.

Compiler's Comments

2007 Amendment: Chapter 329 at beginning before "dealer" inserted "new" and near middle deleted reference to 61-4-131 and 61-4-137; and made minor changes in style. Amendment effective January 1, 2008.

Severability Clause: Section 9, Ch. 381, L. 1977, was a severability clause.

61-4-143. Unlawful curbstoning of vehicle for sale.

Compiler's Comments

2005 Amendment: Chapter 542 in (2), (2)(a) in three places, (2)(b), and (2)(c) before "vehicle" inserted "motor". Amendment effective January 1, 2006.

Effective Date: Section 10, Ch. 385, L. 2001, provided: "[This act] is effective on passage and approval." Approved April 28, 2001.

61-4-150. Sale, transfer, or exchange of dealership — notice — response to notice.

Compiler's Comments

Saving Clause: Section 4, Ch. 177, L. 2001, was a saving clause.

Effective Date: Section 5, Ch. 177, L. 2001, provided that this section is effective on passage and approval. Approved March 30, 2001.

Part 2

Licensing of New Motor Vehicle Manufacturers, Distributors, and Importers — Disputes — Standing

Part Compiler's Comments

Functions Transferred in 1985 — Name Change: Section 1, Ch. 503, L. 1985, substituted references to Department of Justice for references to Division of Motor Vehicles.

Functions Transferred in 1981— Name Change: Section 2, Ch. 431, L. 1981, provided: "The functions of the department of business regulation contained in Title 61, chapter 4, part 2, are transferred to the division of motor vehicles. Unless inconsistent with this act, wherever the term "department", meaning department of business regulation, appears in Title 61, chapter 4, part 2, it is changed to "division", meaning division of motor vehicles. The code commissioner is authorized and instructed to change the word "department" to "division" in Title 61, chapter 4, part 2, in accordance with this act."

Severability Clause: Section 10, Ch. 380, L. 1977, was a severability clause.

Part Case Notes

Sale of Automobile Franchise — Error in Failure to Resolve Mootness as Threshold Issue Before Underlying Dispute Addressed: Ford Motor Company (Ford) notified franchisee Shamrock Motors (Shamrock) that it intended to terminate Shamrock's automobile dealer franchise because Shamrock had sold 80% of its stock without Ford's knowledge or consent, which violated their franchise agreement. The Motor Vehicle Division of the Department of Justice issued a ruling that Ford had good cause, so Shamrock filed for judicial review in the District Court. Ford then removed to federal court, where the ruling was reversed, so Ford appealed to the Ninth Circuit Court. Shamrock then sold the dealership, and the decision was vacated because of lack of jurisdiction. The case was remanded to state court, where Ford moved to dismiss for mootness. The District Court denied the motion without discussion and ruled for Shamrock, concluding that the franchise could not be terminated as a result of the sale of 80% of the franchise stock. Reversing on appeal, the Supreme Court cited Adkins v. Livingston, 121 M 528, 194 P2d 238 (1948), in holding that mootness is a threshold issue that must be dealt with before the underlying dispute may be addressed. A matter is moot when, because of an event or happening, the issue has ceased to exist and no longer presents an actual controversy. A question is moot when a court cannot grant effective relief. If the parties cannot be restored to their original position, an appeal becomes moot. When Shamrock chose to sell the franchise during the appellate process, the question of whether Ford had good cause to terminate the franchise in the first instance became academic and thus moot. The District Court erred when it did not resolve the issue of mootness before addressing the merits of the claim, not recognizing that once Shamrock sold the dealership and was no longer the franchisee, there was no effective relief that the court could fashion under this part, so the appeal from the Motor Vehicle Division's ruling should have been dismissed as moot. Shamrock Motors, Inc. v. Ford Motor Co., 1999 MT 21, 293 M 188, 974 P2d 1150, 56 St. Rep. 99 (1999), followed in Shamrock Motors, Inc. v. Chrysler Corp., 1999 MT 39, 293 M 317, 974 P2d 1154, 56 St. Rep. 164 (1999).

61-4-201. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 362, L. 2023. Amendment effective May 2, 2023.

Applicability: Section 11, Ch. 362, L. 2023, provided: "(1) [This act] applies to all presently existing or hereafter established systems of distribution of motor vehicles in this state, including all existing agreements between a manufacturer, a factory branch, a distributor or a distributor branch, and a motor vehicle dealer, except to the extent that such application would impair valid contractual agreements in violation of the state or federal constitution.

(2) [This act] does not:

(a) govern, restrict, or apply to data that exists outside of a dealer data system, including data that is generated by a motor vehicle or devices that a consumer connects to a motor vehicle; or

(b) authorize a dealer or third party to use data that is obtained from a person in a manner that is inconsistent with either:

(i) an agreement with the person; or

(ii) the purposes for which the person provided the data to the dealer or third party."

Preamble: The preamble attached to Ch. 362, L. 2023, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 10, Ch. 362, L. 2023, was a severability clause.

2021 Amendment: Chapter 389 inserted definition of transferee. Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2009 Amendment: Chapter 308 inserted definitions of distribute and line-make; in definitions of distributor or wholesaler, distributor branch, factory branch, and manufacturer before "new motor vehicles" inserted "a line-make of"; in definition of franchise near beginning after "contract" inserted "and any agreed-to amendments"; in definition of manufacturer near beginning of first sentence after "vehicles" inserted "and distributes them directly or indirectly through one or more distributors to one or more new motor vehicle dealers in this state" and inserted second sentence concerning central or principal sales corporation; and made minor changes in style. Amendment effective April 18, 2009.

Severability: Section 10, Ch. 308, L. 2009, was a severability clause.

1999 Amendments — Composite Section: Chapter 313 in definition of franchise inserted (b)(ii) expanding franchise condition to include service motor vehicles under terms of franchise and manufacturer's warranty and in (c) substituted "an independent and separate business" for "a separate business"; and made minor changes in style. Amendment effective April 15, 1999.

Chapter 384 at end of introductory clause inserted "unless the context clearly indicates otherwise"; inserted definition of motor vehicle; and made minor changes in style. Amendment effective October 1, 1999.

Saving Clause: Section 4, Ch. 313, L. 1999, was a saving clause.

1997 Amendment: Chapter 221 deleted former definition of Department as Department of Justice; inserted definitions of new motor vehicle and retail sale; in definition of new motor vehicle dealer inserted reference to franchise with manufacturer of new motor vehicles; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

1985 Amendment: In (2) substituted references to department of justice for references to division of motor vehicles.

1981 Amendments — Composite: Chapter 274 substituted "department of commerce" for "department of business regulation" in (2).

Chapter 431 deleted former subsection (2) defining department as department of business regulation; inserted subsection (4) defining division of motor vehicles.

The Ch. 274 amendment does not appear in the composite section, as prepared by the Code Commissioner, because subsection (2) in which it appeared was deleted in its entirety by Ch. 431, such deletion being in the nature of a repealer (see 1-2-204).

Case Notes

Improper Finding That Franchise Did Not Exist — Failure to Address Nonrevenue-Based Circumstances in Determining Substantial Reliance — Summary Judgment Reversed: On the question of whether a franchise existed, the parties agreed that their relationship met the definition of franchise in this section, but disputed whether plaintiff was substantially reliant on defendant for a continued supply of new motor vehicles, parts, and accessories. The District Court applied the common meaning of the term and concluded that plaintiff did not generate 50% or more of its revenue from sales of products supplied by defendant, so plaintiff was not substantially reliant on defendant, and therefore no franchise existed. On appeal, the Supreme Court held that the District Court applied an unnecessarily restrictive and simplistic standard and failed to consider other nonrevenue-based circumstances that potentially impacted on the issue of substantial reliance. The question of whether a franchise existed was reversed and remanded for consideration of nonrevenue as well as revenue-based circumstances. Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am., 2005 MT 187, 328 M 66, 117 P3d 159 (2005), distinguishing Kans. City Trailer Sales v. Holiday Rambler Corp., 1994 WL 49932 (W. Dist. Mo. 1994).

61-4-202. License requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 362, L. 2023. Amendment effective May 2, 2023.

Applicability: Section 11, Ch. 362, L. 2023, provided: "(1) [This act] applies to all presently existing or hereafter established systems of distribution of motor vehicles in this state, including all existing agreements between a manufacturer, a factory branch, a distributor or a distributor branch, and a motor vehicle dealer, except to the extent that such application would impair valid contractual agreements in violation of the state or federal constitution.

(2) [This act] does not:

(a) govern, restrict, or apply to data that exists outside of a dealer data system, including data that is generated by a motor vehicle or devices that a consumer connects to a motor vehicle; or

(b) authorize a dealer or third party to use data that is obtained from a person in a manner that is inconsistent with either:

(i) an agreement with the person; or

(ii) the purposes for which the person provided the data to the dealer or third party."

Preamble: The preamble attached to Ch. 362, L. 2023, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 10, Ch. 362, L. 2023, was a severability clause.

2009 Amendment: Chapter 308 inserted (6) pertaining to delaying the issuance of licenses when objections have been lodged relative to a franchise agreement. Amendment effective April 18, 2009.

Severability: Section 10, Ch. 308, L. 2009, was a severability clause.

2007 Amendment: Chapter 329 deleted former (2)(b) that read: "(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft, a snowmobile, or an off-highway vehicle is not required to pay the $15 fee required in subsection (2)(a)"; in (4) at beginning deleted "Except as provided in subsection (4)(b)"; deleted former (4)(b) that read: "(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft, a snowmobile, or an off-highway vehicle is not required to pay the $15 fee required in subsection (4)(a) but is required to annually apply to renew its license on a form provided by the department"; deleted former (5)(d) that read: "(d) The provisions of subsection (5)(b) do not apply to dealers of personal watercraft, snowmobiles, or off-highway vehicles licensed under the provisions of Title 23"; and made minor changes in style. Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1) near end of second sentence before "vehicle" inserted "motor"; in (2)(b) and (4)(b) after "watercraft" deleted "as defined in 23-2-502", after "snowmobile" deleted "as defined in 23-2-601", and after "off-highway vehicle" deleted "as defined in 23-2-801"; and in (5)(a) in three places before "vehicles" inserted "motor". Amendment effective January 1, 2006.

1999 Amendment: Chapter 384 in (1) near middle of first sentence inserted "importer, or franchiser" and in last sentence in two places inserted reference to importers; inserted (2)(b) exempting certain persons from license fee; at beginning of (4)(a) inserted exception clause; inserted (4)(b) exempting certain persons from renewal fee and requiring annual renewal of the persons; inserted (5)(d) exempting certain dealers from licensing requirements of subsection (5)(b); and made minor changes in style. Amendment effective October 1, 1999.

1985 Amendment: In (2) through (4) substituted references to department of justice for references to division of motor vehicles.

1981 Amendment: Deleted "new motor vehicle dealer or a" after "A" at the beginning of (2); substituted "part 1 of this chapter" for "this part" and added "or Title 61, chapter 4, part 1" near the middle of (5) to remove the duplicate licensing of new motor vehicle dealers; substituted "division" for "department" throughout the section; and made minor changes in phraseology.

61-4-203. Administration.

Compiler's Comments

2019 Amendment: Chapter 335 deleted former (3) that read: "(3) prescribe rules it determines necessary to carry out the provisions of this part"; and made minor changes in style. Amendment effective May 7, 2019.

1985 Amendment: In lead-in substituted references to department of justice for references to division of motor vehicles.

1981 Amendment: Changed "department" to "division" throughout the section.

Case Notes

Subject Matter Jurisdiction of District Court to Determine Whether Franchise Exists: Plaintiff filed an action under 61-4-210, contending that defendant failed to follow the notice provisions in 61-4-205 in terminating plaintiff's dealership agreement and that defendant needed to exhaust its administrative remedies before the District Court could obtain subject matter jurisdiction. Defendant contended that the Department of Justice Motor Vehicle Division lacked jurisdiction because the dealer agreement did not constitute a franchise, so the administrative and notice provisions did not apply. The Supreme Court noted that a vehicle dealer that believes that its agreement with a manufacturer, distributor, or importer constitutes a franchise and that the notice requirements have not been complied with may bring a direct action in District Court pursuant to 61-4-210 for violation of the notice requirement. That is what plaintiff did. However, an action under 61-4-210 is not connected to the administrative contested case proceedings provided for in 61-4-205 and 61-4-206 and does not require a party to initiate and exhaust administrative proceedings prior to bringing the action. Thus, the District Court had subject matter jurisdiction over the question of whether a franchise agreement existed between the parties. Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am., 2005 MT 187, 328 M 66, 117 P3d 159 (2005).

61-4-204. Filing agreement — product liability.

Compiler's Comments

2019 Amendment: Chapter 283 in (4) inserted fourth sentence regarding dealer's demand for defense and indemnity of a claim alleging manufacturer's negligence, breach of warranty, or product liability based on allegations without a reasonable investigation and at end substituted "as provided in this part" for "at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat-rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work"; in (5) near beginning after "by the dealer" deleted "pursuant to this section" and after "delivery, preparation" deleted "warranty" and in middle after "claim from the dealer" inserted "unless the claim is properly disapproved"; deleted former (5)(b) that read: "(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim"; deleted former (5)(c) that read: "(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

(i) the claim was false or fraudulent;

(ii) the repairs were not properly made; or

(iii) the repairs were not necessary to correct the defective condition"; deleted former (5)(d) that read: "(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer. A manufacturer may not deny a claim based solely on a dealer's incidental failure to comply with a specific claim processing requirement, such as a clerical error or other administrative technicality that does not put into question the legitimacy of the claim"; in (6) in middle of first sentence after "dealer is otherwise" substituted "entitled" for "eligible"; deleted former (7) that read: "(7) A franchisor may not recover or seek to recover any of its costs for compensating a dealer for warranty work, including labor and parts, or for the dealer's participation in incentives by imposing on the dealer any charge or surcharge to the wholesale price paid by the dealer to the franchisor for any product, including motor vehicles and parts"; in (8) near end after "set forth in" substituted "61-4-213(12)(d)" for "subsection (5)(d)"; in (10) near middle after "with a dealer" deleted "and except as provided in subsection (5)(c)"; in (11) at end substituted "27-2-203" for "subsection (5)(c)"; inserted (13) regarding violation of this section; and made minor changes in style. Amendment effective May 3, 2019.

Preamble: The preamble attached to Ch. 283, L. 2019, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 19, Ch. 283, L. 2019, was a severability clause.

2009 Amendment: Chapter 308 in (3) at beginning substituted "franchisor" for "manufacturer, distributor, or importer"; in (5)(a) near middle following "expenses" inserted "and claims made for incentives"; in (5)(d) inserted second sentence concerning a manufacturer's denial of claims; inserted (6) regarding a dealer's being penalized for selling a motor vehicle that was ultimately shipped to a foreign country; inserted (7) concerning charges and surcharges imposed by the franchisor on the dealer; in (8) deleted second sentence that read: "An audit of incentive payments may apply only to the 18-month period immediately preceding the date on which the dealer was notified of an impending audit"; inserted (9) establishing a time period for the resubmission of denied claims; inserted (10) concerning a time period for the submission of incentive claims; inserted (11) regarding chargebacks for incentive programs and certain time periods; inserted (12) waiving the time period for chargebacks in cases of fraud; and made minor changes in style. Amendment effective April 18, 2009.

Severability: Section 10, Ch. 308, L. 2009, was a severability clause.

2007 Amendment: Chapter 329 in (1) near middle of first sentence after "provisions of" deleted "Title 23 or". Amendment effective January 1, 2008.

2005 Amendment: Chapter 542 in (1) in three places before "vehicles" inserted "motor"; in (4) in fifth sentence after "recreational vehicle" deleted "as defined in 61-1-132"; in (5)(a) near end after "motor home" deleted "as defined in 61-1-130"; in (6) near middle before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

1999 Amendments — Composite Section: Chapter 313 inserted (5) requiring payment of claim for delivery, preparation, warranty, and recall service compensation by manufacturer within 30 days of claim receipt, providing exception for motor home manufacturer, providing procedure when claim approved or disapproved, prohibiting manufacturer from denying claim or reducing claim amount if dealer provides sufficient documentation, and authorizing franchisor to audit dealer on validity of claims or chargebacks for incentives and limiting audit to 18-month period preceding date of audit notification; and made minor changes in style. Amendment effective April 15, 1999.

Chapter 384 near beginning of (1) inserted reference to Title 23; and made minor changes in style. Amendment effective October 1, 1999.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Saving Clause: Section 4, Ch. 313, L. 1999, was a saving clause.

1991 Amendment: in (4), in fourth sentence, inserted exception clauses relating to household appliances in recreational vehicle and to truck rated at more than 10,000 pounds, after "authorized dealer" inserted "for labor, parts, and other expenses incurred by a dealer", substituted "same rate" for "dealer's regular established retail rate", after "rate" inserted language relating to time charged to retail customers, substituted "nonwarranty work of a like kind" for "similar work", and inserted last phrase relating to the flat rate labor time guide manual; and made minor changes in style.

1985 Amendment: In (1) through (4) substituted references to department of justice for references to division of motor vehicles.

1981 Amendment: Changed "department" to "division" throughout the section.

61-4-205. Limitations on cancellation and termination.

Compiler's Comments

2019 Amendment: Chapter 283 inserted (3)(b) regarding notice of intention to enter into a franchise for additional representation, a change in the identity of the proposed additional franchisee or of the additional location, and limit of one notice of intention to enter into a franchise within 3 calendar years; inserted (3)(c) regarding no finding of good cause and a franchisee's entitlement to recover attorney fees, costs, and expenses; and made minor changes in style. Amendment effective May 3, 2019.

Preamble: The preamble attached to Ch. 283, L. 2019, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 19, Ch. 283, L. 2019, was a severability clause.

2009 Amendment: Chapter 308 inserted (8) concerning dealer compensation when the franchisor has created the conditions for its nonperformance of the franchise agreement; inserted (9) establishing compensatory formulas and timelines for franchisor nonperformance; inserted (10) outlining the duties of successors to the nonperforming franchisor; inserted (11) establishing obligations of a nonperforming franchisor to franchisees; inserted (12) concerning nonperforming franchisor's duty to supply replacement parts; inserted (13) providing for reduction in the amount of dealer compensation in certain circumstances; and made minor changes in style. Amendment effective April 18, 2009.

Severability: Section 10, Ch. 308, L. 2009, was a severability clause.

1999 Amendments — Composite Section: Chapter 384 in (7) inserted reference to Title 23; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 409 in (7) near end after "61-4-101" deleted "through 61-4-105". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1997 Amendment: Chapter 221 in (3), in first sentence, extended from 30 days to 60 days time for franchisor to file notice of termination with Department; in (4), in last sentence after "consider interested persons", deleted "such copy to be in the form and substance and given in the manner the department finds appropriate"; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

1991 Amendment — Code Commissioner Instruction: The Code Commissioner inserted reference to wholesaler after dealer, pursuant to sec. 12, Ch. 383, L. 1991, that directed the Code Commissioner to change "dealer" to "dealer and wholesaler" or "dealer or wholesaler", as the usage requires.

1985 Amendment: In (3) and (4) substituted references to department of justice for references to division of motor vehicles.

1981 Amendment: Changed "department" to "division" throughout the section.

Case Notes

Prospective Dealer Unable to Establish Good Cause for Franchise — Consideration of Public Interest Unnecessary: In Rimrock Chrysler, Inc. v. St., 2016 MT 165, 384 Mont. 76, 375 P.3d 392 (Rimrock I), the plaintiff, a car dealership, sought judicial review of an administrative ruling denying it a Chrysler franchise. The Supreme Court reversed the District Court's dismissal of the plaintiff's petition for judicial review and remanded the matter to the District Court to adjudicate the petition. On remand, the District Court denied the petition, holding that the plaintiff lacked good cause to receive the franchise pursuant to Title 61, ch. 4, part 2, commonly known as the Montana Dealer Act. On subsequent appeal, the Supreme Court affirmed the denial, holding that if a petitioner does not first establish that good cause exists to receive the franchise, a court need not consider whether the franchise is in the public interest. Rimrock Chrysler, Inc. v. Dept. of Justice, 2018 MT 24, 390 Mont. 235, 411 P.3d 1278.

Appeal of Administrative Review — Franchisor Not Party to Appeal — District Court Findings of No Justiciable Controversy and Mootness Reversed: A car dealership filed an administrative protest against its franchisor and a competing car dealership after the franchisor agreed to award the competing dealership a franchise agreement. Following a hearing, the hearings examiner for the Motor Vehicle Division of the Department of Justice sustained the dealership's protest. The competing dealership appealed the ruling to the District Court, but the franchisor did not. The District Court dismissed the appeal, holding that it was moot and that no justiciable controversy existed because the franchisor had not appealed the hearings examiner's decision. The competing dealership appealed, and the Supreme Court reversed and vacated the dismissal of the appeal. The Supreme Court ruled that, in this case, the franchisor appeal was irrelevant because the competing dealership could be awarded relief on appeal. Rimrock Chrysler, Inc. v. St., 2016 MT 165, 384 Mont. 76, 375 P.3d 392.

Improper Finding That Franchise Did Not Exist — Failure to Address Nonrevenue-Based Circumstances in Determining Substantial Reliance — Summary Judgment Reversed: On the question of whether a franchise existed, the parties agreed that their relationship met the definition of franchise in 61-4-201, but disputed whether plaintiff was substantially reliant on defendant for a continued supply of new motor vehicles, parts, and accessories. The District Court applied the common meaning of the term and concluded that plaintiff did not generate 50% or more of its revenue from sales of products supplied by defendant, so plaintiff was not substantially reliant on defendant, and therefore no franchise existed. On appeal, the Supreme Court held that the District Court applied an unnecessarily restrictive and simplistic standard and failed to consider other nonrevenue-based circumstances that potentially impacted on the issue of substantial reliance. The question of whether a franchise existed was reversed and remanded for consideration of nonrevenue as well as revenue-based circumstances. Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am., 2005 MT 187, 328 M 66, 117 P3d 159 (2005), distinguishing Kans. City Trailer Sales v. Holiday Rambler Corp., 1994 WL 49932 (W. Dist. Mo. 1994).

Subject Matter Jurisdiction of District Court to Determine Whether Franchise Exists: Plaintiff filed an action under 61-4-210, contending that defendant failed to follow the notice provisions in this section in terminating plaintiff's dealership agreement and that defendant needed to exhaust its administrative remedies before the District Court could obtain subject matter jurisdiction. Defendant contended that the Department of Justice Motor Vehicle Division lacked jurisdiction because the dealer agreement did not constitute a franchise, so the administrative and notice provisions did not apply. The Supreme Court noted that a vehicle dealer that believes that its agreement with a manufacturer, distributor, or importer constitutes a franchise and that the notice requirements have not been complied with may bring a direct action in District Court pursuant to 61-4-210 for violation of the notice requirement. That is what plaintiff did. However, an action under 61-4-210 is not connected to the administrative contested case proceedings provided for in 61-4-206 and this section and does not require a party to initiate and exhaust administrative proceedings prior to bringing the action. Thus, the District Court had subject matter jurisdiction over the question of whether a franchise agreement existed between the parties. Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am., 2005 MT 187, 328 M 66, 117 P3d 159 (2005).

Effect of Department Failure to Mail Termination Notice: The Department of Business Regulation (functions now handled by Department of Justice) must, within 5 days of the receipt of notice to terminate a franchise from the franchiser, send a copy of the notice to the franchisee and any other person entitled to notice. Once this notice is received by the franchisee, he may object to the approval of the proposed action by filing written objections with the Department. Here, the Department failed to send out such notice, so the time for filing franchisee's written objections in this case has not commenced to run. State ex rel. Billings Chrysler-Plymouth, Inc. v. Dept. of Business Regulation, 36 St. Rep. 151 (1979) (not reported in Montana Reports).

61-4-206. Objections — hearing.

Compiler's Comments

2019 Amendment: Chapter 283 in (8) in middle of first sentence substituted "written complaint" for "verified complaint". Amendment effective May 3, 2019.

Preamble: The preamble attached to Ch. 283, L. 2019, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 19, Ch. 283, L. 2019, was a severability clause.

2013 Amendment: Chapter 273 in (1)(a) at beginning inserted exception clause; inserted (1)(b) regarding objection by franchisee of same line-make; and made minor changes in style. Amendment effective April 22, 2013.

Saving Clause: Section 4, Ch. 273, L. 2013, was a saving clause.

2003 Amendment: Chapter 299 in (2) in first sentence after "department shall" inserted "appoint a hearings officer to preside over and conduct a contested case hearing under the provisions of Title 2, chapter 4, part 6" and at beginning of second sentence inserted "Within 30 days of the order of appointment, the hearings officer shall", after "time" substituted "for a scheduling conference for the contested case" for "which must be within 30 days of the date of the order, and place of a hearing on the objection", and near end after "copy of the" inserted "scheduling conference order and the"; deleted former (3) that read: "(3) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days"; in (4) near end after "costs" inserted "related to the contested case hearing"; in (6) in second sentence substituted "60 days" for "30 days"; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

1997 Amendment: Chapter 221 in (4), near beginning, inserted "or upon objection to the establishment of a new motor vehicle dealership", after "continue" inserted "or not establish", and deleted former last sentence that read: "When there is an objection to the establishment of a new motor vehicle dealership, the burden of proof that good cause does exist shall be with the franchisor"; inserted (9) requiring agreement to continue in effect until remedies are exhausted and requiring franchisor to comply with agreement and law; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

1985 Amendment: In (1) through (3) and (5) through (8) substituted references to department of justice for references to division of motor vehicles.

1981 Amendment: Changed "department" to "division" throughout the section.

Case Notes

Prospective Dealer Unable to Establish Good Cause for Franchise — Consideration of Public Interest Unnecessary: In Rimrock Chrysler, Inc. v. St., 2016 MT 165, 384 Mont. 76, 375 P.3d 392 (Rimrock I), the plaintiff, a car dealership, sought judicial review of an administrative ruling denying it a Chrysler franchise. The Supreme Court reversed the District Court's dismissal of the plaintiff's petition for judicial review and remanded the matter to the District Court to adjudicate the petition. On remand, the District Court denied the petition, holding that the plaintiff lacked good cause to receive the franchise pursuant to Title 61, ch. 4, part 2, commonly known as the Montana Dealer Act. On subsequent appeal, the Supreme Court affirmed the denial, holding that if a petitioner does not first establish that good cause exists to receive the franchise, a court need not consider whether the franchise is in the public interest. Rimrock Chrysler, Inc. v. Dept. of Justice, 2018 MT 24, 390 Mont. 235, 411 P.3d 1278.

Improper Finding That Franchise Did Not Exist — Failure to Address Nonrevenue-Based Circumstances in Determining Substantial Reliance — Summary Judgment Reversed: On the question of whether a franchise existed, the parties agreed that their relationship met the definition of franchise in 61-4-201, but disputed whether plaintiff was substantially reliant on defendant for a continued supply of new motor vehicles, parts, and accessories. The District Court applied the common meaning of the term and concluded that plaintiff did not generate 50% or more of its revenue from sales of products supplied by defendant, so plaintiff was not substantially reliant on defendant, and therefore no franchise existed. On appeal, the Supreme Court held that the District Court applied an unnecessarily restrictive and simplistic standard and failed to consider other nonrevenue-based circumstances that potentially impacted on the issue of substantial reliance. The question of whether a franchise existed was reversed and remanded for consideration of nonrevenue as well as revenue-based circumstances. Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am., 2005 MT 187, 328 M 66, 117 P3d 159 (2005), distinguishing Kans. City Trailer Sales v. Holiday Rambler Corp., 1994 WL 49932 (W. Dist. Mo. 1994).

Improper Federal Court Jurisdiction and Review of State Agency Decision: Ford Motor Company sought to terminate an automobile dealer franchise, and the franchise holder sought a Montana Department of Justice administrative hearing under 61-4-206. The Department's decision in favor of Ford was appealed to a Montana District Court under 2-4-702. Ford successfully removed the case to the United States District Court, which reversed the Department's decision and rendered judgment in favor of Ford. The franchise holder appealed. The Montana procedure clearly provided for state District Court appellate review, not de novo review, of the administrative agency decision. Therefore, the federal District Court had neither original jurisdiction nor removal jurisdiction over review of the administrative agency decision. The removal to the federal District Court was error. The federal District Court's reversal of the administrative agency decision and rendering of judgment in favor of Ford were also in error. The judgment was vacated, and the case was remanded to the federal District Court for further remand by it to the state District Court. Shamrock Motors, Inc. v. Ford Motor Co., 120 F3d 196 (9th Cir. 1997), overruled in BNSF Railway Co. v. O'Dea, 572 F3d 785 (9th Cir. 2009).

61-4-207. Determination of good cause.

Compiler's Comments

2021 Amendment: Chapter 389 inserted (3)(e) concerning whether the franchisor's action is in good faith; and made minor changes in style. Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

2019 Amendment: Chapter 283 in (3)(a) after "transacted by other" inserted "existing"; in (3)(b) near beginning after "incurred by other" inserted "existing" and at end after "part of their" substituted current text regarding franchise agreements, date of investment and obligations, and date of appointment of additional franchisee for "franchises"; in (3)(c) near beginning after "whether the" inserted "other existing" and after "community are" inserted "substantially compliant with reasonable manufacturer requirements for" and near middle after "sales and service facilities" substituted "special and essential tools and equipment, replacement parts supply" for "equipment, parts supply"; inserted (3)(d) regarding changing demographic characteristics to support the economic viability of existing and additional franchisees; and made minor changes in style. Amendment effective May 3, 2019.

Preamble: The preamble attached to Ch. 283, L. 2019, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 19, Ch. 283, L. 2019, was a severability clause.

2017 Amendment: Chapter 92 in (1) after "consideration" inserted "all"; in (1)(a) substituted "Montana market that are essential, reasonable, and not discriminatory and that take into account the franchisee's local market variations beyond adjusting for the local popularity of general vehicle types" for "market"; in (2)(d)(i) inserted "greater"; in (2)(d)(ii) near beginning substituted "alter" for "reduce"; and made minor changes in style. Amendment effective March 23, 2017.

2013 Amendment: Chapter 273 inserted (2)(d)(ii) regarding reduction of franchises or dealer locations; and made minor changes in style. Amendment effective April 22, 2013.

Saving Clause: Section 4, Ch. 273, L. 2013, was a saving clause.

2009 Amendment: Chapter 308 in (1)(a) substituted "the franchisee's sales in relation to the market" for "amount of business transacted by the franchise"; in (1)(g) near beginning following "subsection (2)" substituted language concerning actions by the franchisee for "failure by the franchisee to substantially comply with the written and uniformly applied requirements of the franchise that are determined by the department to be reasonable and material"; inserted (1)(h) concerning enforceability of the franchise; inserted (2)(c) regarding failure to change location; inserted (2)(d) concerning market penetration; and made minor changes in style. Amendment effective April 18, 2009.

Severability: Section 10, Ch. 308, L. 2009, was a severability clause.

1997 Amendment: Chapter 221 in (1)(g), before "requirements", substituted "the written and uniformly applied" for "those"; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

1985 Amendment: In (1), (1)(g), and (3) substituted references to department of justice for references to division of motor vehicles.

1981 Amendment: Changed "department" to "division" throughout the section.

Case Notes

Analysis of Good Cause — Termination of Franchise Agreement Proper — No Error in Upholding Department's Final Order: The defendant, a franchisor, served notice of its intention to terminate the plaintiff's franchise agreement pursuant to Title 61, ch. 4, part 2, commonly known as the Montana Dealer Act. The plaintiff filed an objection to the notice with the Department of Justice, claiming that the defendant lacked good cause to terminate the agreement as required under the Montana Dealer Act. Following a contested case hearing and a ruling by the hearings officer that the defendant had good cause, the Department issued a final decision adopting the ruling. The plaintiff then filed a petition for judicial review, and the District Court affirmed the Department's ruling. On appeal, the plaintiff argued that the District Court had erred in affirming the ruling. After analyzing several factors to determine whether good cause existed to terminate the agreement, the Supreme Court affirmed. S & P Brake Supply, Inc. v. Daimler Trucks North America, LLC, 2018 MT 25, 390 Mont. 243, 411 P.3d 1264.

Prospective Dealer Unable to Establish Good Cause for Franchise — Consideration of Public Interest Unnecessary: In Rimrock Chrysler, Inc. v. St., 2016 MT 165, 384 Mont. 76, 375 P.3d 392 (Rimrock I), the plaintiff, a car dealership, sought judicial review of an administrative ruling denying it a Chrysler franchise. The Supreme Court reversed the District Court's dismissal of the plaintiff's petition for judicial review and remanded the matter to the District Court to adjudicate the petition. On remand, the District Court denied the petition, holding that the plaintiff lacked good cause to receive the franchise pursuant to Title 61, ch. 4, part 2, commonly known as the Montana Dealer Act. On subsequent appeal, the Supreme Court affirmed the denial, holding that if a petitioner does not first establish that good cause exists to receive the franchise, a court need not consider whether the franchise is in the public interest. Rimrock Chrysler, Inc. v. Dept. of Justice, 2018 MT 24, 390 Mont. 235, 411 P.3d 1278.

Sale of Automobile Franchise — Error in Failure to Resolve Mootness as Threshold Issue Before Underlying Dispute Addressed: Ford Motor Company (Ford) notified franchisee Shamrock Motors (Shamrock) that it intended to terminate Shamrock's automobile dealer franchise because Shamrock had sold 80% of its stock without Ford's knowledge or consent, which violated their franchise agreement. The Motor Vehicle Division of the Department of Justice issued a ruling that Ford had good cause, so Shamrock filed for judicial review in the District Court. Ford then removed to federal court, where the ruling was reversed, so Ford appealed to the Ninth Circuit Court. Shamrock then sold the dealership, and the decision was vacated because of lack of jurisdiction. The case was remanded to state court, where Ford moved to dismiss for mootness. The District Court denied the motion without discussion and ruled for Shamrock, concluding that the franchise could not be terminated as a result of the sale of 80% of the franchise stock. Reversing on appeal, the Supreme Court cited Adkins v. Livingston, 121 M 528, 194 P2d 238 (1948), in holding that mootness is a threshold issue that must be dealt with before the underlying dispute may be addressed. A matter is moot when, because of an event or happening, the issue has ceased to exist and no longer presents an actual controversy. A question is moot when a court cannot grant effective relief. If the parties cannot be restored to their original position, an appeal becomes moot. When Shamrock chose to sell the franchise during the appellate process, the question of whether Ford had good cause to terminate the franchise in the first instance became academic and thus moot. The District Court erred when it did not resolve the issue of mootness before addressing the merits of the claim, not recognizing that once Shamrock sold the dealership and was no longer the franchisee, there was no effective relief that the court could fashion under Title 61, ch. 4, part 2, so the appeal from the Motor Vehicle Division's ruling should have been dismissed as moot. Shamrock Motors, Inc. v. Ford Motor Co., 1999 MT 21, 293 M 188, 974 P2d 1150, 56 St. Rep. 99 (1999), followed in Shamrock Motors, Inc. v. Chrysler Corp., 1999 MT 39, 293 M 317, 974 P2d 1154, 56 St. Rep. 164 (1999).

61-4-208. Prohibited acts — rights of franchisees.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 362, L. 2023. Amendment effective May 2, 2023.

Applicability: Section 11, Ch. 362, L. 2023, provided: "(1) [This act] applies to all presently existing or hereafter established systems of distribution of motor vehicles in this state, including all existing agreements between a manufacturer, a factory branch, a distributor or a distributor branch, and a motor vehicle dealer, except to the extent that such application would impair valid contractual agreements in violation of the state or federal constitution.

(2) [This act] does not:

(a) govern, restrict, or apply to data that exists outside of a dealer data system, including data that is generated by a motor vehicle or devices that a consumer connects to a motor vehicle; or

(b) authorize a dealer or third party to use data that is obtained from a person in a manner that is inconsistent with either:

(i) an agreement with the person; or

(ii) the purposes for which the person provided the data to the dealer or third party."

Preamble: The preamble attached to Ch. 362, L. 2023, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 10, Ch. 362, L. 2023, was a severability clause.

2017 Amendment: Chapter 93 inserted (1)(e) prohibiting the enforcement of a right of first refusal in new motor vehicle franchise contracts. Amendment effective March 23, 2017.

2013 Amendment: Chapter 273 in (1) after "manufacturer" deleted "of new motor vehicles"; inserted (1)(a)(v) regarding purchase by franchisee of goods and services from vendors; in (1)(a)(viii) and (1)(a)(viii)(A) after "distributor branch" inserted "importer" and substituted "any of these persons" for "the listed persons"; in (1)(a)(viii)(B) substituted "any of these persons or entities" for "the listed entities"; in (2)(a) inserted "or importer"; inserted (2)(b) regarding goods and services eligible for reimbursement; in (3)(a), (3)(b), and (3)(c) in two places after "manufacturer" deleted "of new motor vehicles"; and made minor changes in style. Amendment effective April 22, 2013.

Saving Clause: Section 4, Ch. 273, L. 2013, was a saving clause.

2009 Amendment: Chapter 308 in (1)(a), (1)(a)(i), (1)(a)(vi), (1)(a)(vii), (1)(a)(vii)(A), (1)(a)(vii)(B), (1)(b) in two places, and (1)(c) after reference to dealer inserted reference to transferee of a new motor vehicle dealer; in (1)(a)(iii) at end after "facilities" deleted "when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion"; in (1)(a)(iv) at end after "manufacturer" substituted "in order to keep or enter into a franchise agreement or to participate in any program discount, credit, rebate, or sales incentive" for "that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations"; inserted (1)(a)(v) adding any efforts designed to coerce a dealer into not becoming involved with any other line-makes as a prohibited act; in (1)(c) following "or franchise" inserted "of a new motor vehicle dealer or transferee of a new motor vehicle dealer"; inserted (1)(d) prohibiting a manufacturer from linking a dealer's performance to certain allocations of vehicles and program participation; and made minor changes in style. Amendment effective April 18, 2009.

Severability: Section 10, Ch. 308, L. 2009, was a severability clause.

2005 Amendment: Chapter 542 in (1)(b) near beginning and near end before "vehicles" inserted "motor" and near middle in two places before "vehicle" inserted "motor". Amendment effective January 1, 2006.

1999 Amendment: Chapter 313 inserted (3) regarding persons who may directly or indirectly own or operate a motor vehicle dealership in Montana and providing exceptions from prohibition; and made minor changes in style. Amendment effective April 15, 1999.

Saving Clause: Section 4, Ch. 313, L. 1999, was a saving clause.

1997 Amendment: Chapter 221 in (1)(a) inserted "or require"; inserted (1)(a)(iii)concerning change of location of dealership, (1)(a)(iv) concerning exclusive facilities, (1)(a)(v) concerning refraining from participation in certain activities, (1)(b) concerning delivery of new vehicles, and (1)(c) concerning unreasonable restrictions; inserted (2) specifying circumstances under which failure is not violation; and made minor changes in style. Amendment effective April 8, 1997.

Saving Clause: Section 15, Ch. 221, L. 1997, was a saving clause.

1991 Amendment: Inserted (2) prohibiting use of coercion to obtain participation in advertising campaigns or sales promotions; and made minor changes in style.

61-4-209. Cease and desist orders.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

1981 Amendment: Changed "department" to "division" throughout the section.

61-4-210. Penalties — administrative penalties.

Compiler's Comments

2009 Amendment: Chapter 308 in (3) in two places following "dealer" inserted "or transferee of a new motor vehicle dealer"; and made minor changes in style. Amendment effective April 18, 2009.

Severability: Section 10, Ch. 308, L. 2009, was a severability clause.

1991 Amendment: Inserted (4) relating to administrative enforcement and penalties.

1985 Amendment: In (2) substituted references to department of justice for references to division of motor vehicles.

1981 Amendment: Changed "department" to "division" throughout the section.

Case Notes

Improper Finding That Franchise Did Not Exist — Failure to Address Nonrevenue-Based Circumstances in Determining Substantial Reliance — Summary Judgment Reversed: On the question of whether a franchise existed, the parties agreed that their relationship met the definition of franchise in 61-4-201, but disputed whether plaintiff was substantially reliant on defendant for a continued supply of new motor vehicles, parts, and accessories. The District Court applied the common meaning of the term and concluded that plaintiff did not generate 50% or more of its revenue from sales of products supplied by defendant, so plaintiff was not substantially reliant on defendant, and therefore no franchise existed. On appeal, the Supreme Court held that the District Court applied an unnecessarily restrictive and simplistic standard and failed to consider other nonrevenue-based circumstances that potentially impacted on the issue of substantial reliance. The question of whether a franchise existed was reversed and remanded for consideration of nonrevenue as well as revenue-based circumstances. Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am., 2005 MT 187, 328 M 66, 117 P3d 159 (2005), distinguishing Kans. City Trailer Sales v. Holiday Rambler Corp., 1994 WL 49932 (W. Dist. Mo. 1994).

Motion to Amend Judgment Inappropriate When Testimony and Evidence Available in Original Proceedings: Plaintiff moved to alter or amend a summary judgment order based on affidavits and evidence regarding whether a franchise existed between the parties. The District Court denied the motion, and the Supreme Court affirmed. The affidavits and evidence were not considered newly discovered or previously unavailable, and plaintiff failed to establish that the District Court had the evidence available during the original proceeding, so a motion to alter or amend the judgment was inappropriate. Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am., 2005 MT 187, 328 M 66, 117 P3d 159 (2005). See also Lee v. USAA Cas. Ins. Co., 2001 MT 59, 304 M 356, 22 P3d 631 (2001).

Subject Matter Jurisdiction of District Court to Determine Whether Franchise Exists: Plaintiff filed an action under this section, contending that defendant failed to follow the notice provisions in 61-4-205 in terminating plaintiff's dealership agreement and that defendant needed to exhaust its administrative remedies before the District Court could obtain subject matter jurisdiction. Defendant contended that the Department of Justice Motor Vehicle Division lacked jurisdiction because the dealer agreement did not constitute a franchise, so the administrative and notice provisions did not apply. The Supreme Court noted that a vehicle dealer that believes that its agreement with a manufacturer, distributor, or importer constitutes a franchise and that the notice requirements have not been complied with may bring a direct action in District Court pursuant to this section for violation of the notice requirement. That is what plaintiff did. However, an action under this section is not connected to the administrative contested case proceedings provided for in 61-4-205 and 61-4-206 and does not require a party to initiate and exhaust administrative proceedings prior to bringing the action. Thus, the District Court had subject matter jurisdiction over the question of whether a franchise agreement existed between the parties. Hi-Tech Motors, Inc. v. Bombardier Motor Corp. of Am., 2005 MT 187, 328 M 66, 117 P3d 159 (2005).

61-4-212. Damage notice.

Compiler's Comments

Severability: Section 10, Ch. 308, L. 2009, was a severability clause.

Effective Date: Section 11, Ch. 308, L. 2009, provided that this section is effective April 18, 2009.

61-4-213. Warranty reimbursement.

Compiler's Comments

2021 Amendment: Chapter 389 in (1)(a)(i) near beginning inserted "using the franchisor's labor time guide or the labor time guide used by the dealer for labor furnished other than pursuant to warranty, at the dealer's election"; and made minor changes in style. Amendment effective April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

Effective Date: Section 20, Ch. 283, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 3, 2019.

Preamble: The preamble attached to Ch. 283, L. 2019, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affect the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 19, Ch. 283, L. 2019, was a severability clause.

61-4-215. Mediation of disputes.

Compiler's Comments

Effective Date: Section 21, Ch. 389, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

61-4-216. Administrative hearings and adjudications — procedure.

Compiler's Comments

Effective Date: Section 21, Ch. 389, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

61-4-217. Standing to bring action.

Compiler's Comments

Effective Date: Section 21, Ch. 389, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

61-4-222. Fees.

Compiler's Comments

2005 Amendment: Chapter 596 in (1) in three places substituted "license plates" for "number plates". Amendment effective January 1, 2006.

1999 Amendment: Chapter 384 inserted (2) exempting certain manufacturers from fees for number plates; and made minor changes in style. Amendment effective October 1, 1999.

61-4-223. Assignment of numbers.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 130 in (2) in second sentence substituted "registration decals" for "nonremovable stickers" and in third sentence substituted "registration decals" for "stickers". Amendment effective October 1, 2005.

Chapter 596 in (1) at end of first sentence substituted "license plates" for "number plates" and in second sentence near beginning substituted "license plates" for "number plates" and after "similar to" substituted "standard license plates" for "number plates". Amendment effective January 1, 2006.

61-4-225. Loaner license plates — issuance — restrictions on use.

Compiler's Comments

Effective Date: Section 21, Ch. 389, L. 2021, provided: "[This act] is effective on passage and approval." Approved April 29, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

Part 3
Transportation of Vehicles

61-4-301. Permit and transit plates for new motor vehicles being transported by driveaway or towaway methods — used mobile homes.

Compiler's Comments

2005 Amendment: Chapter 542 in (1)(a) near beginning of first sentence and near middle before "vehicles" inserted "motor"; in (2)(a) in first sentence near middle before "vehicles" and near end before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 299 in (2)(a) near beginning of first sentence after "justice for" substituted "five sets of transit plates" for "a sufficient number of distinctive transit plates or devices" and in second sentence increased price for each set of transit plates from $1 to $10; inserted (2)(b) allowing a permitholder to receive more than five sets of transit plates under certain circumstances; and made minor changes in style. Amendment effective January 1, 2004.

Applicability: Section 18, Ch. 299, L. 2003, provided: "[This act] applies to any dealer who had a valid dealer license as of December 31, 2003, and to any dealer license, license plates, or permits issued on or after January 1, 2004."

1993 Amendment: Chapter 575 inserted (1)(b) relating to a permit application for a person moving used mobile homes from a point outside the state to a point inside the state. Amendment effective January 1, 1994.

61-4-302. One-trip fee in addition to permit and plate fees payable quarterly — exception.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) in first sentence near middle after "department" deleted "of justice" and near end before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

1993 Amendment: Chapter 575 inserted (2) stating that a person moving new or used mobile homes is not subject to the one-trip fee. Amendment effective January 1, 1994.

61-4-303. Disposition of funds collected.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-4-306. Exemptions from fees.

Compiler's Comments

2005 Amendment: Chapter 542 in five places before "vehicles" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

61-4-307. Display of plates.

Compiler's Comments

2005 Amendment: Chapter 542 near beginning, middle, and end before "vehicle" inserted "motor" and near beginning after "combination of" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

61-4-308. List of holders of permits and transit plates.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-4-310. Single movement permit — fee — limitation — county treasurer to issue.

Compiler's Comments

2005 Amendment: Chapter 596 in (1) in first sentence near beginning after "subject to" substituted "registration under chapter 3" for "license under this title or a mobile home" and in second sentence near end after "taxes" inserted "or fees in lieu of property tax"; deleted former (1)(b) that read: "(b) For purposes of this section, a mobile home is considered unladen when all items are removed except the equipment originally installed by the manufacturer and the personal effects of the owners"; in (2) in two places after "vehicle" deleted "or mobile home"; inserted (4) concerning movement with tax-paid receipt; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 162, Ch. 596, L. 2005, a coordination section, the Ch. 542 amendments to this section were rendered void.

2002 Amendment: Chapter 13 in (1)(a) inserted third sentence relating to deposit of the fee in the state general fund. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(2), Ch. 13, Sp. L. August 2002, provided: "(2) [Sections 3, 4, 7, 15, 16, 18, 20, 21, and 34] apply retroactively, within the meaning of 1-2-109, to July 1, 2001."

1997 Amendment: Chapter 42 in (1)(a), in first sentence after "title", inserted reference to mobile home; inserted (1)(b) clarifying when a mobile home is considered unladen; in (2), in two places, inserted reference to mobile home; and made minor changes in style. Amendment effective March 12, 1997.

1993 Amendment: Chapter 79 in first sentence of (3), after "vehicle", deleted "as defined in part 5, chapter 10, Title 75" and substituted reference to motor vehicle wrecking facility or motor vehicle graveyard for reference to auto wrecking graveyard and inserted second sentence incorporating definitions in 75-10-501; and made minor changes in style.

1985 Amendment: In (1) substituted reference to department of justice for reference to division of motor vehicles.

Part 4
Monopolies in Financing Sale of Motor Vehicles

61-4-402. Definitions.

Compiler's Comments

1999 Amendment: Chapter 384 inserted definition of motor vehicle; and made minor changes in style. Amendment effective October 1, 1999.

61-4-404. Threats prima facie evidence.

Compiler's Comments

2005 Amendment: Chapter 542 in two places before "vehicles" deleted "vehicle or"; and made minor changes in style. Amendment effective January 1, 2006.

61-4-406. Suit for injury to business or property.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 5
New Motor Vehicle Warranties — Remedies

Part Compiler's Comments

Applicability: Section 9, Ch. 144, L. 1983, provided: "This act applies only to covered motor vehicles purchased after October 1, 1983."

61-4-501. Definitions.

Compiler's Comments

2007 Amendment: Chapter 84 in definition of consumer in first sentence near beginning inserted "or lessee", inserted "or lease", inserted "passenger", inserted "used for personal, family, or household purposes", and after "modifications or alternations" deleted "by the purchaser, any person to whom the motor vehicle is transferred during the duration of an express warranty applicable to the motor vehicle, or any other person entitled by the terms of the warranty to the benefits of its provisions" and inserted second sentence regarding person to whom vehicle is transferred and express warranty; and in definition of motor vehicle in (b)(i) substituted "15,000 pounds" for "10,000 pounds". Amendment effective March 30, 2007.

2005 Amendment: Chapter 542 in definition of motor vehicle in (a) after "motor home" deleted "as defined in 61-1-130"; in definition of reasonable allowance for use in three places before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 360 in definition of motor vehicle in (a) near end inserted "or registered" and in (b) after "weight rating" deleted "or a motorcycle as defined in 61-1-105"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Inserted definition of manufacturer; and near beginning of definition of motor vehicle, after "vehicle", inserted "including the nonresidential portion of a motor home as defined in 61-1-130", in second sentence deleted reference to a motorhome, and at end inserted sentence creating residential purpose exception.

1985 Amendment: Inserted (1) defining collateral charge as all governmental charges; inserted (3) defining incidental damage as incidental and consequential damage; in (4) in second sentence, after "61-1-130", inserted remainder of sentence excluding from definition of motor vehicle a truck with 10,000 pounds or more gross vehicle weight rating or a motorcycle under 61-1-605; inserted (5) defining reasonable allowance for use as an amount directly attributable to use of the vehicle by consumers prior to first written notice of the nonconformity to manufacturer or agent during subsequent period when vehicle is not out of service because of nonconformity; and in (6), after "means" substituted "the period ending 2 years" for "the term of an express agreement or the period ending 1 year" and after "motor vehicle" inserted "or during the first 18,000 miles of operation".

Code Commissioner Correction — Subsections Not Codified: As amended by Ch. 744, L. 1985, this section contained a definition of "Department" as the Department of Commerce and a definition of "Division" as the Division of Motor Vehicles. Section 13, Ch. 503, L. 1985, instructed the Code Commissioner to replace all references to the Division of Motor Vehicles with references to the Department of Justice. To avoid two definitions of "department" for this part, the Code Commissioner has not codified the two definitions and throughout the part has replaced "department" with "department of commerce" and "division" with "department of justice".

61-4-502. Notice — warranty enforceable after warranty period — when.

Compiler's Comments

1985 Amendment: Inserted (3) requiring manufacturer to disclose to consumer in warranty or owner's manual that written notification of nonconformity is required before consumer can be eligible for refund or replacement.

61-4-503. Replacement for nonconformity to warranty.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) near end before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

1985 Amendment: In (2) in first sentence, after "purchase price", substituted "plus reasonable collateral charges and incidental damages" for "excluding all sales taxes, license fees, registration fees, and any similar governmental charges" and deleted former last sentence that read: "A reasonable allowance for use is an amount directly attributable to use by the consumer and any previous consumers prior to his first written report of the nonconformity to the manufacturer or its agent and during any subsequent period when the vehicle is not out of service because of nonconformity."

Case Notes

If the Motor Home Is Rockin' — Reasonable Attempts to Remedy Vehicle Problem — Lemon Law Applicable: Defendant manufacturer contended that the Montana Lemon Law did not apply because plaintiffs failed to make a reasonable number of attempts to fix a swaying and handling problem with their motor home prior to expiration of the warranty period. Evidence at trial showed that plaintiffs repeatedly delivered the motor home to dealerships for repair and complained of the swaying problem, but that dealers refused to attempt to repair or even document the problem in a work order because they viewed it as a problem for which the chassis manufacturer was responsible. Despite a lack of documentation of attempted repairs, the jury found plaintiffs' testimony credible, and the Supreme Court affirmed that there was sufficient evidence for the jury to find that plaintiffs had made a reasonable number of attempts to have the vehicle problem remedied, so the requirement of this section was satisfied. Vader v. Fleetwood Enterprises, Inc., 2009 MT 6, 348 M 344, 201 P3d 139 (2009).

61-4-504. Reasonable number of attempts — presumption.

Compiler's Comments

2005 Amendment: Chapter 542 in (2) at beginning before "vehicle" inserted "motor". Amendment effective January 1, 2006.

61-4-505. Dealer exemption — liability to manufacturer.

Compiler's Comments

2005 Amendment: Chapter 542 in (2) near middle before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

1985 Amendment: Inserted (2) establishing that dealer is not liable to manufacturer for refund or replacements without evidence that repairs made by dealer were carried out inconsistent with manufacturer's instructions.

61-4-506. Provisions nonexclusive — applicability of U.C.C. — defenses.

Compiler's Comments

2005 Amendment: Chapter 542 in (3) near middle before "vehicle" inserted "motor". Amendment effective January 1, 2006.

1985 Amendment: Inserted (2) providing that express warranties arising from the sale of new motor vehicles are subject to general obligation and construction of contract provisions of U.C.C.; and inserted (3) providing that it is an affirmative defense to a claim under this part that an alleged nonconformity does not substantially impair the use, market value, or safety of the vehicle or that the nonconformity is the result of abuse, neglect, or unauthorized modification or alteration of a motor vehicle by the consumer.

61-4-507. Exhaustion of remedies under federal law.

Compiler's Comments

2005 Amendment: Chapter 280 near middle after "department" deleted "of administration" and near end after "part 703" deleted "as those provisions read on October 1, 1983". Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 near middle after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

1985 Amendment: Before "in substantial compliance" inserted "certified by the department of commerce to be".

Administrative Rules

ARM 23.19.406 Department's dispute resolution procedure — when available to consumer.

61-4-511. Manufacturer's dispute settlement procedure — certification — prohibited contents.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 280 in (1) near middle of first sentence after "part 703" deleted "(16 CFR, part 703), as those provisions read on October 1, 1983" and at end after "department" deleted "of administration", in second sentence at beginning after "department" deleted "of administration" and near middle deleted requirement that the department of administration report to the department of justice and inserted requirement for maintenance of records, and at beginning of third sentence after "The department" deleted "of administration"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 542 in (2)(c) near middle before "vehicle" inserted "motor". Amendment effective January 1, 2006.

2001 Amendment: Chapter 483 throughout (1) after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (1) substituted reference to department of justice for reference to division of motor vehicles.

Source: Chapter 744, L. 1985, is based on Connecticut Public Act 84-388 (Lemon Law II) section 42-179 of general statutes.

Applicability: Section 20, Ch. 744, L. 1985, was an applicability clause that read: "This act applies to automobiles sold on or after October 1, 1985."

Severability Clause: Section 21, Ch. 744, L. 1985, was a severability clause.

Administrative Rules

ARM 23.19.404 Manufacturer's informal dispute settlement procedure — certification.

61-4-512. Annual audit — revocation or suspension of certification.

Compiler's Comments

2005 Amendment: Chapter 280 throughout section after "department" deleted "of administration"; in (1) near middle after "part 703" deleted "(16 CFR, part 703), as those provisions read on October 1, 1983"; in (2) deleted former second sentence that read: "The department of administration shall notify the department of justice of any revocation or suspension of a certification"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 in (1) in two places after "department of" substituted "administration" for "commerce"; in (2) near beginning of first sentence and second sentence after "department of" substituted "administration" for "commerce" and near beginning of third sentence after "department of" substituted "administration" for "justice"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In (2) substituted reference to department of justice for reference to division of motor vehicles in two places.

Administrative Rules

ARM 23.19.405 Manufacturer's informal dispute settlement procedure — audit.

61-4-515. Arbitration procedure.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 130 in (2) near middle after "before an" substituted "arbitrator" for "arbitration panel". Amendment effective October 1, 2005.

Chapter 280 in (1) and (2) after "department" deleted "of administration"; and in (2) near middle substituted "arbitrator" for "arbitration panel". Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 in (1) near beginning of first sentence and in (2) near end after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: Section 23, Ch. 744, L. 1985, provided that if Senate Bill No. 110 was approved, the bracketed reference to "[Title 27, chapter 5]" in (1) of this section was changed to "Senate Bill No. 110". Senate Bill No. 110 was approved (Ch. 684, L. 1985), and it repealed and replaced all sections in Title 27, chapter 5. Therefore, the amendment by sec. 23, Ch. 744, L. 1985, required no actual wording change, only removal of brackets.

Administrative Rules

Title 23, chapter 19, subchapter 4, ARM New motor vehicle warranty rules.

61-4-516. Selection of arbitrator.

Compiler's Comments

2005 Amendment: Chapter 280 in two places after "department" deleted "of administration". Amendment effective July 1, 2005.

2003 Amendment: Chapter 360 near beginning of first sentence substituted "arbitrator for a grievance" for "arbitration panel hearing a grievance" and at end substituted "be chosen by the department of administration" for "consist of three members"; deleted former second sentence that read: "One member must be chosen by the consumer, one member must be chosen by the manufacturer, and one member must be chosen by mutual agreement of the parties"; and in last sentence substituted "shall" for "may" and at end substituted "as an arbitrator" for "on panels from which the third member may be chosen"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in second sentence after "department of" substituted "administration" for "commerce". Amendment effective July 1, 2001.

Administrative Rules

ARM 23.19.401 Definitions.

61-4-517. Implementation of arbitration.

Compiler's Comments

2007 Amendment: Chapter 84 in (1) in second sentence increased filing fee from $50 to $100; and in (3) in second sentence at end increased filing fee from $250 to $750. Amendment effective March 30, 2007.

2005 Amendment: Chapter 280 throughout section after "department" deleted "of administration"; in (1) in third sentence before "form" deleted "complaint"; in (4) substituted "account" for "fund"; in (5) substituted "department's" for "department of administration"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 throughout section after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

Administrative Rules

Title 23, chapter 19, subchapter 4, ARM New motor vehicle warranty rules.

61-4-518. Arbitration — role of department of justice — expert.

Compiler's Comments

2005 Amendment: Chapter 280 in three places after "department" deleted "of administration". Amendment effective July 1, 2005.

2003 Amendment: Chapter 360 in (1) near middle of second sentence substituted "arbitrator" for "arbitration panel"; in (2) in first and second sentences substituted "arbitrator" for "panel" and in last sentence substituted "expert, at the arbitrator's request, may be present" for "expert may sit as a nonvoting member of the panel"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 throughout section after "department of" substituted "administration" for "commerce"; and in (2) deleted former fourth sentence that read: "The department of justice may suggest an expert at the request of the department of commerce." Amendment effective July 1, 2001.

1985 Amendment: In (2) in last sentence substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.19.402 Correspondence.

ARM 23.19.408 Powers and duties of arbitrators.

ARM 23.19.417 Recordkeeping.

61-4-519. Action by arbitrator — decision.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 280 in (1) and (3) after "department" deleted "of administration"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 542 in (2)(a) and in (2)(b) in three places before "vehicle" inserted "motor". Amendment effective January 1, 2006.

2003 Amendment: Chapter 360 in (1) at beginning substituted "arbitrator" for "arbitration panel"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 483 in (1) near middle and in second sentence in (3) after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: Changed "[Title 27, chapter 5, part 3]" to "Title 27, chapter 5". Section 23, Ch. 744, L. 1985, provided that if Senate Bill No. 110 was approved, the bracketed reference to "[Title 27, chapter 5, part 3]" in this section was changed to "Senate Bill No. 110". Senate Bill No. 110 was approved (Ch. 684, L. 1985), and it repealed and replaced all sections in Title 27, chapter 5. Therefore, "Senate Bill No. 110" now constitutes "Title 27, chapter 5" and the bracketed reference was revised accordingly.

Administrative Rules

ARM 23.19.408 Powers and duties of arbitrators.
ARM 23.19.414 Conduct of oral arbitration hearings.
ARM 23.19.416 Predecision settlement of dispute.
ARM 23.19.418 Notice of arbitration decision.
ARM 23.19.419 Postperformance date contact.

61-4-520. Nonconforming procedure — arbitration de novo.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 130 at end of first sentence after "administration" substituted "arbitrator" for "panel" and near middle of third sentence after "arbitration" deleted "panel". Amendment effective October 1, 2005.

Chapter 280 in first sentence near middle after "part 703" deleted "as in effect on October 1, 1983" and at end substituted "a department arbitrator" for "a department of administration panel" and in last sentence near middle substituted "department's arbitration hearing" for "department of administration arbitration panel hearing". Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 near end of first sentence and near middle of third sentence after "department of" substituted "administration" for "commerce"; and made minor changes in style. Amendment effective July 1, 2001.

Administrative Rules

ARM 23.19.406 Department's dispute resolution procedure — when available to consumer.
ARM 23.19.411 Consumer appeals process.

61-4-525. Notice on resale of replaced motor vehicle.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 280 in second sentence at beginning after "department" deleted "of justice"; and made minor changes in style. Amendment effective July 1, 2005.

Chapter 542 near end of first and second sentences before "vehicle" inserted "motor"; and made minor changes in style. Amendment effective January 1, 2006.

1985 Amendment: In last sentence substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.19.420 Notice of resale of returned vehicle.

61-4-526. Records of disputes.

Compiler's Comments

2005 Amendment: Chapter 280 in three places after "department" deleted "of administration"; in first sentence near middle inserted "appropriate"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 483 in first and second sentences after "department of" substituted "administration" for "commerce" and in third sentence substituted "The statistical summary must be considered by the department of administration" for "A copy of the statistical summary must be filed with the department of justice and must be considered by it"; and made minor changes in style. Amendment effective July 1, 2001.

1985 Amendment: In last sentence substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.19.416 Predecision settlement of dispute.
ARM 23.19.417 Recordkeeping.

CHAPTER 5
DRIVER'S LICENSES

Chapter Administrative Rules

Title 23, chapter 3, subchapter 1, ARM Driver licensing.
Title 23, chapter 3, subchapter 5, ARM Licensing operators of commercial motor vehicles.

Part 1
Licensing Provisions

61-5-101. Driver licensing responsibilities of department.

Compiler's Comments

2005 Amendment: Chapter 358 in (2) near middle after "commercial driver's license" inserted "or motor vehicle driver's license". Amendment effective October 1, 2005.

1997 Amendment: Chapter 164 inserted (2) requiring the Department to provide an examiner to administer certain previously scheduled examinations; and made minor changes in style. Amendment effective July 1, 1997.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Composite Section: Section 61-5-101 was amended by Ch. 421 and Ch. 451, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Chapter 421 was not intended to make substantive change in law. Conflict of language between Ch. 421 and Ch. 451 has been resolved in favor of Ch. 451 language.

Administrative Rules

ARM 23.2.123 Denial for inability to verify name and birthdate.

Title 23, chapter 3, subchapter 1, ARM Driver licensing.

ARM 23.3.209 through 23.3.212 Changes in status of driver's license.

61-5-102. Drivers to be licensed — penalty.

Compiler's Comments

2021 Amendment: Chapter 217 in (2)(a)(iii) at end after "autocycle" inserted "or a three-wheeled motorcycle". Amendment effective October 1, 2021.

2019 Amendment: Chapter 309 in (2)(a)(i) near beginning substituted "subsections (2)(a)(ii) and (2)(a)(iii)" for "subsection (2)(a)(ii)"; and inserted (2)(a)(iii) making a motorcycle endorsement optional for autocycles. Amendment effective October 1, 2019.

2017 Amendment: Chapter 321 in (1)(b) near beginning after "penalty for a" deleted "first", and at end deleted "imprisonment for not more than 6 months, or both a fine and imprisonment. The penalty for second and subsequent violations of this section is a fine of not more than $500 and imprisonment for not less than 2 days or more than 6 months"; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 44, Ch. 321, L. 2017, provided: "[This act] applies to offenses committed after June 30, 2017."

2011 Amendment: Chapter 209 in (2)(a)(ii) after "operation of" inserted "a low-speed electric vehicle or"; inserted (3) pertaining to low-speed restricted driver's license; and made minor changes in style. Amendment effective January 1, 2012.

2007 Amendments — Composite Section: Chapter 233 in (2)(a)(i) at beginning inserted exception clause; inserted (2)(a)(ii) providing that a motorcycle endorsement is not required for the operation of electric motorcycles or certain other electric vehicles; and made minor changes in style. Amendment effective April 23, 2007.

Chapter 462 inserted (1)(b) providing penalty for first, second, and subsequent violations of section; inserted (1)(c) providing exception for person who has not renewed license; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 79 in (2)(a) near beginning after "motorcycle" deleted "or quadricycle" and deleted former second sentence that read: "A motorcycle endorsement is required for the operation of a quadricycle." Amendment effective October 1, 2005.

2003 Amendment: Chapter 428 in (2)(b) near beginning after "commercial" inserted "motor" and at end inserted "and the license bears the proper endorsement for:

(i) the specific vehicle type or types being operated; or

(ii) the passengers or type or types of cargo being transported"; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 23(1), Ch. 428, L. 2003, provided that this section applies to the operation of a commercial motor vehicle on or after October 1, 2003.

2001 Amendment: Chapter 415 deleted former (4) that read: "(4) A person operating a bicycle defined in 61-1-123(2) must have in the person's possession at all times when operating the bicycle a valid Montana driver's license." Amendment effective October 1, 2001.

1999 Amendment: Chapter 309 in (1) deleted former third sentence that read: "All surrendered licenses shall be returned by the department to the issuing department together with information that the licensee is not licensed in this state" and in third sentence after "have" inserted "in the person's possession or under the person's control" and after "valid" inserted "Montana"; inserted (2)(a) regarding validity of motorcycle or quadricycle license; inserted (2)(b) regarding commercial licenses; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1987 Amendment: In first sentence of (1) inserted "driver's" before "license", at end of first sentence deleted "as an operator or chauffeur under the provisions of this chapter", and throughout remainder of (1), before "license", substituted "driver's" or "Montana driver's" for "operator's or chauffeur's" or "operators' or chauffeurs'"; deleted former (2) that read: "(2) No person shall drive a motor vehicle as a chauffeur unless he holds a valid chauffeur's license. No person shall receive a chauffeur's license unless and until he surrenders to the department any operator's license issued to him or an affidavit that he does not possess an operator's license. Any person holding a valid chauffeur's license hereunder need not procure an operator's license"; near beginning of (2) substituted "a licensed driver" for "an operator or chauffeur"; and made minor changes in phraseology. Amendment effective January 1, 1988.

1985 Amendment: In (1) and (2) substituted references to department of justice for references to division of motor vehicles.

Case Notes

Grounds for Investigative Stop of Vehicle — Knowledge Owner Is Unlicensed Is Sufficient — No Need to Determine Owner Not Licensed Elsewhere: To make an investigative stop of a pickup, the officer needed only a reasonable or particularized suspicion, based on objective data, that an offense was being committed. After the officer observed that a pickup was oscillating between 50 and 60 miles an hour on a freeway and that the plate was new and shiny, in contrast to the rest of the pickup, he had dispatch do a license check and was informed that the pickup owner's license was expired. Knowledge that the pickup owner's license was expired was enough to validate the officer's stop of the pickup because it gave the officer a particularized suspicion that an offense was being committed. The officer did not have to also ascertain, before the stop, that the pickup owner did not have a valid license from another state. St. v. Hatler, 2001 MT 38, 304 M 211, 19 P3d 822A (2001).

Licensing Drivers — Legitimate Exercise of Police Power of State — Ability to Drive on Public Roads Not Fundamental Right: Requiring drivers to be licensed by the state is a justifiable, reasonable, and desirable exercise of the police power of the state. The ability to drive a motor vehicle on a public highway is not a fundamental right. The right to travel granted by the state and federal constitutions is separate from the right or privilege to operate a motor vehicle on the public highways and does not include the ability to ignore the laws governing the use of the public highways. St. v. Skurdal, 235 M 291, 767 P2d 304, 45 St. Rep. 2394 (1988).

Constitutionality: Enforcement of the provisions of this section requiring a valid driver's license is not a violation of constitutional rights. Billings v. Skurdal, 224 M 84, 730 P2d 371, 43 St. Rep. 2036 (1986).

Attorney General's Opinions

Motorcycle Operator to be Licensed: An operator of a motorcycle or motor-driven cycle that is driven on public highways in the state must be licensed under section 31-125, R.C.M. 1947 (now 61-5-102), or section 31-129, R.C.M. 1947 (now 61-5-106), as amended, unless the operator is exempt from license under section 31-126, R.C.M. 1947 (now 61-5-104). 29 A.G. Op. 48 (1962).

61-5-103. Residency requirement.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 428 inserted (3) establishing conditions for issuance of a commercial driver's license to a nonresident; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 596 in (1) near beginning decreased time from 120 days to 60 days. Amendment effective January 1, 2006.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

1999 Amendment: Chapter 309 in (1) substituted "120 consecutive days" for "90 days"; in (2) after "30" inserted "consecutive"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1989 Amendment: In two places in (1) substituted "Montana" for "this state" and substituted "more than" for "a period exceeding"; and inserted (2) requiring commercial motor vehicle licensing if operator resides in Montana more than 30 days.

61-5-104. Exemptions.

Compiler's Comments

2021 Amendment: Chapter 119 in (1)(b) at end deleted "and who is not employed in Montana, except as a member of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed"; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 330 in (5)(a) and (5)(c) near end substituted "90 days" for "30 days"; in (5)(b) at end deleted "and for up to 30 days following the date on which the licensee is honorably separated from the service"; and made minor changes in style. Amendment effective October 1, 2017.

2007 Amendment: Chapter 144 in (5)(a) deleted former second sentence that read: "During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession"; inserted (5)(b) allowing renewal of a driver's license at any time during the person's military service and providing that the renewed license remains in effect for up to 30 days after the person is honorably discharged; inserted (5)(c) providing that the driver's license of a person in the military who applies for a driver's license remains in effect as long as service continues and for up to 30 days after the person is honorably discharged; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendments — Composite Section: Chapter 428 inserted (3)(b) defining jurisdiction; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 542 in (1)(d) after "farm tractor" inserted "as defined in 61-9-102"; in (1)(e) near end after "railroad" deleted "locomotive or"; in (1)(f) after "off-highway vehicle" deleted "as defined in 23-2-801"; and made minor changes in style. Amendment effective January 1, 2006.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2001 Amendment: Chapter 207 in (3) near beginning after "nonresident" deleted "not otherwise exempt from the licensing requirements of 49 CFR, part 383, and" and in middle after "home" substituted "jurisdiction, in accordance with the licensing and testing standards of 49 CFR, part 383" for "state or country"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

1999 Amendment: Chapter 95 inserted (1)(f) establishing criteria for when a person under 16 years of age but at least 12 years of age may operate an off-highway vehicle on a forest development road without a driver's license. Amendment effective October 1, 1999.

1997 Amendment: Chapter 105 in (1)(d), at beginning after "person", substituted "who temporarily drives, operates, or moves a" for "while driving or operating any" and after "husbandry" substituted "for use in intrastate commerce" for "temporarily operated or moved"; in (3) substituted reference to part 383 for part 391; and made minor changes in style.

1995 Amendment: Chapter 53 in (2), near end after "motor vehicle", inserted "except a commercial motor vehicle" and after "state" deleted "only as an operator"; substituted (3) regarding nonresident's operation of a commercial motor vehicle for former language that read: "A nonresident who is at least 18 years of age and who has in his immediate possession a valid commercial operator's license issued to him in his home state or country may operate a motor vehicle or commercial motor vehicle in this state subject to the age limits applicable to commercial vehicle operators in this state"; in (5), in second sentence after "when", deleted "in the immediate possession of the licensee while driving"; and made minor changes in style. Amendment effective February 9, 1995.

1991 Amendment: Inserted (1)(e) concerning persons engaged in operation of a train or locomotive not being required to display driver's license to law enforcement officer; and made minor changes in style. Amendment effective April 22, 1991.

1987 Amendment: In (3), before "license", substituted "commercial operator's" for "chauffeur's", after "motor vehicle" inserted "or commercial motor vehicle", after "state" deleted "either as an operator or chauffeur", and near end substituted "commercial vehicle operators" for "chauffeurs". Amendment effective January 1, 1988.

1985 Amendment: Inserted (1)(b) and (1)(c) providing exemptions from the requirement of driver's license for a member of armed forces on active duty in Montana who holds either a license issued by another state or by the armed forces of the United States in a foreign country.

Administrative Rules

ARM 23.3.141 Military persons.

ARM 23.3.146 Drivers of government vehicles.

Attorney General's Opinions

Invalid Operator of Self-Propelled Wheelchair: An invalid operator of a self-propelled wheelchair or similar vehicle is exempt from driver's license provisions. 36 A.G. Op. 86 (1976).

61-5-105. Who may not be licensed.

Compiler's Comments

2015 Amendment: Chapter 358 in (2) inserted "except as provided in 61-5-232"; and made minor changes in style. Amendment effective July 1, 2015.

2011 Amendment: Chapter 207 in (10) in first sentence substituted "whose presence" for "who does not submit proof satisfactory to the department that the applicant's presence" and before "authorized" inserted "not", inserted second sentence pertaining to noncitizen's application for driver's license, and in third sentence after "accept" deleted "as a primary source of identification" and substituted "by another state as proof that an applicant is" for "by a state if the state does not require that a driver license in that state be". Amendment effective October 1, 2011.

2007 Amendment: Chapter 242 in (7) in second sentence after "physician" inserted "licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendments — Composite Section: Chapter 428 in (2) near beginning after "revoked" inserted "or canceled or who is disqualified from operating a commercial motor vehicle"; inserted (9) prohibiting licensure of a person who is not a resident of or domiciled in Montana except as provided in 61-5-103(3); and made minor changes in style. Amendment effective October 1, 2005.

Chapter 478 inserted (10) providing that a license may not be issued to a person who does not submit satisfactory proof that the person is legally in the United States and that a driver's license from a state that does not require a licensed driver to be legally in the United States may not be accepted as a primary source of identification; and made minor changes in style. Amendment effective July 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Applicability: Section 6, Ch. 478, L. 2005, provided: "[This act] applies to driver's licenses issued on or after July 1, 2005, and to driver's licenses renewed on or after July 1, 2006."

2001 Amendment: Chapter 207 in (2) after "state" inserted language pertaining to national driver register or commercial driver's license information system, as established under federal law. Amendment effective October 1, 2001.

Applicability: Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

1999 Amendment: Chapter 309 inserted (8) prohibiting department from issuing license to person lacking functional ability to safely operate motor vehicle on the highway; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1995 Amendment: Chapter 364 in (1)(b) substituted language allowing license issuance to a person 13 years of age because of hardship for former language that read: "The department may issue a restricted license to any person who is at least 13 years of age"; substituted (2) concerning suspended driving privilege for former language that read: "whose license has been suspended during the suspension, or to any person whose license has been revoked, except as provided in 61-5-208"; in (3), after "who is", deleted "an habitual drunkard, or is" and after "use of" inserted "alcohol or"; in (5), after "examination", deleted "unless the person shall have successfully passed such examination"; substituted (6) regarding proof of financial responsibility for former language that read: "who is required under the provisions of the motor vehicle financial responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof"; in (7), at beginning of first sentence after "who", substituted "has any condition" for "is suffering from any form of epileptic type seizures or similar disorders" and in second sentence, near beginning after "suffering from", substituted "a condition if the afflicted person's attending physician attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations" for "epileptic type seizures or similar disorder characterized by lapse of consciousness or control, if otherwise qualified to be licensed to drive a motor vehicle, when the afflicted person can show through a written report from his attending physician that he has not experienced an epileptic type seizure or similar disorder characterized by lapse of consciousness or control for a sufficient period and that the condition is stabilized as attested to by said physician"; and made minor changes in style.

Applicability: Section 7, Ch. 364, L. 1995, provided: "[This act] applies to a person who, on or after October 1, 1995, applies for a Montana driver's license or who seeks to renew a Montana driver's license that expires on or after October 1, 1995."

1987 Amendment: At beginning of (1) deleted "as an operator"; in (1)(a) substituted "a driver's license" for "an operator's license" and after "15 years" inserted "of age"; deleted former (2) that read: "(2) as a chauffeur, employed by another for the principal purpose of driving a motor vehicle when in use exclusively for the transportation of property for compensation, who is under the age of 18 years, or to any person, as a chauffeur, who is employed by another for the principal purpose of driving a motor vehicle transporting passengers for hire or transporting school children, who is under the age of 18 years"; at beginning of (2) through (5) and (7) deleted "as an operator or chauffeur"; and made minor changes in phraseology. Amendment effective January 1, 1988.

1985 Amendment: In lead-in, (1)(a), (1)(b), and (8) substituted references to department of justice for references to division of motor vehicles.

Administrative Rules

ARM 23.2.123 Denial for inability to verify name and birthdate.
ARM 23.3.132 Underage application and license.
ARM 23.3.210 Denial of license due to incompetency or addiction.
ARM 23.3.211 Other information resulting in change of status of driver's license.
ARM 23.3.212 Altered driver's license.

Case Notes

Liability of Parent for Child's Alleged Negligent Driving — Theories of Negligent Entrustment and Vicarious Liability Under Family Purpose Doctrine Rejected: Following a car accident, the plaintiffs sued both the teenage driver (defendant) for negligence and her mother for negligent entrustment and vicarious liability under the family purpose doctrine. The District Court granted the mother summary judgment after analyzing the three elements in Crisafulli v. Bass, 2001 MT 316, 308 Mont. 40, 38 P.3d 842, and concluding that there was no evidence to establish that the mother should have known that her daughter was an incompetent driver. The District Court also rejected the application of the family purpose doctrine. A jury subsequently found that the defendant was not negligent. On appeal, the plaintiffs claimed the District Court had erred in granting the mother summary judgment. The Supreme Court affirmed, noting that the defendant had never received any traffic citations and had never been involved in an accident. Therefore, the plaintiffs failed to meet their burden of proof that the mother should have known that her daughter was an incompetent driver or would drive in a manner that would create an unreasonable risk to others. Similarly, the Supreme Court rejected the application of the family purpose doctrine in this case as there was no agency relationship between the mother and daughter. A family relationship alone will not satisfy the agency relationship for applying the family purpose doctrine. Styren Farms, Inc. v. Roos, 2011 MT 299, 363 Mont. 41, 265 P.3d 1230.

Denial of Montana Driver's License Based on Suspension of Driving Privileges in Michigan: In Chain v. Dept. of Motor Vehicles, 2001 MT 224, 306 M 491, 36 P3d 358 (2001), the Supreme Court held that the Department of Motor Vehicles had to accept Chain's driver's license application but could still choose to deny Chain a license after completing an investigation. Chain then applied for a Montana driver's license, but after an investigation, the application was denied because Chain had been convicted in Michigan of twice operating a vehicle under the influence of liquor, twice having an unlawful bodily alcohol content while driving, driving with a suspended or revoked driver's license five times, and refusing to be tested for intoxication five times. In total, Michigan authorities took 16 separate actions against Chain's driving privileges, including five suspensions, two revocations and nine denial/revocations, resulting in suspension of Chain's Michigan driving privileges until 2022. Chain filed an action in District Court requesting that he be issued a driver's license, but the District Court denied Chain's claim on grounds that Chain could not receive a license in Montana when his driving privileges were suspended or revoked elsewhere. Chain appealed, but the Supreme Court affirmed. Giving Chain's Michigan suspensions and revocations the same force and effect as if they were committed in Montana, the state was within its discretion to deny Chain a license. Chain v. Motor Vehicle Div., 2004 MT 216, 322 M 381, 96 P3d 1135 (2004).

Driver's License Application Allowed One Year After Suspension or Revocation — Department's Discretionary Power to Issue License: Before moving to Montana, Chain lived in Michigan, where he was convicted of DUI on at least four separate occasions, which resulted in suspension or revocation of his driving privileges. Once here, Chain attempted to apply for a Montana driver's license, but the Department of Motor Vehicles cited this section and refused to let him apply because his driving privileges were still suspended or revoked in Michigan. Chain requested that the District Court order the Department to allow the application and to issue a license if all the application requirements were met, but the request was denied. Chain argued on appeal that the Department should have instead applied 61-5-208, which limits revocations or suspensions to 1 year and allows application for a new license at the end of that period. Chain also cited the Driver License Compact in 61-5-401 as support for the proposition that he should have an opportunity to reapply 1 year after revocation. The Supreme Court noted nothing in the record to indicate whether Michigan was a member of the Compact and thus declined to apply 61-5-401, but the court found Montana licensing statutes to be dispositive. The court agreed that this section prohibits issuance of a license if driving privileges are still suspended or revoked but found nothing in the statutes that disallowed application for a license. Under 61-5-107, after receiving an application, the Department should have requested a copy of Chain's driving record from Michigan and then analyzed it in the same manner as if it had been amassed in Montana. Once 1 year had passed after Chain's revocation or suspension, he could apply for a license like any other citizen in similar circumstances, as provided in 61-5-208, and after investigation, the Department had the discretionary power whether or not to issue a license. Chain v. Dept. of Motor Vehicles, 2001 MT 224, 306 M 491, 36 P3d 358 (2001).

Liability of Provider: Liability of father who provided motorbike for his 12-year-old son was not based on imputed negligence or family purpose doctrine, but was based on the act of providing an unlicensable minor with possession of an instrument which in his immature and incompetent hands was dangerous to other motorists. Sedlacek v. Ahrens, 165 M 479, 530 P2d 424 (1974).

61-5-106. Learner licenses — traffic education permits — temporary driver's permits.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 450 inserted (2)(b) authorizing testing for a learner license without a traffic education course because of the covid-19 pandemic; and made minor changes in style. Amendment effective May 10, 2021, and terminates June 30, 2023.

Chapter 570 in (1)(b)(i) at beginning inserted an exception clause regarding a licensee under 18 years of age; inserted (1)(b)(ii) regarding a licensee who is a ward of the state; and made minor changes in style. Amendment effective May 14, 2021.

2017 Amendment: Chapter 323 throughout (1) and (2) substituted "learner license" for "instruction permit", substituted "license" for "permit", and substituted references to licensee for references to permitholder; in (2) in two places before "learner license" deleted "traffic education" and near end inserted "or other driver as provided in subsection (1)(b)"; and made minor changes in style. Amendment effective May 4, 2017.

2005 Amendment: (Version effective July 1, 2006) Chapter 297 in (1)(a) in first sentence near beginning inserted "which is valid for 1 year from the date of issuance" and in second sentence at beginning inserted exception clause, near end inserted "other than a motorcycle", and at end after "public highways" deleted "for a period of 6 months from the date the fees required in 61-5-111 are paid"; inserted (1)(b) regarding requirements for permitholder under 18 years of age; inserted (1)(c) regarding requirements for holder of instruction permit for motorcycle; in (2) in first sentence near beginning inserted "which is valid for 1 year from the date of issuance" and at end after "public instruction" inserted reference to availability of course to all who meet age requirements and reside within or attend school in district offering course; and made minor changes in style. Amendment effective July 1, 2006.

Applicability: Section 10, Ch. 297, L. 2005, provided: "[This act] applies to a person who applies for a driver's license on or after July 1, 2006, and who is under 18 years of age at the time of the application unless the person was issued an instruction permit, traffic education learner's license, or traffic education permit prior to July 1, 2006."

1999 Amendment: Chapter 309 inserted (6) authorizing department to issue temporary medical assessment and rehabilitation driving permit. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1995 Amendment: Chapter 364 in (1) substituted "the knowledge test and the vision examination as provided in 61-5-110" for "all parts of the examination other than the driving test", substituted "permittee" for "applicant" and for "driver", and at end, after "6 months", inserted "from the date the fees required in 61-5-111 are paid"; in (2), near beginning of first sentence after "issue", substituted "a traffic education learner license" for "an instruction permit" and at beginning of second sentence substituted "A traffic education learner license entitles the licensee to operate a motor vehicle" for "An instruction permit must be restricted to the operation of a motor vehicle"; in (3)(a), at beginning, substituted "An instructor of a traffic education program approved by the department and by the superintendent of public instruction may" for "The department upon receiving proper application may in its discretion" and at end substituted "and who meets the age requirements specified in 20-7-503" for "even though the applicant has not reached the legal age to be eligible for a driver's license"; and made minor changes in style.

Applicability: Section 7, Ch. 364, L. 1995, provided: "[This act] applies to a person who, on or after October 1, 1995, applies for a Montana driver's license or who seeks to renew a Montana driver's license that expires on or after October 1, 1995."

1993 Amendment: Chapter 195 in (4), in two places in the first sentence, substituted "commercial driver's license" for "commercial vehicle operator's endorsement" and in two places in second sentence substituted "license" for "endorsement"; and made minor changes in style.

1987 Amendment: Near end of second sentence of (1) substituted "driver" for "operator or chauffeur"; near end of first sentence of (2) and throughout (3) substituted "a driver's license" for "an operator's license"; and inserted (4) granting Department discretion to issue temporary commercial vehicle operator's endorsement. Amendment effective January 1, 1988.

1985 Amendments: Chapter 503 in (1) in four places, in (2) in two places, and in (3) in two places substituted reference to department of justice for reference to division of motor vehicles.

Chapter 516 in (2) near end, after "motorcycle", inserted "or quadricycle" (effective January 1, 1986).

Administrative Rules

ARM 23.3.139 and 23.3.518 Temporary licenses.

Title 23, chapter 3, subchapter 5, ARM Licensing operators of commercial motor vehicles.

61-5-107. Application for license or motorcycle endorsement.

Compiler's Comments

2023 Amendments — Composite Section: Section 40, Ch. 685, L. 2023, in (2) inserted a citation to the definition of "sex". Amendment effective October 1, 2023.

Section 1, Ch. 686, L. 2023, in (1) deleted former second sentence that read: "Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application." Amendment effective October 1, 2023

Severability: Section 42, Ch. 685, L. 2023, was a severability clause.

2017 Amendment: Chapter 323 in (1) and (5) substituted "a learner license" for "an instruction permit"; and made minor changes in style. Amendment effective May 4, 2017.

2005 Amendments — Composite Section: Chapter 180 inserted (5) providing that a person from 15 to 25 years of age who is required to register for the draft must be given a chance to register when applying for an instruction permit, license, or identification card and that if the person is 15 to 17 years of age, the person must be given a chance to be registered for the draft upon becoming 18 years of age and providing that registration information on the application must be sent to the selective service system. Amendment effective October 1, 2005.

Chapter 428 in (2)(b) near beginning after "revocation" inserted "cancellation"; and made minor changes in style. Amendment effective October 1, 2005.

(Version effective July 1, 2006) Chapter 478 inserted (2)(e) providing that an applicant who is a foreign national in the country under a temporary federal law authorization must give the expiration date of the document authorizing the applicant's presence in the country; and made minor changes in style. Amendment effective July 1, 2006.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Applicability: Section 6, Ch. 478, L. 2005, provided: "[This act] applies to driver's licenses issued on or after July 1, 2005, and to driver's licenses renewed on or after July 1, 2006."

2003 Amendments — Composite Section — Coordination: Chapter 428 in (1) near middle of first sentence after "driver's license" inserted "commercial driver's license"; in (2) at end of introductory clause substituted "provide the following additional information" for "include a statement that allows the department to determine"; in (2)(a) at beginning inserted "the name of each jurisdiction in which" and after "licensed" substituted "to drive any type of motor vehicle during the 10-year period immediately preceding the date of the application" for "as a driver or commercial vehicle operator, and, if so, when and by what state or country"; in (2)(b) substituted "a certification from the applicant that the applicant is not currently subject to a suspension, revocation, disqualification, or withdrawal of a previously issued driver's license or any driving privileges in another jurisdiction and that the applicant does not have a driver's license from another jurisdiction" for "any commercial driver's license has ever been suspended or revoked"; deleted former (2)(c) that read: "(c) an application has ever been denied and, if so, the date of and reason for suspension, revocation, or denial"; in (2)(c) at beginning substituted "a brief description of any" for "the applicant has a"; in (2)(d) at beginning substituted "a brief description of" for "the applicant relies upon, or intends to rely upon" and after "restrictions" inserted "that the applicant relies upon or intends to rely upon"; in (4)(a) at end of first sentence substituted "each jurisdiction in which the applicant was licensed in the preceding 10-year period" for "the previous licensing jurisdiction" and in third sentence after "record" inserted "created and maintained" and at end after "state" deleted "with the same force and effect as though entered on the driver's record in this state in the original instance" (amendment in third sentence rendered void by Ch. 556 amendment); and made minor changes in style. Amendment effective October 1, 2003.

Chapter 556 in (4)(a) in first sentence after "applicant" inserted "who is not eligible for licensure under 61-5-105 and who was" and deleted former third sentence that read: "When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance"; inserted (4)(b) requiring driving records to be appended to driver's record and allowing department to rely on information in driving records to determine action to be taken against applicant upon conviction or conduct requiring suspension or revocation of license; and made minor changes in style. Amendment effective May 5, 2003.

Pursuant to sec. 15(3), Ch. 556, L. 2003, a coordination section, in (4)(a) after "record" substituted "from each jurisdiction in which the applicant was licensed in the preceding 10-year period" for "from the previous licensing jurisdiction".

Applicability: Section 23(2), Ch. 428, L. 2003, provided that this section applies to a driver's license issued or renewed on or after October 1, 2003.

1999 Amendments — Composite Section: Chapter 29 in (2) substituted "and the applicant's" for "and if the application is for a commercial vehicle operator's license"; and made minor changes in style. Amendment effective October 1, 2000.

Chapter 309 deleted former second sentence in (1) that read: "A motorcycle endorsement is required for the operation of a quadricycle"; near beginning of (2) after "full" inserted "legal", substituted "commercial driver's license" for "commercial vehicle operator's license", and at end substituted "must include a statement that allows the department to determine if" for "state whether"; in (2)(b) substituted "driver's license" for "operator's license"; in (2)(c) substituted "denied" and "denial" for "refused" and "refusal"; inserted (2)(d) requiring statement for department to determine if applicant has physical or mental disability that may impair safe operation of vehicle; inserted (2)(e) requiring statement for department to determine if applicant relies upon adaptive equipment or operational restrictions for safe operation of vehicle; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 7, Ch. 29, L. 1999, provided: "(1) [Sections 2 and 3] [61-5-107 and 61-5-111] apply to driver's licenses issued on or after October 1, 2000.

(2) [Sections 4 and 5] [87-2-106 and 87-2-202] apply to license years beginning on or after March 1, 2000."

Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1997 Amendment: Chapter 552 in (2), in introductory clause, inserted "and if the application is for a commercial vehicle operator's license, social security number"; inserted (3) requiring the Department to keep the Social Security number from this source confidential, except that it may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the Department and may be provided to the Department of Public Health and Human Services to use for Title IV-D purposes; and made minor changes in style. Amendment effective July 1, 1997.

Contingent Termination — Request for Federal Exemptions: Section 104, Ch. 552, L. 1997, contained the following contingent termination provisions and order that the Department of Public Health and Human Services seek federal exemptions:

"(1) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 93] [50-15-403];

(e) [section 95] [61-5-107];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:

(a) [section 9] [40-5-922];

(b) [section 11] [40-5-924];

(c) [sections 22 through 24] [37-1-307, 40-1-107, and 40-4-105];

(d) [section 93] [50-15-403, certification filed April 24, 1998];

(e) [section 95] [61-5-107];

(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116].

(5) (a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).

(b) Because section 395(c) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA and because the Montana legislature believes that the section of PRWORA prohibiting a jury trial in a paternity proceeding violates Article II, section 26, of the Montana constitution and is therefore rejected, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5)(a). [This exemption was received on December 8, 1997.]

(6) [Sections 9, 11, 22 through 24, 93, and 95] [37-1-307, 40-1-107, 40-4-105, 40-5-922, 40-5-924, 50-15-403, and 61-5-107] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminate July 1, 1999.

(7) If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] [40-4-204, 40-5-226, 40-5-901, 40-5-906, 40-5-907, 40-5-923, and 40-6-116] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement."

1995 Amendment: Chapter 364 in (3) inserted second sentence allowing the transmission of a driving record manually or electronically; and made minor changes in style.

Applicability: Section 7, Ch. 364, L. 1995, provided: "[This act] applies to a person who, on or after October 1, 1995, applies for a Montana driver's license or who seeks to renew a Montana driver's license that expires on or after October 1, 1995."

1993 Amendment: Chapter 195 near beginning of (1), after "driver's license", deleted "commercial vehicle operator's endorsement"; and made minor changes in style.

1991 Amendment: At end of (1) inserted last two sentences requiring voter registration form to be attached to driver's license application and requiring Department to forward registration form to election administrator.

1987 Amendment: Near beginning of (1) substituted "driver's license" for "operator's or chauffeur's license" and after "license" inserted "commercial vehicle operator's endorsement"; in (2) substituted "a driver or commercial vehicle operator" for "an operator or chauffeur"; and made minor change in phraseology. Amendment effective January 1, 1988.

1985 Amendments: Chapter 503 in (1) and (3) substituted references to department of justice for references to division of motor vehicles.

Chapter 516 in (1) inserted second sentence requiring a motorcycle endorsement for the operation of a quadricycle (effective January 1, 1986).

Administrative Rules

Title 23, chapter 3, subchapter 1, ARM Driver licensing.

Title 23, chapter 3, subchapter 5, ARM Licensing operators of commercial motor vehicles.

Case Notes

Denial of Montana Driver's License Based on Suspension of Driving Privileges in Michigan: In Chain v. Dept. of Motor Vehicles, 2001 MT 224, 306 M 491, 36 P3d 358 (2001), the Supreme Court held that the Department of Motor Vehicles had to accept Chain's driver's license application but could still choose to deny Chain a license after completing an investigation. Chain then applied for a Montana driver's license, but after an investigation, the application was denied because Chain had been convicted in Michigan of twice operating a vehicle under the influence of liquor, twice having an unlawful bodily alcohol content while driving, driving with a suspended or revoked driver's license five times, and refusing to be tested for intoxication five times. In total, Michigan authorities took 16 separate actions against Chain's driving privileges, including five suspensions, two revocations and nine denial/revocations, resulting in suspension of Chain's Michigan driving privileges until 2022. Chain filed an action in District Court requesting that he be issued a driver's license, but the District Court denied Chain's claim on grounds that Chain could not receive a license in Montana when his driving privileges were suspended or revoked elsewhere. Chain appealed, but the Supreme Court affirmed. Giving Chain's Michigan suspensions and revocations the same force and effect as if they were committed in Montana, the state was within its discretion to deny Chain a license. Chain v. Motor Vehicle Div., 2004 MT 216, 322 M 381, 96 P3d 1135 (2004).

Driver's License Application Allowed One Year After Suspension or Revocation — Department's Discretionary Power to Issue License: Before moving to Montana, Chain lived in Michigan, where he was convicted of DUI on at least four separate occasions, which resulted in suspension or revocation of his driving privileges. Once here, Chain attempted to apply for a Montana driver's license, but the Department of Motor Vehicles cited 61-5-105 and refused to let him apply because his driving privileges were still suspended or revoked in Michigan. Chain requested that the District Court order the Department to allow the application and to issue a license if all the application requirements were met, but the request was denied. Chain argued on appeal that the Department should have instead applied 61-5-208, which limits revocations or suspensions to 1 year and allows application for a new license at the end of that period. Chain also cited the Driver License Compact in 61-5-401 as support for the proposition that he should have an opportunity to reapply 1 year after revocation. The Supreme Court noted nothing in the record to indicate whether Michigan was a member of the Compact and thus declined to apply 61-5-401, but the court found Montana licensing statutes to be dispositive. The court agreed that 61-5-105 prohibits issuance of a license if driving privileges are still suspended or revoked but found nothing in the statutes that disallowed application for a license. Under this section, after receiving an application, the Department should have requested a copy of Chain's driving record from Michigan and then analyzed it in the same manner as if it had been amassed in Montana. Once 1 year had passed after Chain's revocation or suspension, he could apply for a license like any other citizen in similar circumstances, as provided in 61-5-208, and after investigation, the Department had the discretionary power whether or not to issue a license. Chain v. Dept. of Motor Vehicles, 2001 MT 224, 306 M 491, 36 P3d 358 (2001).

61-5-108. Application of minors — imputed liability.

Compiler's Comments

2021 Amendment: Chapter 570 in (1)(b) allowing a minor to sign and verify an application if the minor has submitted a certificate of insurance to the department; and made minor changes in style. Amendment effective May 14, 2021.

2017 Amendment: Chapter 323 in (1) and (2) substituted "a learner license" for "an instruction permit". Amendment effective May 4, 2017.

1999 Amendment: Chapter 309 in (1) after "license" inserted "or medical assessment and rehabilitation driving permit"; in middle of (2) after "minor for" substituted "an instruction permit, driver's license, or medical and rehabilitation driving permit" for "permit or license"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1991 Amendment: In (1), near middle after "oaths", inserted "or an employee of the department", substituted "a parent" for "both the father and mother", after "applicant" substituted "or, if none is available" for former language regarding surviving parent, person having custody, or employer, and after "responsible" substituted "adult" for "person"; in (2), near end after "misconduct", inserted reference to liability when a liability policy is in effect for the minor and deleted reference to subsection (3); deleted former (3) excepting a parent or guardian from liability for a minor upon acceptance of proof of deposit of financial responsibility in respect to a vehicle owned or operated by the minor; and made minor changes in style.

1987 Amendment: Near beginning of (1) substituted "driver's license" for "operator's license". Amendment effective January 1, 1988.

1985 Amendment: In (3) substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.3.115 Consent of parents or guardians.

ARM 23.3.138 Application for minors.

Title 23, chapter 3, subchapter 5, ARM Licensing operators of commercial motor vehicles.

Case Notes

Standard of Care of Licensed Minor Driver: It was error for the District Court to give an instruction in a pedestrian/automobile accident case stating that a child is not held to the same standard of care as an adult. On appeal, the Supreme Court held that a 16-year-old with a valid Montana driver's license is held to the same standard of care while driving an automobile as an adult in the same circumstances. Cooper v. Rosston, 232 M 186, 756 P2d 1125, 45 St. Rep. 978 (1988).

Minor's Driver's License Application — Time for Deposit of Proof of Financial Responsibility: Under 61-5-108, a parent, parents, guardian, or other responsible person may sign a minor's driver's license application and deposit proof of financial responsibility "in form and in amounts as required under the motor vehicle financial responsibility laws" and thereby escape imputation to them of the minor's negligence. This does not require the proof to be deposited when the minor's application is filed. From the time proof is deposited there is no imputed negligence, whether the deposit is before, in conjunction with, or after the filing of the minor's application, so long as insurance is in effect at the time of a given accident. Gaub v. Milbank Ins. Co., 220 M 424, 715 P2d 443, 43 St. Rep. 497 (1986).

When Liability Not Imputed to Signers: Under appellant's construction of this section, if a parent or guardian signs the application and provides proof of financial responsibility, then liability is not imputed to that parent or guardian. However, if both parents or some other responsible person signs and provides proof, he is still subject to imputed liability. This is not a reasonable construction, as is shown by the title of the enacting session law chapter, and would not be adopted. Gaub v. Milbank Ins. Co., 220 M 424, 715 P2d 443, 43 St. Rep. 497 (1986).

61-5-109. Release from liability.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

Administrative Rules

ARM 23.3.209 Cancellation for withdrawal of consent for a minor.

61-5-110. Records check of applicants — examination of applicants — cooperative driver testing programs — reciprocal agreement with foreign country.

Compiler's Comments

2023 Amendments — Composite Section — Coordination: Section 2, Ch. 646, L. 2023, inserted new subsection (3) regarding records checks for nonexempt commercial driver's licenses; and made minor changes in style. Amendment effective May 19, 2023.

Section 2, Ch. 686, L. 2023, in (5)(a) in first sentence after "applicant who has a" deleted "valid" and after "issued by another jurisdiction" inserted "that is currently valid or expired for less than 1 year"; and in (5)(b) after "applicant who surrenders a" deleted "valid" and after "issued by another jurisdiction" inserted "that is currently valid or expired for less than 1 year". Amendment effective October 1, 2023.

The amendment to this section made by sec. 2, Ch. 744, L. 2023, was rendered void by sec. 6, Ch. 744, L. 2023, a coordination section.

Applicability: Section 6, Ch. 646, L. 2023, provided: "A holder of a commercial learner's permit that was issued prior to the adoption of administrative rules on or before January 1, 2024, pursuant to [section 2(3)] [61-5-110(3)] is exempt from the entry-level driver training records check requirements under [sections 2(3) and 3(4) through (6)] [61-5-110(3) and 61-14-202(4) through (6)] as long as the permit holder obtains a commercial driver's license prior to the expiration, renewal, or extension of the commercial learner's permit."

2013 Amendments — Composite Section: Chapter 194 inserted (2)(b)(ii) concerning driver's license reciprocity agreements with foreign countries; in (4)(a) in two places substituted "an applicant" for "a resident"; inserted (5) regarding when the department may enter into reciprocity agreements with foreign countries; and made minor changes in style. Amendment effective April 12, 2013.

Chapter 254 inserted (2)(c) regarding skills test waiver. Amendment effective October 1, 2013.

2005 Amendments — Composite Section: Chapter 79 in (2)(a) near end of second sentence after "motor vehicle" deleted "quadricycle". Amendment effective October 1, 2005.

Chapter 428 in (2)(a) inserted third sentence regarding performance of the road test or skills test; in (2)(b) near beginning after "road test, or" substituted "skills test" for "both" and at end after "subsection (3)" inserted "or by a certified third-party commercial driver testing program as provided in 61-5-118"; in (3)(a) near beginning after "road tests" inserted "or skills tests"; in (4)(b) near end after "knowledge and" inserted "road or"; and made minor changes in style. Amendment effective October 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2003 Amendment: Chapter 428 in (1) near middle after "49 U.S.C. 30302" substituted "and" for "or". Amendment effective October 1, 2003.

Applicability: Section 23(2), Ch. 428, L. 2003, provided that this section applies to a driver's license issued or renewed on or after October 1, 2003.

2001 Amendment: Chapter 207 inserted (1) requiring department to conduct check of applicant's driving record through the national driver register or commercial driver's license information system prior to examination; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

1999 Amendments — Composite Section: Chapter 181 in (2) at end after "education" inserted "or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training"; in (2)(a) at end inserted "or motorcycle safety training courses approved by the board of regents"; at end of (2)(c) inserted "and the board of regents"; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 309 in (1) in second sentence before "operation" inserted "safe" and deleted former third and fourth sentences that read: "The examination for the commercial driver's license may include additional items. The knowledge test and the road test or the skills test must be waived for an applicant who works in a farm-related service industry and who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title and rules adopted by the department"; in two places in (3)(a) substituted "another jurisdiction" for "another state" and after "examination" deleted "and, if requested by the examiner, completion of either the knowledge test or road test, or both"; inserted (3)(b) outlining when department may require applicant surrendering license to submit to knowledge and skills test; inserted (3)(c) requiring department to notify issuing agency from other jurisdiction of surrender of license and providing procedure for returning surrendered license to applicant; and made minor changes in style. Amendment effective October 1, 1999.

Termination Provision Repealed: Section 2, Ch. 292, L. 1999, repealed sec. 12, Ch. 53, L. 1995, which terminated this section September 30, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1995 Amendments — Composite Section: (Temporary version) Chapter 53 in (1), in second sentence after "eyesight", inserted "a knowledge test examining", after "signs" deleted "regulating, warning, and directing traffic", and after "state" inserted exception clause and inserted fourth sentence waiving the knowledge and road tests or the skills test for an applicant who works in a farm-related service industry; deleted former (2) that read: "(2) Within 90 days of receipt of an application for a commercial driver's license, the department shall give an examination to the applicant in the county where the applicant resides"; near middle of second sentence of (2) substituted "knowledge test and the road test or the skills test" for "written examination and actual demonstration of the operation of a motor vehicle"; and made minor changes in style. Amendment terminates September 30, 1999.

(Version effective October 1, 1999) Chapter 53 in (1), in second sentence after "eyesight", inserted "a knowledge test examining", after "signs" deleted "regulating, warning, and directing traffic", and after "state, and" substituted "a road test or a skills test demonstrating the applicant's" for "must include an actual demonstration of" and inserted fourth sentence waiving the knowledge and road tests or the skills test for an applicant who works in a farm-related service industry; deleted former (2) that read: "(2) Within 90 days of receipt of an application for a commercial driver's license, the department shall give an examination to the applicant in the county where the applicant resides"; near middle of second sentence of (2) substituted "knowledge test and the road test or the skills test" for "written examination and actual demonstration of the operation of a motor vehicle"; and made minor changes in style. Amendment effective October 1, 1999.

In both versions, the amendments in (2) were rendered void by sec. 9, Ch. 364, L. 1995, a coordination section.

Chapter 364 in (1), in second sentence after "eyesight", inserted "a knowledge test examining" and after "signs" deleted "regulating, warning, and directing traffic" and inserted fourth sentence allowing waiver of the knowledge test or road test under certain circumstances; inserted (2) allowing certification of certain state-approved high school traffic education courses; in (3), at end of first sentence, inserted "successful completion of a vision examination, and, if requested by the examiner, completion of either the knowledge test or road test, or both" and at beginning of second sentence substituted "In addition, a resident surrendering a commercial driver's license issued by another state shall successfully complete" for "A resident who obtains a Montana driver's license in this manner is exempt from the written examination and actual demonstration of the operation of a motor vehicle provided for in subsection (1) but is not exempt from the eyesight test or, in the case of commercial drivers" and at end inserted "before being issued a commercial driver's license by the department"; and made minor changes in style. Amendment effective April 12, 1995.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

Applicability: Section 7, Ch. 364, L. 1995, provided: "[This act] applies to a person who, on or after October 1, 1995, applies for a Montana driver's license or who seeks to renew a Montana driver's license that expires on or after October 1, 1995."

Coordination Instruction: Section 9, Ch. 364, L. 1995, provided: "If [this act] [House Bill No. 248] is passed and approved, then subsection (2) of 61-5-110 in [sections 4 and 5] of Senate Bill No. 34 (Chapter 53, Laws of 1995) is void." House Bill No. 248 was approved April 12, 1995, as Ch. 364, L. 1995; therefore, the amendments to subsection (2) of 61-5-110 in Ch. 53, L. 1995, are void.

1993 Amendment: Chapter 195 near beginning of (1), after "driver's license", deleted "commercial vehicle operator's endorsement" and in last sentence substituted "commercial driver's license" for "commercial vehicle operator's endorsement"; in (2) substituted "commercial driver's license" for "commercial vehicle operator's endorsement" and after "examination" deleted "for endorsement"; and made minor changes in style.

1991 Amendment: Inserted (3) permitting resident to surrender valid out-of-state license for Montana license without taking written or driving tests but retaining eyesight test and any examination required by federal regulations for commercial drivers. Amendment effective April 1, 1991.

1987 Amendment: Near beginning of (1) substituted "a driver's license" for "an operator's or chauffeur's license", inserted "commercial vehicle operator's endorsement", and substituted last sentence for "The department shall make provision for giving an examination either in the county where the applicant resides or at a place adjacent thereto reasonably convenient to the applicant within not more than 30 days from the date the application is received"; and inserted (2) requiring Department to give commercial vehicle operator's endorsement examination within 90 days of receipt of application in applicant's county. Amendment effective January 1, 1988.

1985 Amendments: Chapter 503 substituted reference to department of justice for reference to division of motor vehicles in two places.

Chapter 516 in second sentence, near end after "motor vehicle", inserted "quadricycle" (effective January 1, 1986).

Administrative Rules

ARM 23.3.118 Vision test.
ARM 23.3.119 Vision standards.
ARM 23.3.158 Traffic examination description and scoring.
Title 23, chapter 3, subchapter 5, ARM Licensing operators of commercial motor vehicles.

61-5-111. Contents of driver's license, renewal, license expirations, license replacements, grace period, and fees for licenses, permits, and endorsements — notice of expiration.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 452 in (3)(c) increased renewal deadline from 3 months to 1 year after expiration; in (3)(d)(ii) near middle substituted "a completed application and" for "to the department an approved vision examination and a medical evaluation from a licensed physician, licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102, in addition to"; in (3)(d)(iv) increased driver's license term from 8 to 12 years and at end inserted "8 years for a REAL ID-compliant driver's license"; in (3)(d)(v)(D)(I) substituted "more than 1 year" for "3 months or longer"; deleted former (3)(d)(vi) that read: "(vi) If a license was issued to a foreign national whose presence in the United States is temporarily authorized under federal law, the license may not be renewed by mail or online"; inserted (3)(e) regarding renewal for an applicant on active military duty outside Montana; in (4)(a) increased expiration date from 8 years to 12 years from the anniversary of the licensee's birthday; and made minor changes in style. Amendment effective May 10, 2021.

Chapter 566 in (3)(c) after "expiration of the person's license" inserted "or if the person has applied for a REAL ID-compliant driver's license pursuant to 61-5-129". Amendment effective July 1, 2021.

Preamble: The preamble attached to Ch. 566, L. 2021, provided: "WHEREAS, the Legislature is concerned with the delays associated with transferring defendants to state custody after imposition of sentence. When the Department of Corrections does not timely assume custody of defendants after sentencing, local government facilities may lack capacity to hold other persons. It is the expectation of the Legislature that the Department of Corrections will ensure that defendants sentenced for one or more felonies will not remain in a county detention facility for more than 10 business days after sentencing unless unusual circumstances arise; and

WHEREAS, with respect to the Department of Corrections, the Legislature has been advised that the vocational opportunities at the Montana Women's Prison are inadequate, particularly when compared to the offerings at the Montana State Men's Prison. The Legislature is mindful that the campuses may face different limitations in what programming may be offered based on location, footprint, and facilities; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 that the Department of Corrections had drug treatment beds that were not fully utilized in fiscal year 2019, which resulted in a payment for failure to allow the contractor to operate at 75% capacity; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned that the Department of Corrections has yet to fully implement statutory directives to measure the effectiveness of its programs—both those provided by the Department of Corrections employees and those provided by contractors. In 2017, the Legislature directed the Department of Corrections to conduct evaluations of programs to determine their impact on reducing recidivism. This work, in addition to other requirements in Senate Bill No. 59 (2017), appears to be unaddressed or incomplete. Moreover, the Department of Corrections' definition of recidivism is an inadequate measure for the determination of effectiveness of its programming. The Legislature is interested in having data on crimes committed by those discharged from the Department of Corrections' custody, not merely "the rate at which adult offenders return to prison in Montana for any reason within three years of their release from prison", which fails to address reentry outcomes of many individuals committed to the Department of Corrections' custody and evaluates a truncated time period; and

WHEREAS, with respect to the Office of State Public Defender, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 regarding billing practices by contractors, including the failure to require the use of assistants for nonattorney tasks, and allowing contractors to work a number of hours each year that may induce attorneys to be contractors instead of the Office of State Public Defender employees; and

WHEREAS, with respect to the Office of State Public Defender, it is the sense of the Legislature that the Office of State Public Defender expends its appropriation, in part, to perform tasks that are not required by the state or federal constitution or by statutory directive, such as in section 47-1-104(4), MCA. Given limited resources and the demands on the Office of State Public Defender staff, the Legislature believes that it is incumbent on the Office of State Public Defender management to limit the scope of its work to what is required by statute and the constitution; and

WHEREAS, with respect to the Office of State Public Defender, neither through its employees nor its contractors should the Office of State Public Defender impair the Legislature's intent to have defendants share in the costs of counsel provided by the Office of State Public Defender. The Office of State Public Defender employees and contractors should not move the court to waive assessments under section 46-8-113, MCA, unless the defendant can show a compelling reason why they cannot pay this assessment over the course of the sentence; and

WHEREAS, in House Bill No. 640 (2019), the Legislature established a mechanism to ensure that sexual abuse reports generated by those with mandatory reporting responsibilities are provided to county attorneys and that county attorneys report to the Attorney General on the status of the investigations and prosecutions generated from these referrals. It is the sense of the Legislature that the Department of Justice has not undertaken a thorough review of the reports generated pursuant to section 41-3-210(3), MCA, and the Legislature urges the Department of Justice to do so; and

WHEREAS, the Legislature has taken a number of steps to strengthen the laws and investigative response to address human trafficking and sexual exploitation of minors. Given the collective commitment in the legislative and executive branches to combat these crimes, the Legislature needs greater clarity on whether its appropriations and statutory changes are having an impact; and

WHEREAS, the Legislature expresses its concern that the backlog of testing on sexual assault kits must be eliminated as soon as possible; and

WHEREAS, the definition of recidivism utilized by the judicial branch in evaluating the effectiveness of treatment courts is different than the definition used by the Department of Corrections for its programming, making it difficult to compare the effectiveness of treatment courts to in-patient treatment. It is the sense of the Legislature that a single definition of recidivism would make it possible to have a consistent evaluation of effectiveness; and

WHEREAS, the Legislature believes that expungement of a conviction for driving under the influence of drugs or alcohol will impair the correctional and public safety goals that the Legislature aims to achieve through the Section D appropriation."

2019 Amendments — Composite Section: Chapter 335 in (1)(a) deleted former second sentence that read: "The department shall adopt necessary rules governing sales"; and deleted former (4)(f) that read: "(f) The department may adopt rules to implement online driver's license renewal." Amendment effective May 7, 2019.

Chapter 445 in (2)(a)(iii) at end inserted exception clause; in (3)(d)(v)(C) inserted "a change of date of birth"; in (3)(f) in first sentence inserted "send electronically or" and substituted "120 days" for "90 days" and substituted second sentence regarding notice for "Except as provided in 61-3-119 and 61-5-115, the department shall mail the notice to the Montana mailing address shown on the driver's license"; in (4)(d)(i) and (4)(d)(ii) substituted "4 years" for "5 years"; inserted (8) concerning the replacement of a driver's license; inserted (9) concerning expedited delivery service for a driver's license or identification card; and made minor changes in style. Except for amendments to (4)(d) and (9), amendment effective May 10, 2019. Amendment to (4)(d) effective October 1, 2020, and amendment to (9) effective January 1, 2020.

2015 Amendment: Chapter 398 in (2)(a)(iv) in two places substituted "customary manual signature" for "customary signature" and before "reproduction" deleted "digital"; in (2)(b) after "distinguishing number" deleted "unless the licensee expressly authorizes the use"; in (3)(d)(i) substituted "(3)(d)(iii)" for "(3)(d)(iv)", and after "by mail" substituted "or online" for "if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license. A person may not renew by mail for a subsequent license term after a mail renewal, except that a spouse or dependent of a person stationed outside Montana on active military duty may renew a driver's license by mail for one additional consecutive term following a mail renewal"; in (3)(d)(ii), (3)(d)(iv), (3)(d)(v), and (3)(d)(vi) after "by mail" inserted "or online"; in (3)(d)(iii) substituted "the renewal applicant shall apply in person" for "the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department"; inserted (3)(d)(v)(C) and (3)(d)(v)(D) regarding licenses ineligible for mail or online renewal; inserted (3)(e) regarding spouses or dependents of renewal applicants stationed outside Montana on active military duty; in (3)(f) substituted "no earlier than 90 days" for "no earlier than 60 days"; inserted (4)(f) providing rulemaking authority; and made minor changes in style. Amendment effective January 1, 2017.

Applicability: Section 6(2), Ch. 398, L. 2015, provided: "[Section 5] [61-5-111] is effective January 1, 2017, and applies to driver's license renewals occurring after December 31, 2016."

2013 Amendment: Chapter 322 inserted (2)(a)(v) and (7) regarding veteran designations; and made minor changes in style. Amendment effective January 1, 2014.

2011 Amendment: Chapter 181 in (2)(a)(iii) substituted "Montana residence address unless the licensee requests use of the mailing address" for "Montana mailing address". Amendment effective October 1, 2011.

2007 Amendment: Chapter 242 in (3)(d)(ii) after "physician" inserted "licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendments — Composite Section: (Both versions) Chapter 104 in (3)(d)(i) inserted second sentence providing limits on mail renewal of driver's licenses; in (3)(d)(iv) at beginning inserted exception clause, increased term from 4 years to 8 years, and at end deleted "and a person may not renew by mail for consecutive license terms"; and made minor changes in style. Amendment effective October 1, 2005.

(Version effective July 1, 2006) Chapter 297 in (5) near beginning substituted "a driver's license" for "an original license", after "license must be" deleted "designated and", and substituted "with a notation that conveys the restrictions imposed under 61-5-133" for "as a "provisional license"" and deleted former second sentence that read: "Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving"; and made minor changes in style. Amendment effective July 1, 2006.

(Both versions) Chapter 428 in (3)(a) before "skills" inserted "road or"; in (3)(d)(i) at beginning inserted exception clause; inserted (3)(d)(v)(B) prohibiting mail renewal if the applicant holds a commercial driver's license with a hazardous materials endorsement requiring additional testing and assessment pursuant to federal law; in (4)(a) included subsection (4)(d) in exception clause; inserted (4)(d) regarding expiration of commercial driver's licenses; in (6)(a) at beginning substituted "Upon application for a driver's license or commercial driver's license and any combination of the specified endorsements, the following fees must be paid" for "Fees for driver's licenses are"; in (6)(a)(iii)(A) increased fee from $5 to $10 a year or fraction of a year; in (6)(a)(iii)(B) increased fee from $3.50 to $8.50 a year or fraction of a year; in (6)(b) provided that the fee for a renewal notice for either a driver's license or a commercial driver's license is 50 cents; and made minor changes in style. Amendment to subsection (6) effective July 1, 2005; amendments to remainder of subsections effective April 28, 2005.

(Version effective July 1, 2006) Chapter 478 in (3)(d)(i) at beginning inserted exception clause; inserted (3)(d)(vi) providing that a license may not be renewed by mail if it was issued to a foreign national temporarily in the country under federal authorization; in (4)(a) included subsection (4)(e) in exception clause; inserted (4)(e) providing that a license issued to a foreign national temporarily in the country under a federal authorization expires no later than the expiration of the document authorizing the person's presence in the country; and made minor changes in style. Amendment effective July 1, 2006.

(Both versions) Chapter 596 inserted (1)(b) concerning authorized agent agreement with county treasurer; in (3)(e) in second sentence at beginning inserted exception clause and at end deleted "unless the licensee has submitted a change of address as required by 61-5-115"; deleted former (7) that read: "(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term"; and made minor changes in style. Amendment effective January 1, 2006.

Applicability: Section 10, Ch. 297, L. 2005, provided: "[This act] applies to a person who applies for a driver's license on or after July 1, 2006, and who is under 18 years of age at the time of the application unless the person was issued an instruction permit, traffic education learner's license, or traffic education permit prior to July 1, 2006."

Section 6, Ch. 478, L. 2005, provided: "[This act] applies to driver's licenses issued on or after July 1, 2005, and to driver's licenses renewed on or after July 1, 2006."

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Retroactive Applicability: Section 41, Ch. 428, L. 2005, provided: "[Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20] [61-5-220, 61-5-221, 61-1-134, 61-1-137, 61-5-111(1) through (5) and (7), 61-5-112, and 61-5-114] apply retroactively, within the meaning of 1-2-109, to any new hazardous materials endorsement issued by the department of justice on or after January 31, 2005, and to any hazardous materials endorsement renewed or hazardous materials endorsement transfer authorized by the department on or after May 31, 2005."

2003 Amendments — Composite Section: Chapter 251 in (3)(e) in first sentence before "driver's license" deleted "commercial" and at end deleted "if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license" and inserted second sentence requiring the notice to be mailed to the address on the license unless the licensee submitted a change of address; inserted (6)(d) concerning a 50 cent renewal notice fee; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 428 in (3)(b) near beginning after "department" inserted "shall, if the information was not provided in a prior licensing cycle, require the renewal applicant to provide the name of each jurisdiction in which the applicant was previously licensed to drive any type of motor vehicle during the 10-year period immediately preceding the date of the renewal application and". Amendment effective October 1, 2003.

Chapter 558 in (6)(a) increased noncommercial driver's license fee from $4 to $5; and made minor changes in style. Amendment effective July 1, 2003.

Applicability: Section 23(2), Ch. 428, L. 2003, provided that this section applies to a driver's license issued or renewed on or after October 1, 2003.

2001 Amendment: Chapter 207 in middle of first sentence of (3)(a) after "shall" inserted "conduct a records check in accordance with 61-5-110(1) to determine the applicant's eligibility status and shall"; inserted (3)(d)(v) prohibiting renewal of license by mail if records check shows ineligible license status; in (4)(a) deleted former second sentence that read: "The department may adopt rules to stagger the implementation of the conversion to an 8-year license cycle over a 4-year period"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

1999 Amendments — Composite Section: Chapter 29 in (2) inserted next to last sentence prohibiting use of licensee's social security number unless authorized by licensee. Amendment effective October 1, 2000.

Chapter 309 in second sentence in (2) substituted "full legal name" for "full name" and in two places before "signature" inserted "customary"; in (3)(a) after "applicant" substituted language outlining instances when applicant required to submit to a knowledge and skills test for "complete a road test demonstrating the applicant's ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle"; inserted second sentence in (3)(c) requiring person seeking to renew driver's license to appear in person and providing exception; inserted (3)(d) outlining procedures for renewal of license by mail; deleted former (5) that read: "(5) It is unlawful for any person to have in the person's possession or under the person's control more than one valid Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial driver's license""; deleted former (7) that read: "(7) The holder of a valid chauffeur's license may convert or renew the chauffeur's license to a commercial driver's license by paying the appropriate fee and complying with the requirements established by the department";

inserted (7) requiring department to change license status to inactive upon notice from another jurisdiction of surrender of Montana driver's license and providing for reactivation of license; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 7, Ch. 29, L. 1999, provided: "(1) [Sections 2 and 3] [61-5-107 and 61-5-111] apply to driver's licenses issued on or after October 1, 2000.

(2) [Sections 4 and 5] [87-2-106 and 87-2-202] apply to license years beginning on or after March 1, 2000."

Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1995 Amendment: Chapter 364 in (1), near middle of second sentence after "may", substituted "in its discretion" for "not" and at end inserted "to sell receipts" and near middle of fourth sentence, after "department", deleted "except as provided in subsection (4)", after "date of birth" substituted "Montana mailing" for "residence", and at end, after "either", substituted "the licensee's signature or a digital reproduction of the licensee's signature" for "a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's signature in pen and ink immediately upon receipt of the license"; in (2)(a), near end after "applicant's", deleted "physical"; in (2)(c), near end after "within", inserted "6 months before or"; substituted (2)(d) regarding notice of expiration of a commercial license for former (2)(d) and (2)(e) that read: "(d) The department shall mail a driver's license renewal notice to a person no earlier than 60 days and no later than 30 days prior to the expiration date of the person's license.

(e) (i) A person may renew a driver's license by mail, without the tests provided for in subsection (2)(a), for a 4-year period, provided that the person:

(A) has not accumulated five or more points on the person's driving record for the 4 years immediately preceding the expiration date; and

(B) submits a sworn affidavit on a form prescribed by the department, attesting to the person's physical and mental ability to safely operate a motor vehicle.

(ii) The department may not renew a driver's license by mail for more than one renewal period. At the expiration of the mail renewal period, a person shall apply in person for a renewal.

(iii) A person who holds a probationary or restricted license may not renew the license by mail"; at beginning of first sentence of (3)(a) inserted exception clause, increased time from 4 years to 8 years, and at end inserted "or on the licensee's 75th birthday, whichever occurs first" and inserted second sentence regarding conversion to an 8-year license cycle; inserted (3)(b) and (3)(c) regarding expiration of licenses of persons over 75 and under 21 years of age; deleted former (4) that read: "(4) A license issued to a person under the age of 21 years must contain a photograph of the licensee's profile"; in (4) deleted last sentence that read: "Upon renewal the department may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form must be issued subject to other provisions of the laws of Montana"; in (5), in first sentence after "one", inserted "valid"; in (7), near beginning after "holder of a", inserted "valid", after "convert" inserted "or renew", and near middle, after "fee", deleted "covering the remainder of the life of the license"; deleted former (9) that read: "(9) The holder of a valid chauffeur's license who is renewing and wishes to obtain a commercial driver's license may do so upon paying the appropriate fees and complying with the requirements established by the department"; deleted former (10) that read: "(10) A person may not renew a driver's license by mail until the person has received a digital license issued by the department. As used in this subsection, the term "digital license" means a license having a computer-imaged photograph and signature"; and made minor changes in style.

Applicability: Section 7, Ch. 364, L. 1995, provided: "[This act] applies to a person who, on or after October 1, 1995, applies for a Montana driver's license or who seeks to renew a Montana driver's license that expires on or after October 1, 1995."

1993 Special Session Amendment: Chapter 26 in (2)(a), near beginning after "applies", inserted "in person"; inserted (2)(d) relating to renewal notice; inserted (2)(e) relating to renewal by mail; deleted former (8) that read: "(8) A license designated as a chauffeur's license as of January 1, 1988, is valid as a commercial driver's license until the expiration of the license"; and inserted (10) relating to digital licenses. Amendment effective July 1, 1994.

1993 Amendment: Chapter 195 throughout section substituted references to commercial driver's license for references to commercial vehicle operator's endorsement; in (7)(a) inserted exception clause; and made minor changes in style.

1991 Amendment: In (7) increased driver's license fee from $3 to $4, interstate commercial vehicle operator's endorsement from $3 to $5, and intrastate commercial vehicle operator's endorsement from $1.50 to $3.50. Amendment effective July 1, 1991.

1989 Amendment: In third sentence of (1), after "issue", inserted "a driver's license" and after "every" substituted "qualifying applicant" for "applicant qualifying therefor a driver's license as applied for"; inserted (2)(b) authorizing Department to require written examination for endorsement; in second sentence of (5), after "marked", inserted "as provisional"; at beginning of (9) and (10) deleted reference to on or after January 1, 1988; deleted (11) authorizing hazardous material endorsement examination for licensee after January 1, 1988; and made minor changes in punctuation, style, and grammar.

1987 Amendment: Throughout section substituted "a driver's license" for "an operator's or chauffeur's license"; in (5), near beginning of third sentence after "renewal", deleted "as applicable to operator's licenses"; in (6) inserted last sentence establishing that license for commercial vehicle operation remains invalid until holder completes examination requirements and license is marked with commercial vehicle operator's endorsement; inserted (7)(c) relating to fees for commercial vehicle operator's endorsement; inserted (8) through (11) relating to fees and renewal requirements for certain licenses after January 1, 1988; and made minor changes in phraseology. Amendment effective January 1, 1988.

1985 Amendments — Applicability and Coordination Instruction: Chapter 276 in (1) in fourth sentence, near beginning, before "photograph", inserted "full-face", and after "department" inserted exception clause; and inserted (4) requiring license issued to person under age 19 to contain photograph of licensee's profile.

The applicability provision of Ch. 276, L. 1985, provided: "This act applies to persons who make an original application for a Montana driver's license on or after July 1, 1985, and to persons under the age of 19 years who renew a driver's license on or after July 1, 1985. If Article II, section 14, of the Montana constitution is amended by the electorate to permit the legislature to establish 21 years as the legal drinking age, this act applies to persons under the age of 21 years who renew a driver's license." The coordination instruction of that chapter provided: "If Article II, section 14, of the Montana constitution is amended by the electorate to permit the legislature to establish 21 years as the legal age for consuming alcoholic beverages, the phrase "19 years" in 61-5-111(4) must be changed to "21 years"." Chapter 129, L. 1985 (Senate Bill No. 3), provides for submission to the electorate in November 1986 of an amendment to Art. II, sec. 14, of the Montana Constitution that would remove the legal drinking age of 19 years from the Constitution and allow the legal drinking age to be established by statute or initiative. As originally introduced, Senate Bill No. 3 provided for submission to the electorate of an amendment that would have allowed the Legislature or the people to establish the legal drinking age at 21.

Chapter 277 in (1) deleted former last two sentences that read: "Five percent of the license fees collected by the county treasurer shall be deposited by the county treasurer for the use of the county general fund. In the event no agent is appointed under this section, 5% of the license fees collected by the division shall be retained by the division to defray the cost of handling"; in (7) increased driver's license fee from $2 to $3; and deleted former (7) that read: "The county treasurer or other agent of the division collecting such fees shall retain 5% of each fee for the use of the county general fund and shall transmit the remainder to the state treasurer, who shall deposit to the credit of the state general fund all money received by him from the collection of the fees."

Chapter 503 substituted references to department of justice for references to division of motor vehicles throughout section.

Chapter 516 in (6) in second sentence, near middle after "motorcycle", inserted "or quadricycle" (effective January 1, 1986).

Administrative Rules

Title 23, chapter 3, subchapter 1, ARM Driver licensing.

ARM 23.3.211 Other information resulting in change of status of driver's license.

ARM 23.3.508 Application for endorsement.

Case Notes

Validity of Amendment: The 1961 amendment of this section (House Bill No. 342) was not rendered invalid because the deciding vote therein was cast by the Lieutenant Governor on the third reading, where at that time the Senators then present and voting were equally divided. State ex rel. Easbey v. Highway Patrol Bd., 140 M 383, 372 P2d 930 (1962).

Attorney General's Opinions

Fees Remitted Without Reduction: All driver's license fees collected by a county must be remitted to the State Treasurer without reduction. 31 A.G. Op. 17 (1966).

61-5-112. Reciprocal agreements.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 309 at end substituted "61-1-101(10)(b)(ii)" for "61-1-101(9)(b)(ii)". Amendment effective October 1, 2019.

Chapter 335 deleted former (1) concerning rulemaking (see 2019 Session Law for former text); and made minor changes in style. Amendment effective May 7, 2019.

2017 Amendment: Chapter 302 inserted (1)(h) concerning issuance of commercial learner's permit; and made minor changes in style. Amendment effective October 1, 2017.

2011 Amendment: Chapter 296 in (2) at end substituted "61-1-101(9)(b)(ii)" for "61-1-101(8)(b)(ii)". Amendment effective January 30, 2012.

2007 Amendment: Chapter 329 in (2) at end substituted "61-1-101(8)(b)(ii)" for "61-1-101(7)(b)(ii)". Amendment effective January 1, 2008.

2005 Amendments — Composite Section: Chapter 428 in (1)(a) near beginning after "comport with the" inserted "licensing standards and" and at end after "part 391" inserted "and the security threat assessment provisions of 49 CFR, part 1572"; in (1)(c) at end after "older" deleted "or an operationally restricted type 2 commercial driver's license to a person who is 16 years of age or older"; in (1)(d) near middle after "knowledge and" inserted "road or"; and made minor changes in style. Amendment effective April 28, 2005.

Chapter 542 in (2) at end after "driver's license" substituted "because the vehicles are not considered commercial motor vehicles as provided in 61-1-101(7)(b)(ii)" for "as provided in 61-1-134(2)". Amendment effective January 1, 2006.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Retroactive Applicability: Section 41, Ch. 428, L. 2005, provided: "[Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20] [61-5-220, 61-5-221, 61-1-134, 61-1-137, 61-5-111(1) through (5) and (7), 61-5-112, and 61-5-114] apply retroactively, within the meaning of 1-2-109, to any new hazardous materials endorsement issued by the department of justice on or after January 31, 2005, and to any hazardous materials endorsement renewed or hazardous materials endorsement transfer authorized by the department on or after May 31, 2005."

2003 Amendment: Chapter 428 inserted (1)(g) requiring rules to prescribe minimum standards for certification of a third-party commercial driver testing program and waiver; inserted (2) allowing the department to enter reciprocal agreements with adjacent states allowing drivers of certain farm vehicles to operate without a commercial driver's license within 150 miles of the farm; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 23(2), Ch. 428, L. 2003, provided that this section applies to a driver's license issued or renewed on or after October 1, 2003.

1999 Amendment: Chapter 309 in introduction substituted "shall adopt rules" for "upon issuing a commercial driver's license shall indicate on the license the class of license issued and shall appropriately examine each applicant according to the class applied for and may impose rules for classification, examination, and use" and after "public" inserted language regarding governing of classification of commercial driver's license and related endorsements and examinations; inserted (1) requiring rules to comport with federal regulations; inserted (2) requiring rules to allow for issuance of type 2 commercial license in accordance with medical qualification and visual acuity standards; inserted (3) requiring rules to allow for issuance of type 2 commercial license to person age 18 or older or restricted commercial license to person age 16 or older; inserted (4) requiring rules to allow for issuance of seasonal commercial license without knowledge and skills test to person in farm-related service industries with good driving record; inserted (5) requiring rules to prescribe operational and seasonal restrictions for seasonal commercial license; inserted (6) requiring rules to prescribe requirements for medical statement to qualify for type 2 commercial license; and made minor changes in style. Amendment effective April 15, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1993 Amendment: Chapter 195 near beginning substituted "commercial driver's license" for "license with a commercial vehicle operator's endorsement" and near middle, after "according to the class", deleted "of endorsement"; and made minor changes in style.

1987 Amendment: Near beginning substituted "license with a commercial vehicle operator's endorsement" for "chauffeur's license", substituted "endorsement" for "license", substituted "classification, examination, and use" for "exercise", and deleted former (2) that read: "(2) No person may drive any school bus transporting school children or any motor vehicle when in use for the transportation of persons for compensation until he has been licensed as a chauffeur for either such purpose and the license so indicates. The department may not issue a chauffeur's license for either purpose unless the applicant has had at least 1 year of driving experience prior thereto and the department is fully satisfied as to the applicant's competency and fitness to be employed." Amendment effective January 1, 1988.

1985 Amendment: In (1) and in two places in (2) substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

Title 23, chapter 3, subchapter 5, ARM Licensing operators of commercial motor vehicles.

Collateral References

Reciprocal Agreements for Farm Vehicles Within 150 Miles of Farm, Transportation Interim Committee Memo, Mont. Leg. Serv. Div. (March 2024), https://leg.mt.gov/content/Committees/Interim/2023-2024/Transportation/Meetings/031424-March-14-2024/04.020-TIC-LSD-farm-exemption-reciprocity-compendium.pdf.

61-5-113. Restricted licenses.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 552, L. 2023. Amendment effective October 1, 2023.

1999 Amendment: Chapter 309 in (1) substituted language regarding license restrictions for former language that read: "The department upon issuing a driver's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1987 Amendment: Near beginning of (1) substituted "a driver's license" for "an operator's or chauffeur's license"; and in (3) inserted "or endorsement" after "license". Amendment effective January 1, 1988.

1985 Amendment: In (1) through (3) substituted references to department of justice for references to division of motor vehicles.

Administrative Rules

ARM 23.3.119 Vision standards.
ARM 23.3.134 Restrictions of handicapped drivers.
ARM 23.3.135 Grace period for renewals.
Title 23, chapter 3, subchapter 5, ARM Licensing operators of commercial motor vehicles.

61-5-114. Replacement license — veteran designation.

Compiler's Comments

2017 Amendment: Chapter 323 in (1) in two places substituted "a learner license" for "an instruction permit" and in three places before "license" deleted "permit or"; and made minor changes in style. Amendment effective May 4, 2017.

2013 Amendment: Chapter 322 inserted (3) regarding veteran designations. Amendment effective January 1, 2014.

2005 Amendments — Composite Section — Coordination: Chapter 428 in (1) near middle after "obtain a" substituted "replacement" for "duplicate or substitute"; and inserted (2) requiring surrender of a revoked or removed hazardous materials endorsement and allowing issuance of a replacement license without a hazardous materials endorsement for $10. Amendment effective April 28, 2005.

Section 112, Ch. 596, near middle after "destroyed" inserted "or a person wants to update personal information contained on an instruction permit or a driver's license issued to the person", after "duplicate or" substituted "replacement" for "substitute", and at end inserted "or that personal information has changed"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 163, Ch. 596, L. 2005, a coordination section, inserted (2) concerning hazardous materials endorsement; and made minor changes in style.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Retroactive Applicability: Section 41, Ch. 428, L. 2005, provided: "[Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20] [61-5-220, 61-5-221, 61-1-134, 61-1-137, 61-5-111(1) through (5) and (7), 61-5-112, and 61-5-114] apply retroactively, within the meaning of 1-2-109, to any new hazardous materials endorsement issued by the department of justice on or after January 31, 2005, and to any hazardous materials endorsement renewed or hazardous materials endorsement transfer authorized by the department on or after May 31, 2005."

2003 Amendment: Chapter 558 in middle increased duplicate license fee from $5 to $10; and made minor changes in style. Amendment effective July 1, 2003.

1987 Amendment: Near beginning substituted "driver's license" for "operator's or chauffeur's license". Amendment effective January 1, 1988.

1985 Amendments: Chapter 277 increased fee for duplicate licenses from $1 to $5.

Chapter 503 substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.3.149 Duplicate licenses.

61-5-115. Notice of change of address.

Compiler's Comments

2005 Amendment: Chapter 596 near middle substituted "issued license" for "license issued to him or when the name of a licensee is changed by marriage or otherwise", after "writing" inserted "or electronically by an approved automated interface", and after "addresses" deleted "or of such former and new names"; and made minor changes in style. Amendment effective January 1, 2006.

1987 Amendment: Near beginning substituted "a driver's license" for "an operator's or chauffeur's license". Amendment effective January 1, 1988.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

61-5-116. License to be carried and exhibited on demand.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 304, L. 2023. Amendment effective October 1, 2023.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1989 Amendment: Changed "patrolman" to "patrol officer".

1987 Amendment: Near beginning and near end of second sentence substituted "driver's license" for "operator's or chauffeur's license" and made minor changes in phraseology. Amendment effective January 1, 1988.

1985 Amendments: Chapter 348 inserted "a city or municipal judge".

Chapter 503 substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Validity as Police Power Regulation: A driver challenged as unconstitutional a citation under this section's provision that a motor vehicle operator carry an operator's license and exhibit it upon demand by certain law enforcement and other personnel. Conviction of the offense was upheld when the driver did not meet his burden of clearly showing that the provision was unreasonable. The driver claimed that due process was violated in that he had a right to use the highway in his vehicle and with his gasoline and that his use could not be regulated in an attempt to provide for the general welfare and safety of the people of the state. St. v. Deitchler, 201 M 70, 651 P2d 1020, 39 St. Rep. 1959 (1982).

61-5-118. Third-party commercial driver testing program — certification of testing programs and examiners — fees — test waiver.

Compiler's Comments

2019 Amendment: Chapter 335 deleted former (3) (see 2019 Session Law for former text); in (5)(a) at end after "permit" deleted "issued under 61-5-112"; and made minor changes in style. Amendment effective May 7, 2019.

2017 Amendment: Chapter 302 in (1) substituted current text concerning who may be certified as third-party commercial driver testing program for former text that read: "(1) The department may certify as a third-party commercial driver testing program any company that:

(a) in the course of its commercial enterprise, customarily transports or hauls any goods, including agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal regulations;

(b) regularly and continuously employs a minimum number of drivers. The department shall determine the minimum number of drivers and whether they are regularly and continuously employed by the company.

(c) has a permanent Montana mailing address and maintains a place of business in this state that includes at least one permanent, regularly occupied structure with facilities and equipment to conduct offstreet skills testing;

(d) employs at least one examiner with qualifications required by rules of the department; and

(e) complies with rules adopted by the department under 61-5-112"; inserted (2) requiring administration of same skills test; inserted (3) requiring department to adopt rules governing third-party testing programs; deleted former (3) that read: "(3) An examiner for a certified third-party commercial driver testing program may administer a road test or a skills test only to a company employee who has applied to the department for a commercial driver's license and who has passed the knowledge test required by 61-5-110 and by department or federal rules"; inserted (4) concerning decertification of third-party testing program; inserted (5) concerning collection of fees; inserted (6)(a) concerning requirements for commercial driver's license applicant tested under third-party testing program; and made minor changes in style. Amendment effective October 1, 2017.

2003 Amendment: Chapter 428 in (1)(e) at end substituted "61-5-112" for "61-5-117". Amendment effective October 1, 2003.

Applicability: Section 23(2), Ch. 428, L. 2003, provided that this section applies to a driver's license issued or renewed on or after October 1, 2003.

1999 Amendment: Chapter 292 in (2)(a) provided that certification be under subsection (1); and inserted (2)(b) concerning third-party commercial driver examiner from a jurisdiction that has a comparable third-party commercial driver testing program. Amendment effective July 1, 1999.

Preamble: The preamble attached to Ch. 292, L. 1999, provided: "WHEREAS, the 54th Legislature approved a pilot project to establish a third-party commercial driver testing program; and

WHEREAS, the program has resulted in uniform testing standards and competent examiners, without adding full-time employees to the Department of Justice; and

WHEREAS, the Legislature desires to continue use of the program and to grant permanent authorization for the program."

Termination Provision Repealed: Section 2, Ch. 292, L. 1999, repealed sec. 12, Ch. 53, L. 1995, which terminated this section September 30, 1999.

Effective Date — Termination: Section 11(2), Ch. 53, L. 1995, provided that this section is effective October 1, 1995. Section 12, Ch. 53, L. 1995, provided that this section terminates September 30, 1999.

Administrative Rules

ARM 23.3.560 through 23.3.570 Third-party CDL skills testing.

61-5-119. Definitions.

Compiler's Comments

2005 Amendments — Composite Section — Coordination: Chapter 428 deleted former (2) that read: "(2) For the purposes of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 542 in (1)(b)(i) before "vehicle" inserted "motor"; in (2) inserted "unless the context requires otherwise" and inserted definition of cancellation; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 36, Ch. 428, L. 2005, a coordination section, in definition of cancellation at beginning of second sentence inserted exception clause; and made minor changes in style.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Effective Date: Section 24(2), Ch. 309, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

61-5-120. Medical assessment and rehabilitation driving permit.

Compiler's Comments

2007 Amendment: Chapter 242 in (1) near beginning and in (5) near middle after "physician" inserted reference to licensed physician assistant or advanced practice registered nurse; and made minor changes in style. Amendment effective October 1, 2007.

Effective Date: Section 24(2), Ch. 309, L. 1999, provided that this section is effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

61-5-121. Disposition of fees.

Compiler's Comments

2007 Amendments — Composite Section: Chapter 6 deleted former (1)(a) that read: "(a) The amount of 22.3% of each driver's license fee, 18.25% of each commercial driver's license fee, and 25% of each replacement driver's license fee must be deposited into an account in the state special revenue fund. Upon receiving an appropriation, the department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature"; and made minor changes in style. Amendment effective February 16, 2007.

Chapter 44 in (2)(a) near beginning of first sentence and in (2)(b) near middle after "endorsements, and" substituted "replacement" for "duplicate". Amendment effective October 1, 2007.

2005 Amendments — Composite Section — Coordination: Chapter 464 deleted former (1)(a) that read: "(a) The amount of 22.3% of each driver's license fee and 25% of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. The department shall report the amount deposited and transferred under this subsection (1)(a) to the legislative finance committee by October 31 of the year preceding each regular session of the legislature"; in (1)(d) increased amount of driver's license fee deposited in general fund from 54.5% to 76.8% and increased amount of duplicate driver's license fees deposited in general fund from 62.5% to 87.5%; in (2)(a) in second sentence near middle after "into the" substituted "state traffic education account established in 20-7-504, the state motorcycle safety account established in 20-25-1002" for "account in the state special revenue fund, as provided in subsection (1)(a)"; in (2)(b) near middle after "into the" substituted "state traffic education account established in 20-7-504, the state motorcycle safety account established in 20-25-1002" for "account in the state special revenue fund as provided in subsection (1)(a)"; and made minor changes in style. Amendment effective July 1, 2005.

Section 164, Ch. 596, throughout section substituted "replacement driver's license" for "duplicate driver's license"; in (1) at beginning inserted exception clause; in (1)(a) in first sentence after "fee" inserted "18.25% of each commercial driver's license fee" and in second sentence at beginning inserted "Upon receiving an appropriation"; in (1)(b)(i) near middle after "fee" inserted "2.5% of each commercial driver's license fee"; in (1)(d) after "fee" inserted "16.94% of each commercial driver's license fee"; in (1)(e) substituted "the remainder of each driver's license fee, each commercial driver's license fee, and each replacement driver's license fee" for "the amount of 54.5% of each driver's license fee and 62.5% of each duplicate driver's license fee"; deleted former (1)(f) that read: "(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited into the state general fund"; in (2)(a) in second sentence after "remit" substituted "all remaining fees to the state for deposit" for "to the department of revenue all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The department of revenue, upon receipt of the fees and statement, shall deposit the fees"; in (2)(b) after "shall" deleted "remit all fees to the department of revenue, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The department of revenue, upon receipt of the fees and statement, shall"; inserted (3) concerning deposit of fee for renewal notice; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 164, Ch. 596, L. 2005, a coordination section, the Ch. 428, Ch. 542, and sec. 114, Ch. 596, amendments to this section were rendered void, and the amendments from Ch. 464 were replaced by the language contained in the coordination section.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2003 Amendment: Chapter 558 in (1)(a) in first sentence increased percentage of driver's license fee required to be deposited in state special revenue account from 16.7% to 22.3% and inserted third sentence requiring department by October 31 prior to each legislative session to report amount deposited and transferred to legislative finance committee; in (1)(d) decreased percentage of driver's license fee required to be deposited in state traffic education account from 26.25% to 20.7%; in (1)(e) decreased percentage of driver's license fee to be deposited in state general fund from 54.55% to 54.5%; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 257 throughout (2)(a) and (2)(b) substituted references to department of revenue for references to state treasurer. Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1999 Amendment: Chapter 181 in (1)(g) near middle substituted "motorcycle safety account" for "traffic education account"; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendments: Chapter 42 in (1) substituted "from driver's licenses, motorcycle endorsements, and commercial driver's licenses provided for in 61-5-111 and from duplicate driver's licenses" for "from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial driver's licenses provided for in 61-5-111(7)(c), and duplicate driver's licenses" (voided by Ch. 422 amendment). Amendment effective March 12, 1997.

Chapter 422 in (1), after "driver's licenses", "motorcycle endorsements", and "commercial driver's licenses", deleted reference to 61-5-111(7); in (1)(a), near beginning, substituted "16.7%" for "25%" and inserted "25%" of duplicate driver's license fees; in (1)(b)(i) substituted "2.5%" for "3.75%" and inserted "3.75%" of duplicate driver's license fees; in (1)(b)(ii) and (1)(c)(ii), before "general fund", inserted "state"; in (1)(c)(i) substituted "3.34%" for "5%"; in (1)(d) inserted "8.75%" of duplicate driver's license fees; in (1)(e) inserted "62.5%" of duplicate driver's license fees; in (1)(f) substituted "2.5%" for "3.75%"; and in (1)(g) substituted "63.46%" for "95%" and at end inserted "and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund". Amendment effective July 1, 1997.

1995 Amendment: Chapter 509 in (1)(d) substituted "26.25%" for "8.75%"; and in (1)(e) substituted "54.55%" for "62.5%". Amendment effective July 1, 1995.

1995 Purported Amendment: Section 6, Ch. 364, purported to amend this section. The amendment was rendered void by sec. 81, Ch. 509, a coordination section.

1993 Special Session Amendment: Chapter 39 in (1)(d) decreased amount to traffic education account from 17.5% to 8.75%; in (1)(e) increased amount to general fund from 53.75% to 62.5%; and in second sentence of (2)(a) and in first sentence of (2)(b), before "and the state general fund", deleted "the state traffic education account". Amendment effective July 1, 1994.

1993 Amendment: Chapter 195 throughout section substituted references to commercial driver's license for references to commercial vehicle operator's endorsement; in (1)(a) deleted last sentence statutorily appropriating funds from the account to the pension trust fund; and made minor changes in style.

July 1992 Special Session Amendment: (Temporary version) Chapter 11, Sp. L. July 1992, in (1)(a), at beginning, inserted exception clause; and inserted (4) transferring $750,000 from the highway patrol retirement clearing account to the general fund. Amendment effective August 6, 1992, and terminates September 2, 1992.

Severability: Section 7, Ch. 11, Sp. L. July 1992, was a severability clause.

January 1992 Special Session Amendments: (Temporary version) Section 3, Ch. 5, at beginning of (1)(b)(ii) and (1)(c)(ii) inserted exception clause; and inserted (3) pertaining to the deposit of certain fees into the general fund on or before June 30, 1993. Amendment effective January 21, 1992.

(Version effective July 1, 1993) Section 5, Ch. 5, at end of (1)(b)(ii) substituted deposit in the general fund for deposit in the state special revenue fund to defray costs of issuing licenses or duplicate licenses; at end of (1)(c)(ii) substituted deposit in the general fund for deposit in the state special revenue fund to defray costs of issuing motorcycle endorsements; and at beginning of (1)(e) inserted "In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii)". Amendment effective July 1, 1993.

Effective Date — Termination: Section 7(1), Ch. 5, Sp. L. January 1992, provided that this section is effective on passage and approval (approved January 21, 1992) and terminates July 1, 1993.

1991 Amendments: Chapter 584 in (1)(d), near middle after "duplicate driver's license fee", deleted "and the amount of 35% of each motorcycle endorsement fee"; in (1)(e), near middle after "duplicate driver's license fee", deleted "and the amount of 60% of each motorcycle endorsement fee"; inserted (1)(g) concerning depositing 95% of motorcycle endorsement fee into motorcycle safety training account (now state traffic education account, pursuant to sec. 9, Ch. 701, L. 1991, a coordination instruction); and in (2)(a), near end of second sentence, and in (2)(b), near end of first sentence, inserted "the motorcycle safety training account" (now state traffic education account, pursuant to sec. 9, Ch. 701, L. 1991, a coordination instruction) and at end of each subsection inserted reference to 61-5-121(1)(g). Amendment effective July 1, 1991.

Chapter 726 in (1)(a) reduced amount of fee deposited in state special revenue fund from 33⅓% to 25%; in (1)(b)(i) reduced amount of fee deposited in county general fund from 5% to 3.75%; in (1)(d) reduced amount of fee deposited in traffic education account from 23⅓% to 17.5%; in (1)(e) increased amount of fee deposited in state general fund from 38⅓% to 53.75%; and in (1)(f) reduced amount of fee deposited in county general fund from 5% to 3.75%. Amendment effective July 1, 1991.

Coordination Instruction: Section 9, Ch. 701, L. 1991, provided: "If House Bill No. 560, including provisions amending 61-5-121 to deposit money in the motorcycle safety training account, is passed and approved, then [section 1 of House Bill No. 560] [amending 61-2-406 (repealed sec. 8, Ch. 701, L. 1991)] is void and the code commissioner shall change "motorcycle safety training account" in 61-5-121, as amended by House Bill No. 560, to "state traffic education account"." House Bill No. 560 was approved April 23, 1991, as Ch. 584, L. 1991, and included amendments to 61-5-121. Therefore, the Code Commissioner has changed the reference to the state traffic education account as indicated in the coordination instruction.

1989 Amendments: Chapter 62 in (1)(a), after "deposited into", deleted "the" and inserted "an account in the state special revenue fund. The department shall transfer the funds from this account to the" and near end, after "trust fund", inserted "as provided in 19-6-404. Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund"; and in second sentence of (2)(a) and near middle of (2)(b), after "deposited into the", substituted "account in the state special revenue fund as provided in subsection (1)(a)" for "Montana highway patrolmen's retirement pension trust fund". Amendment effective March 10, 1989.

Chapter 217 in (1)(a) changed "patrolmen's" to "patrol officers'".

Chapter 275 in (1)(b)(i) increased percentage from 3⅓% to 5%; in (1)(e) decreased percentage from 40% to 38⅓%; and in (1)(f), at beginning, substituted "If the fee is collected by the county treasurer or other agent of the department, the amount of 5% of each" for "The entire amount of each" and inserted reference to the county general fund. Amendment effective July 1, 1989.

Chapter 398 at end of (1)(f) substituted "state general fund" for "motor vehicle recording account established in 61-3-108". Amendment effective July 1, 1989.

1987 Amendments: Chapters 370 and 443 in (1) changed "61-5-111(6)(a)" and "61-5-111(6)(b)" to "61-5-111(7)(a)" and "61-5-111(7)(b)".

Chapter 443 in (1) inserted "commercial vehicle operator's endorsements provided for in 61-5-111(7)(c)"; inserted (1)(f) requiring commercial vehicle operator's endorsement fee to be deposited into motor vehicle recording account; near beginning of (2)(a) and (2)(b) inserted "commercial vehicle operator's endorsements"; and at end of (2)(a) and (2)(b) inserted reference to subsection (1)(f). Amendment effective January 1, 1988.

1985 Amendment: Substituted references to department of justice for references to division of motor vehicles throughout section.

61-5-122. Low-speed restricted driver's license.

Compiler's Comments

2017 Amendment: Chapter 323 in (3) in first sentence substituted "learner license" for "instruction permit" and in second sentence substituted "license" for "permit" and in two places substituted "licensee" for "permitholder". Amendment effective May 4, 2017.

Effective Date: Section 16, Ch. 209, L. 2011, provided that this section is effective January 1, 2012.

Grandfather Clause: Section 17, Ch. 209, L. 2011, provided: "A low-speed electric vehicle or golf cart that meets the definitions provided in 61-1-101 and that was titled and registered under a one-time registration provision as a light vehicle or quadricycle prior to [the effective date of this act] [effective January 1, 2012] is considered legally titled and registered if operated by a person with a low-speed restricted driver's license."

61-5-123. Waiver of skills test or knowledge test related to military commercial motor vehicles experience — definition.

Compiler's Comments

2021 Amendment: Chapter 237 in (1) substituted current language for former text that read: "The department may waive the skills test or knowledge test, or both, required for a commercial driver's license if an applicant meets the conditions in subsection (2) and is"; in (2) inserted current language and deleted former text (see 2021 Session Law for former text); inserted (3) providing for the waiver of the skills test; inserted (4) providing for a waiver of the knowledge test; inserted (5) providing for a waiver of the applicable skills and knowledge tests for a passenger, tank vehicle, or hazardous materials endorsement; and made minor changes in style. Amendment effective April 15, 2021.

2019 Amendment: Chapter 335 deleted former (3) that read: "(3) The department shall adopt rules necessary for the administration of this section"; and made minor changes in style. Amendment effective May 7, 2019.

Chapter 445 in (1) after "may waive the skills test" inserted "or knowledge test, or both"; inserted (2)(b)(i) requiring an applicant to provide proof that the applicant has passed a knowledge test; and made minor changes in style. Amendment effective May 10, 2019.

2017 Amendment: Chapter 432 in (1) after "if an applicant" substituted "meets the conditions in subsection (2) and" for "who"; in (1)(a) inserted "who was honorably discharged"; inserted (1)(b), (1)(c), and (1)(d) regarding currently serving in the armed forces or a reserve component or being honorably discharged; in (2) at beginning inserted "An applicant shall"; in (2)(b)(i) substituted current text for former text that read: "the applicant is regularly employed, or within the last 90 days was regularly employed, in a position requiring operation of a commercial motor vehicle"; deleted former (2)(b)(iii) that read: "(iii) for at least 2 years immediately preceding the applicant's honorable separation from military service as evidenced by the applicant's certificate of release or discharge from active duty, the applicant was operating a motor vehicle representative of the class of motor vehicle for which the applicant is seeking a commercial driver's license"; and made minor changes in style. Amendment effective May 22, 2017.

Effective Date: The section is effective October 1, 2013.

61-5-126. Providing information to selective service system.

Compiler's Comments

1997 Amendment: Chapter 42 in two places substituted "50 App. U.S.C." for "50 U.S.C."; and made minor changes in style. Amendment effective March 12, 1997.

Severability: Section 5, Ch. 663, L. 1989, was a severability clause.

61-5-127. Providing list of licensed drivers and holders of Montana identification cards for jury selection purposes.

Compiler's Comments

2017 Amendment: Chapter 24 in (1) near beginning substituted "office of court administrator" for "secretary of state" and near middle after "18 years of age or older" deleted "and whose address is in that county". Amendment effective October 1, 2017.

2007 Amendment: Chapter 133 in (1) in first sentence after "second Monday of" substituted "April" for "May" and after "submit to the" substituted "secretary of state" for "clerk of the district court of each county". Amendment effective April 5, 2007.

Extension of Effective Date: Section 1, Ch. 99, L. 2005, amended sec. 9, Ch. 441, L. 2003, by extending the effective date imposed by Ch. 441 to October 1, 2007. Effective March 24, 2005.

Applicability Date Extended: Section 2, Ch. 99, L. 2005, amended sec. 10, Ch. 441, L. 2003, to read: "[This act] applies to combined jury lists compiled partly from the lists submitted under [section 1] [61-5-127] by the department of justice to the clerks of the district courts on and after the second Monday of May 2008." Amendment effective March 24, 2005.

Effective Date: Section 9, Ch. 441, L. 2003, provided that this section is effective October 1, 2005.

Applicability: Section 10, Ch. 441, L. 2003, provided: "[This act] applies to combined jury lists compiled partly from the lists submitted under [section 1] [61-5-127] by the department of justice to the clerks of the district courts on and after the second Monday of May 2006."

Case Notes

No Abuse of Discretion in Denial of Mistrial Based on Jury Selection Process Involving Combined List of Potential Jurors: Under 3-15-402 and 61-5-127, a list that included licensed drivers as well as registered voters was to be provided by the Secretary of State to the Clerk of the District Court of each county for the exclusive purpose of making a list of persons to serve as trial jurors during the ensuing year. The term "ensuing year" was not defined. The District Court concluded that the Legislature intended that the first combined jury list would be provided to Clerks of Court on or before the first Monday of May 2008 and that the Clerk of Court would use the combined list to prepare the annual jury panel for calendar year 2009. Norquay contended that the combined list should have been used to draw the jury in his trial in September 2008 and that failure to do so necessitated a mistrial. The Supreme Court held that the term "ensuing year" was ambiguous and that Norquay failed to carry the burden of demonstrating that the District Court abused its discretion in interpreting the statutory scheme and in denying his motion for a mistrial. The District Court was affirmed. St. v. Norquay, 2010 MT 85, 356 Mont. 113, 233 P.3d 768.

61-5-128. Legislative direction to state agency to implement REAL ID Act.

Compiler's Comments

Effective Date — Contingency: Section 9, Ch. 443, L. 2017, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2018.

(2) If before January 1, 2018, the state of Montana receives an extension from compliance with the REAL ID Act of 2005, Public Law 109-13, from the department of homeland security, [this act] is effective January 1, 2019. Notification of the extension must be sent to the Montana department of justice and the code commissioner." In a letter dated June 21, 2017, the department of homeland security notified the attorney general that Montana was granted an extension through October 10, 2017, to meet REAL ID requirements. In a letter dated October 16, 2017, the department of homeland security notified the attorney general that Montana was granted an extension through October 10, 2018, to meet REAL ID requirements.

2017 Amendment: Chapter 443 deleted former (1) that read: "(1) The legislature finds that the enactment into law by the U.S. congress of the REAL ID Act of 2005, as part of Public Law 109-13, is inimical to the security and well-being of the people of Montana, will cause unneeded expense and inconvenience to those people, and was adopted by the U.S. congress in violation of the principles of federalism contained in the 10th amendment to the U.S. constitution"; after "The state of Montana" substituted "shall" for "will not", after "REAL ID Act of 2005" inserted "Public Law 109-13", before "to implement the provisions" deleted "not", and at end deleted "and to report to the governor any attempt by agencies or agents of the U.S. department of homeland security to secure the implementation of the REAL ID Act of 2005 through the operations of that division and department"; and made minor changes in style. Amendment effective January 1, 2018, or on occurrence of contingency, and void on occurrence of contingency.

Preamble: The preamble attached to Ch. 198, L. 2007, provided: "WHEREAS, in May 2005, the U.S. Congress enacted the REAL ID Act of 2005 (REAL ID Act) as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief Act (Public Law 109-13), which was signed by President Bush on May 11, 2005, and which becomes fully effective May 11, 2008; and

WHEREAS, some of the requirements of the REAL ID Act are that states shall:

(1) issue a driver's license or state identification card in a uniform format, containing uniform information, all as prescribed by the Department of Homeland Security;

(2) verify the issuance, validity, and completeness of all primary documents used to issue a driver's license, such as those showing that the bearer is a U.S. citizen or a lawful alien, a lawful refugee, or a person holding a valid visa;

(3) provide for secure storage of all primary documents that are used to issue a federally approved driver's license or state identification card;

(4) provide fraudulent document recognition training to all persons engaged in issuing driver's licenses or state identification cards; and

(5) issue a driver's license or state identification card in a prescribed format if it is a license or card that does not meet the criteria provided for a federally approved license or identification card; and

WHEREAS, use of the federal minimum standards for state driver's licenses and state-issued identification cards will be necessary for any type of federally regulated activity for which an identification card must be displayed, including flying in a commercial airplane, making transactions with a federally licensed bank, entering a federal building, or making application for federally supported public assistance benefits, including Social Security; and

WHEREAS, some of the intended privacy requirements of the REAL ID Act, such as the use of common machine-readable technology and state maintenance of a database that can be shared with the United States and agencies of other states, may actually make it more likely that a federally required driver's license or state identification card, or the information about the bearer on which the license or card is based, will be stolen, sold, or otherwise used for purposes that were never intended or that are criminally related than if the REAL ID Act had not been enacted; and

WHEREAS, these potential breaches in privacy that could result directly from compliance with the REAL ID Act may violate the right to privacy, as secured by Article II, section 10, of the Montana Constitution, of thousands of residents of Montana; and

WHEREAS, the American Association of Motor Vehicle Administrators, the National Governors' Association, and the National Conference of State Legislatures have estimated, in an impact analysis dated September 2006, that the cost to the states to implement the REAL ID Act will be more than $11 billion over 5 years, and the Motor Vehicle Division of the Montana Department of Justice has estimated that the implementation of the REAL ID Act will cost Montana $2,660,000 to fully implement the Act, none of which costs are or will be paid for by the federal government; and

WHEREAS, for all of these reasons, the American Association of Motor Vehicle Administrators, the National Governors' Association, and the National Conference of State Legislatures, in a letter dated March 17, 2005, to the majority and minority leaders of the U.S. Senate, opposed the adoption of the REAL ID Act, but the opposition of those groups, and the groups' request that Congress rely on driver's license security provisions already passed by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004, was largely ignored by Congress; and

WHEREAS, the regulations that are to be adopted by the U.S. Department of Homeland Security to implement the requirements of the REAL ID Act have yet to be adopted and, in reality, will probably not become effective until the spring of 2007, effectively giving the states only 1 year in which to become familiar with the implementing regulations and comply with those regulations and the requirements of the REAL ID Act; and

WHEREAS, the mandate to the states, through federal legislation that provides no funding for its requirements, to issue what is, in effect, a national identification card appears to be an attempt to "commandeer" the political machinery of the states and to require them to be agents of the federal government, in violation of the principles of federalism contained in the 10th amendment to the U.S. Constitution, as construed by the United States Supreme Court in New York v. United States, 488 U.S. 1041 (1992), United States v. Lopez, 514 U.S. 549 (1995), and Printz v. United States, 521 U.S. 898 (1997); and

WHEREAS, some states, or legislative bodies in some states, such as New Hampshire and Washington, have, through legislation, opposed the implementation of the REAL ID Act.

THEREFORE, the purpose of the Legislature in enacting [this act] is to refuse to implement the REAL ID Act and thereby protest the treatment by Congress and the President of the states as agents of the federal government and, by that protest, lead other state legislatures and Governors to reject the treatment by the federal government of the 50 states by the enactment of the REAL ID Act."

Effective Date: This section is effective October 1, 2007.

61-5-129. REAL ID-compliant driver's license or identification card — voluntary application.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 14, Ch. 166, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 566 in (4)(a)(i) after "license or identification card during" inserted "or prior to"; deleted former (4)(a)(ii) that read: "(ii) for a person who is applying for a REAL ID-compliant driver's license or identification card prior to the renewal period specified in 61-5-111(3)(c), the additional fee is $50"; and made minor changes in style. Amendment effective July 1, 2021.

Preamble: The preamble attached to Ch. 566, L. 2021, provided: "WHEREAS, the Legislature is concerned with the delays associated with transferring defendants to state custody after imposition of sentence. When the Department of Corrections does not timely assume custody of defendants after sentencing, local government facilities may lack capacity to hold other persons. It is the expectation of the Legislature that the Department of Corrections will ensure that defendants sentenced for one or more felonies will not remain in a county detention facility for more than 10 business days after sentencing unless unusual circumstances arise; and

WHEREAS, with respect to the Department of Corrections, the Legislature has been advised that the vocational opportunities at the Montana Women's Prison are inadequate, particularly when compared to the offerings at the Montana State Men's Prison. The Legislature is mindful that the campuses may face different limitations in what programming may be offered based on location, footprint, and facilities; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 that the Department of Corrections had drug treatment beds that were not fully utilized in fiscal year 2019, which resulted in a payment for failure to allow the contractor to operate at 75% capacity; and

WHEREAS, with respect to the Department of Corrections, the Legislature is concerned that the Department of Corrections has yet to fully implement statutory directives to measure the effectiveness of its programs—both those provided by the Department of Corrections employees and those provided by contractors. In 2017, the Legislature directed the Department of Corrections to conduct evaluations of programs to determine their impact on reducing recidivism. This work, in addition to other requirements in Senate Bill No. 59 (2017), appears to be unaddressed or incomplete. Moreover, the Department of Corrections' definition of recidivism is an inadequate measure for the determination of effectiveness of its programming. The Legislature is interested in having data on crimes committed by those discharged from the Department of Corrections' custody, not merely "the rate at which adult offenders return to prison in Montana for any reason within three years of their release from prison", which fails to address reentry outcomes of many individuals committed to the Department of Corrections' custody and evaluates a truncated time period; and

WHEREAS, with respect to the Office of State Public Defender, the Legislature is concerned with the findings of the Legislative Audit Division in 2020 regarding billing practices by contractors, including the failure to require the use of assistants for nonattorney tasks, and allowing contractors to work a number of hours each year that may induce attorneys to be contractors instead of the Office of State Public Defender employees; and

WHEREAS, with respect to the Office of State Public Defender, it is the sense of the Legislature that the Office of State Public Defender expends its appropriation, in part, to perform tasks that are not required by the state or federal constitution or by statutory directive, such as in section 47-1-104(4), MCA. Given limited resources and the demands on the Office of State Public Defender staff, the Legislature believes that it is incumbent on the Office of State Public Defender management to limit the scope of its work to what is required by statute and the constitution; and

WHEREAS, with respect to the Office of State Public Defender, neither through its employees nor its contractors should the Office of State Public Defender impair the Legislature's intent to have defendants share in the costs of counsel provided by the Office of State Public Defender. The Office of State Public Defender employees and contractors should not move the court to waive assessments under section 46-8-113, MCA, unless the defendant can show a compelling reason why they cannot pay this assessment over the course of the sentence; and

WHEREAS, in House Bill No. 640 (2019), the Legislature established a mechanism to ensure that sexual abuse reports generated by those with mandatory reporting responsibilities are provided to county attorneys and that county attorneys report to the Attorney General on the status of the investigations and prosecutions generated from these referrals. It is the sense of the Legislature that the Department of Justice has not undertaken a thorough review of the reports generated pursuant to section 41-3-210(3), MCA, and the Legislature urges the Department of Justice to do so; and

WHEREAS, the Legislature has taken a number of steps to strengthen the laws and investigative response to address human trafficking and sexual exploitation of minors. Given the collective commitment in the legislative and executive branches to combat these crimes, the Legislature needs greater clarity on whether its appropriations and statutory changes are having an impact; and

WHEREAS, the Legislature expresses its concern that the backlog of testing on sexual assault kits must be eliminated as soon as possible; and

WHEREAS, the definition of recidivism utilized by the judicial branch in evaluating the effectiveness of treatment courts is different than the definition used by the Department of Corrections for its programming, making it difficult to compare the effectiveness of treatment courts to in-patient treatment. It is the sense of the Legislature that a single definition of recidivism would make it possible to have a consistent evaluation of effectiveness; and

WHEREAS, the Legislature believes that expungement of a conviction for driving under the influence of drugs or alcohol will impair the correctional and public safety goals that the Legislature aims to achieve through the Section D appropriation."

Effective Date — Contingency: Section 9, Ch. 443, L. 2017, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2018.

(2) If before January 1, 2018, the state of Montana receives an extension from compliance with the REAL ID Act of 2005, Public Law 109-13, from the department of homeland security, [this act] is effective January 1, 2019. Notification of the extension must be sent to the Montana department of justice and the code commissioner." In a letter dated June 21, 2017, the department of homeland security notified the attorney general that Montana was granted an extension through October 10, 2017, to meet REAL ID requirements. In a letter dated October 16, 2017, the department of homeland security notified the attorney general that Montana was granted an extension through October 10, 2018, to meet REAL ID requirements.

Administrative Rules

ARM 23.3.173 through 23.3.190 REAL ID rules.

61-5-131. Purpose.

Compiler's Comments

Effective Date: Section 9, Ch. 297, L. 2005, provided: "[This act] is effective July 1, 2006."

Applicability: Section 10, Ch. 297, L. 2005, provided: "[This act] applies to a person who applies for a driver's license on or after July 1, 2006, and who is under 18 years of age at the time of the application unless the person was issued an instruction permit, traffic education learner's license, or traffic education permit prior to July 1, 2006."

61-5-132. Prerequisites for issuance of driver's license to minor.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 450 in (1)(c)(i) at beginning inserted "has successfully completed a traditional traffic education course approved pursuant to 20-7-503(1) and"; inserted (1)(c)(ii) regarding completion of an approved alternative traffic education course and at least 75 hours of driving experience; and made minor changes in style. Amendment effective May 10, 2021.

Chapter 570 near beginning in (1)(c), (1)(d), and (2) after "parent or legal guardian" inserted "or if none is available, a responsible adult with knowledge of the person's driving experience"; and made minor changes in style. Amendment effective May 14, 2021.

2017 Amendment: Chapter 323 in (1)(a) "substituted "a learner license or traffic education permit" for "an instruction permit or traffic education learner's license"; in (2) near end substituted "learner license" for "instruction permit or traffic education learner's license". Amendment effective May 4, 2017.

Effective Date: Section 9, Ch. 297, L. 2005, provided: "[This act] is effective July 1, 2006."

Applicability: Section 10, Ch. 297, L. 2005, provided: "[This act] applies to a person who applies for a driver's license on or after July 1, 2006, and who is under 18 years of age at the time of the application unless the person was issued an instruction permit, traffic education learner's license, or traffic education permit prior to July 1, 2006."

61-5-133. First year restrictions on driver's license issued to minor.

Compiler's Comments

Effective Date: Section 9, Ch. 297, L. 2005, provided: "[This act] is effective July 1, 2006."

Applicability: Section 10, Ch. 297, L. 2005, provided: "[This act] applies to a person who applies for a driver's license on or after July 1, 2006, and who is under 18 years of age at the time of the application unless the person was issued an instruction permit, traffic education learner's license, or traffic education permit prior to July 1, 2006."

61-5-134. Operation of motor vehicle by minor in violation of restricted first-year license — penalty.

Compiler's Comments

Effective Date: Section 9, Ch. 297, L. 2005, provided: "[This act] is effective July 1, 2006."

Applicability: Section 10, Ch. 297, L. 2005, provided: "[This act] applies to a person who applies for a driver's license on or after July 1, 2006, and who is under 18 years of age at the time of the application unless the person was issued an instruction permit, traffic education learner's license, or traffic education permit prior to July 1, 2006."

61-5-135. Education on distracted driving.

Compiler's Comments

Effective Date: Section 9, Ch. 297, L. 2005, provided: "[This act] is effective July 1, 2006."

Applicability: Section 10, Ch. 297, L. 2005, provided: "[This act] applies to a person who applies for a driver's license on or after July 1, 2006, and who is under 18 years of age at the time of the application unless the person was issued an instruction permit, traffic education learner's license, or traffic education permit prior to July 1, 2006."

61-5-141. Self-certification of operation status — medical certificate submission and tracking — notice of expiration — downgrade of license.

Compiler's Comments

Effective Date: Section 13, Ch. 296, L. 2011, provided that this section is effective January 30, 2012.

61-5-146. Limitations on issuance of hazardous materials endorsement to commercial driver's license — security threat assessment.

Compiler's Comments

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Effective Date: Section 40(2), Ch. 428, L. 2005, provided that this section is effective on passage and approval. Approved April 28, 2005.

Retroactive Applicability: Section 41, Ch. 428, L. 2005, provided: "[Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20] [61-5-220, 61-5-221, 61-1-134, 61-1-137, 61-5-111(1) through (5) and (7), 61-5-112, and 61-5-114] apply retroactively, within the meaning of 1-2-109, to any new hazardous materials endorsement issued by the department of justice on or after January 31, 2005, and to any hazardous materials endorsement renewed or hazardous materials endorsement transfer authorized by the department on or after May 31, 2005."

61-5-147. Authority to revoke or remove hazardous materials endorsement.

Compiler's Comments

2011 Amendment: Chapter 296 in (1) in second sentence near end after "transport hazardous" substituted "material" for "materials, as defined in 61-8-801"; and made minor changes in style. Amendment effective January 30, 2012.

2005 Amendment — Coordination: Section 37, Ch. 428, L. 2005, a coordination section, provided that if Senate Bill No. 285 and [this act] are both passed and approved, then [section 2(1)] of House Bill No. 192 [61-5-221(1)] must be amended in (1) in second sentence after "materials" by inserting "as defined in 61-8-801". Senate Bill No. 285 was approved as Ch. 542, L. 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Effective Date: Section 40(2), Ch. 428, L. 2005, provided that this section is effective on passage and approval. Approved April 28, 2005.

Retroactive Applicability: Section 41, Ch. 428, L. 2005, provided: "[Sections 1, 2, 10, 11, 18(1) through (5) and (7), 19, and 20] [61-5-220, 61-5-221, 61-1-134, 61-1-137, 61-5-111(1) through (5) and (7), 61-5-112, and 61-5-114] apply retroactively, within the meaning of 1-2-109, to any new hazardous materials endorsement issued by the department of justice on or after January 31, 2005, and to any hazardous materials endorsement renewed or hazardous materials endorsement transfer authorized by the department on or after May 31, 2005."

61-5-150. Communication restrictions.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

61-5-151. Entry-level driver training — requirements — responsibilities of department of transportation.

Compiler's Comments

Effective Date: Section 7, Ch. 744, L. 2023, provided that this section is effective on passage and approval. Approved May 22, 2023.

2023 Enactment — Coordination: The enactment of this section by sec. 1, Ch. 744, L. 2023, was replaced by sec. 6, Ch. 744, L. 2023, a coordination section.

Part 2
Revocation, Suspension, or Cancellation of Licenses

Part Case Notes

Driver's License — Property Interest, Not Right — Revocation Not Cruel and Unusual Punishment: Revocation of driver's license under habitual traffic offender's law is civil in nature, and the due process standards are not as strict as in criminal actions. The law's predispositional court hearing satisfies due process rights, and a postdispositional hearing is not necessary. Licensing drivers is within the police power of the state, and the fact that the law gives a judge no discretion to determine who is a habitual traffic offender or the consequences of being one does not constitute cruel or unusual punishment. State ex rel. Majerus v. Carter, 214 M 272, 693 P2d 501, 41 St. Rep. 2468 (1984).

61-5-201. Authority of department to cancel license.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 686, L. 2023. Amendment effective October 1, 2023.

2005 Amendment: Chapter 428 in (1) after "license" substituted "if it has reasonable grounds to believe" for "upon determining"; inserted (3) providing that a person whose driver's license is canceled because the person failed to give the required or correct information on the application or committed any fraud in making the application is disqualified from operating a commercial motor vehicle for a period of 60 days from the date of the cancellation; and made minor changes in style. Amendment effective October 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

1993 Amendment: Chapter 195 near beginning of (1), after "driver's license", deleted "and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement"; and made minor changes in style.

1987 Amendment: Near beginning of (1) substituted "a driver's license" for "any operator's or chauffeur's license" and inserted "and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement"; and made minor changes in phraseology. Amendment effective January 1, 1988.

1985 Amendment: In (1) and (2) substituted references to department of justice for references to division of motor vehicles.

Administrative Rules

Title 23, chapter 2, subchapter 1, ARM Procedural rules.
ARM 23.3.142 Dishonored checks.
Title 23, chapter 3, subchapter 2, ARM Driver improvement.
ARM 23.3.410 Recommendation for reexamination.
ARM 23.3.503 Eligibility for type 1 endorsement.
ARM 23.3.504 Physical qualifications for type 1 endorsement.
ARM 23.3.505 Eligibility for type 2 endorsement.
ARM 23.3.507 Medical statement required for type 2 endorsement.
ARM 23.3.516A Air brake restriction.

Law Review Articles

Judge Bars Agency From Revoking Driver Licenses of Illegal Immigrants, Perrotta, N.Y.L.J. (May 11, 2005).

61-5-202. Cancellation of license upon death of person signing minor's application.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.3.209 Cancellation for withdrawal of consent for a minor.

61-5-203. Suspending privileges of nonresidents and unlicensed persons.

Compiler's Comments

2007 Amendment: Chapter 83 in (1) inserted "pursuant to 61-5-104(2) through (4)" and at end after "this chapter" deleted "may be suspended or revoked"; inserted (2) regarding suspension or revocation of unlicensed person's privilege to apply for and be issued license; and made minor changes in style. Amendment effective March 30, 2007.

Retroactive Applicability: Section 5, Ch. 83, L. 2007, provided: "[Sections 1 and 2] [61-1-101 and 61-5-203] apply retroactively, within the meaning of 1-2-109, to any suspension or revocation imposed against an unlicensed person prior to [the effective date of this act]." Effective March 30, 2007.

1993 Amendment: Chapter 195 after "driver's license" deleted "and commercial vehicle operator's endorsement or just an endorsement"; and made minor changes in style.

1987 Amendment: Near end substituted "a driver's license" for "an operator's or chauffeur's license" and inserted "and commercial vehicle operator's endorsement or just an indorsement"; and made minor change in phraseology. Amendment effective January 1, 1988.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Officer's Suspension of License Advice to Nonresident Driver Refusing Alcohol Testing Not Misleading — Motion to Suppress Test Results Denied: Following an arrest for DUI, Simmons, a Nevada resident, was informed by the arresting officer that failure to comply with a request for a breath sample would result in possible seizure or suspension of his Nevada driver's license. In a motion to suppress the evidence, Simmons argued that the District Court had erred in denying his motion to suppress the breath test results because, since Montana had no authority to seize or suspend a Nevada license, his consent to the test was invalid because the officer provided erroneous and misleading information about the consequences of refusing testing. Simmons cited a Georgia decision, St. v. Coleman, 455 SE 2d 604 (Ga. App. 1995), in which the Georgia court ruled that informing holders of out-of-state driver's licenses that they will lose driving privileges if they refuse blood alcohol testing constituted misinformation that justifies excluding from evidence any subsequent breath test results. Under Georgia law, drivers must be informed that the penalty for refusing a blood alcohol test is the loss of driving privileges "at least on the highways of this state". In affirming the District Court decision, the Supreme Court adopted the reasoning of the three-judge minority in Coleman, ruling that the advisory read to Simmons was technically correct in informing him that failure to submit to a blood alcohol test would result in the seizure and suspension of his driver's license. If a person refuses a testing request, Montana law specifically authorizes the Department of Justice to suspend or revoke nonresident driving privileges and to forward the seized license, along with a report of the testing refusal, to the licensing authority of the nonresident's home state. Since by definition a driver's license includes "any nonresident's driving privilege", the advisory read to Simmons informing him that his driver's license would be seized and suspended was technically correct. St. v. Simmons, 2000 MT 329, 303 M 60, 15 P3d 408, 57 St. Rep. 1393 (2000).

61-5-204. Suspending resident's license upon conviction in another state.

Compiler's Comments

1993 Amendment: Chapter 195 near beginning, after "driver's license", deleted "and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement" and at end, after "driver's license", deleted "or commercial vehicle operator's endorsement"; and made minor changes in style.

1989 Amendment: In middle of section substituted "jurisdiction" for "state"; after "offense" substituted "in that jurisdiction" for "therein"; and made minor changes in style.

1987 Amendment: Near beginning inserted "driver's" before "license", inserted "and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement", near end inserted "driver's" before "license", after "license" deleted "of an operator or chauffeur", and at end inserted "or commercial vehicle operator's endorsement". Amendment effective January 1, 1988.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Driving While Ability Impaired in New York Similar to Driving Under the Influence in Montana — License Suspension Affirmed: Montanye was arrested in New York for driving while impaired, and his driver's license was suspended in Montana under the reciprocal application of the Driver License Compact. Montanye contended that because conviction in New York of driving while impaired requires a lesser degree of intoxication than conviction for driving under the influence in Montana, the offenses are totally dissimilar and suspension of his license was improper. The Supreme Court noted that there were a few differences between the states' statutes, but that both laws deal with a driver's diminished ability to drive while under the influence of alcohol and both provide for suspension of license as punishment and are thus substantially similar. Therefore, the District Court did not err in revoking Montanye's license under Montana law. Montanye v. St., 262 M 258, 864 P2d 1234, 50 St. Rep. 1541 (1993), overruled in St. v. McNally, 2002 MT 160, 310 M 396, 50 P3d 1080 (2002). See also St. v. Young, 2012 MT 251, 366 Mont. 527, 289 P.3d 110.

61-5-205. Mandatory revocation or suspension of license upon certain convictions — duration of action — exceptions.

Compiler's Comments

2021 Amendment: Chapter 498 in (2)(a) substituted "61-8-1002" for "61-8-401, 61-8-406, or 61-8-411". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2013 Amendment: Chapter 153 in (2)(a) inserted reference to 61-8-411; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 149 in (2)(a) substituted "a driving offense under 61-8-401 or 61-8-406" for "driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or operating a motor vehicle with a blood alcohol concentration of 0.08 or more". Amendment effective October 1, 2011.

Applicability: Section 7, Ch. 149, L. 2011, provided: "[This act] applies to offenses committed on or after [the effective date of this act]." Effective October 1, 2011.

2007 Amendment: Chapter 145 in (3) in first sentence after "under" substituted "subsections (1)(a), (1)(b), and (1)(d) through (1)(f)" for "subsection (1)" and inserted second sentence providing for a revocation period of 2 years if the offender received a felony conviction under 61-7-103. Amendment effective October 1, 2007.

2003 Amendments — Composite Section — Coordination: Chapter 379 inserted (1)(e) requiring revocation of license on conviction of fleeing from or eluding peace officer; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 556 in (1) after "department" deleted "upon proper authority" and after "license" substituted "or driving privilege if the department receives notice from a court or another licensing jurisdiction that the individual has been convicted of any of the following offenses" for "or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for any of the following offenses, when the conviction or forfeiture has become final"; deleted former (1)(b) that read: "(b) driving a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more"; deleted former (1)(f) that read: "(f) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months"; in (2) substituted text requiring department to suspend license or driving privilege upon receipt of notice from court or another jurisdiction that individual was convicted of listed offenses for "The department upon proper authority shall suspend the driver's license or the operating privilege of a driver upon receiving a record of the driver's conviction of or forfeiture of bail not vacated for"; inserted (2)(a) regarding driver while under the influence with blood alcohol concentration of 0.10 or more; inserted (2)(b) requiring suspension of license or driving privilege for conviction of three reckless driving offenses within 12-month period; in (2)(c) after "45-6-301" deleted "when the conviction or forfeiture has become final" and deleted former second sentence that read: "The suspension must be for 30 days for a first offense, 6 months for a second offense, and 1 year for a third or subsequent offense"; inserted (3) requiring that revocation be for period of 1 year; inserted (4) concerning suspension periods; and made minor changes in style. Amendment effective May 5, 2003.

Pursuant to sec. 15(1), Ch. 556, L. 2003, a coordination section, in (2)(a) substituted "0.08" for "0.10".

The amendments to this section made by Ch. 329, L. 2003, were rendered void by sec. 15(4), Ch. 556, L. 2003, a coordination section.

2001 Amendments — Composite Section: Chapter 224 inserted (2) concerning suspension of license for conviction of theft of motor vehicle fuel; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 563 at end of (1)(g) inserted "involving a motor vehicle". Amendment effective October 1, 2001.

1993 Amendment: Chapter 195 near beginning, after "driver's license", deleted "including the commercial vehicle operator's endorsement"; and made minor changes in style.

1989 Amendment: Inserted (7) that read: "(7) negligent vehicular assault as defined in 45-5-205"; and made minor changes in phraseology.

1987 Amendments: Chapter 443 near beginning of introductory clause inserted "driver's" before "license", after "license" inserted "including the commercial vehicle operator's endorsement", substituted "driver" for "operator or chauffeur", and before "conviction" substituted "the driver's" for "such operator's or chauffeur's". Amendment effective January 1, 1988.

Chapter 612 in (2), before "drug", substituted "any" for "narcotic" and after "drug" deleted "or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle".

1985 Amendment: In lead-in and (5) substituted references to department of justice for references to division of motor vehicles.

1983 Amendment: At end of (2), inserted "or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more".

Administrative Rules

ARM 23.3.221 Appeal does not alter revocation.

Case Notes

Justice's Court — No Authority to Vacate Conviction and Order Alteration of Driver's Civil Records: A Justice's Court does not have authority to vacate a conviction or to direct alteration of the records of the Division of Motor Vehicles (now Department of Justice). Therefore, a Justice's Court could not order the Division to strike a prior DUI conviction and not consider it in revoking the driver's license on a second conviction. The District Court properly granted the Division's motion to quash a Writ of Mandate issued by the District Court staying the actions of the Division. Lancaster v. Dept. of Justice, 218 M 97, 706 P2d 126, 42 St. Rep. 1425 (1985).

Law Review Articles

Determining Blood/Alcohol Concentration: Two Methods of Analysis, Thompson, 46 Mont. L. Rev. 364 (1985).

61-5-206. Authority of department to suspend or revoke license or driving privilege — right to hearing.

Compiler's Comments

2017 Amendment: Chapter 323 in (1) near beginning inserted "or revoke"; and in (2) in first sentence near beginning inserted "or revokes" and in last sentence in two places inserted "or revocation". Amendment effective October 1, 2017.

2007 Amendment: Chapter 180 in (1)(c) and (1)(d) near end inserted "or tribal identification card"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 596 in (2) deleted former first two sentences that read: "However, the department may, in lieu of suspending the license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record would authorize suspension as provided in subsection (1). Upon issuance of a probationary license, the licensee is subject to the restrictions set forth in the probationary license", at beginning of first sentence substituted "If the department suspends a driver's license under 61-5-207 or this section or reinstates a license suspension or revocation" for "The licensee's driving privilege may be suspended" and after "violation" substituted "by a person who holds a probationary driver's license under 61-2-302" for "during the period of probation. The licensee shall surrender to the department all driver's licenses that have been issued to the licensee before the probationary license may be issued. The licensee's refusal or neglect to surrender the licenses upon demand is grounds for suspending all licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing the person on probation, as authorized in this section", and in last sentence after "suspension" deleted "or probation" and after "period of" deleted "probation or"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 556 deleted former (1)(a) through (1)(d) that read: "(a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(c) is a habitually reckless or negligent driver of a motor vehicle;

(d) is incompetent to drive a motor vehicle"; deleted former (1)(f) that read: "(f) has committed an offense in another state that if committed in this state would be grounds for suspension or revocation"; deleted former (1)(j) that read: "(j) has been declared a driver in need of rehabilitation and improvement, as defined in 61-11-203, and has failed to enroll in or successfully complete, within 90 days of notice, a driver rehabilitation and improvement course or other appropriate course determined by the department as provided in 61-11-204"; and made minor changes in style. Amendment effective May 5, 2003.

2001 Amendment: Chapter 218 inserted (1)(j) concerning driver in need of rehabilitation and improvement; and made minor changes in style. Amendment effective April 6, 2001.

1993 Amendment: Chapter 195 near beginning of (1), after "driver's license", deleted "including the commercial vehicle operator's endorsement"; and made minor changes in style.

1991 Amendment: Inserted (1)(h) regarding alteration of license or identification card to obtain alcohol; inserted (1)(i) regarding authorizing another to use license or identification card to obtain alcohol; and made minor changes in style.

1987 Amendments: Chapter 244 at beginning of (1)(e) inserted "committed or".

Chapter 443 near beginning of (1) inserted "driver's" before "license" and after "license" inserted "including the commercial vehicle operator's endorsement"; and in (1) and (2) substituted "a driver" for "an operator or chauffeur". Amendment effective January 1, 1988.

1985 Amendment: In (1), in (2) in two places, and in (3) in four places substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

Title 23, chapter 2, subchapter 1, ARM Procedural rules.
ARM 23.3.207 Examinations failed.
ARM 23.3.212 Altered driver's license.
ARM 23.3.231 Probationary licenses.
ARM 23.3.507 Medical statement required for type 2 endorsement.

Case Notes

Validity of Driver Rehabilitation Point System: The driver rehabilitation point system implemented by ARM 23.3.202 is a valid administrative rule expressly authorized by 61-2-302 and impliedly authorized by 61-5-206. The point system increases the fairness of the suspension process, harmonizes with its enabling legislation, and is necessary to effectuate statutory purposes. Bick v. Dept. of Justice, 224 M 455, 730 P2d 418, 43 St. Rep. 2331 (1986).

Administrative Suspension Not to Remove Habitual Offender Points: The Highway Patrol petitioned to have defendant formally declared a habitual traffic offender. The District Court refused, contending that the defendant had accumulated only 11 points since his license had been suspended under 61-5-206. At that time he had 27 habitual offender points. The District Court held that those points were removed by the administrative suspension. The Supreme Court vacated the judgment, holding that the removal of points required by 61-11-211 applied only to revocations and not to administrative suspensions. No contrary legislative intent is indicated by the statutes. Suspension of a license under 61-5-206 is a civil proceeding and not a criminal prosecution. The deprivation of the driving privilege under 61-5-206 is intended to protect the public and is not done for the punishment of the individual. The Supreme Court held that the same traffic offense may be used first to suspend a license under 61-5-206, and then to be cumulated with additional points to allow revocation as a habitual offender. State ex rel. Griffith v. Brustkern, 202 M 438, 658 P2d 410, 40 St. Rep. 194 (1983).

Suspension of License Not Punishment: The purpose and nature of the suspension of a driver's license are for the protection of the unsuspecting public and does not constitute "punishment" as understood within the meaning of the law. The Highway Patrol Board can take into consideration past driving violations before a previous suspension of a driver's license in suspending his license again. In re France, 147 M 283, 411 P2d 732 (1966).

Law Review Articles

Montana's Legislative Attempt to Deal With the Drinking Driver: The 1983 DUI Statutes, Rohan, 46 Mont. L. Rev. 309 (1985).

61-5-207. Reexamination or medical evaluation — when required.

Compiler's Comments

2007 Amendment: Chapter 242 in (1) near end and in (5) near middle after "physician" inserted reference to licensed physician assistant or advanced practice registered nurse; in (3) at end deleted "by a licensed physician"; and made minor changes in style. Amendment effective October 1, 2007.

1999 Amendment: Chapter 309 near beginning of (1) after "department" substituted language regarding department receiving reliable evidence that driver lacks ability for safe operation of vehicle for "having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may, based on information received, investigate the licensee's record, physical or mental condition, or need for a license" and at end after "licensee" substituted language regarding authorizing department to obtain medical evaluation from licensed physician or requiring applicant to submit to one or more tests for "submit to an examination"; at beginning of (2) after "Upon" inserted "the review of a medical evaluation", after "conclusion" substituted "of testing, or both" for "of the investigation or examination", and after "department" substituted outline of department options at conclusion of testing for "shall take action as may be appropriate considering the facts reported or discovered and may suspend or revoke the driver's license of the person or permit the person to retain the license or may issue a license subject to restrictions as permitted under 61-5-113"; inserted (3) concerning age; inserted (4) concerning duration of suspension; in (5) substituted "obtain a medical evaluation from a licensed physician or submit to testing as required by the department" for "submit to the investigation or examination" and after "suspension" deleted "or revocation"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1993 Amendment: Chapter 195 near beginning, after "to be licensed", deleted "or to have a commercial vehicle operator's endorsement" and in second sentence, after "revoke the", substituted "driver's license" for "license and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement"; and made minor changes in style.

1991 Amendment: In first sentence, after "may", inserted "based on information received, investigate the licensee's record, physical or mental condition, or need for a license or", in second sentence, after "conclusion of", inserted "the investigation or" and after "appropriate" inserted "considering the facts reported or discovered", and in third sentence, before "examination", inserted "investigation or"; and made minor changes in style.

1987 Amendment: Near beginning substituted "driver" for "operator or chauffeur", after "licensed" inserted "or to have a commercial vehicle operator's endorsement", and in second sentence inserted "and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement". Amendment effective January 1, 1988.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

Administrative Rules

ARM 23.3.208 Reexamination ordered.
ARM 23.3.211 Other information resulting in change of status of driver's license.
ARM 23.3.410 Recommendation for reexamination.
ARM 23.3.507 Medical statement required for type 2 endorsement.
ARM 23.3.516A Air brake restriction.

61-5-208. Period of suspension or revocation — limitation on issuance of probationary license — notation on driver's license.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 82, L. 2023, in (2)(b) inserted reference to subsection (5); in (2)(b)(ii) and (2)(b)(iii) at beginning of last sentence inserted exception clause; inserted (5) regarding not completing chemical dependency treatment; and made minor changes in style. Amendment effective March 23, 2023.

Section 15, Ch. 166, L. 2023, in (2)(a)(ii) and (2)(b)(ii) in first sentence substituted "61-8-1011" for "61-8-1002"; and in (2)(b)(ii) in last sentence substituted "61-8-1009" for "61-8-1002". Amendment effective October 1, 2023.

Section 1, Ch. 612, L. 2023, inserted (7) regarding provisional, restricted, or probationary licenses. Amendment effective October 1, 2023.

Retroactive Applicability: Section 3, Ch. 82, L. 2023, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to an individual who met the requirements of 61-5-208(5) on or after July 1, 2022."

2021 Amendment: Chapter 498 in (2)(b)(i) substituted "61-8-1002" for "61-8-401, 61-8-406, 61-8-411, or 61-8-465"; in (2)(b)(ii) and (2)(b)(iii) in first sentence near beginning substituted "violating 61-8-1002" for "violating 61-8-401, 61-8-406, 61-8-411, or 61-8-465", after "specified in" substituted "61-8-1002" for "61-8-734", and at end substituted "61-8-1010" for "61-8-442" and in middle of last sentence substituted “61-8-1002” for “61-8-732”; in (4) substituted “61-8-1002” for “61-8-401, 61-8-406, 61-8-411, or 61-8-465”; and in (5)(b) substituted “61-8-1008” for “61-8-731”. Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: “[This act] applies to DUI incidents taking place on or after [the effective date of this act].” Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2017 Amendment: Chapter 321 in (2)(b)(ii) and (2)(b)(iii) near end substituted “chemical dependency treatment” for “a chemical dependence education course, treatment, or both”, and after “remains in effect until” substituted “treatment is completed” for “the course or treatment, or both, are completed”; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 44, Ch. 321, L. 2017, provided: “[This act] applies to offenses committed after June 30, 2017.”

2015 Amendment: Chapter 424 throughout section after “61-8-411” inserted “or 61-8-465”; and made minor changes in style. Amendment effective May 5, 2015.

Applicability: Section 22, Ch. 424, L. 2015, provided: “[This act] applies to offenses committed on or after [the effective date of this act].” Effective May 5, 2015.

2013 Amendment: Chapter 153 in (2)(b)(i), (2)(b)(ii), (2)(b)(iii), and (4) inserted references to 61-8-411; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendments — Composite Section: Chapter 149 in (2)(a) near beginning after “61-2-302” inserted “and this section”; in (2)(b) substituted “Subject to 61-5-231 and except as provided in subsection (4) of this section” for “When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall”; in (2)(b)(i) near middle inserted “for a first offense under 61-8-401 or 61-8-406, the department shall”; in (2)(b)(ii) substituted “collateral not vacated for a second offense under 61-8-401 or 61-8-406 within the time period specified in 61-8-734” for “collateral for a second, third, or subsequent offense within 5 years of the first offense”; inserted (2)(b)(iii) relating to a third offense under 61-8-401 or 61-8-406; deleted former (2)(c) that read: “(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction”; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 318 in (2)(a) at beginning in exception clause inserted reference to 44-4-1205 and after “61-2-302” inserted “and except as otherwise provided in this section”; in (2)(b)(i) at beginning deleted: “When a person is convicted or forfeits bail or collateral not vacated for a first offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for a first offense of operation of a motor vehicle by a person with alcohol concentration of 0.08 or more, the department shall” and after “not vacated” inserted “for a first offense of violating 61-8-401 or 61-8-406, the department shall”; in (2)(b)(ii) in first sentence after “collateral” substituted “not vacated for a second offense of violating 61-8-401 or 61-8-406 within the time period specified in 61-8-734” for “for a second, third, or subsequent offense within 5 years of the first offense”; inserted (2)(b)(iii) establishing penalties for third and subsequent convictions; deleted former (2)(c) that read: “(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction”; and made minor changes in style. Amendment effective October 1, 2011.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Applicability: Section 7, Ch. 149, L. 2011, provided: “[This act] applies to offenses committed on or after [the effective date of this act].” Effective October 1, 2011.

Saving Clause: Section 11, Ch. 318, L. 2011, was a saving clause.

Severability: Section 12, Ch. 318, L. 2011, was a severability clause.

2009 Amendments — Composite Section: Chapter 41 in (2)(b) near end of third sentence substituted “required under 61-8-732” for “ordered by the sentencing court”. Amendment effective January 1, 2010.

Chapter 448 in (2)(b) in second sentence at end after “suspension” inserted language allowing issuance of probationary driver’s license under certain conditions. Amendment effective October 1, 2009.

Applicability: Section 4, Ch. 448, L. 2009, provided: "[This act] applies to offenses committed on or after [the effective date of this act]." Effective October 1, 2009.

2005 Amendments — Composite Section: Chapter 547 inserted (5) regarding driver's license issued after license revocation. Amendment effective October 1, 2005.

Chapter 596 deleted former (3) that read: "(3) (a) If the person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with an ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension of a person who has been convicted of a first violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension has expired and any required chemical dependency education course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the court-imposed ignition interlock restriction by, including but not limited to operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension has been reinstated because of violation of an ignition interlock restriction"; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 166, Ch. 596, L. 2005, a coordination section, the Ch. 542 amendments to this section were rendered void.

2003 Amendments — Composite Section: Chapter 329 in (2)(b) near middle of first sentence substituted "0.08" for "0.10". Amendment effective April 15, 2003.

Chapter 556 in (1) after "highways" deleted "for a period of more than 1 year"; in (2)(b) in first sentence in two places before "offense" inserted "first", in second sentence near middle after "shall" substituted "suspend" for "revoke", substituted "may not issue" for "upon issuance of any restricted", and at end substituted "suspension" for "revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device", and in third sentence at beginning after "1-year" inserted "suspension" and near end substituted "suspension" for "revocation"; in (3)(a) in first sentence before "violation" inserted "first"; deleted former (4) that read: "(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2)"; in (4)(a) at beginning inserted exception clause and in two places before "revocation" inserted "suspension or"; inserted (4)(b) providing that suspension commences from last day of prior suspension or revocation if suspension is for conviction of driving with suspended or revoked license; and made minor changes in style. Amendment effective May 5, 2003.

The amendments to this section made by sec. 2, Ch. 300, L. 2003, and sec. 5, Ch. 556, L. 2003, were rendered void by sec. 15(8), Ch. 556, L. 2003, a coordination section.

Applicability: Section 9, Ch. 300, L. 2003, provided: "[This act] applies to persons sentenced for offenses committed on or after [the effective date of this act]." Effective April 14, 2003.

2001 Amendment: Chapter 207 at beginning of (2)(a) inserted exception clause, after "restored" deleted "unless the revocation was for a cause that has been removed", and at end substituted "until the revocation or suspension period has been completed" for former second sentence that read: "After the expiration of the period of the revocation or suspension, the person may apply for a new license or endorsement as provided by law, but the department may not issue a new license or endorsement unless it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana"; at end of (6) substituted "provided in 61-8-802" for "provided in 61-8-811 and subsection (2) of this section"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

1999 Amendments — Composite Section: Chapter 258 in second sentence of (2)(b) after "1 year" inserted remainder of sentence concerning restricted probationary license; in (3)(a) in two places after "suspension" deleted "or revocation"; in (3)(b) in first sentence after "violated the" inserted "court-imposed" and in first and second sentences after "suspension" deleted "or revocation"; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 309 inserted (2)(c) regarding when person is considered to have committed second, third, or subsequent offense; and made minor changes in style. Amendment effective October 1, 1999.

Chapter 455 in (2)(b) near middle of third sentence after "completed" substituted "a chemical dependency education" for "an alcohol information"; in (3)(a) in second sentence after "required" substituted "chemical dependency education" for "alcohol information"; and made minor changes in style. Amendment effective October 1, 1999.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1997 Amendment: Chapter 107 inserted (3) concerning ignition interlock devices and restrictions. Amendment effective July 1, 1997.

1993 Amendment: Chapter 195 in (1), after "driver's license", deleted "commercial vehicle operator's endorsement"; at beginning of (2), after "license", deleted "commercial vehicle operator's endorsement", in third sentence, after "suspend the", substituted "driver's license" for "license, including any commercial vehicle operator's endorsement", and in fourth sentence, after "revoke the license", deleted "commercial vehicle operator's endorsement"; in (5), after "provided in", inserted "61-8-811" and deleted second sentence regarding suspension by the Department of commercial vehicle operator's endorsements in accordance with the provisions of Title 61; and made minor changes in style.

1991 Amendment: In (1), at end, substituted "otherwise permitted by law" for "permitted under subsection (2) of this section, 61-5-207, 61-5-212, 61-6-123, 61-8-803 through 61-8-805, and 61-11-211"; and inserted (5) providing that a person convicted under 61-8-401 or 61-8-406 while operating a commercial motor vehicle must have his driver's license and commercial motor vehicle endorsement suspended.

1989 Amendments: Chapter 378 near end of (1) inserted "61-8-803 through 61-8-805"; and made minor changes in style and grammar.

Chapter 476 in (1), near end, inserted reference to subsection (2); in (2), at end of last sentence, inserted exception clause; and made minor changes in phraseology.

1987 Amendments: Chapter 443 in (1) and near beginning of (2) inserted "commercial vehicle operator's endorsement"; in (2), in three places after "license", inserted either "endorsement" or "or endorsement" and in two places, after "license", inserted "including any commercial vehicle operator's endorsement"; and in (4) substituted "driver's license" for "operator's or chauffeur's license". Amendment effective January 1, 1988.

Chapter 612 in (2), near middle of second sentence before "drug", substituted "any" for "narcotic" and after "drug" deleted "or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle".

1985 Amendments: Chapter 314 in (2) near end of first sentence, after "investigation of", deleted "character, habits, and", after "person", substituted "and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in this state" for "that it is safe to grant the privilege of driving a motor vehicle on the public highways".

Chapter 503 in (1) and in (2) in three places substituted reference to department of justice for reference to division of motor vehicles.

1983 Amendment: In (2), near end of second sentence after "a combination thereof" inserted "or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more".

Case Notes

Denial of Montana Driver's License Based on Suspension of Driving Privileges in Michigan: In Chain v. Dept. of Motor Vehicles, 2001 MT 224, 306 M 491, 36 P3d 358 (2001), the Supreme Court held that the Department of Motor Vehicles had to accept Chain's driver's license application but could still choose to deny Chain a license after completing an investigation. Chain then applied for a Montana driver's license, but after an investigation, the application was denied because Chain had been convicted in Michigan of twice operating a vehicle under the influence of liquor, twice having an unlawful bodily alcohol content while driving, driving with a suspended or revoked driver's license five times, and refusing to be tested for intoxication five times. In total, Michigan authorities took 16 separate actions against Chain's driving privileges, including five suspensions, two revocations and nine denial/revocations, resulting in suspension of Chain's Michigan driving privileges until 2022. Chain filed an action in District Court requesting that he be issued a driver's license, but the District Court denied Chain's claim on grounds that Chain could not receive a license in Montana when his driving privileges were suspended or revoked elsewhere. Chain appealed, but the Supreme Court affirmed. Giving Chain's Michigan suspensions and revocations the same force and effect as if they were committed in Montana, the state was within its discretion to deny Chain a license. Chain v. Motor Vehicle Div., 2004 MT 216, 322 M 381, 96 P3d 1135 (2004).

Driver's License Suspension Limited to One Year When Original Sentence and Suspension Discharged: Following his involvement in a fatal car accident in 1994, Parpart was sentenced to a 2-year prison sentence followed by an 8-year placement in an appropriate program, and Parpart's driver's license was suspended for the entire 10-year period. In 1999, Parpart's sentence was discharged, and he requested reinstatement of his driver's license in 2000, but the request was denied. During the following year, Parpart was twice convicted of driving with a suspended license. The Department of Justice, Motor Vehicle Division, assumed that Parpart's 1994 suspension extended through 2004 and that any subsequent violations required continuation for a like period under 61-5-212, so two additional 10-year suspension periods were added for each violation, extending the suspension to 2024. Parpart challenged the constitutionality of the initial license suspension and the two subsequent license suspensions. The District Court granted summary judgment for the Department, and Parpart appealed. Without addressing the constitutional issues, the Supreme Court held that the sentencing court had the authority to impose the initial license suspension as a condition of the sentence, but once the sentence was discharged in 1999, the suspension was discharged as well. Parpart should have appealed the denial of his request for reinstatement rather than disregarding it and driving without a license, but because the 1994 sentence was discharged, the Department's authority to suspend Parpart's license for each of the subsequent violations was limited to 1 year, pursuant to this section. Thus, because Parpart's two 1-year suspensions would have ended in 2002, Parpart was entitled to reinstatement of driving privileges upon compliance with 61-5-218. Parpart v. Dept. of Justice, 2004 MT 4, 319 M 182, 84 P3d 1 (2004).

Driver's License Application Allowed One Year After Suspension or Revocation — Department's Discretionary Power to Issue License: Before moving to Montana, Chain lived in Michigan, where he was convicted of DUI on at least four separate occasions, which resulted in suspension or revocation of his driving privileges. Once here, Chain attempted to apply for a Montana driver's license, but the Department of Motor Vehicles cited 61-5-105 and refused to let him apply because his driving privileges were still suspended or revoked in Michigan. Chain requested that the District Court order the Department to allow the application and to issue a license if all the application requirements were met, but the request was denied. Chain argued on appeal that the Department should have instead applied this section, which limits revocations or suspensions to 1 year and allows application for a new license at the end of that period. Chain also cited the Driver License Compact in 61-5-401 as support for the proposition that he should have an opportunity to reapply 1 year after revocation. The Supreme Court noted nothing in the record to indicate whether Michigan was a member of the Compact and thus declined to apply 61-5-401, but the court found Montana licensing statutes to be dispositive. The court agreed that 61-5-105 prohibits issuance of a license if driving privileges are still suspended or revoked but found nothing in the statutes that disallowed application for a license. Under 61-5-107, after receiving an application, the Department should have requested a copy of Chain's driving record from Michigan and then analyzed it in the same manner as if it had been amassed in Montana. Once 1 year had passed after Chain's revocation or suspension, he could apply for a license like any other citizen in similar circumstances, as provided in this section, and after investigation, the Department had the discretionary power whether or not to issue a license. Chain v. Dept. of Motor Vehicles, 2001 MT 224, 306 M 491, 36 P3d 358 (2001).

License Revocation — DUI and BAC Synonymous: In August 1983, petitioner was convicted of DUI in violation of 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10). In November 1984, petitioner was convicted of a BAC violation under 61-8-406 (now repealed and content reorganized in Title 61, chapter 8, part 10). The Motor Vehicle Division revoked petitioner's driver's license for 1 year for a second offense within 5 years. Petitioner argued that the license should be revoked for only 6 months because one BAC plus one DUI is not equal to a second offense under 61-5-208. The Supreme Court agreed with the state's contention that although the criminal statutes defining DUI and BAC are different, the concern here is only with the civil penalty of revocation of a driver's license, and the statute is clear. For purposes of license revocation, DUI and BAC are synonymous and a 1-year revocation is required in this case. Additionally, 61-5-208 is not void for vagueness. Horton v. St., 221 M 233, 717 P2d 1108, 43 St. Rep. 772 (1986), followed in Dewart v. St., 254 M 215, 835 P2d 769, 49 St. Rep. 706 (1992).

Attorney General's Opinions

DUI Offense Considered Within Five Years: The Montana Highway Patrol (now Department of Justice) must consider an offense of driving under the influence of intoxicating liquor within 5 years prior to July 1, 1961, effective date of section 31-149, R.C.M. 1947 (now 61-5-208). 29 A.G. Op. 35 (1962).

61-5-209. Surrender and return of license upon suspension or revocation.

Compiler's Comments

1993 Amendment: Chapter 195 near beginning, after "license", deleted "or commercial vehicle endorsement"; and made minor changes in style.

1987 Amendment: After "license" inserted "or commercial vehicle operator's endorsement". Amendment effective January 1, 1988.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-5-210. No operation under foreign license during suspension or revocation in this state.

Compiler's Comments

1993 Amendment: Chapter 195 near end, after "new license", deleted "or commercial vehicle operator's endorsement"; and made minor changes in style.

1987 Amendment: Near beginning, before "license", deleted "operator's or chauffeur's"; in two places, after "motor vehicle", inserted "or commercial motor vehicle"; and near end inserted "or commercial vehicle operator's endorsement". Amendment effective January 1, 1988.

61-5-211. Right of appeal to court.

Compiler's Comments

1993 Amendment: Chapter 195 near beginning of first sentence, after "driver's license", deleted "or commercial vehicle operator's endorsement" and after "whose license" deleted "or endorsement" and in second sentence, after "entitled to a", substituted "driver's license" for "license or commercial vehicle operator's endorsement" and near end, after "license", deleted "or endorsement"; and made minor changes in style.

1987 Amendment: Near beginning, before "license", inserted "driver's", after "license" inserted "commercial motor vehicle operator's endorsement", after "whose license" substituted "or endorsement has" for "had", and near end inserted "or commercial vehicle operator's endorsement" and "or endorsement". Amendment effective January 1, 1988.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-5-212. Driving while license suspended or revoked — penalty — second offense of driving without licensing exemption.

Compiler's Comments

2021 Amendment: Chapter 498 in (1)(b)(iii) substituted "61-8-1002(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)" for "61-8-401, 61-8-406, or 61-8-411" and substituted "61-8-1016" for "61-8-402 or 61-8-409". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2017 Amendment: Chapter 321 in (1)(a) in first sentence near beginning after "driving a motor vehicle" deleted "without a valid license or"; in (1)(a)(iii) after "public highway of this state" deleted "without possessing a valid driver's license, as provided in 61-5-102, or"; deleted former (1)(b)(i) that read: "(i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving during a suspension or revocation period shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500"; inserted (1)(b)(i) and (1)(b)(ii) concerning second conviction without proof of a statutory exemption and conviction during a suspension or revocation period; deleted former (3), (4), (5), and (6) that read: "(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, 61-8-410, or 61-8-411 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by

subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section"; and made minor changes in style. Amendment effective July 1, 2017.

The amendments made to this section by sec. 1, Ch. 415, L. 2017, were rendered void by sec. 2, Ch. 415, L. 2017, a coordination section.

Applicability: Section 44, Ch. 321, L. 2017, provided: "[This act] applies to offenses committed after June 30, 2017."

2015 Amendment: Chapter 358 in (1)(a)(i) inserted "unless the person has obtained a restricted-use driving permit under 61-5-232". Amendment effective July 1, 2015.

2013 Amendment: Chapter 153 in (1)(b)(ii) and (3) inserted references to 61-8-411; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendments — Composite Section: Chapter 83 in (1)(a)(i) substituted "privilege to drive or apply for and be issued a driver's license" for "privilege to do so"; in (1)(a)(ii) at end substituted "or from obtaining a commercial driver's license" for "under federal regulations"; in (2)(a) inserted "or privilege to apply for and be issued a driver's license"; and made minor changes in style. Amendment effective March 30, 2007.

Chapter 462 in (1)(a) inserted "without a valid license or without statutory exemption"; inserted (1)(a)(iii) regarding driving vehicle on highway without possessing valid driver's license or exemption; in (1)(b)(i) inserted "without a valid driver's license or without proof of a statutory exemption for the second time or driving"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 583 in (1)(b) near beginning after "$500" inserted exception language providing for increased penalties if the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401 or 61-8-406 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs and providing for an additional possible sentence of community service. Amendment effective October 1, 2005.

2003 Amendments — Composite Section: Chapter 428 in (1)(a) at beginning of introductory clause after "person" substituted "commits the offense of driving a motor vehicle during a suspension or revocation period if the person" for "who"; in (1)(a)(i) at beginning after "vehicle" deleted "or commercial motor vehicle"; inserted (1)(a)(ii) prohibiting the operation of a commercial motor vehicle during a suspension or revocation period; in (1)(b) at beginning substituted "A person convicted of the offense of driving a motor vehicle during a suspension or revocation period" for "is guilty of a misdemeanor and upon conviction"; in (2)(a) near middle after "driving a" inserted "noncommercial" and after "license" inserted "or privilege to drive"; inserted (2)(b) concerning suspension of a commercial driver's license upon receipt of a record of conviction; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 556 in (2)(a) at end substituted "for an additional 1-year period" for "for an additional like period"; and in (3) after "suspended" deleted "or revoked". Amendment effective May 5, 2003.

Applicability: Section 23(3), Ch. 428, L. 2003, provided that this section applies to conduct or offenses that occur on or after October 1, 2003.

1997 Amendment: Chapter 88 in (3), after "61-8-402", deleted reference to subsection (5).

1995 Amendment: Chapter 447 inserted (3) concerning seizure of vehicle or rendering vehicle inoperable; inserted (4) concerning court order for action concerning seizure of vehicle or rendering vehicle inoperable; inserted (5) concerning convicted person liable for costs; and inserted (6) prohibiting suspension or deferred imposition of penalties.

1993 Amendment: Chapter 195 in (2), after "person's", substituted "driver's license" for "license or commercial vehicle operator's endorsement"; and made minor changes in style.

1989 Amendment: In middle of (1), after "revoked", substituted "in this state or any other state is guilty" for "shall be guilty"; and made minor changes in phraseology.

1987 Amendment: Near beginning of (1) inserted "or commercial motor vehicle"; and in (2), after "license", inserted "or commercial vehicle operator's endorsement". Amendment effective January 1, 1988.

1985 Amendment: In (2) substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Appointed Counsel Violated Duties of Loyalty and Confidentiality — Trial Not Fundamentally Unfair or Unreliable — Substitute Counsel Appointed: The defendant's convictions for driving with a suspended license and failing to provide proof of insurance were not reversed because of ineffective assistance of counsel, despite the fact that appointed counsel violated his duties of loyalty and confidentiality to the defendant. Counsel's disclosure fell below an objective standard of reasonableness, establishing the first prong of the Strickland analysis. However, the defendant broadly argued that her counsel completely abandoned his duty and had a conflict of interest, requiring prejudice to be presumed under Strickland and U.S. v. Cronic, 466 US 648 (1984). The Supreme Court acknowledged federal precedent, in which courts have rarely applied Cronic, emphasizing that only nonrepresentation, not poor representation, triggers a presumption of prejudice. As applied, the defense counsel's errors, while violating duties of confidentiality and loyalty, did not result in complete abandonment of the defendant because she was provided substitute counsel for trial. The defense counsel's disclosure did not render the trial result "fundamentally unfair" or "unreliable" and the defendant could not show that there was a reasonable probability that, but for her counsel's unprofessional errors, the result of the proceeding would have been different. Libby v. Hubbard, 2018 MT 2, 390 Mont. 108, 408 P.3d 532, citing U.S. v. Cronic, 466 US 648 (1984), Strickland v. Wash., 466 US 668 (1984), Bell v. Cone, 535 US 685 (2002), and St. v. Bekemans, 2013 MT 11, 368 Mont. 235, 293 P.3d 843.

Alternative Sentencing Recommendation — No Breach of Plea Agreement — Information Technology Surcharges: The defendant was charged with four crimes related to a vehicle accident and agreed to a plea agreement recommending a deferred sentence. The parties subsequently received a presentence investigation report that was consistent with the plea agreement. At the sentencing hearing, the state expressed concerns about the defendant's housing when asked by the District Court. The defendant did not object to the state's testimony. The District Court rejected the plea agreement, sentenced the defendant to imprisonment, and imposed information technology surcharges per count under 3-1-317. On appeal, the Supreme Court affirmed in part, holding that the District Court's sentence was fashioned to help the defendant address her chemical dependency issues and that the state did not breach the plea agreement with its comments based on the circumstances of the case. The Supreme Court also reversed in part, finding that the District Court incorrectly imposed the information technology surcharges per count rather than per user under the language of 3-1-317. St. v. Ellison, 2017 MT 88, 387 Mont. 243, 393 P.3d 192, following St. v. Bartosh, 2007 MT 59, 336 Mont. 212, 154 P.3d 58, and distinguishing St. v. LaMere, 2000 MT 45, 298 Mont. 358, 2 P.3d 204, and St. v. Rardon, 2002 MT 345, 313 Mont. 321, 61 P.3d 132.

Driving with Suspended License — Absolute Liability: Because it does not contain a reference to a mental state and because pursuant to 45-2-104 the penalty does not exceed $500, 61-5-212 establishes that driving with a suspended license is an absolute liability offense that does not require proof of a mental state. Kalispell v. Omyer, 2016 MT 63, 383 Mont. 19, 368 P.3d 1165.

Motor Vehicle Records Admitted as Business Records — No Abuse of Discretion: Stamped language on letters sent by the Motor Vehicle Division (MVD) to the defendants notifying them of their license suspensions stated that the sender testified the letter was sent to the person at the person's last address on a specific date. The District Court admitted the letters as administratively created contemporaneous business records over the defendants' objections that the letters were testimonial hearsay created to prove a fact at trial. The defendants appealed, claiming the letters were the only evidence that each defendant had a culpable mental state. However, the Supreme Court affirmed, holding that 61-5-212 imposed absolute liability on defendants and therefore, although the District Court reached the correct result for the wrong reason, it did not err. Because of the plain language of Rule 902(4), M.R.Ev. (Title 26, ch. 10), the record-keeping requirements of the MVD, and the unreasonability of an MVD representative having to be present every time a driving record was necessary for trial, the District Court did not abuse its discretion in admitting the letters. Kalispell v. Omyer, 2016 MT 63, 383 Mont. 19, 368 P.3d 1165.

Suspended License Remains Suspended After Expiration: Driver was properly charged with driving while her license was suspended or revoked since she never paid the required reinstatement fees and thus her license remained suspended, despite the fact her license had expired due to the passage of time. St. v. Bessette, 2008 MT 346, 346 M 300, 195 P3d 311 (2008).

Improper to Convict of Driving With Suspended or Revoked License When Driver Never Licensed: Several drivers who never possessed a license or who had not possessed a valid license in recent years challenged their convictions of driving with suspended or revoked licenses, arguing that the state must first have granted the privilege to drive before they could be charged under this section. The Supreme Court agreed. Under the plain language of the statute, a person must possess a privilege to drive before that privilege can be suspended or revoked. The state could have charged the drivers of driving without a license under 61-5-307, but charges brought under this section were improper, and the court reversed with orders to vacate the sentences. (See 2007 amendment.) Billings v. Gonzales, 2006 MT 24, 331 M 71, 128 P3d 1014 (2006).

Erratic Driving and Occupants Switching Drivers — Sufficient Particularized Suspicion to Justify Investigative Stop: The fact that an officer observed that the occupants had switched drivers during the time that the officer lost sight of a vehicle and that the vehicle was driving in the center of a gravel road constituted a sufficient particularized suspicion under the totality of the circumstances, including the officer's 27 years of experience, to warrant an investigative stop. St. v. Britt, 2005 MT 101, 327 M 1, 111 P3d 217 (2005).

Driver's License Suspension Limited to One Year When Original Sentence and Suspension Discharged: Following his involvement in a fatal car accident in 1994, Parpart was sentenced to a 2-year prison sentence followed by an 8-year placement in an appropriate program, and Parpart's driver's license was suspended for the entire 10-year period. In 1999, Parpart's sentence was discharged, and he requested reinstatement of his driver's license in 2000, but the request was denied. During the following year, Parpart was twice convicted of driving with a suspended license. The Department of Justice, Motor Vehicle Division, assumed that Parpart's 1994 suspension extended through 2004 and that any subsequent violations required continuation for a like period under this section, so two additional 10-year suspension periods were added for each violation, extending the suspension to 2024. Parpart challenged the constitutionality of the initial license suspension and the two subsequent license suspensions. The District Court granted summary judgment for the Department, and Parpart appealed. Without addressing the constitutional issues, the Supreme Court held that the sentencing court had the authority to impose the initial license suspension as a condition of the sentence, but once the sentence was discharged in 1999, the suspension was discharged as well. Parpart should have appealed the denial of his request for reinstatement rather than disregarding it and driving without a license, but because the 1994 sentence was discharged, the Department's authority to suspend Parpart's license for each of the subsequent violations was limited to 1 year, pursuant to 61-5-208. Thus, because Parpart's two 1-year suspensions would have ended in 2002, Parpart was entitled to reinstatement of driving privileges upon compliance with 61-5-218. Parpart v. Dept. of Justice, 2004 MT 4, 319 M 182, 84 P3d 1 (2004).

Payment of Child Support Improper Condition of Sentence for Felony DUI — Victim and Correlation to Underlying Offense Necessary for Imposition of Restitution: Horton was arrested for DUI, and a search of his driving record revealed nine prior DUI convictions. A further search showed that Horton also owed more than $47,000 in back child support. Horton was charged with felony DUI, with driving with a suspended or revoked license, as a habitual traffic offender operating a motor vehicle, and with felony nonsupport. By plea agreement, Horton agreed to plead guilty to the traffic offenses in exchange for dismissal of the nonsupport charge. The plea agreement stated that the state would recommend a 13-month sentence to be served in prerelease, followed by 4 years of probation, and, as a condition of the probationary sentence, provided that Horton would also make regular child support payments plus an additional sum monthly toward the support arrearage. As set out in the agreement, Horton pleaded guilty to the traffic offenses, and the nonsupport charge was dismissed. At sentencing, the habitual traffic offender charge was subsequently dismissed for failure of the state to prove that a valid habitual offender designation was in place at the time of the offense, and in addition, Horton's counsel objected to the court ordering payment of any child support arrearage, arguing that because the nonsupport charge had been dismissed, Horton would be paying restitution on a count for which he had not been convicted. Nevertheless, the court ordered Horton to pay support and promised to revoke his probation and sentence him to 4 years in prison with no parole if support was not paid. On appeal, Horton argued that the District Court abused its discretion and exceeded statutory mandates when it required him to pay restitution for an offense that was dismissed, citing St. v. Brown, 263 M 223, 867 P2d 1098 (1994), for the position that restitution is statutorily limited to the victim of the crime and that because there was no victim who sustained pecuniary or economic loss as a result of the felony DUI or driving with a suspended or revoked license, restitution was inappropriate. The state argued that Horton was attempting to receive the benefit of the plea agreement—having the felony nonsupport charge dismissed—without holding up his end of the bargain by paying child support. The Supreme Court noted that a plea agreement is subject to contract law and that the court will not assist a defendant in escaping the obligations of a plea agreement once its benefits are received. However, the court also pointed out that a District Court's authority to impose sentences in criminal cases is defined and constrained by statute. The statutory authority for payment of restitution is in 46-18-201, which limits payment of restitution to the victim of a crime for which a defendant is convicted, and because Horton was not convicted of nonsupport, there was no victim to whom Horton could be ordered to pay restitution. The state also contended that ordering Horton to pay child support was proper because under 46-18-202(1), a sentencing court may impose any condition reasonably related to the objectives of rehabilitation and the protection of the victim and society. The Supreme Court noted that under St. v. Ommundson, 1999 MT 16, 293 M 133, 974 P2d 620 (1999), a sentencing condition must have some correlation or connection to the underlying offense, but there was no correlation or connection between Horton's conviction for DUI and ordering him to pay child support. Thus, the Supreme Court ordered that the portion of Horton's sentence requiring payment of child support be stricken. St. v. Horton, 2001 MT 100, 305 M 242, 25 P3d 886 (2001), followed in St. v. Setters, 2001 MT 101, 305 M 253, 25 P3d 893 (2001).

Officer's Knowledge of Vehicle Owner's Revoked License Sufficient Basis for Suspicion of Criminal Activity to Warrant Stopping Vehicle: Deputy Keintz observed a vehicle displaying a distinctive personalized license plate being driven by a female south of Missoula. The officer recognized the license plate, recalled the prior arrest and license suspension of the vehicle owner, and initiated a traffic stop. Halvorson was the owner and driver of the vehicle and was ticketed for driving with a suspended license. On appeal, Halvorson contended that the officer did not have sufficient information to form a particularized suspicion that the occupant of the vehicle was or had been engaged in criminal activity to justify stopping the vehicle. Applying the criteria in St. v. Gopher, 193 M 189, 631 P2d 293 (1981), the Supreme Court followed St. v. Pike, 551 NW 2d 919 (Minn. 1996), in holding that an officer's knowledge that the owner of a vehicle has a revoked driver's license is enough to form the basis of a reasonable suspicion of criminal activity when the officer observes the vehicle being driven, as long as the officer remains unaware of any facts that would render unreasonable an assumption that the owner is driving the vehicle. St. v. Halvorson, 2000 MT 56, 299 M 1, 997 P2d 751, 57 St. Rep. 270 (2000), followed in Billings v. Costa, 2006 MT 181, 333 M 84, 140 P3d 1070 (2006). Costa was followed in St. v. Neil, 2009 MT 128, 350 M 268, 207 P3d 296 (2009).

Requirement of Payment of Reinstatement Fee Not Violation of Ex Post Facto Law: Cooney argued that under the law as it existed prior to 1989, the revoked status of his license would have been removed whether or not he paid any fee when his license expired by its own terms and that therefore the application of the new law requiring payment of a fee before the revoked status of a license may be changed was an ex post facto violation as applied to him. The Supreme Court held that the application of the law did not violate the ban on ex post facto legislation because it did not change the legal consequences of Cooney's prior conduct and that in addition, the 1989 amendment was intended to clarify that a period of revocation continues until a defendant pays the required fee. St. v. Cooney, 284 M 500, 945 P2d 891, 54 St. Rep. 967 (1997).

Reasonable Time for Preliminary Examination or Leave to File Information — Time for Commencement of "Reasonable Time" — Higley Clarified: McElderry was arrested on October 14 for DUI, fifth offense; reckless driving; and driving while her license was revoked. On October 16, she made her initial appearance in Lake County Justice's Court and was charged by complaint with the offenses for which she was arrested. On October 25, the state filed a motion in District Court for leave to file an information. The motion was granted on October 28, and an information was filed the same day. On October 29, McElderry filed a motion in District Court to dismiss the charges, arguing that 46-10-105, as interpreted by the Supreme Court in St. v. Higley, 190 M 412, 621 P2d 1043 (1980), required that a determination of probable cause be made within 10 days after a defendant's initial appearance. The District Court dismissed the information, reasoning that the state failed to hold a preliminary examination in Justice's Court or to obtain leave from the District Court to file the information within the reasonable time required by 46-10-105. The Supreme Court held that the District Court erred in calculating the reasonable time as beginning with the time of McElderry's arrest because the plain language of 46-10-105 requires that the period be calculated from the date of initial appearance of the defendant. The Supreme Court therefore recalculated the total delay at 12 days, rather than 14 days. The Supreme Court further explained that its use of the 10-day time period in Higley was intended to mean that the 10-day period at issue in that case was not unreasonable but was not intended to limit the period of reasonable time to 10 days in all cases. Therefore, the Supreme Court held that the District Court erred in interpreting Higley to apply a 10-day limitation in every case. Because the District Court erred in determining the start of the reasonable time and in applying Higley, the Supreme Court held that a new time must be calculated. However, the Supreme Court was unable to tell how the District Court would properly apply its discretion in redetermining a reasonable time and therefore vacated the judgment of the District Court and remanded the case for further proceedings consistent with the Supreme Court's opinion. St. v. McElderry, 284 M 365, 944 P2d 230, 54 St. Rep. 922 (1997), followed in St. v. Robison, 2003 MT 198, 317 M 19, 75 P3d 301 (2003).

61-5-213. Conviction defined.

Compiler's Comments

2005 Amendment: Chapter 428 in first sentence after "this chapter" substituted "part 8 of chapter 8, chapter 11, and as it relates to any state or local law regulating the operation of a motor vehicle on highways or mandating the revocation or suspension of a driver's license or driving privilege" for "and 61-11-101 and 61-11-102" and after ""conviction"" substituted "means:

(1) a plea of guilty or nolo contendere accepted by the court;

(2) an adjudication of guilt that has not been vacated by the appropriate court;

(3) a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal;

(4) a forfeiture of bail or collateral deposited to secure the person's appearance in court that has not been vacated;

(5) the payment of a fine or court cost, regardless of whether it is suspended or rebated; or

(6) the violation of a condition of release without bail, regardless of whether the condition is imposed as part of probation" for "shall mean a final conviction, except that the department shall record a deferred imposition of sentence as a conviction if the underlying offense is a felony. Also, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction"; and made minor changes in style. Amendment effective October 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

1991 Amendment: At end of first sentence inserted exception clause.

61-5-214. Mandatory suspension for failure to appear or comply with criminal sentence — administrative fee — notice.

Compiler's Comments

2019 Amendment: Chapter 348 in (1)(b) at end deleted "including but not limited to the payment of a fine, costs, or restitution as provided in 46-18-201(6)"; in (2)(a) at end deleted "including the payment of any assessed fines, costs, or restitution"; and made minor changes in style. Amendment effective May 7, 2019.

Transition: Section 4, Ch. 348, L. 2019, provided: "(1) A person whose driver's license is currently suspended because the person failed to comply with a court order for the payment of fines, fees, costs, or restitution may file a petition with the court that issued the order of suspension. If the court finds that the person's license was suspended because of the failure to pay fines, fees, costs, or restitution and not for another legal reason, the court shall order the department of justice to reinstate the person's driver's license.

(2) The reinstatement fee required by 61-5-218(1) must be waived by the department for a person whose driver's license is reinstated pursuant to [this act]."

Retroactive Applicability: Section 6, Ch. 348, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to a person whose driver's license was suspended prior to [the effective date of this act] [May 7, 2019] due to failure to comply with a sentencing order that imposed a duty to pay fines, fees, or restitution in a criminal case."

2009 Amendment: Chapter 360 inserted (1)(a) and (1)(b) concerning failure to appear and failure to comply with sentence; deleted former (1)(a) through (1)(c) that read: "(a) is charged with or convicted of a violation of chapters 3 through 10 of this title or fails to comply with a sentence imposed pursuant to 46-18-201;

(b) (i) failed to post the set bond amount or appear upon an issued complaint, summons, or court order;

(ii) after posting a driver's license in lieu of bail, failed to appear upon an issued complaint, summons, or court order; or

(iii) when assessed a fine, costs, or restitution of $100 or more, failed to pay the fine, costs, or restitution; and

(c) received prior written notice that the driver's license or driving privileges of the person would be suspended upon:

(i) failure to post bond or appear on an issued complaint, summons, or court order;

(ii) failure to appear after posting a driver's license in lieu of bond; or

(iii) failure to pay assessed fines, costs, or restitution"; in (2)(a) near middle after "court or" substituted "complied with the sentence imposed pursuant to 46-18-201, including the payment of any" for "paid the"; in (3)(a) inserted first sentence providing for written notice, in second sentence at beginning substituted "Initial notice of the possibility of a license suspension must either" for "notice required under this section may", and near middle following "sent by" substituted "certified" for "first-class"; in (3)(b) near middle following "imminent" substituted remainder of subsection regarding contesting suspension for "and of the probable consequences of a suspension unless the person appears or pays within a specified number of days"; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendments — Composite Section: Chapter 437 in (1)(a) at end after "title" inserted "or fails to comply with a sentence imposed pursuant to 46-18-201". Amendment effective October 1, 2003.

Chapter 465 in (1) before "license" inserted "driver's", after "person" deleted "immediately", after "receipt of a" substituted "report" for "certified copy of a docket page or other sufficient evidence", and after "court" inserted reference to certified report in form prescribed by department; inserted (1)(b)(ii) referring to failure to appear after posting driver's license in lieu of bail; inserted (1)(c)(ii) referring to failure to appear after posting driver's license in lieu of bond; in (2)(a) after "has" deleted "paid the reinstatement fee and"; inserted (2)(b) referring to payment of administrative fee when license held in lieu of bail; inserted (4) requiring deposit of administrative fee in county or city general fund; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 3, Ch. 437, L. 2003, provided: "[This act] applies to sentences imposed for offenses committed on or after [the effective date of this act]." Effective October 1, 2003.

1995 Amendment: Chapter 441 in (1), in two places, substituted "person" for "operator"; in (1)(a), after "charged with", inserted "or convicted", deleted reference to 61-5-302 through 61-5-306 and 61-5-309, extended applicability to chapters 3 through 10, and after "title" deleted "or is guilty of a criminal offense and was driving or was in actual physical control of a motor vehicle when the offense occurred"; in (1)(b)(i) substituted "appear upon issued complaint, summons, or court order" for "appear as ordered by the court or appear upon issued summons"; at beginning of (1)(b)(ii) deleted "failed to forfeit the posted bond amount or"; substituted (1)(c) concerning written notice of possible suspension for former text that read: "received notice, evidenced by a signed receipt for a certified letter or by a statement signed before the court of the provisions of this section, including the reinstatement fee"; inserted (2) concerning duration of suspension; and inserted (3) authorizing notice to be included on summons or complaint and notice to appear.

1989 Amendments: Chapter 83 in introductory clause, in two places after "operator", deleted "or chauffeur"; and in (1) deleted "chapter 12, part 6".

Chapter 263 in introductory clause, in two places after "operator", deleted "or chauffeur"; in (1), at beginning, substituted "is charged with" for "is guilty of", near middle deleted a reference to chapter 12, part 6, and inserted a reference to chapter 6; and made minor changes in phraseology.

Case Notes

Constitutionality of Statute Requiring Mandatory Suspension of Driver's License for Failure to Appear or Pay Fine — Matthews Applied: Pyette was fined $270 in Justice's Court for traffic violations and entered a time-pay contract that allowed monthly payments. If the payments were not made, Pyette was advised that indefinite suspension of the driver's license would occur until payments were made and a reinstatement fee was paid. Pyette made two payments but not the remainder of the payments. A second notice was sent to Pyette stating that action was required within 10 days or the license would be suspended. Pyette did nothing and was notified that the driver's license was suspended pursuant to this section for failure to pay the fine, but the notice stated that the license could be reinstated upon the payment of fees if Pyette appeared before the court. Again, Pyette did nothing. About 6 months later, Pyette was stopped for speeding and cited for driving with a suspended license. Pyette moved to dismiss the driving-with-suspended-license charge on grounds that this section was unconstitutional on its face for failure to provide for a hearing prior to license suspension in violation of due process. The District Court agreed and ordered the Justice's Court to dismiss the charge. The state appealed. The Supreme Court noted that the statute was presumed constitutional and that the burden was on Pyette to prove otherwise. Once issued, a driver's license becomes a property interest that may not be suspended or revoked without procedural due process. Challenges to statutes based on a violation of due process rest on lack of notice and may be overcome when reasonable persons are advised what must be done to avoid a certain result. If a person of ordinary intelligence is given fair notice of what is required to forestall an adverse result from the application of a statute, the statute is not unconstitutionally vague. Under Matthews v. Eldridge, 424 US 319 (1976), when the adequacy of notice of a proposed action is given pursuant to a statute providing for the revocation of a driver's license, three factors are considered: (1) the private interest that will be affected by the official action; (2) the risk of erroneous deprivation of the interest through the procedure used and the probable value, if any, of additional or substitute safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that additional or substitute procedures would entail. In this case, the Matthews test was met. The notice provided to Pyette that the license was to be suspended if Pyette did not appear before the court, although not perfect, was sufficient to satisfy due process. The Supreme Court reversed. St. v. Pyette, 2007 MT 119, 337 M 265, 159 P3d 232 (2007).

61-5-215. Provisional licenses prohibited.

Compiler's Comments

2003 Amendments — Composite Section: Chapters 133 and 465 deleted former (2) that read: "(2) A person whose license is suspended under 61-5-214 shall pay a reinstatement fee of $25 to the court for deposit in the state general fund"; and made minor changes in style. Chapter 133 amendment effective July 1, 2003, and Ch. 465 amendment effective October 1, 2003.

Applicability: Section 6, Ch. 133, L. 2003, provided: "[This act] applies to the reinstatement of a driver's license or driving privilege that is suspended or revoked on or after July 1, 2003."

61-5-216. Reinstatement of license.

Compiler's Comments

2019 Amendment: Chapter 348 near middle after "bond" deleted "or paid the fine, costs, or restitution amounts"; and made minor changes in style. Amendment effective May 7, 2019.

Transition: Section 4, Ch. 348, L. 2019, provided: "(1) A person whose driver's license is currently suspended because the person failed to comply with a court order for the payment of fines, fees, costs, or restitution may file a petition with the court that issued the order of suspension. If the court finds that the person's license was suspended because of the failure to pay fines, fees, costs, or restitution and not for another legal reason, the court shall order the department of justice to reinstate the person's driver's license.

(2) The reinstatement fee required by 61-5-218(1) must be waived by the department for a person whose driver's license is reinstated pursuant to [this act]."

Retroactive Applicability: Section 6, Ch. 348, L. 2019, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to a person whose driver's license was suspended prior to [the effective date of this act] [May 7, 2019] due to failure to comply with a sentencing order that imposed a duty to pay fines, fees, or restitution in a criminal case."

2003 Amendments — Composite Section: Chapter 133 near middle after "fee" inserted "required under 61-2-107 or 61-5-218 has been paid" and after "shall" deleted "immediately"; and made minor changes in style. Amendment effective July 1, 2003.

Chapter 465 after "restitution amounts" inserted reference to administrative fee, after "reinstatement fee" inserted reference to 61-2-107 and 61-5-218, and before "reinstate" deleted "immediately"; and made minor changes in style. Amendment effective October 1, 2003.

The amendments to this section made by sec. 7, Ch. 465, L. 2003, were replaced by sec. 8, Ch. 465, L. 2003, a coordination section.

Applicability: Section 6, Ch. 133, L. 2003, provided: "[This act] applies to the reinstatement of a driver's license or driving privilege that is suspended or revoked on or after July 1, 2003."

1989 Amendment: In two places, after "operator", deleted "or chauffeur".

61-5-218. License reinstatement fee following license suspension or revocation.

Compiler's Comments

2021 Amendment: Chapter 498 in (2)(a) substituted "61-8-1016" for "61-5-205 or 61-8-402". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2009 Amendment: Chapter 360 inserted (2)(c) providing for a waiver of the reinstatement fee; and made minor changes in style. Amendment effective July 1, 2009.

Effective Date: Section 5, Ch. 133, L. 2003, provided: "[This act] is effective July 1, 2003."

Applicability: Section 6, Ch. 133, L. 2003, provided: "[This act] applies to the reinstatement of a driver's license or driving privilege that is suspended or revoked on or after July 1, 2003."

Case Notes

Driver's License Suspension Limited to One Year When Original Sentence and Suspension Discharged: Following his involvement in a fatal car accident in 1994, Parpart was sentenced to a 2-year prison sentence followed by an 8-year placement in an appropriate program, and Parpart's driver's license was suspended for the entire 10-year period. In 1999, Parpart's sentence was discharged, and he requested reinstatement of his driver's license in 2000, but the request was denied. During the following year, Parpart was twice convicted of driving with a suspended license. The Department of Justice, Motor Vehicle Division, assumed that Parpart's 1994 suspension extended through 2004 and that any subsequent violations required continuation for a like period under 61-5-212, so two additional 10-year suspension periods were added for each violation, extending the suspension to 2024. Parpart challenged the constitutionality of the initial license suspension and the two subsequent license suspensions. The District Court granted summary judgment for the Department, and Parpart appealed. Without addressing the constitutional issues, the Supreme Court held that the sentencing court had the authority to impose the initial license suspension as a condition of the sentence, but once the sentence was discharged in 1999, the suspension was discharged as well. Parpart should have appealed the denial of his request for reinstatement rather than disregarding it and driving without a license, but because the 1994 sentence was discharged, the Department's authority to suspend Parpart's license for each of the subsequent violations was limited to 1 year, pursuant to 61-5-208. Thus, because Parpart's two 1-year suspensions would have ended in 2002, Parpart was entitled to reinstatement of driving privileges upon compliance with this section. Parpart v. Dept. of Justice, 2004 MT 4, 319 M 182, 84 P3d 1 (2004).

61-5-219. Discount on license reinstatement fee — completion of driver rehabilitation program.

Compiler's Comments

Effective Date: Section 16, Ch. 556, L. 2003, provided that this section is effective on passage and approval. Approved May 5, 2003.

61-5-231. Authorization of probationary license by DUI court.

Compiler's Comments

2021 Amendment: Chapter 498 in (1) after "drugs under" substituted "61-8-1002(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e), driving with excessive alcohol concentration under 61-8-1002, or aggravated driving under the influence as defined in 61-8-1001 is participating in a DUI court as defined in 61-8-1001" for "61-8-401 or 61-8-411, driving with excessive alcohol concentration under 61-8-406, or aggravated driving under the influence under 61-8-465 is participating in a DUI court" and near end substituted "61-8-1010" for "61-8-442"; and deleted former (3) that read: "(3) For purposes of this section, "DUI court" means any court that has established a special docket for handling cases involving persons charged with violations under 61-8-401, 61-8-406, 61-8-411, or 61-8-465 and that implements a program of incentives and sanctions intended to assist a participant in completing treatment ordered pursuant to 61-8-732 and ending the participant's criminal behavior associated with driving under the influence of alcohol or drugs or with excessive alcohol concentration." Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2015 Amendment: Chapter 424 in (1) after "61-8-406" inserted "or aggravated driving under the influence under 61-8-465"; in (3) after "61-8-411" inserted "or 61-8-465"; and made minor changes in style. Amendment effective May 5, 2015.

Applicability: Section 22, Ch. 424, L. 2015, provided: "[This act] applies to offenses committed on or after [the effective date of this act]." Effective May 5, 2015.

2013 Amendment: Chapter 153 in (1) and (3) inserted references to 61-8-411; and made minor changes in style. Amendment effective October 1, 2013.

Effective Date: This section is effective October 1, 2011.

Applicability: Section 7, Ch. 149, L. 2011, provided: "[This act] applies to offenses committed on or after [the effective date of this act]." Effective October 1, 2011.

61-5-232. Restricted-use driving permit — conditions — definitions.

Compiler's Comments

2019 Amendment: Chapter 335 in (2) deleted former first sentence that read: "The department may adopt rules to determine the process for issuance, withdrawal, and monitoring of a restricted-use driving permit." Amendment effective May 7, 2019.

Effective Date: Section 5, Ch. 358, L. 2015, provided that this section is effective July 1, 2015.

Part 3
Miscellaneous Provisions

Part Compiler's Comments

Legislative Audit Committee Analysis Required: Section 39, Ch. 496, L. 1997, provided: "(1) The legislative audit committee shall conduct or have conducted an analysis of alternative methods of classification, valuation, and taxation of automobiles and trucks having a manufacturer's rated capacity of 1 ton or less. The analysis must include:

(a) alternative methods of valuation and taxation;
(b) imposition of a flat tax or fees in lieu of taxes;
(c) multiyear licensing;
(d) cost-effectiveness and public convenience of alternative methods of classifying motor vehicles and of collecting motor vehicle taxes or fees;
(e) anticipated costs and revenue of alternative systems compared with the present system of classifying, valuing, and taxing motor vehicles; and
(f) alternative methods for formulas based on revenue allocations to counties.
(2) The committee shall report the results of its analysis to the 56th legislature."

61-5-301. Indication on driver's license or identification card of intent to make anatomical gift or of living will declaration.

Compiler's Comments

2013 Amendment: Chapter 194 in (1) substituted "An application furnished by the department for the issuance or renewal of a driver's license under this chapter or for the issuance of an identification card under Title 61, chapter 12, part 5, must include" for "The department of justice shall provide on each driver's license"; in (2) substituted "when applying for or renewing a driver's license or when applying for an identification card" for "at the time of application for a new driver's license or for a renewal"; and in (4) substituted last sentence concerning organ donor symbols for "This statement must be printed on a sticker that the donor may attach permanently to the back of the donor's driver's license." Amendment effective April 12, 2013.

2005 Amendment: Chapter 296 inserted (1)(b) regarding executed declaration under 50-9-103; in (2) and (3) after "anatomical gift" inserted reference to declaration executed under 50-9-103; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 230 in (5) substituted language requiring department to electronically transfer information on persons who volunteer to donate organs or tissue when applying for a driver's license or identification card to the registry for "The department shall also furnish the licensee a means of revoking the document of gift upon the license"; and made minor changes in style. Amendment effective October 1, 2003.

Preamble: The preamble attached to Ch. 230, L. 2003, provided: "WHEREAS, more than 80,000 people are currently waiting for life-saving organ transplants on the national transplant waiting list, of which 1,200 persons live in our region, and 17 people die each day as a result of the shortage of donated organs."

1989 Amendment: Near middle of (1) and in middle of (4) substituted reference to 72-17-201 for reference to 72-17-204.

1987 Amendments: Chapter 204 in (2), after "application", inserted "for a new driver's license or for a renewal" and inserted last sentence requiring Department to ask applicant orally whether anatomical gift is intended.

Chapter 443 near beginning of (1) substituted "driver's license" for "operator's or chauffeur's license". Amendment effective January 1, 1988.

1985 Amendment: Inserted (2) and (3) requiring department to provide information regarding anatomical gifts and to provide a space on operator's or chauffeur's license for indicating that licensee has executed document of intent to make anatomical gift.

61-5-302. Unlawful use of license or identification card.

Compiler's Comments

2007 Amendment: Chapter 180 in (1), (2), (3), and (6) inserted "or tribal identification card"; and made minor changes in style. Amendment effective October 1, 2007.

1993 Amendment: Chapter 195 in (5), after "driver's license", deleted "commercial vehicle operator's endorsement"; and made minor changes in style.

1991 Amendment: Throughout section inserted "or identification card"; and made minor changes in style.

1987 Amendment: Substituted "driver's license" for "operator's or chauffeur's license" throughout section; and in (5) inserted "or commercial vehicle operator's endorsement". Amendment effective January 1, 1988.

1985 Amendment: In (4) substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.3.411 Surrender of suspended, revoked, or canceled driver's license.

61-5-304. Permitting unauthorized minor to drive.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Knowingly Construed: Instructing 12-year-old son not to ride motorbike on highway did not relieve father of liability for knowingly permitting such offense, since the basis of his liability was the endangerment of others by the entrusting of a motorbike to an unlicensable minor. Sedlacek v. Ahrens, 165 M 479, 530 P2d 424 (1974).

61-5-305. Employing driver without license.

Compiler's Comments

Code Commissioner Correction: After "licensed" the Code Commissioner deleted "and endorsed". Chapter 195 changed references in statutes from commercial motor vehicle operator's endorsement to references to commercial driver's license. The Code Commissioner has made the change in this section pursuant to the authority provided in sec. 84, Ch. 10, L. 1993.

1987 Amendment: Substituted "commercial vehicle operator" for "chauffeur of a motor vehicle" and after "licensed" inserted "and endorsed". Amendment effective January 1, 1988.

Administrative Rules

Title 23, chapter 3, subchapter 5, ARM Licensing operators of commercial motor vehicles.

61-5-306. Renting motor vehicle to another.

Compiler's Comments

1993 Amendment: Chapter 195 at end of (3) substituted "commercial driver's license" for "commercial vehicle operator's endorsement"; and made minor changes in style.

1987 Amendment: In (2) substituted "driver's license" for "operator's or chauffeur's license"; inserted (3) prohibiting the rental of a commercial motor vehicle to person without commercial vehicle operator's endorsement; in (4), near end of first sentence, inserted "and expiration date" and at end of first sentence deleted "and the date and place when and where said license was issued"; and made minor changes in phraseology. Amendment effective January 1, 1988.

1985 Amendment: In (3) substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

Title 23, chapter 3, subchapter 5, ARM Licensing operators of commercial motor vehicles.

61-5-307. Penalty for misdemeanor.

Case Notes

Power of State to Enact and Courts to Enforce Laws Regulating Motor Vehicles: Appellant, appearing pro se, challenged as unconstitutional laws requiring driver's license, mandatory insurance, and vehicle registration. The Supreme Court held that the issues raised by the appellant were frivolous, unreasonable, and groundless in that the court had previously recognized the state's power to regulate motor vehicles in the interests of public safety at the expense of individual rights. Whitefish v. Hansen, 237 M 105, 771 P2d 976, 46 St. Rep. 657 (1989).

61-5-308. Uniformity of interpretation.

Compiler's Comments

Source: Chapter 267, L. 1947, was based on the provisions of the Uniform Drivers' Licensing Laws Annotated, promulgated by the National Highway Traffic Safety Administration, U.S. Department of Transportation.

61-5-309. Unlawful issuance of license or identification card.

Compiler's Comments

1985 Amendment: At end substituted reference to department of justice for reference to division of motor vehicles.

61-5-310. Displaying electronic driver's license.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 4
Driver License Compact

61-5-401. Driver License Compact.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

Administrative Rules

ARM 23.3.143 National driver registration.

Case Notes

Denial of Montana Driver's License Based on Suspension of Driving Privileges in Michigan: In Chain v. Dept. of Motor Vehicles, 2001 MT 224, 306 M 491, 36 P3d 358 (2001), the Supreme Court held that the Department of Motor Vehicles had to accept Chain's driver's license application but could still choose to deny Chain a license after completing an investigation. Chain then applied for a Montana driver's license, but after an investigation, the application was denied because Chain had been convicted in Michigan of twice operating a vehicle under the influence of liquor, twice having an unlawful bodily alcohol content while driving, driving with a suspended or revoked driver's license five times, and refusing to be tested for intoxication five times. In total, Michigan authorities took 16 separate actions against Chain's driving privileges, including five suspensions, two revocations and nine denial/revocations, resulting in suspension of Chain's Michigan driving privileges until 2022. Chain filed an action in District Court requesting that he be issued a driver's license, but the District Court denied Chain's claim on grounds that Chain could not receive a license in Montana when his driving privileges were suspended or revoked elsewhere. Chain appealed, but the Supreme Court affirmed. Giving Chain's Michigan suspensions and revocations the same force and effect as if they were committed in Montana, the state was within its discretion to deny Chain a license. Chain v. Motor Vehicle Div., 2004 MT 216, 322 M 381, 96 P3d 1135 (2004).

Driving While Ability Impaired in Colorado Not Similar to Driving Under the Influence in Montana — Felony DUI Sentence Reversed — Montanye Reversed: The District Court found that Colorado law was substantially similar to Montana's DUI statute, and based on McNally's four prior DWAI convictions in Colorado, the court sentenced McNally for felony DUI. McNally appealed on grounds that the Colorado convictions did not constitute previous convictions under a similar statute for purposes of determining the number of prior DUI convictions under Montana law. The Supreme Court examined Colorado law and agreed with McNally. Colorado law allows a person to be convicted for DUI if the person's ability is impaired to the slightest degree, which is a lower standard than Montana law. Therefore, McNally's prior Colorado convictions did not qualify as convictions for purposes of enhancing McNally's conviction to a felony, and McNally's felony conviction was reversed. St. v. McNally, 2002 MT 160, 310 M 396, 50 P3d 1080 (2002), following Helena v. Davis, 222 M 492, 723 P2d 224 (1986), and overruling Montanye v. St., 262 M 258, 864 P2d 1234 (1993). However, see St. v. Young, 2012 MT 251, 366 Mont. 527, 289 P.3d 110, ruling that Montana and Idaho DUI statutes were sufficiently similar to uphold felony sentence.

Driver's License Application Allowed One Year After Suspension or Revocation — Department's Discretionary Power to Issue License: Before moving to Montana, Chain lived in Michigan, where he was convicted of DUI on at least four separate occasions, which resulted in suspension or revocation of his driving privileges. Once here, Chain attempted to apply for a Montana driver's license, but the Department of Motor Vehicles cited 61-5-105 and refused to let him apply because his driving privileges were still suspended or revoked in Michigan. Chain requested that the District Court order the Department to allow the application and to issue a license if all the application requirements were met, but the request was denied. Chain argued on appeal that the Department should have instead applied 61-5-208, which limits revocations or suspensions to 1 year and allows application for a new license at the end of that period. Chain also cited the

Driver License Compact in this section as support for the proposition that he should have an opportunity to reapply 1 year after revocation. The Supreme Court noted nothing in the record to indicate whether Michigan was a member of the Compact and thus declined to apply this section, but the court found Montana licensing statutes to be dispositive. The court agreed that 61-5-105 prohibits issuance of a license if driving privileges are still suspended or revoked but found nothing in the statutes that disallowed application for a license. Under 61-5-107, after receiving an application, the Department should have requested a copy of Chain's driving record from Michigan and then analyzed it in the same manner as if it had been amassed in Montana. Once 1 year had passed after Chain's revocation or suspension, he could apply for a license like any other citizen in similar circumstances, as provided in 61-5-208, and after investigation, the Department had the discretionary power whether or not to issue a license. Chain v. Dept. of Motor Vehicles, 2001 MT 224, 306 M 491, 36 P3d 358 (2001).

Out-of-State Convictions in Home State — Driver License Compact Not Applicable — Nonjurisdictional Claims Waived by Guilty Plea: Wheeler was charged with DUI, fifth offense. The affidavit in support of the information alleged that Wheeler had four previous DUI convictions. Three of the convictions occurred in Colorado. Wheeler moved to expunge those convictions, arguing that those convictions would have been expunged if they had occurred in Montana. The state argued that Colorado was Wheeler's home state when he received the DUI convictions, that the Driver License Compact did not apply, and that Wheeler had no reasonable expectation that the Colorado convictions would be expunged. The District Court denied the motion to expunge. The Supreme Court held that the expungement claim is a nonjurisdictional claim that was waived by Wheeler's guilty plea and affirmed the District Court decision. St. v. Wheeler, 285 M 400, 948 P2d 698, 54 St. Rep. 1213 (1997).

Driving While Ability Impaired in New York Similar to Driving Under the Influence in Montana — License Suspension Affirmed: Montanye was arrested in New York for driving while impaired, and his driver's license was suspended in Montana under the reciprocal application of the Driver License Compact. Montanye contended that because conviction in New York of driving while impaired requires a lesser degree of intoxication than conviction for driving under the influence in Montana, the offenses are totally dissimilar and suspension of his license was improper. The Supreme Court noted that there were a few differences between the states' statutes, but that both laws deal with a driver's diminished ability to drive while under the influence of alcohol and both provide for suspension of license as punishment and are thus substantially similar. Therefore, the District Court did not err in revoking Montanye's license under Montana law. Montanye v. St., 262 M 258, 864 P2d 1234, 50 St. Rep. 1541 (1993), overruled in St. v. McNally, 2002 MT 160, 310 M 396, 50 P3d 1080 (2002). See also St. v. Young, 2012 MT 251, 366 Mont. 527, 289 P.3d 110.

Violation in Another State Included in Habitual Offender Calculation: Defendant was declared a habitual traffic offender. In order to reach the point designation, a speeding violation from the state of Washington was included. Defendant contended that because violations of Montana speed limits mandated by federal fuel conservation conditions may not be included in the calculation, the Washington violation should not be included. The court found that the Washington violation would not be a mere conservation violation in Montana but a violation of the interstate nighttime speed limit. Under 61-5-401, Montana has adopted a Driver License Compact giving effect to violations committed in other jurisdictions. The Washington violation was correctly treated as a speeding violation in the habitual traffic offender calculation. State ex rel. Landon v. Macek, 208 M 172, 676 P2d 228, 41 St. Rep. 247 (1984).

61-5-402. Department as licensing authority — information and documents to be furnished.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-5-403. Reimbursement of compact administrator.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-5-405. Offenses furnishing ground for suspension or revocation of license — return to licensing jurisdiction of abstracts of court records and reports of conviction.

Compiler's Comments

2021 Amendment: Chapter 498 in (1) after "45-5-104" substituted "61-8-1002" for "61-8-401". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2011 Amendment: Chapter 235 in (1) near end substituted "61-7-105" for "61-7-103". Amendment effective October 1, 2011.

2009 Amendment: Chapter 348 inserted (2)(c) concerning careless driving resulting in death and reckless driving resulting in death; and made minor changes in style. Amendment effective October 1, 2009.

1995 Amendment: Chapter 354 in (1), after "61-8-401", substituted "the definition of felony as provided in 45-2-101" for "45-2-101(21)"; and made minor changes in style. Amendment effective April 11, 1995.

Severability: Section 18, Ch. 354, L. 1995, was a severability clause.

1991 Amendment: Inserted (3) requiring forwarding of court abstracts or reports of conviction and disallowing Department action under certain conditions.

1985 Amendment: In (2) substituted reference to department of justice for reference to division of motor vehicles.

1981 Amendment: Changed internal reference to section 45-2-101 in subsection (1) to reflect amendment of that section.

CHAPTER 6
RESPONSIBILITY OF VEHICLE USERS AND OWNERS

Chapter Collateral References

Uniform Motor Vehicle Accident Reparations Act, 14 U.L.A. 41 through 134.

Part 1
Motor Vehicle Insurance Responsibility and Verification

Part Case Notes

Underinsured Motorist Coverage Applied to Vehicle Rather Than Owner or Operator: Plaintiffs' vehicle was struck by a rental truck driven by an intoxicated driver. Plaintiffs obtained a default judgment against the driver and settled with the truck rental company and then sought benefits from their own insurer under their underinsured motorist policy. The policy provided for payment only after the limits of liability under any applicable bodily injury bonds or policies were exhausted. Thus, application of underinsured coverage was dependent on the available coverage on the vehicle at issue, which, in this case, was the rental truck that was covered by a $7 million bodily injury policy. That amount exceeded plaintiffs' damages, so the rental truck could not be considered underinsured, and plaintiffs were therefore not entitled to remuneration from their insurer. Mecca v. Farmers Ins. Exch., 2005 MT 260, 329 M 73, 122 P3d 1190 (2005), distinguishing Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114 (1998).

Antistacking Statutes Applicable to Specific Types of Coverage — Section Interpreted: In interpreting 33-23-204, the Supreme Court clarified three points regarding the statute: (1) it is directed at insurance against liability; (2) it is directed at insurance coverage that is required by law; and (3) it is concerned with liability insurance that is not only required but that is required by both parts 1 and 3 of Title 61, ch. 6. There are only three variations of coverage that meet these criteria, and those coverages are the per person, per vehicle, and property damage coverages. Underinsurance coverage and medical payment coverage do not qualify as insurance against liability but rather are excess or additional coverage designed to protect the first party insured; therefore, the prohibition against stacking in 33-23-203 does not apply to underinsurance and medical payment coverage. Farmers Alliance Mut. Ins. Co. v. Holeman, 278 M 274, 924 P2d 1315, 53 St. Rep. 904 (1996), distinguishing Grier v. Nationwide Mut. Ins. Co., 248 M 457, 812 P2d 347

(1991). See also Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Stacking of Optional Motor Vehicle Coverages Not Allowed — Underinsurance and Medical Payment Coverage Not Included: The U.S. District Court certified to the Montana Supreme Court the question of whether 33-23-203 prohibits the stacking of underinsured motorist coverage and medical payment coverage available under a policy of motor vehicle liability insurance when a premium is charged for coverage of each motor vehicle listed within the policy. The Supreme Court answered in the negative, noting that 33-23-203 does not allow stacking unless a liability policy provides otherwise. The antistacking provisions apply to any policy of motor vehicle insurance against liability now or hereafter required under 33-23-201 or Title 61, ch. 6, parts 1 and 3. However, the antistacking provision does not apply to underinsurance and medical payment coverage when a premium is charged for coverage of each motor vehicle listed within the policy because those coverages do not qualify as liability insurance. Farmers Alliance Mut. Ins. Co. v. Holeman, 278 M 274, 924 P2d 1315, 53 St. Rep. 904 (1996), distinguishing Grier v. Nationwide Mut. Ins. Co., 248 M 457, 812 P2d 347 (1991). See also Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Vehicle Owner Not Liable for Adult Daughter's Accident — Speculative and Conclusory Statements Insufficient to Raise Genuine Issue of Material Fact: The plaintiff sued the owner of a vehicle driven by the owner's adult daughter. The District Court granted the owner's motion for summary judgment. The Supreme Court held that summary judgment was proper because the plaintiff failed in the burden to raise any genuine issue of material fact that the daughter was the owner's agent at the time of the accident or that the owner negligently entrusted the vehicle to the daughter. As a matter of law, the owner was not liable for the daughter's alleged negligence merely by being the owner of the vehicle. Ulrigg v. Jones, 274 M 215, 907 P2d 937, 52 St. Rep. 1198 (1995).

Allowance of Greater Liability Protection for Named Insured Than for Permissive User: Nothing in the Motor Vehicle Safety-Responsibility Act or in the public policy of Montana prohibits an insurance agreement from affording a named insured greater liability protection than an omnibus insured, such as a renter. Guar. Nat'l Ins. Co. v. Kemper Financial Serv., 667 F. Supp. 714, 44 St. Rep. 1561 (D.C. Mont. 1987).

Family Exclusion Clause Void: A parent is not immune from a negligence action brought against him by a child under the age of emancipation injured in the operation of a motor vehicle. Therefore, a family exclusion clause in an automobile insurance policy obtained under the mandatory liability insurance law is void and unenforceable because 61-6-301 requires motorists to carry insurance against loss resulting from liability imposed by law for injury suffered by any person. If the policy had been certified under the Motor Vehicle Safety-Responsibility Act, the exclusion clause would have been invalid because liability under that act is "absolute". Transamerica Ins. Co. v. Royle, 202 M 173, 656 P2d 820, 40 St. Rep. 12 (1983), contrasted in Stutzman v. Safeco Ins. Co. of America, 284 M 372, 945 P2d 32, 54 St. Rep. 925 (1997), and Am. Family Mut. Ins. Co. v. Livengood, 1998 MT 329, 292 M 244, 970 P2d 1054, 55 St. Rep. 1336 (1998).

Insurance Coverage Not Mandated as to Nonowned Automobiles: The mandatory liability protection law does not incorporate the Motor Vehicle Safety-Responsibility Act except for 61-6-103, and thus the provisions of the latter Act do not apply to defendant's policy, and her contention that coverage as to nonowned automobiles is mandated by law is erroneous. St. Farm Mut. Auto. Ins. Co. v. Queen, 38 St. Rep. 608 (1981).

Intent of Legislature: The general legislative intent in enacting financial responsibility provisions of the Motor Vehicle Safety-Responsibility Act was: (1) to provide for voluntary and not compulsory automobile liability insurance for motorist who has not become involved in automobile accident; (2) to require compulsory proof of ability to respond in damages resulting from automobile accident after motorist becomes involved in such accident; and (3) to require compulsory proof of financial responsibility for future automobile accidents, from a motorist (a) convicted of certain driving offenses, or (b) who has outstanding unsatisfied judgment against him as a result of past automobile accident. A motorist who voluntarily carried ordinary automobile liability policy at time he became involved in accident was exempted from requirements of proof of ability to respond in damages whereas motorist who has neither been convicted nor forfeited bail for one of driving offenses referred to in Act nor who has outstanding unsatisfied judgment against him as result of previous automobile accident is not required to furnish proof of future financial responsibility at all. Boldt v. St. Farm Mut. Auto. Ins. Co., 151 M 337, 443 P2d 33 (1968).

61-6-101. Short title.

Compiler's Comments

2009 Amendment: Chapter 413 changed name from "Motor Vehicle Safety-Responsibility Act" to "Motor Vehicle Insurance Responsibility and Verification Act". Amendment effective October 1, 2009.

The amendment to this section by sec. 6, Ch. 387, L. 2009, was rendered void by sec. 28, Ch. 413, L. 2009, a coordination section.

61-6-102. Definitions.

Compiler's Comments

2009 Amendment: Chapter 413 inserted definitions of commercial automobile insurance coverage, insurer, low-volume insurer, motor vehicle liability policy, suspension, and system; in definition of license after "means" substituted current definition for "any license, temporary instruction permit, or temporary license issued under the laws of this state pertaining to the licensing of persons to operate motor vehicles"; and made minor changes in style. Amendment effective October 1, 2009.

The amendment to this section by sec. 7, Ch. 387, L. 2009, was rendered void by sec. 28, Ch. 413, L. 2009, a coordination section.

2005 Amendment: Chapter 542 substituted introductory clause for former text that read: "The following words and phrases, when used in this part, have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning"; inserted definition of person; deleted definition of ways of this state open to the public that read: ""Ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel and in common use by the public"; and made minor changes in style. Amendment effective January 1, 2006.

1985 Amendment: Inserted (6) defining ways of this state open to the public.

Case Notes

"Owner": A wife was co-owner (see 61-1-101 for definition of "owner") with her husband of a vehicle, but her registration, even though indivisible from that of her husband, was excluded from the operation of section 53-422, R.C.M. 1947 (now repealed), after the husband was involved in an accident with another vehicle. He became subject to the provisions of the section regarding suspension. State ex rel. Penhale v. St. Highway Patrol, 133 M 162, 321 P2d 612 (1958).

61-6-103. Motor vehicle liability policy minimum limits — other requirements.

Compiler's Comments

2015 Amendment: Chapter 216 in (1)(b)(iii) increased minimum requirement from $10,000 to $20,000. Amendment effective October 1, 2015.

Applicability: Section 2, Ch. 216, L. 2015, provided: "[This act] applies to motor vehicle insurance liability policies issued or renewed on or after January 1, 2016."

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 413 deleted former (1) that read: "A "motor vehicle liability policy", as the term is used in this part, means an owner's or operator's policy of liability insurance, certified as provided in 61-6-133 or 61-6-134 as proof of financial responsibility and issued, except as otherwise provided in 61-6-134, by an insurance carrier duly authorized to transact business in this state, to or for the benefit of the person named therein as insured"; and made minor changes in style. Amendment effective October 1, 2009.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

The amendment to this section by sec. 8, Ch. 387, L. 2009, was rendered void by sec. 28, Ch. 413, L. 2009, a coordination section.

1989 Amendment: In (2)(b)(iii) substituted "$10,000" for "$5,000"; near end of (3), before "policy", substituted "the operator's" for "an owner's"; in (7), after "termination", inserted "nonrenewal"; and made minor changes in phraseology.

Saving Clause: Section 3, Ch. 425, L. 1989, was a saving clause.

Effective Date — Applicability: Section 5, Ch. 425, L. 1989, provided: "[This act] is effective July 1, 1990, and applies to motor vehicle liability insurance policies issued, renewed, extended, or reinstated after June 30, 1990."

Case Notes

Extension of Insurance Exception to American Rule — Insured Eligible to Recover Both Taxable and Nontaxable Costs When Forced to Litigate: The plaintiff sued an insurer to obtain insurance benefits related to injuries she sustained in a car accident. After the jury found in her favor, she filed a memorandum of costs; however, she filed it after the 5-day deadline under 25-10-501. The District Court denied the entirety of her requested costs, including her nontaxable litigation expenses. The plaintiff appealed, arguing that the District Court had erred in applying the deadline to her nontaxable costs. The Supreme Court agreed and expressly extended its rulings in Mlekush v. Farmers Ins. Exch., 2015 MT 302, 381 Mont. 292, 358 P.3d 913, and Mlekush v. Farmers Ins. Exch., 2017 MT 256, 389 Mont. 99, 404 P.3d 704, by holding that the insurance exception to the American rule allows an insured to recover both taxable and nontaxable costs from an insurer when the insured is forced to litigate in order to recover the full benefit of the applicable policy. To recover nontaxable costs, the insured must submit a request at the same time as or before requesting attorney fees. King v. St. Farm Mut. Auto. Ins. Co., 2019 MT 208, 397 Mont. 126, 447 P.3d 1043.

Underinsured Motorist Claim — Verdict for Insured in Excess of Insurer's Last Offer — Recovery of Reasonable Attorney Fees — Extension of Insurance Exception to American Rule: When a first-party insured is compelled to pursue litigation and a jury returns a verdict in excess of the insurer's last offer to settle an underinsured motorist claim, the insurer must pay the first-party insured's attorney fees in an amount subsequently determined by the District Court to be reasonable. In addition, if a first-party insured goes to trial and obtains a verdict in excess of the insurer's last offer, it is prima facie proof that the insured was forced to assume the burden of legal action to obtain the full benefit of the policy, but if the policy limits are tendered prior to a verdict, the District Court may consider to what extent the insured assumed the burden of legal action to recover the full benefits of the insurance contract. Mlekush v. Farmers Ins. Exch., 2017 MT 256, 389 Mont. 99, 404 P.3d 704. See also King v. St. Farm Mut. Auto. Ins. Co., 2019 MT 208, 397 Mont. 126, 447 P.3d 1043, in which the Supreme Court extended its holding in the Mlekush cases to provide that the insurance exception to the American rule allows an insured to recover both taxable and nontaxable costs from an insurer.

Underinsured Motorist Coverage Applied to Vehicle Rather Than Owner or Operator: Plaintiffs' vehicle was struck by a rental truck driven by an intoxicated driver. Plaintiffs obtained a default judgment against the driver and settled with the truck rental company and then sought benefits from their own insurer under their underinsured motorist policy. The policy provided for payment only after the limits of liability under any applicable bodily injury bonds or policies were exhausted. Thus, application of underinsured coverage was dependent on the available coverage on the vehicle at issue, which, in this case, was the rental truck that was covered by a $7 million bodily injury policy. That amount exceeded plaintiffs' damages, so the rental truck could not be considered underinsured, and plaintiffs were therefore not entitled to remuneration from their insurer. Mecca v. Farmers Ins. Exch., 2005 MT 260, 329 M 73, 122 P3d 1190 (2005), distinguishing Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114 (1998).

Clause in Insurance Policy Excluding Coverage for Transported Property Valid: Plaintiffs were transporting snowmobiles on a trailer when they were involved in a multiple vehicle accident that resulted in damage to their vehicle and the destruction of the trailer and snowmobiles. The insurer covered the loss of the trailer, but declined to compensate for the loss of the snowmobiles on grounds that they were excluded from policy coverage, and plaintiffs filed suit to recover damages. The District Court held that the policy exclusion for damage to property being transported was valid and granted the insurer summary judgment. On appeal, plaintiffs contended that the policy provision violated 61-6-301, which mandates motor vehicle insurance. The Supreme Court agreed that an exclusion to mandatory coverage is void and unenforceable absent a statutory exclusion, but then noted that the statutory exclusion in this section allows a policy exclusion for damage to property transported by the insured. The court held that the exclusion in this section is not inconsistent with the purpose and intent of 61-6-301 and that because the policy provision was not void, there was no genuine issue of material fact and summary judgment was proper. Grimsrud v. Hagel, 2005 MT 194, 328 M 142, 119 P3d 47 (2005). See also Bain v. Gleason, 223 M 442, 726 P2d 1153 (1986), and Stutzman v. Safeco Ins. Co. of America, 284 M 372, 945 P2d 32 (1997).

Underinsured Motorist Coverage Not Necessarily Created by Mere Ownership of Insured Vehicle if Owner Not Named Insured on Policy:
Defendant insurer claimed that plaintiffs' claims in a 2002 action were barred by collateral estoppel and res judicata because of the prior holding in Lee v. USAA Cas. Ins. Co., 2001 MT 59, 304 M 356, 22 P3d 631 (2001). Applying the test in Haines Pipeline Constr., Inc. v. Mont. Power Co., 265 M 282, 876 P2d 632 (1994), for determining whether collateral estoppel barred the present action because it might be a relitigation of the 2001 case, the Supreme Court disagreed with defendant's assertion. Plaintiffs had not previously litigated whether defendant had a duty to defend and a duty to indemnify Hoss because that issue did not arise until defendant refused to indemnify Hoss and Hoss confessed judgment. Also, the issue of whether defendant had a duty to defend and a duty to indemnify Hoss was different from the issue in the 2001 case, which concerned whether Lee was a named insured under Hoss's policy, thereby entitling Lee to underinsured motorist benefits. Because the present issue was never litigated, there was never a final judgment on the merits, so defendant's collateral estoppel and res judicata arguments were inapplicable. Lee v. USAA Cas. Ins. Co., 2004 MT 54, 320 M 174, 86 P3d 562 (2004).

Lee's long-term cohabiting companion, Hoss, purchased insurance from USAA Casualty Insurance Co. (USAA) that covered two vehicles owned jointly by Lee and Hoss, but Lee was not a named insured on the USAA policy. As is typical, the policy language extended coverage to the named insured and the insured's spouse or family member by blood, marriage, or adoption, but did not cover a cohabiting partner unless the partner was driving or was a passenger in a covered vehicle. The policy included underinsured motorist (UIM) coverage that did not necessarily require that the covered person be driving or be a passenger in a covered vehicle, thereby potentially extending UIM coverage to Lee. Lee was injured in an accident in Louisiana while in a taxi and filed a UIM claim, contending that she was entitled to stack coverage under both vehicles. Although USAA initially indicated that Lee would be entitled to UIM coverage because she was a co-owner of the vehicles, the insurer later changed its position and denied coverage on grounds that because Lee was not a named insured and as a matter of law not a "covered person" under the relevant policy provisions, USAA had no obligation to treat her as insured. The District Court granted summary judgment for USAA, concluding that Lee was not an insured for purposes of UIM coverage under the express language of Hoss's policy and that Lee could not benefit from a policy to which she was not a party. On appeal, the Supreme Court agreed. The insurance agreement between USAA and Hoss could not be construed because of a patent ambiguity to confer the status of named insured upon Lee. The court declined to reform the insurance policy to include, as a matter of public policy, all owners of insured vehicles as named insureds under liability policies covering the owners' vehicles. It is the vehicle, not the driver, that is the focal concern of the mandatory liability laws. Those laws do not require that each named insured be the registered vehicle owner or that all registered owners be named insureds. Lee v. USAA Cas. Ins. Co., 2001 MT 59, 304 M 356, 22 P3d 631 (2001).

Insurer Required to Pay Undisputed Medical Coverage Without Settlement Agreement When Liability Reasonably Clear — No Bad Faith Claim for Pre-Watters Conditioned Settlement Offer: Defendant insurer offered to pay plaintiffs the policy limit of $1 million in exchange for a full release of claims against the insureds. Plaintiffs refused to provide a release, the case went to trial, and plaintiffs were awarded more than $3 million. Plaintiffs then counterclaimed against the insurer, claiming that refusal to pay the undisputed medical claims without a release violated 33-18-201(6) and (13). The Supreme Court noted that the purpose of 33-18-201 is to ensure prompt payment of damages for which an insurer is clearly obligated. Thus, pursuant to Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997), and Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626 (2000), the insurer had a duty to pay plaintiffs' undisputed medical expenses up to the limits of its coverage and without the benefit of a settlement agreement. Nevertheless, because the insurer made its settlement offer in 1998, more than 2 years prior to the Watters decision, the insurer had an arguably reasonable basis under 33-18-242 for asserting that it was entitled to condition payment of policy limits on plaintiffs' provision of a release of claims, so the insurer was not liable for acting in bad faith in violation of 33-18-201. Shilhanek v. D-2 Trucking, Inc., 2003 MT 122, 315 M 519, 70 P3d 721 (2003), overruling Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), and overruling Watters to the extent that Watters implies that an insurer's obligation under Ridley is limited to the minimum coverage required by the Motor Vehicle Safety-Responsibility Act. See also High Country Paving, Inc. v. United Fire & Cas. Co., 2019 MT 297, 398 Mont. 191, 454 P.3d 1210.

Accident Involving Multiple Liable Insureds — Maximum Insurance Coverage Limited to Policy Amount: In a case of first impression, the Supreme Court was asked to determine whether persons insured under one policy, who are both found legally liable for causing one accident, must each be covered by the mandatory limits in this section. The District Court found that Montana's vehicle insurance omnibus statutes do not require separate, full coverage for multiple insureds when each insured is liable for independent acts of negligence arising from one accident. The court reasoned that this section refers to each accident, not each separate act of negligence that may have contributed to causing the accident, and held that as a matter of law, once the injured person's damages resulting from the one accident exhaust the $50,000 policy limit, the insurer's obligation to cover any further claims ceases. The Supreme Court noted that if the Legislature ever intended to allow a double recovery system, it never expressly provided the language necessary for such an interpretation, but also noted that the language of this section does not expressly prohibit double recovery. Rather, the clear statutory language provides that an owner's policy must provide a base amount of coverage, subject to limits exclusive of interest and costs, with respect to each motor vehicle, not each insured, in the event that the vehicle causes damage to persons or property, regardless of who is behind the wheel. The legislative history provided no evidence that the Legislature ever contemplated or wished to require that the minimum amounts of liability could or should be increased depending on the number of insureds found liable for causing one accident, and the Supreme Court, declining to construe the statute in any way that would insert a particular and precise meaning that had been omitted, affirmed the District Court's conclusion that the insurer was obligated under these circumstances to pay the policy limit on behalf of its insureds, and no more. Infinity Ins. Co. v. Dodson, 2000 MT 287, 302 M 209, 14 P3d 487, 57 St. Rep. 1196 (2000).

No Direct Action Allowed Against Insurer Until Liability of Insured Established: Montana law does not allow a plaintiff to bring a direct action against an insurer until the liability of the insured has been established, unless such right is expressly sanctioned by the Legislature and not merely inferentially deduced. Safeco Ins. Co. of Ill. v. District Court, 2000 MT 153, 300 M 123, 2 P3d 834, 57 St. Rep. 604 (2000). See also Ulrigg v. Jones, 274 M 215, 907 P2d 937 (1995).

No Liability Per Se for Paying Mandatory Minimum Policy Limits — Avoiding Liability Through Coerced Economic Necessity: Guaranty National Insurance Co. (Guaranty) provided a minimum motor vehicle liability policy for Moore, who was clearly liable for injuring the Watterses in a car accident. Guaranty offered to settle the Watterses' claim to the extent of the policy coverage, but not without an absolute release of all liability. Guaranty argued that without a full release, it would be subject to a bad faith claim by Moore for placing the interests of a third-party claimant above those of its insured to whom it owed a fiduciary duty. The Supreme Court noted that under 33-18-242, an insured, but not a third-party claimant, is prohibited from bringing a bad faith action in connection with the handling of a claim. In purchasing the minimum required statutory coverage, Moore could not have reasonably expected that Guaranty would be obligated to provide greater coverage than that purchased by demanding a full liability release as a condition of paying the limits of the minimum coverage. When the monetary consequences of a person's tortious conduct undisputedly exceed policy limits and liability is clear, the only incentive for an injured third-party claimant to settle for policy limits and provide the insured with an absolute release from liability is some form of coerced economic necessity. Compelling an innocent third party to proceed to trial to recoup that which is already owed is inconsistent with public policy to encourage settlement and avoid unnecessary litigation. Guaranty would not have been exposed to per se liability for bad faith from Moore by paying the policy limits. Thus, when liability resulting from an automobile accident is reasonably clear and a third-party claimant's damages undisputedly exceed mandatory minimum policy limits pursuant to this section, the prompt, fair, and equitable settlement of the claims cannot be forestalled by an insurer based on an illusory bad faith or breach of contract claim that an insured may bring, and to refuse payment based on such an unfounded potential liability is itself a deceptive practice within the meaning of 33-18-201. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000), following Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997).

Purpose of Mandatory Liability Insurance Law — Absolute Liability of Insurer Not Applicable to Coverage in Excess of Statutory Minimum: The mandatory liability insurance law seeks to protect members of the general public who are innocent victims of automobile accidents and was enacted for the benefit of the public, rather than for the benefit of the insured. The liability of an insurance carrier with respect to motor vehicle mandatory liability insurance becomes absolute whenever injury or damage covered by the policy occurs, but the absolute liability standard does not apply to insurance coverage that exceeds the mandatory minimum limits. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000).

Unfair Trade Practice to Require Full and Final Release of Liability Before Claim Paid Within Policy Limits — "Settlement" Distinguished From "Release": Guaranty National Insurance Co. (Guaranty) provided a minimum motor vehicle liability policy for Moore, who was clearly liable for injuring the Watterses' in a car accident. Guaranty offered to settle the Watterses' claim to the extent of the policy coverage, but not without an absolute release of all liability. The Watterses declined the offer, eventually bringing an unfair trade action against Guaranty for failing to promptly pay damages for which Moore was liable. Guaranty argued that the full release from liability was necessary to effectuate a settlement, citing Thompson v. St. Farm Mut. Auto. Ins. Co., 161 M 207, 505 P2d 423 (1973), and Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), and contended that because no settlement was proffered from the Watterses, Guaranty could not, as a matter of law, have violated 33-18-201. The Supreme Court instead applied Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997). The court clarified the relevant terms, noting that in accord with the general governing principles of contract law from which the law of settlements is derived, in the context of the Unfair Trade Practices Act, a settlement is synonymous with an enforceable bilateral contract that discharges a future or existing obligation, while a release, as a matter of law, is nothing more than an accord and satisfaction or one of several ways in which an obligation may contractually be discharged or settled for less than or for something different than from what is owed. The court concluded that a settlement between Guaranty and the Watterses was legally possible without the Watterses executing a full and final release of all liability, as evidenced by Guaranty's settlement of the Watterses' property damage claims within the limits of Moore's policy without a release. Thus, when liability resulting from an automobile accident is reasonably clear and a third-party claimant's damages undisputedly exceed mandatory minimum policy limits pursuant to this section, it is an unfair trade practice per se under 33-18-201 for an insurer to condition the payment of the owed mandatory minimum policy limits on the third party's agreement to provide a full and final release of all liability in favor of an insured. An insurer who pays mandatory minimum policy limits under these circumstances does not act in bad faith per se against its insured by not obtaining a full and final liability release on the insured's behalf. Unfortunately for the Watterses, under the case law in effect at the time, Guaranty had a reasonable basis under Juedeman upon which to deny payment of policy limits, so Guaranty's cross-motion for summary judgment was granted. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000), overruling Thompson v. St. Farm Mut. Auto. Ins. Co., 161 M 207, 505 P2d 423 (1973), and Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), and overruled in Shilhanek v. D-2 Trucking, Inc., 2003 MT 122, 315 M 519, 70 P3d 721 (2003), to the extent that Watters implies that an insurer's obligation under Ridley is limited to the minimum coverage required by the Motor Vehicle Safety-Responsibility Act. See also High Country Paving, Inc. v. United Fire & Cas. Co., 2019 MT 297, 398 Mont. 191, 454 P.3d 1210.

Underinsured Motor Vehicle Defined — Policy Exclusion of Husband's Vehicle as Vehicle of "Relative" Upheld — Exclusion Not Contrary to Public Policy or Reasonable Expectations of Insured: Stutzman was injured in a one-car accident when her husband, John Turcotte, negligently lost control of his vehicle. Stutzman, who, along with Turcotte, was an insured in a policy written by Safeco, sued Safeco in an attempt to collect the underinsured motorist benefits provided in the policy. In its defense, Safeco raised the policy definition of an "underinsured motor vehicle" that excluded a motor vehicle owned by a "relative" of an insured. Citing decisions from other jurisdictions, the Supreme Court held that because Turcotte was married to Stutzman at the time of the accident, Turcotte was Stutzman's "relative" within the meaning of the exclusion applicable to the underinsured motorist benefits of the policy and that the exclusion applied even though exclusions are generally to be narrowly construed against the insurer. The Supreme Court also held that although a court may invalidate an exclusion that violates Montana's mandatory insurance law, there is no requirement in Montana law for underinsured motorist coverage and, moreover, that public policy should uphold the exclusion because an insured could otherwise substitute less expensive underinsured motorist coverage for more expensive liability coverage. Further, citing Wellcome v. Home Ins. Co., 257 M 354, 849 P2d 190 (1993), the Supreme Court held that the doctrine of reasonable expectations of the insured is inapplicable when the terms of the policy clearly demonstrate an intent to exclude coverage. Stutzman v. Safeco Ins. Co. of America, 284 M 372, 945 P2d 32, 54 St. Rep. 925 (1997), followed in Am. Family Mut. Ins. Co. v. Livengood, 1998 MT 329, 292 M 244, 970 P2d 1054, 55 St. Rep. 1336 (1998).

Required Coverages: Under Montana's statutory scheme, the minimum third-party liability coverages under this section and the minimum first-party uninsured motorist coverage under 33-23-201 are required coverages. Farmers Alliance Mut. Ins. Co. v. Holeman, 278 M 274, 924 P2d 1315, 53 St. Rep. 904 (1996), distinguishing Grier v. Nationwide Mut. Ins. Co., 248 M 457, 812 P2d 347 (1991). See also Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Insurance Company Cannot Be Sued Directly by Third-Party Claimant in Place of Insured Tortfeasor: The plaintiff sued the owner of a vehicle driven by the owner's adult daughter. The District Court granted the owner's motion for summary judgment and granted the plaintiff's motion to add the owner's insurance carrier as a party defendant. The general rule is that a direct action against an insurer does not lie until the liability of the insured has been established. Unless and until the tort claimant establishes the liability of the tortfeasor, there are no injuries or damages "covered by the policy" within the meaning of this section. The District Court erred in allowing the joinder of the insurer as a party defendant. Ulrigg v. Jones, 274 M 215, 907 P2d 937, 52 St. Rep. 1198 (1995).

Umbrella Policy Not Automobile or Motor Vehicle Policy That Must Include Uninsured Motorist Coverage: The statutory definition of motor vehicle liability policy in this section does not include excess insurance, such as an umbrella policy. Therefore, an umbrella policy does not constitute a motor vehicle liability policy as envisioned by 33-23-201, the uninsured motorist statute. Read together, these statutes clearly apply only to primary automobile insurance, not to a commercial umbrella policy issued to protect the insured from liability to third parties. However, this does not mean that an insurer may not offer additional uninsured motorist coverage as part of a primary policy or umbrella policy. Rowe v. The Travelers Indem. Co., 245 M 413, 800 P2d 157, 47 St. Rep. 1946 (1990).

Insurer's Liability Not Subject to Canadian Tort Law: The plaintiff, relying on the policy's underinsurance clause, sought reimbursement from the insurer for injuries suffered in an automobile accident in Canada. The insurer argued that it was only liable for those damages allowed under the restrictive Canadian tort laws. The Supreme Court held that those damages that the plaintiff could not obtain reimbursement for under Canadian law could be recovered under the underinsurance clause because the policy was governed by the contract laws of the place where it was created and not by tort law. St. Farm Mut. Auto. Ins. Co. v. Estate of Braun, 243 M 125, 793 P2d 253, 47 St. Rep. 1043 (1990).

Additional Omnibus Insured — Tort Claims Act Not Shield — Employer's Insurance Secondary: When an employee of Butte-Silver Bow was involved in an auto accident while acting in the course and scope of his employment and driving his own car, Butte-Silver Bow was an additional omnibus insured under the employee's auto policy. The employee's personal insurance carrier was not shielded from liability by the state tort claims act. The employee's insurer was the primary insurer, and Butte-Silver Bow's insurer was the excess insurer. Guar. Nat'l Ins. Co. v. State Farm Ins. Co., 238 M 324, 777 P2d 353, 46 St. Rep. 1303 (1989).

Continuation of Liability Coverage if Driver Initially Obtained Control of Automobile With Owner's Permission: If the driver of a motor vehicle initially obtains control and operates a motor vehicle with the permission of the owner, the owner's liability insurance must continue to cover the vehicle even though the permittee may have exceeded the scope of the owner's permission or consent. Enforcement of minimum statutory coverage in this state is mandated. The clear purpose of 61-6-301 is to protect innocent members of the general public injured on the highways through the negligence of financially irresponsible motorists. Horace Mann Ins. v. Hampton, 235 M 354, 767 P2d 343, 46 St. Rep. 49 (1989).

Allowance of Greater Liability Protection for Named Insured Than for Permissive User: Nothing in the Motor Vehicle Safety-Responsibility Act or in the public policy of Montana prohibits an insurance agreement from affording a named insured greater liability protection than an omnibus insured, such as a renter. Guar. Nat'l Ins. Co. v. Kemper Financial Serv., 667 F. Supp. 714, 44 St. Rep. 1561 (D.C. Mont. 1987).

Failure to State Exact Amount of Liability Coverage in Car Rental Agreement — No Ambiguity Found: A car rental agreement did not state a specific dollar amount of liability insurance provided, but rather provided rentee with a primary automobile liability insurance policy with limits of coverage equal to the minimum statutory requirements of Montana. The fact that rentee may have been unaware of the precise dollar amount of the minimum required by 61-6-103 was of no consequence in determining whether the agreement was ambiguous, and coverage was properly limited to the minimum required by this section. Guar. Nat'l Ins. Co. v. Kemper Financial Serv., 667 F. Supp. 714, 44 St. Rep. 1561 (D.C. Mont. 1987).

Consortium Claim Subject to "Each Person" Limit of Liability Coverage: Under mandatory motor vehicle insurance coverage statutes, husband's cause of action for consortium and wife's cause of action for bodily injuries are subject to the "one person limitation" set forth in 61-6-103 as referred to in 61-6-301. The policy in question does not extend coverage beyond the statutory requirements. Therefore, husband is not entitled to recover from the insurance company an amount over the limit specified for one person for consequential damages to himself resulting from injuries to his wife, such as loss of her services or consortium. Bain v. Gleason, 223 M 1153, 726 P2d 1153, 43 St. Rep. 1897 (1986).

No Coverage Under Additional Policies on Automobiles Not Involved in Accident: There is no coverage for injured plaintiffs under father's motor vehicle liability policies on separate vehicles not owned or driven by son involved in collision. Son is not an insured under those policies merely by virtue of being relative of insured father. Bain v. Gleason, 223 M 1153, 726 P2d 1153, 43 St. Rep. 1897 (1986).

Family Relationship — Issue of Implied Consent: The son ran away from home in his parents' vehicle and subsequently was involved in a one-car accident. The trial court erred in granting summary judgment, holding that there was no liability coverage for the insureds' minor son under the parents' policy. Because a family relationship exists between the insured and the vehicle's driver, the parents' implied consent to their son's use of the vehicle remains a genuine issue of material fact. If the jury upon remand makes a finding of implied permission, then the trial court must find the respondent insurance company to be the insurer of the son and his parents for payment of any damages. Farmers Ins. Exch. v. Janzer, 215 M 260, 697 P2d 460, 42 St. Rep. 337 (1985).

Implied Permission — Question of Fact: The omnibus clause in a vehicle liability policy insured any person driving the vehicle with the permission of the insured provided the use was within the scope of the permission. Under Cascade Ins. Co. v. Glacier Gen. Ins. Co., 156 M 236, 479 P2d 259 (1971), permission may be implied under an omnibus clause. The question of whether permission is implied is one of fact. Under the facts of this case, the court found that the owner of the vehicle, Western Surety, would not reasonably anticipate that its agent would, while drunk at a bar, lend the car to a total stranger for any purpose. Aetna Ins. Co. v. Rankin, 40 St. Rep. 1138 (D.C. Mont. 1983) (apparently not reported in Federal Supplement).

Recovery Under Uninsured Motorist Clause — Allowed if Liability Insurance Amount Less Than That Required by This Section: An uninsured motorist clause defined an uninsured motor vehicle as a land motor vehicle "of which there is, in at least the amounts specified by the financial responsibility law of the state . . . no bodily injury liability insurance". The minimum amount of insurance specified for a liability insurance policy is set out by this section, and a motorist carrying less than the statutory limits is an uninsured motorist within the meaning of the insurance contract. Oleson v. Farmers Ins. Group, 185 M 164, 605 P2d 166, 37 St. Rep. 8 (1980).

When Omnibus Clause Required: The Motor Vehicle Safety-Responsibility Act requires an omnibus clause in an insurance policy only when a policy is issued for certification under the Act. The policy here was not issued for the purpose of certification under the Act, enabling the insurer to insert exclusions in its policy not mentioned in this section. USF&G Co. v. Wilcox, 472 F. Supp. 74, 36 St. Rep. 1178 (D.C. Mont. 1979).

Policy Voluntarily Obtained: A liability insurance policy that the automobile owner voluntarily obtains is not subject to the coverage requirements of this chapter. Velte v. Allstate Ins. Co., 181 M 300, 593 P2d 454, 36 St. Rep. 724 (1979).

Primary and Secondary Insurance: The first liability policy provided primary coverage to driver when he was driving other vehicles except when there was "other collectible insurance" in which case it provided excess coverage. The second liability policy owned by auto agency insured driver only if there was "no other valid and collectible automobile liability insurance". The first policy was liable for the cost of defending an action for damages arising out of the accident. Phoenix Ins. Co. v. Nationwide Mut. Ins. Co., 335 F. Supp. 671 (D.C. Mont. 1972).

Permitted User: Driver of insured's automobile was permitted user under this section even though permission came from insured's son and even though son had been told not to lend out the automobile, since the automobile was purchased for son's exclusive use away from home and son had ostensible authority to permit its use by third party. Cascade Ins. Co. v. Glacier Gen. Ins. Co., 156 M 236, 479 P2d 259 (1971).

Proof of Responsibility — Insurance — When Statutory Provisions Attach: Under the Montana Vehicle Safety-Responsibility Act proof of financial responsibility is required: (1) if a judgment arising out of liability for damages in an automobile accident is outstanding and unsatisfied; or (2) in case of conviction or forfeiture of bail for driving offenses requiring revocation of a license. Neither of these conditions was present when the policies in question in this case were issued, so that the provisions of this section, relating to policies issued as proof of future financial responsibility and eliminating policy defenses, never attached. The policies in question were voluntarily carried by the motorists. The household exclusion contained in one policy was valid and not contrary to public policy. Lewis v. Mid-Century Ins. Co., 152 M 328, 449 P2d 679 (1968).

Defenses Available to Insurer: Insurance company being sued by injured party for amount of judgment previously secured against insured motorist was entitled to defend on ground that accident was not reported to it until a year later, in breach of the policy provisions requiring prompt notice, despite contention that policy was subject to that portion of insurance laws eliminating policy defenses. Boldt v. St. Farm Mut. Auto. Ins. Co., 151 M 337, 443 P2d 33 (1968).

Garage Business Exclusion: Garage business exclusion clause of policy was not violative of public policy as expressed in statute in absence of showing that policy was issued to show proof of financial responsibility. N. Assurance Co. of Am. v. Truck Ins. Exch., 151 M 132, 439 P2d 760 (1968).

61-6-105. Department to administer law and make rules.

Compiler's Comments

2013 Amendment: Chapter 142 in (2)(b) at end deleted "and the time requirements in 61-3-303 and 61-3-312"; and in (2)(g) after "policy" inserted provision for specific checks for a previously uninsured vehicle. Amendment effective April 3, 2013.

2011 Amendment: Chapter 73 inserted (2)(b) requiring rules for determining the implementation schedule of the system; and made minor changes in style. Amendment effective March 25, 2011.

2009 Amendment: Chapter 413 in (1) at end after "the administration" inserted reference to online motor vehicle liability insurance system; inserted (2)(a) through (2)(f) specifying rules to be adopted by department; in (2)(g) substituted current language requiring hearing for persons aggrieved by suspension order of department for "may provide for hearings upon request of persons aggrieved by orders or acts of the department under the provisions of this part"; inserted (3) authorizing department to adopt certain rules; and made minor changes in style. Amendment effective October 1, 2009.

The amendment to this section by sec. 9, Ch. 387, L. 2009, was rendered void by sec. 28, Ch. 413, L. 2009, a coordination section.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-6-108. Matters not to be evidence in civil suits.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-6-112. Surrender of license.

Compiler's Comments

1999 Amendment: Chapter 309 near end of second sentence after "officer" substituted "may seize the license during an investigative stop or arrest" for "or highway patrol officer to secure possession thereof"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1989 Amendment: Near end of second sentence changed "patrolman" to "patrol officer".

1985 Amendments: Chapter 218 in three places, after references to license, deleted references to registration.

Chapter 503 substituted reference to department of justice for reference to division of motor vehicles in five places.

61-6-121. Courts to report nonpayment of judgments.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: In (1) and in (2) in two places substituted references to department of justice for references to division of motor vehicles.

61-6-122. Suspension for nonpayment of judgments — exceptions.

Compiler's Comments

1999 Amendment: Chapter 309 in (2) in first sentence after "discretion" substituted "allow the debtor a license or nonresident's operating privilege" for "for 6 months" and at beginning of second sentence inserted "The debtor's license or nonresident's operating privilege continues" and at end substituted "compliance with 61-6-301" for "financial responsibility"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1985 Amendments: Chapter 218 in (1) and (2) after "license", deleted "and registration".

Chapter 503 in (1) and in (2) in two places substituted references to department of justice for references to division of motor vehicles.

61-6-123. Suspension to continue until judgments paid and proof given — maximum period of suspension.

Compiler's Comments

2001 Amendment: Chapter 515 near end after "first entered" deleted "as provided in 25-9-301"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 309 near end after "proof of" substituted "compliance with 61-6-301" for "financial responsibility"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

61-6-125. Installment payment of judgments — default.

Compiler's Comments

1999 Amendment: Chapter 309 in (2) after "proof of" substituted "compliance with 61-6-301" for "financial responsibility"; and made minor changes in style. Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1985 Amendments: Chapter 218 in (2) after "suspend a license", deleted "or require the suspension of a registration" and after "restore any license", deleted "and the registration"; and in (3) after "suspend the license", deleted "and the registration".

Chapter 503 in (2) and (3) substituted references to department of justice for references to division of motor vehicles.

61-6-131. When proof of financial responsibility required.

Compiler's Comments

2019 Amendment: Chapter 445 in (1) near middle after "this state revokes the license" inserted "or privilege to drive" and near end after "revoked and may not be" substituted current text regarding restoration for "renewed and a license may not be issued to the person until permitted under the motor vehicle laws of this state and not then unless and until the person maintains proof of financial responsibility"; deleted former (2) and (3) that read: "(2) If a person is not licensed, but by the final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of a license, a license may not be issued to the person until the person gives and maintains proof of financial responsibility.

(3) Whenever the department revokes a nonresident's operating privilege by reason of a conviction or forfeiture of bail, the privilege remains revoked unless the person has previously given or immediately gives and maintains proof of financial responsibility"; and inserted (2) concerning the issuance of a probationary license. Amendment effective May 10, 2019.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendments: Chapter 218 near beginning of (1) after "revokes the license of any person", deleted "upon receiving record of a conviction or a forfeiture of bail, the division shall also suspend the registration for all motor vehicles registered in the name of such person, except that the division shall not suspend such registration, unless otherwise required by law, if such person has previously given or shall immediately give and thereafter maintain proof of financial responsibility with respect to all motor vehicles registered by such person", near middle of (1) after "shall remain revoked", deleted "and such registration shall remain suspended", and after "nor shall any license be thereafter issued to such person", deleted "nor shall any motor vehicle be thereafter registered in the name of such person"; merged former (1) and (2) relating to requirement that, once revoked, a license may not be renewed or issued without proof of financial responsibility; and in (2) after "no license shall be thereafter issued to such person", deleted "and no motor vehicle shall continue to be registered or thereafter be registered in the name of such person".

Chapter 503 in (1) and (3) substituted references to department of justice for references to division of motor vehicles.

Case Notes

Proof of Responsibility — Insurance — When Statutory Provisions Attach: Under the Montana Vehicle Safety-Responsibility Act proof of financial responsibility is required: (1) if a judgment arising out of liability for damages in an automobile accident is outstanding and unsatisfied; or (2) in case of conviction or forfeiture of bail for driving offenses requiring revocation of a license. Neither of these conditions was present when the policies in question in this case were issued, so that the provisions of 61-6-103, relating to policies issued as proof of future financial responsibility and eliminating policy defenses, never attached. The policies in question were voluntarily carried by the motorists. The household exclusion contained in one policy was valid and not contrary to public policy. Lewis v. Mid-Century Ins. Co., 152 M 328, 449 P2d 679 (1968).

61-6-132. Alternate methods of giving proof.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-6-133. Certificate of insurance as proof.

Compiler's Comments

1985 Amendments: Chapter 218 deleted former (2) that read: "No motor vehicle shall be or continue to be registered in the name of any person required to file proof of financial responsibility unless such motor vehicle is so designated in such a certificate."

Chapter 503 in first sentence substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

When Omnibus Clause Required: The Motor Vehicle Safety-Responsibility Act requires an omnibus clause in an insurance policy only when a policy is issued for certification under the Act. The policy here was not issued for the purpose of certification under the Act, enabling the insurer to insert exclusions in its policy not mentioned in 61-6-103. USF&G Co. v. Wilcox, 472 F. Supp. 74, 36 St. Rep. 1178 (D.C. Mont. 1979).

61-6-134. Certificate furnished by nonresident as proof.

Compiler's Comments

1985 Amendment: In (1) in two places, in (1)(a), and in (2) substituted references to department of justice for references to division of motor vehicles.

61-6-135. Notice of cancellation or termination of certified policy.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

61-6-136. Other policies not affected.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-6-137. Bond as proof of responsibility.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: In (1) in three places substituted reference to department of justice for reference to division of motor vehicles.

61-6-138. Money or securities as proof of responsibility.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendments: Chapter 218 in two places in (1) increased proof of financial responsibility deposit from $11,000 to $55,000.

Chapter 503 in (1) substituted reference to department of justice for reference to division of motor vehicles.

61-6-139. Owner permitted to give proof for others.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-6-140. Substitution of proof of responsibility.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-6-142. Duration of proof — when money or securities may be canceled or returned.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendments: Chapter 218 in three places, after references to license, deleted references to registration.

Chapter 503 in (1) in two places, in (1)(a), (1)(c), and in (2) in two places substituted references to department of justice for references to division of motor vehicles.

61-6-143. Self-insurers.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in three places.

61-6-151. Violations — penalties.

Compiler's Comments

1985 Amendment: In (2) and (3) after references to license, deleted references to registration.

61-6-157. Creation of online motor vehicle liability insurance verification system.

Compiler's Comments

2019 Amendment: Chapter 445 in (3)(g) after "a surety or indemnity bond under 61-6-137" deleted "or 61-6-301". Amendment effective May 10, 2019.

2015 Amendment: Chapter 348 in (4) substituted "parts 10 and 11" for "parts 1 and 2". Amendment effective October 1, 2015.

Severability: Section 72, Ch. 348, L. 2015, was a severability clause.

2011 Amendment: Chapter 73 in (3)(i) substituted "be used only for information-gathering and educational purposes until the completion of" for "be installed and operational no later than July 1, 2011, following". Amendment effective March 25, 2011.

Effective Date: Section 29(1), Ch. 413, L. 2009, provided that this section is effective October 1, 2009.

61-6-158. Vehicle insurance verification and license plate operating account.

Compiler's Comments

2017 Amendments — Composite Section: Chapter 323 in (2) inserted reference to 61-3-701(5); and made minor changes in style. Amendment effective May 4, 2017.

Chapter 384 in (3) at end inserted "or other costs incurred by the department or as otherwise appropriated by the legislature to the department". Amendment effective July 1, 2017.

Severability: Section 38, Ch. 384, L. 2017, was a severability clause.

2011 Amendments — Composite Section: Chapter 209 in (2) substituted "(13)" for "(12)". Amendment effective January 1, 2012.

Chapter 247 in (2) substituted "(13)" for "(12)". Amendment effective April 22, 2011.

Effective Date: Section 29(1), Ch. 413, L. 2009, provided that this section is effective October 1, 2009.

Part 2
Liability of Vehicle Owner — Contract Indemnification Limitations

61-6-201. Liability of owner for negligence of employee driver.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Collision With Demonstrator: The mere fact that a demonstrator auto driven by a salesman is of advertising benefit to the dealer is not enough to make the dealer liable for the fault of the salesman who drives it. State ex rel. City Motor Co. v. District Court, 166 M 52, 530 P2d 486 (1974).

Liability for Acts of Employee: Under this section, the owner of a vehicle employed for the conveyance of passengers is liable for all damages done by a driver in his employ to person or property while acting within the scope of his employment. Rohan v. Sherman & Reed, 61 M 519, 202 P 749 (1921).

61-6-202. Motor carrier transportation contract indemnification — limitation — definition.

Compiler's Comments

Erroneous Codification Instruction — Code Commissioner Correction: Section 2, Ch. 108, L. 2013, provided that this section was to be codified as an integral part of Title 28, chapter 2. The code commissioner has codified this section in Title 61, chapter 6, part 2, to more closely reflect the subject matter.

In (4) the code commissioner deleted the definition of motor carrier that read: ""Motor carrier" has the meaning provided in 61-1-101" and made minor changes in style to reflect the codification of this section in Title 61.

Effective Date: Section 3, Ch. 108, L. 2013, provided that this section is effective on passage and approval. Approved March 28, 2013.

Applicability: Section 4, Ch. 108, L. 2013, provided: "[This act] applies to motor carrier transportation contracts entered into or renewed on or after [the effective date of this act]." Effective March 28, 2013.

Part 3
Mandatory Liability Protection

Part Compiler's Comments

Severability Clause: Section 7, Ch. 592, L. 1979, was a severability clause.

Part Case Notes

No Direct Action Allowed Against Insurer Until Liability of Insured Established: Montana law does not allow a plaintiff to bring a direct action against an insurer until the liability of the insured has been established, unless such right is expressly sanctioned by the Legislature and not merely inferentially deduced. Safeco Ins. Co. of Ill. v. District Court, 2000 MT 153, 300 M 123, 2 P3d 834, 57 St. Rep. 604 (2000). See also Ulrigg v. Jones, 274 M 215, 907 P2d 937 (1995).

Antistacking Statutes Applicable to Specific Types of Coverage — Section Interpreted: In interpreting 33-23-204, the Supreme Court clarified three points regarding the statute: (1) it is directed at insurance against liability; (2) it is directed at insurance coverage that is required by law; and (3) it is concerned with liability insurance that is not only required but that is required by both parts 1 and 3 of Title 61, ch. 6. There are only three variations of coverage that meet these criteria, and those coverages are the per person, per vehicle, and property damage coverages. Underinsurance coverage and medical payment coverage do not qualify as insurance against liability but rather are excess or additional coverage designed to protect the first party insured; therefore, the prohibition against stacking in 33-23-203 does not apply to underinsurance and medical payment coverage. Farmers Alliance Mut. Ins. Co. v. Holeman, 278 M 274, 924 P2d 1315, 53 St. Rep. 904 (1996), distinguishing Grier v. Nationwide Mut. Ins. Co., 248 M 457, 812 P2d 347 (1991). See also Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Stacking of Optional Motor Vehicle Coverages Not Allowed — Underinsurance and Medical Payment Coverage Not Included: The U.S. District Court certified to the Montana Supreme Court the question of whether 33-23-203 prohibits the stacking of underinsured motorist coverage and medical payment coverage available under a policy of motor vehicle liability insurance when a premium is charged for coverage of each motor vehicle listed within the policy. The Supreme Court answered in the negative, noting that 33-23-203 does not allow stacking unless a liability policy provides otherwise. The antistacking provisions apply to any policy of motor vehicle insurance against liability now or hereafter required under 33-23-201 or Title 61, ch. 6, parts 1 and 3. However, the antistacking provision does not apply to underinsurance and medical payment coverage when a premium is charged for coverage of each motor vehicle listed within the policy because those coverages do not qualify as liability insurance. Farmers Alliance Mut. Ins. Co. v. Holeman, 278 M 274, 924 P2d 1315, 53 St. Rep. 904 (1996), distinguishing Grier v. Nationwide Mut. Ins. Co., 248 M 457, 812 P2d 347 (1991). See also Farmers Alliance Mut. Ins. Co. v. Holeman, 1998 MT 155, 289 M 312, 961 P2d 114, 55 St. Rep. 601 (1998).

Vehicle Owner Not Liable for Adult Daughter's Accident — Speculative and Conclusory Statements Insufficient to Raise Genuine Issue of Material Fact: The plaintiff sued the owner of a vehicle driven by the owner's adult daughter. The District Court granted the owner's motion for summary judgment. The Supreme Court held that summary judgment was proper because the plaintiff failed in the burden to raise any genuine issue of material fact that the daughter was the owner's agent at the time of the accident or that the owner negligently entrusted the vehicle to the daughter. As a matter of law, the owner was not liable for the daughter's alleged negligence merely by being the owner of the vehicle. Ulrigg v. Jones, 274 M 215, 907 P2d 937, 52 St. Rep. 1198 (1995).

Award of Attorney Fees in Declaratory Judgment Insurance Action — Distinction Between Third-Party Claimant and Insured: As a general rule, an insured is not entitled to recover attorney fees and expenses incurred in defending a declaratory judgment action brought by an insurer to determine the existence of coverage under a liability insurance policy. However, recovery is appropriate where it is ultimately determined by the court that the insurer was not acting in good faith in contesting coverage and instituting declaratory judgment proceedings. A third-party claimant is not entitled to recover attorney fees incurred in a declaratory judgment proceeding, even if the claimant arguably falls within the policy definition of "insured". Iowa Mut. Ins. Co. v. Davis, 689 F. Supp. 1028, 45 St. Rep. 1361 (D.C. Mont. 1988).

Exclusion From Coverage Prohibited: The U.S. District Court certified to the Montana Supreme Court the question of whether this part prohibits exclusion of a named driver or drivers from coverage under a motor vehicle liability policy. Answering in the affirmative, the Supreme Court found that enforcement of minimum statutory coverage is mandated by law in Montana and is a minor burden on insureds when compared to increased protection of the general traveling public. An insurer's attempt to exclude defendant from coverage was found to be contrary to the requirements of 61-6-301 (prior to 1989 amendment) and repugnant to the state's interest in protecting innocent victims of automobile accidents. Iowa Mut. Ins. Co. v. Davis, 231 M 166, 752 P2d 166, 45 St. Rep. 514 (1988). The propriety of awarding attorney fees and expenses relative to this case was discussed in Iowa Mut. Ins. Co. v. Davis, 689 F. Supp. 1028, 45 St. Rep. 1361 (D.C. Mont. 1988).

Family Exclusion Clause Void: A parent is not immune from a negligence action brought against him by a child under the age of emancipation injured in the operation of a motor vehicle. Therefore, a family exclusion clause in an automobile insurance policy obtained under the mandatory liability insurance law is void and unenforceable because 61-6-301 requires motorists to carry insurance against loss resulting from liability imposed by law for injury suffered by any person. If the policy had been certified under the Motor Vehicle Safety-Responsibility Act, the exclusion clause would have been invalid because liability under that act is "absolute". Transamerica Ins. Co. v. Royle, 202 M 173, 656 P2d 820, 40 St. Rep. 12 (1983), contrasted in Stutzman v. Safeco Ins. Co. of America, 284 M 372, 945 P2d 32, 54 St. Rep. 925 (1997), and Am. Family Mut. Ins. Co. v. Livengood, 1998 MT 329, 292 M 244, 970 P2d 1054, 55 St. Rep. 1336 (1998).

Insurance Coverage Not Mandated as to Nonowned Automobiles: The mandatory liability protection law does not incorporate the Motor Vehicle Safety-Responsibility Act except for 61-6-103 and thus the provisions of the latter act do not apply to defendant's policy, and her contention that coverage as to nonowned automobiles is mandated by law is erroneous. St. Farm Mut. Auto. Ins. Co. v. Queen, 38 St. Rep. 608 (1981).

Part Attorney General's Opinions

Effective Date: Under 1-2-201 and Ch. 592, L. 1979, from and after July 1, 1979, owners of motor vehicles registered and operated in this state must be covered by a current policy of motor vehicle liability insurance or satisfy one of the other two statutory alternatives for liability protection. 38 A.G. Op. 49 (1979).

Part Law Review Articles

Uninsured Motorist Coverage: Are Conflicts Inherent in Every Provision?, Hanson, 29 Mont. L. Rev. 183 (1968).

61-6-301. Required motor vehicle insurance — family member exclusion.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 4 in (3) in second sentence after "The bond" deleted "must be on a form approved by the commissioner of insurance and". Amendment effective February 12, 2019.

Chapter 445 deleted former (2) and (3) (see 2019 Session Law for former text); and made minor changes in style. Amendment effective May 10, 2019.

Saving Clause: Section 3, Ch. 4, L. 2019, was a saving clause.

2005 Amendment: Chapter 542 in (1)(a) near end after "motor vehicle" deleted "as defined in 61-1-102"; in (4) near beginning after "ways of this state open to the public" inserted "as defined in 61-8-101"; and made minor changes in style. Amendment effective January 1, 2006.

1995 Amendment: Chapter 393 inserted (4) concerning exceptions to the unlawfulness of operating a motor vehicle without liability insurance; and made minor changes in style.

1989 Amendment: At beginning of (1)(a) inserted exception clause; inserted (1)(b) providing for family member exclusion; and made minor changes in phraseology.

1989 Statement of Intent: The statement of intent attached to Ch. 425, L. 1989, provided: "By amending section 61-6-301, MCA, it is the intent of the legislature to expressly permit named driver exclusions in mandatory motor vehicle insurance policies for family members of the policyholder. It is the finding of the legislature that the prohibition against named driver exclusions in the context of the family has the result, in effect, of denying coverage to families who have found their insurance premiums to double or triple due to the Montana supreme court's decision in Iowa Mutual Insurance Company v. Davis, 752 P.2d 166 (1988). In that case, the court held that mandatory liability coverage requirements, as a matter of public policy, prohibited exclusion of a named driver or named drivers from coverage under motor vehicle liability policies."

Effective Date — Applicability: Section 5, Ch. 425, L. 1989, provided: "[This act] is effective July 1, 1990, and applies to motor vehicle liability insurance policies issued, renewed, extended, or reinstated after June 30, 1990."

1985 Amendment: In (2) substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Appointed Counsel Violated Duties of Loyalty and Confidentiality — Trial Not Fundamentally Unfair or Unreliable — Substitute Counsel Appointed: The defendant's convictions for driving with a suspended license and failing to provide proof of insurance were not reversed because of ineffective assistance of counsel, despite the fact that appointed counsel violated his duties of loyalty and confidentiality to the defendant. Counsel's disclosure fell below an objective standard of reasonableness, establishing the first prong of the Strickland analysis. However, the defendant broadly argued that her counsel completely abandoned his duty and had a conflict of interest, requiring prejudice to be presumed under Strickland and U.S. v. Cronic, 466 US 648 (1984). The Supreme Court acknowledged federal precedent, in which courts have rarely applied Cronic, emphasizing that only nonrepresentation, not poor representation, triggers a presumption of prejudice. As applied, the defense counsel's errors, while violating duties of confidentiality and loyalty, did not result in complete abandonment of the defendant because she was provided substitute counsel for trial. The defense counsel's disclosure did not render the trial result "fundamentally unfair" or "unreliable" and the defendant could not show that there was a reasonable probability that, but for her counsel's unprofessional errors, the result of the proceeding would have been different. Libby v. Hubbard, 2018 MT 2, 390 Mont. 108, 408 P.3d 532, citing U.S. v. Cronic, 466 US 648 (1984), Strickland v. Wash., 466 US 668 (1984), Bell v. Cone, 535 US 685 (2002), and St. v. Bekemans, 2013 MT 11, 368 Mont. 235, 293 P.3d 843.

Driving Without Insurance — Statement to Officer Admission, Not Confession — Circumstantial Evidence of Guilt: The defendant was charged with operating a motor vehicle without insurance. At the time she was stopped, the defendant could not provide proof of insurance, and when asked if she had insurance, she responded: "I don't have insurance." The defendant failed to appear for the bench trial and, at its conclusion, her counsel moved to dismiss the charge for insufficient evidence. The Justice Court denied the motion and found her guilty. After the District Court affirmed the decision, the defendant appealed to the Supreme Court, arguing that her statement to the officer was a confession and that it had not been corroborated by other evidence. The Supreme Court affirmed, holding that her statement was an admission and served as circumstantial evidence of guilt. St. v. Davis, 2016 MT 206, 384 Mont. 388, 378 P.3d 1192.

Family Member Exclusion Not Unconscionable — Summary Judgment Reversed: A wife was injured in a car accident as a result of her husband's negligent driving. Because the husband's umbrella policy contained an express family member exclusion, the insurer denied coverage for her injuries. The couple sought a declaratory judgment that the wife was entitled to coverage. They argued that the exclusion was unenforceable because it was ambiguous, violated public policy and the reasonable expectations of the insured, and was unconscionable. The District Court granted summary judgment to the plaintiffs based on its conclusion that the exclusion was unconscionable. On appeal, the Supreme Court reversed, reasoning that the family member exclusion allows broad coverage at an economical cost and therefore did not unreasonably favor the insurer. Fisher v. St. Farm Mut. Auto. Ins. Co., 2013 MT 208, 371 Mont. 147, 305 P.3d 861, followed in Meadow Brook, LLP v. First Am. Title Ins. Co., 2014 MT 190, 375 Mont. 509, 329 P.3d 608.

State Required to Prove Lack of Insurance: After a traffic stop of a vehicle based on an observation that the vehicle did not have taillights, the officer approached the vehicle and requested the driver, who was Farmer's girlfriend, to produce her driver's license and proof of registration. She was unable to produce either document. The officer also requested the driver to produce proof of liability insurance on the vehicle, which she also was unable to produce. The officer then contacted dispatch to run a check on the license plate number of the vehicle, and dispatch informed him that the vehicle was registered to Farmer. At the time of the traffic stop, Farmer was seated in the vehicle's front passenger seat. Farmer also did not produce proof of liability insurance for the vehicle. Farmer received a citation for failure to carry valid liability insurance on his vehicle in violation of 61-6-301. At the trial in the District Court, the officer testified that he requested the driver to provide proof of insurance and she failed to do so. He further testified that Farmer was seated in the passenger seat, observed the interaction, and at no time made an effort to provide proof of insurance for the vehicle. The officer did not state that he directly requested Farmer to provide such proof, but rather testified that he "made a request to the driver and he [Farmer] was sitting right there, so I don't know if I made a direct request to him, but he was sitting right there when I asked for it." The state presented no other evidence, either direct or circumstantial, that Farmer did not have liability insurance for the vehicle at the time of the traffic stop. At the close of the state's case-in-chief, Farmer moved the District Court for a directed verdict, arguing that the state had failed to present evidence that his vehicle was not insured at the time of the traffic stop. The District Court determined that the state had presented sufficient evidence to convict Farmer under 61-6-301 for allowing his vehicle to be operated without valid liability insurance and found Farmer guilty of that offense. The court then sentenced Farmer and entered judgment on the conviction and sentence. Farmer appealed. The state contended that the officer's testimony that Farmer did not produce proof of insurance at the time of the traffic stop was sufficient to establish his failure to insure the vehicle. The state cited 61-6-302 and asserts that the statute imposed upon Farmer a duty to prove, upon demand, that his vehicle was insured. It was undisputed here that Farmer was not the "operator" of the vehicle at the time of the traffic stop. Farmer had no obligation pursuant to 61-6-302 to provide proof of insurance, and Farmer's failure to present proof of insurance did not support a finding that the insurance did not exist at the time of the traffic stop. The state argued 61-6-302 must be viewed as an enforcement mechanism for 61-6-301 because the only effective way to ascertain compliance with 61-6-301 is to place a duty upon the vehicle owner to provide proof of insurance. Interpreting the statutes in the manner advocated by the state would require the Supreme Court to either insert the term "owner" into 61-6-302 or insert language requiring an owner to provide proof of insurance upon request into 61-6-301 and the Court declined to do so. The case was reversed and remanded with instructions to vacate the judgment and dismiss the charge. St. v. Farmer, 2008 MT 354, 346 M 335, 195 P3d 800 (2008). (See 2009 amendment.)

Clause in Insurance Policy Excluding Coverage for Transported Property Valid: Plaintiffs were transporting snowmobiles on a trailer when they were involved in a multiple vehicle accident that resulted in damage to their vehicle and the destruction of the trailer and snowmobiles. The insurer covered the loss of the trailer, but declined to compensate for the loss of the snowmobiles on grounds that they were excluded from policy coverage, and plaintiffs filed suit to recover damages. The District Court held that the policy exclusion for damage to property being transported was valid and granted the insurer summary judgment. On appeal, plaintiffs contended that the policy provision violated this section, which mandates motor vehicle insurance. The Supreme Court agreed that an exclusion to mandatory coverage is void and unenforceable absent a statutory exclusion, but then noted that the statutory exclusion in 61-6-103 allows a policy exclusion for damage to property transported by the insured. The court held that the exclusion in 61-6-103 is not inconsistent with the purpose and intent of this section and that because the policy provision was not void, there was no genuine issue of material fact and summary judgment was proper. Grimsrud v. Hagel, 2005 MT 194, 328 M 142, 119 P3d 47 (2005). See also Bain v. Gleason, 223 M 442, 726 P2d 1153 (1986), and Stutzman v. Safeco Ins. Co. of America, 284 M 372, 945 P2d 32 (1997).

Underinsured Motorist Coverage Not Necessarily Created by Mere Ownership of Insured Vehicle if Owner Not Named Insured on Policy:

Defendant insurer claimed that plaintiffs' claims in a 2002 action were barred by collateral estoppel and res judicata because of the prior holding in Lee v. USAA Cas. Ins. Co., 2001 MT 59, 304 M 356, 22 P3d 631 (2001). Applying the test in Haines Pipeline Constr., Inc. v. Mont. Power Co., 265 M 282, 876 P2d 632 (1994), for determining whether collateral estoppel barred the present action because it might be a relitigation of the 2001 case, the Supreme Court disagreed with defendant's assertion. Plaintiffs had not previously litigated whether defendant had a duty to defend and a duty to indemnify Hoss because that issue did not arise until defendant refused to indemnify Hoss and Hoss confessed judgment. Also, the issue of whether defendant had a duty to defend and a duty to indemnify Hoss was different from the issue in the 2001 case, which concerned whether Lee was a named insured under Hoss's policy, thereby entitling Lee to underinsured motorist benefits. Because the present issue was never litigated, there was never a final judgment on the merits, so defendant's collateral estoppel and res judicata arguments were inapplicable. Lee v. USAA Cas. Ins. Co., 2004 MT 54, 320 M 174, 86 P3d 562 (2004).

Lee's long-term cohabiting companion, Hoss, purchased insurance from USAA Casualty Insurance Co. (USAA) that covered two vehicles owned jointly by Lee and Hoss, but Lee was not a named insured on the USAA policy. As is typical, the policy language extended coverage to the named insured and the insured's spouse or family member by blood, marriage, or adoption, but did not cover a cohabiting partner unless the partner was driving or was a passenger in a covered vehicle. The policy included underinsured motorist (UIM) coverage that did not necessarily require that the covered person be driving or be a passenger in a covered vehicle, thereby potentially extending UIM coverage to Lee. Lee was injured in an accident in Louisiana while in a taxi and filed a UIM claim, contending that she was entitled to stack coverage under both vehicles. Although USAA initially indicated that Lee would be entitled to UIM coverage because she was a co-owner of the vehicles, the insurer later changed its position and denied coverage on grounds that because Lee was not a named insured and as a matter of law not a "covered person" under the relevant policy provisions, USAA had no obligation to treat her as insured. The District Court granted summary judgment for USAA, concluding that Lee was not an insured for purposes of UIM coverage under the express language of Hoss's policy and that Lee could not benefit from a policy to which she was not a party. On appeal, the Supreme Court agreed. The insurance agreement between USAA and Hoss could not be construed because of a patent ambiguity to confer the status of named insured upon Lee. The court declined to reform the insurance policy to include, as a matter of public policy, all owners of insured vehicles as named insureds under liability policies covering the owners' vehicles. It is the vehicle, not the driver, that is the focal concern of the mandatory liability laws. Those laws do not require that each named insured be the registered vehicle owner or that all registered owners be named insureds. Lee v. USAA Cas. Ins. Co., 2001 MT 59, 304 M 356, 22 P3d 631 (2001).

Insurer's Breach of Duty to Indemnify — Recovery of Attorney Fees by Injured Third-Party Claimant Who Prevails in Insurance Coverage Action Against Motor Vehicle Liability Insurer — Modification of Insurance Exception — Standard of Review of Question of Law: Following remand in Christensen v. Mtn. W. Farm Bureau Mut. Ins. Co., 2000 MT 378, 303 M 493, 22 P3d 624 (2000), the Christensens requested attorney fees incurred in the declaratory judgment action. The District Court denied the request, and the Christensens appealed. Generally, under the American rule, a party in a civil action is not entitled to attorney fees absent a specific contractual or statutory provision, although equitable exceptions are recognized. Here, the parties agreed that there was no contractual authority to support an award of attorney fees, although the Supreme Court held in Trustees of Ind. Univ. v. Buxbaum, 2003 MT 97, 315 M 210, 69 P3d

663 (2003), that 27-8-313 authorizes a District Court to award attorney fees when the court, in its discretion, considers such an award to be necessary or proper. The Christensens submitted that the defendant insurer was obligated to reimburse them based on the insurance exception rationale articulated in Home Ins. Co. v. Pinski Bros., Inc., 160 M 219, 500 P2d 945 (1972), which approved an award of attorney fees in cases in which an insurer breaches its obligation to defend an insured. The Supreme Court noted that the issue presented a question of law, so the standard of review was whether the District Court's interpretation of law was correct. The Supreme Court held that an insurer that breaches its duty to indemnify is liable for attorney fees when an insured is forced to assume the burden of legal action to obtain the full benefit of the insurance contract, regardless of whether the insurer's duty to defend is at issue. However, in this case, the Christensens were third-party beneficiaries, and the Supreme Court declined to extend the insurance exception to third-party claimants because that would sanction attorney fee awards for simply demonstrating the existence of any insurance contract from which a third-party claimant successfully established coverage, which would undermine the American rule. Thus, although the Christensens were precluded from recovering attorney fees under the obligatory insurance exception, the case was remanded for a determination of whether attorney fees were necessary or proper under 27-8-313 and Trustees of Ind. Univ. v. Buxbaum. Mtn. W. Farm Bureau Mut. Ins. Co. v. Brewer, 2003 MT 98, 315 M 231, 69 P3d 652 (2003), overruling Yovish v. United Serv. Auto. Ass'n, 243 M 284, 794 P2d 682 (1990), and followed in Hernandez v. Yellowstone County Comm'rs, 2008 MT 251, 345 M 1, 189 P3d 638 (2008), with regard to award of attorney fees only to a prevailing party under the private attorney general theory.

Accident Involving Multiple Liable Insureds — Maximum Insurance Coverage Limited to Policy Amount: In a case of first impression, the Supreme Court was asked to determine whether persons insured under one policy, who are both found legally liable for causing one accident, must each be covered by the mandatory limits in 61-6-103. The District Court found that Montana's vehicle insurance omnibus statutes do not require separate, full coverage for multiple insureds when each insured is liable for independent acts of negligence arising from one accident. The court reasoned that 61-6-103 refers to each accident, not each separate act of negligence that may have contributed to causing the accident, and held that as a matter of law, once the injured person's damages resulting from the one accident exhaust the $50,000 policy limit, the insurer's obligation to cover any further claims ceases. The Supreme Court noted that if the Legislature ever intended to allow a double recovery system, it never expressly provided the language necessary for such an interpretation, but also noted that the language of 61-6-103 does not expressly prohibit double recovery. Rather, the clear statutory language provides that an owner's policy must provide a base amount of coverage, subject to limits exclusive of interest and costs, with respect to each motor vehicle, not each insured, in the event that the vehicle causes damage to persons or property, regardless of who is behind the wheel. The legislative history provided no evidence that the Legislature ever contemplated or wished to require that the minimum amounts of liability could or should be increased depending on the number of insureds found liable for causing one accident, and the Supreme Court, declining to construe the statute in any way that would insert a particular and precise meaning that had been omitted, affirmed the District Court's conclusion that the insurer was obligated under these circumstances to pay the policy limit on behalf of its insureds, and no more. Infinity Ins. Co. v. Dodson, 2000 MT 287, 302 M 209, 14 P3d 487, 57 St. Rep. 1196 (2000).

No Liability Per Se for Paying Mandatory Minimum Policy Limits — Avoiding Liability Through Coerced Economic Necessity: Guaranty National Insurance Co. (Guaranty) provided a minimum motor vehicle liability policy for Moore, who was clearly liable for injuring the Watterses in a car accident. Guaranty offered to settle the Watterses' claim to the extent of the policy coverage, but not without an absolute release of all liability. Guaranty argued that without a full release, it would be subject to a bad faith claim by Moore for placing the interests of a third-party claimant above those of its insured to whom it owed a fiduciary duty. The Supreme Court noted that under 33-18-242, an insured, but not a third-party claimant, is prohibited from bringing a bad faith action in connection with the handling of a claim. In purchasing the minimum required statutory coverage, Moore could not have reasonably expected that Guaranty would be obligated to provide greater coverage than that purchased by demanding a full liability release as a condition of paying the limits of the minimum coverage. When the monetary consequences of a person's tortious conduct undisputedly exceed policy limits and liability is clear, the only incentive for an injured third-party claimant to settle for policy limits and provide the insured with an absolute release from liability is some form of coerced economic necessity. Compelling an innocent third party to proceed to trial to recoup that which is already owed is inconsistent with public policy to encourage settlement and avoid unnecessary litigation. Guaranty would not have been exposed to per se liability for bad faith from Moore by paying the policy limits. Thus, when liability resulting from an automobile accident is reasonably clear and a third-party claimant's damages undisputedly exceed mandatory minimum policy limits pursuant to 61-6-103, the prompt, fair, and equitable settlement of the claims cannot be forestalled by an insurer based on an illusory bad faith or breach of contract claim that an insured may bring, and to refuse payment based on such an unfounded potential liability is itself a deceptive practice within the meaning of 33-18-201. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000), following Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997).

Purpose of Mandatory Liability Insurance Law — Absolute Liability of Insurer Not Applicable to Coverage in Excess of Statutory Minimum: The mandatory liability insurance law seeks to protect members of the general public who are innocent victims of automobile accidents and was enacted for the benefit of the public, rather than for the benefit of the insured. The liability of an insurance carrier with respect to motor vehicle mandatory liability insurance becomes absolute whenever injury or damage covered by the policy occurs, but the absolute liability standard does not apply to insurance coverage that exceeds the mandatory minimum limits. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000).

Unfair Trade Practice to Require Full and Final Release of Liability Before Claim Paid Within Policy Limits — "Settlement" Distinguished From "Release": Guaranty National Insurance Co. (Guaranty) provided a minimum motor vehicle liability policy for Moore, who was clearly liable for injuring the Watterses' in a car accident. Guaranty offered to settle the Watterses' claim to the extent of the policy coverage, but not without an absolute release of all liability. The Watterses declined the offer, eventually bringing an unfair trade action against Guaranty for failing to promptly pay damages for which Moore was liable. Guaranty argued that the full release from liability was necessary to effectuate a settlement, citing Thompson v. St. Farm Mut. Auto. Ins. Co., 161 M 207, 505 P2d 423 (1973), and Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), and contended that because no settlement was proffered from the Watterses, Guaranty could not, as a matter of law, have violated 33-18-201. The Supreme Court instead applied Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987 (1997). The court clarified the relevant terms, noting that in accord with the general governing principles of contract law from which the law of settlements is derived, in the context of the Unfair Trade Practices Act, a settlement is synonymous with an enforceable bilateral contract that discharges a future or existing obligation, while a release, as a matter of law, is nothing more than an accord and satisfaction or one of several ways in which an obligation may contractually be discharged or settled for less than or for something different than from what is owed. The court concluded that a settlement between Guaranty and the Watterses was legally possible without the Watterses executing a full and final release of all liability, as evidenced by Guaranty's settlement of the Watterses' property damage claims within the limits of Moore's policy without a release. Thus, when liability resulting from an automobile accident is reasonably clear and a third-party claimant's damages undisputedly exceed mandatory minimum policy limits pursuant to 61-6-103, it is an unfair trade practice per se under 33-18-201 for an insurer to condition the payment of the owed mandatory minimum policy limits on the third party's agreement to provide a full and final release of all liability in favor of an insured. An insurer who pays mandatory minimum policy limits under these circumstances does not act in bad faith per se against its insured by not obtaining a full and final liability release on the insured's behalf. Unfortunately for the Watterses, under the case law in effect at the time, Guaranty had a reasonable basis under Juedeman upon which to deny payment of policy limits, so Guaranty's cross-motion for summary judgment was granted. Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000), overruling Thompson v. St. Farm Mut. Auto. Ins. Co., 161 M 207, 505 P2d 423 (1973), and Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992). See also High Country Paving, Inc. v. United Fire & Cas. Co., 2019 MT 297, 398 Mont. 191, 454 P.3d 1210.

Insurer Liable for Payment When Liability Clear — Legislative Amendment Poor Evidence — Purpose of Statute — Leveraging Under One Coverage Prohibited — Juedeman Overruled: Guaranty National admitted 90% of the liability for an accident involving Ridley and its insured, Roope, but refused to pay Ridley's medical expenses without settling all of Ridley's claim against Roope. Ridley filed an action for a declaratory judgment against Guaranty National, asking the District Court to find that Guaranty National had a duty to pay medical expenses under 33-18-201. The District Court concluded that Guaranty National had no obligation to pay Ridley's medical expenses until final settlement of all claims arising from the accident. The

Supreme Court reversed, holding that 33-18-201(6) and (13) impose an obligation on an insurer to pay claims when liability is reasonably clear, including claims submitted under the same type of coverage from an insurer. The Supreme Court based its decision on the following: (1) any contrary decisions by the U.S. District Court in Montana are not binding on Montana courts; (2) any construction of the statute based upon action that one Legislature failed to take to amend the statute was a "hazardous basis" for inferring intent of a previous Legislature when it enacted 33-18-201; (3) the purpose of the statute is to encourage prompt settlement of claims and is more consistent with the state's public policy expressed in 61-6-302 through 61-6-304 and this section; and (4) it was the "leveraging" of undisputed claims (using the payment of one claim to settle other claims in a manner to the insurer's advantage) that the Legislature sought to prohibit when it enacted the statute. To the extent that the Supreme Court implied in Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), that the requirements of 33-18-201(6) and (13) apply only to one claim or more than one claim under different types of coverage, that implication was overruled by the Supreme Court. Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987, 54 St. Rep. 1430 (1997), followed in Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000).

Limited Corporate Insurance Policy Covering Permissive Use Customers — Void and Unenforceable: Chrysler Insurance Corporation (Chrysler) issued a policy to one of its automobile dealers that extended coverage to permissive use customers only if they were uninsured or underinsured and only up to the statutory minimum mandated in this section. In effect, the policy set a maximum ceiling level of coverage rather than a minimum floor amount of coverage as statutorily required. Because the Chrysler policy excluded or limited mandated coverage for permissive vehicle operators, the exclusion-limitation language in the policy was void as contrary to public policy and unenforceable. Enforcing the policy according to the remainder of its valid terms, the Supreme Court held that an insured must be extended coverage to the full amount provided under the general liability amount contained in the Chrysler policy. Swank v. Chrysler Ins. Corp., 282 M 376, 938 P2d 631, 54 St. Rep. 390 (1997), following Leibrand v. Nat'l Farmers Union Property & Cas. Co., 272 M 1, 898 P2d 1220 (1995).

Ambiguous Family Member Automobile Liability Exclusion Construed Against Insurer: The U.S. District Court for the District of Montana certified a question to the Montana Supreme Court that arose in two consolidated cases. In each case, a family member was injured in an automobile accident as the result of the negligence of another family member, and in each case, the insurer relied upon exclusions that purported to deny liability to an insured, beyond that required by this section, for injuries caused to another family member. The U.S. District Court asked whether the amendatory endorsements relied upon in each case were valid and enforceable. The Supreme Court held that the endorsements were not valid and enforceable because the language relied upon by the insurers was ambiguous. Citing Worldwide Underwriters Ins. Co. v. Brady, 973 F2d 192 (3rd Cir. 1992), the Supreme Court held that the question of ambiguity must be resolved from the standpoint of a consumer of average intelligence not trained in law or the insurance business and that the policies in question were subject to more than one interpretation regarding the extent of the coverage for damage to a household member. The Supreme Court also held that the remainder of the policies should be enforced according to their terms, giving the insureds the benefit of the value of the policies with no applicable exclusion. Leibrand v. Nat'l Farmers Union Property & Cas. Co., 272 M 1, 898 P2d 1220, 52 St. Rep. 557 (1995), followed in Iwen v. U.S. W. Direct, 1999 MT 63, 293 M 512, 977 P2d 989, 56 St. Rep. 263 (1999). However, see Fisher v. St. Farm Mut. Auto. Ins. Co., 2013 MT 208, 371 Mont. 147, 305 P.3d 861, granting summary judgment to insurer when family member exclusion in policy is not ambiguous, followed in Meadow Brook, LLP v. First Am. Title Ins. Co., 2014 MT 190, 375 Mont. 509, 329 P.3d 608.

No Implied Permission by Insured for Son to Drive Another's Automobile — Insurer Not Liable: When the insured stated in his affidavit that he did not and would not have given his son permission to drive another's automobile on the day in question and when the son stated in his affidavit that he believed his father would have denied him permission to drive the vehicle on that day, the District Court did not err in determining that there was no express or implied permission by the insured for his son to drive the vehicle. The District Court did not err in granting summary judgment for the insurer. Allstate Ins. Co. v. Hankinson, 249 M 237, 815 P2d 145, 48 St. Rep. 662 (1991).

Policy Excluding Mandated Coverage Void: An insurance company appealed a decision in a declaratory action it filed to determine its duty to defend and indemnify a driver for claims arising out of an accident in which the driver was at fault but was driving without permission of the owner of the car. The Supreme Court reversed after finding that the policy's nonowned automobile provision's qualifying language "with the owner's permission" was void as contrary to public policy because it excluded coverage statutorily mandated under the mandatory liability protection law. Allstate Ins. Co. v. Hankinson, 244 M 1, 795 P2d 480, 47 St. Rep. 1380 (1990).

Continuation of Liability Coverage if Driver Initially Obtained Control of Automobile With Owner's Permission: If the driver of a motor vehicle initially obtains control and operates a motor vehicle with the permission of the owner, the owner's liability insurance must continue to cover the vehicle even though the permittee may have exceeded the scope of the owner's permission or consent. Enforcement of minimum statutory coverage in this state is mandated. The clear purpose of this section is to protect innocent members of the general public injured on the highways through the negligence of financially irresponsible motorists. Horace Mann Ins. v. Hampton, 235 M 354, 767 P2d 343, 46 St. Rep. 49 (1989), distinguished in Allstate Ins. Co. v. Hankinson, 249 M 237, 815 P2d 145, 48 St. Rep. 662 (1991).

Exclusion From Coverage Prohibited: The U.S. District Court certified to the Montana Supreme Court the question of whether Title 61, ch. 6, part 3, prohibits exclusion of a named driver or drivers from coverage under a motor vehicle liability policy. Answering in the affirmative, the Supreme Court found that enforcement of minimum statutory coverage is mandated by law in Montana and is a minor burden on insureds when compared to increased protection of the general traveling public. An insurer's attempt to exclude defendant from coverage was found to be contrary to the requirements of this section (prior to 1989 amendment) and repugnant to the state's interest in protecting innocent victims of automobile accidents. Iowa Mut. Ins. Co. v. Davis, 231 M 166, 752 P2d 166, 45 St. Rep. 514 (1988). The propriety of awarding attorney fees and expenses relative to this case was discussed in Iowa Mut. Ins. Co. v. Davis, 689 F. Supp. 1028, 45 St. Rep. 1361 (D.C. Mont. 1988).

Allowance of Greater Liability Protection for Named Insured Than for Permissive User: Nothing in the Motor Vehicle Safety-Responsibility Act or in the public policy of Montana prohibits an insurance agreement from affording a named insured greater liability protection than an omnibus insured, such as a renter. Guar. Nat'l Ins. Co. v. Kemper Financial Serv., 667 F. Supp. 714, 44 St. Rep. 1561 (D.C. Mont. 1987).

Consortium Claim Subject to "Each Person" Limit of Liability Coverage: Under mandatory motor vehicle insurance coverage statutes, husband's cause of action for consortium and wife's cause of action for bodily injuries are subject to the "one person limitation" set forth in 61-6-103 as referred to in 61-6-301. The policy in question does not extend coverage beyond the statutory requirements. Therefore, husband is not entitled to recover from the insurance company an amount over the limit specified for one person for consequential damages to himself resulting from injuries to his wife, such as loss of her services or consortium. Bain v. Gleason, 223 M 442, 726 P2d 1153, 43 St. Rep. 1897 (1986), distinguished in Treichel v. St. Farm Mut. Auto. Ins. Co., 280 M 443, 930 P2d 661, 54 St. Rep. 1 (1997).

No Coverage Under Additional Policies on Automobiles Not Involved in Accident: There is no coverage for injured plaintiffs under father's motor vehicle liability policies on separate vehicles not owned or driven by son involved in collision. Son is not an insured under those policies merely by virtue of being relative of insured father. Bain v. Gleason, 223 M 442, 726 P2d 1153, 43 St. Rep. 1897 (1986).

Coverage of Auto Dealer's Customer Using Vehicle Loaned by Dealer: Because the exclusions in 61-6-303 do not include an auto dealership, a dealership is an "owner of a motor vehicle" within the meaning of this section and must carry insurance on its vehicles. This insurance covers vehicles operated in the state by the owner or with his permission, including a customer to whom the dealer loans a vehicle, even if the customer has his own insurance. Bill Atkin Volkswagen, Inc. v. McClafferty, 213 M 99, 689 P2d 1237, 41 St. Rep. 1981 (1984).

Pro Rata Coverage When Two Insurers Liable — Excess Coverage Clauses — Effect: Driver left his car at dealer's for repair, and while driving a car dealer had loaned driver, he hit a parked car. Driver admitted fault, tendered defense of a suit by damaged car's owner against driver to dealer's insurer, and coverage was denied. Driver's insurer settled the claim. Dealer's insurer partially reimbursed dealer for damage to the loaned vehicle. Dealer sued driver on its insurer's behalf for damage to the loaned vehicle, and driver sued dealer's insurer as a third-party defendant claiming to be insured under dealer's policy. Driver sought, on behalf of his insurer, recovery of the amount paid by driver's insurer to settle the claim of the owner of the parked car and also sought attorney fees and costs. Both the dealer and the driver had a policy stating that it provided only excess insurance over and above any other valid and collectible insurance applicable to a particular event. Each insurer therefore argued that the other insurer was the primary insurer and must pay until the limits of the primary insurer were reached, at which time the excess policy would operate to pay up to its limits. The court held that in such an instance each insurer is liable for a pro rata share of the loss, calculated on the basis of the ratio of the insurer's policy limit to the total of both insurers' policy limits. Bill Atkin Volkswagen, Inc. v. McClafferty, 213 M 99, 689 P2d 1237, 41 St. Rep. 1981 (1984).

Required Insurance — Necessity of Primary Coverage — Excess Coverage Clause Often Adequate: That a policy is procured to satisfy the requirements of a motor vehicle financial responsibility or mandatory liability protection law does not require that policy to provide primary coverage in all events. Between that policy and another policy applicable to a particular event, an excess coverage provision will be given effect. The excess coverage clause does not defeat the purpose of the law, because it provides coverage unless there is other adequate coverage. The loss is thus covered in any event. Moreover, the Montana law simply does not specify that the vehicle owner's insurer is the primary insurer as a matter of law. Bill Atkin Volkswagen, Inc. v. McClafferty, 213 M 99, 689 P2d 1237, 41 St. Rep. 1981 (1984).

Motor Vehicle Liability Insurance — Implied Consent Construed: Plaintiff owned and insured a fleet of vehicles. One of the vehicles was used primarily by the wife and son of plaintiff's president. The president's son and a school friend, McArthur, had an understanding that allowed McArthur to use the car. In the early morning hours of March 23, 1980, the son and a friend went to a truckstop for breakfast. McArthur and another friend stayed in the car to play the radio. A police officer investigated the youths in the car for a possible curfew violation. McArthur, not wanting to receive a citation, decided to leave in the car. While McArthur was backing out, the officer grabbed the car in an attempt to stop it. The officer became caught on the car, and McArthur unwittingly drove over him while leaving the lot. At trial the jury found that McArthur was using the car with the son's implied permission and that plaintiff's insurance covered the incident. Defendant appealed, contending that implied consent to use the car did not exist as the son had told McArthur not to leave. The court found that a complete and unreasonable departure from intended use or an intentionally dangerous and wrongful operation could support a ruling that the use was outside the scope of permitted use. However, under the facts of this case, there was no absolute revocation of consent. The jury could find that the intervening circumstances required immediate action rendering the temporary prohibition on use inapplicable. Coverage was extended to McArthur. Mtn. W. Farm Bureau Mut. Ins. Co. v. Farmers Ins. Exch. Co., 209 M 467, 680 P2d 330, 41 St. Rep. 829 (1984).

Family Exclusion Clause Void: A parent is not immune from a negligence action brought against him by a child under the age of emancipation injured in the operation of a motor vehicle. Therefore, a family exclusion clause in an automobile insurance policy obtained under the mandatory liability insurance law is void and unenforceable because 61-6-301 requires motorists to carry insurance against loss resulting from liability imposed by law for injury suffered by any person. If the policy had been certified under the Motor Vehicle Safety-Responsibility Act, the exclusion clause would have been invalid because liability under that act is "absolute". Transamerica Ins. Co. v. Royle, 202 M 173, 656 P2d 820, 40 St. Rep. 12 (1983). See also Leibrand v. Nat'l Farmers Union Property & Cas. Co., 272 M 1, 898 P2d 1220, 52 St. Rep. 557 (1995), contrasted in Stutzman v. Safeco Ins. Co. of America, 284 M 372, 945 P2d 32, 54 St. Rep. 925 (1997), and Am. Family Mut. Ins. Co. v. Livengood, 1998 MT 329, 292 M 244, 970 P2d 1054, 55 St. Rep. 1336 (1998).

Constitutionality of Mandatory Vehicle Insurance Law: Section 61-3-301 does not violate either due process or equal protection guarantees of the Montana Constitution. St. v. Turk, 197 M 311, 643 P2d 224, 39 St. Rep. 584 (1982).

Attorney General's Opinions

Every Vehicle to Have Its Own Coverage: Every motor vehicle registered and operated in Montana must have liability protection. The certification to the County Treasurer must be that the motor vehicle being registered is covered by a liability policy. The fact that an individual's liability policy may cover another vehicle under certain circumstances does not meet the requirement of continuous coverage. 40 A.G. Op. 5 (1983).

Both Owner and Drivers of Motor Vehicle to Be Insured: When compliance with this section is through the motor vehicle liability insurance option, both the owner and drivers operating the vehicle with the owner's permission must be insured. 38 A.G. Op. 49 (1979).

Carrying Proof of Insurance in Vehicle Not Required — No Probable Cause for Failure to Exhibit Proof After Accident: It is not necessary that proof of compliance with the mandatory motor vehicle insurance law be carried with the operator or exhibited on demand following an accident. A notice to appear on sworn complaint alleging failure to comply with Montana's compulsory insurance law lacks reasonable cause if it is grounded solely on an operator's failure to provide proof of insurance at the scene of an accident. 38 A.G. Op. 49 (1979).

61-6-302. Proof of compliance.

Compiler's Comments

2019 Amendment: Chapter 445 in (1) near end after "or a certificate of self-insurance" deleted "or a posted indemnity bond"; and made minor changes in style. Amendment effective May 10, 2019.

2017 Amendment: Chapter 321 in (4)(a) and (4)(b) inserted references to issuing officer and substituted "the time the alleged violation took place" for "the time of arrest". Amendment effective July 1, 2017.

Applicability: Section 44, Ch. 321, L. 2017, provided: "[This act] applies to offenses committed after June 30, 2017."

2015 Amendments — Composite Section: Chapter 146 inserted (2)(a)(ii) concerning display of electronic document; in (2)(b) in two places after "card" inserted "or electronic document"; in (2)(c) after "card" inserted "or display the electronic document"; in (2)(d) in two places after references to insurance card inserted references to display of electronic document; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 369 inserted (2)(e) defining insurance card; and made minor changes in style. Amendment effective January 1, 2016.

Applicability: Section 12, Ch. 369, L. 2015, provided: "[This act] applies to insurance policies issued or renewed on or after January 1, 2016."

2011 Amendment: Chapter 73 deleted former (3) that read: "(3) Beginning July 1, 2011, a person charged with violating subsection (2) may not be convicted if:

(a) the arresting officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system a request that provides proof of insurance valid at the time of arrest; or

(b) if the system under 61-6-157 is not available, the person produces in court or the office of the arresting officer proof of insurance valid at the time of arrest"; inserted (4) prohibiting conviction for violation of (2) under certain circumstances; and made minor changes in style. Amendment effective March 25, 2011.

2009 Amendments — Composite Section: Chapter 203 in (2) at beginning of first sentence substituted "Each owner or operator of a motor vehicle" for "Each person", after "vehicle" deleted "being operated by the person", and at beginning of third sentence after "vehicle" inserted "owner or"; and made minor changes in style. Amendment effective April 15, 2009.

Chapter 413 in (2) inserted second sentence regarding requirements of insurance card for commercial and fleet insurance and at end deleted former language that read: "However, a person charged with violating this subsection may not be convicted if"; inserted introductory clause of (3) and inserted (3)(a) prohibiting conviction beginning July 1, 2011, of a person for whom the system provides proof of insurance at time of arrest; in (3)(b) at beginning inserted initial phrase regarding unavailability of system; and inserted (4) regarding issuance and service of complaint and notice to appear. Amendment effective October 1, 2009.

The amendment to this section by sec. 10, Ch. 387, L. 2009, was rendered void by sec. 28, Ch. 413, L. 2009, a coordination section.

1995 Amendment: Chapter 393 deleted former (2) that read: "(2) An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the department and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed"; in (2) inserted third sentence concerning the failure to carry an insurance card in a motor vehicle or to provide the card upon demand; and made minor changes in style.

1993 Amendments: Chapters 278 and 365 substituted (1) providing that the registration receipt must contain a statement that unless the vehicle is eligible for exemption, it is unlawful to operate it without liability insurance, self-insurance, or an indemnity bond for former text requiring that a person certify that he had liability insurance, was self-insured, had an indemnity bond, or was eligible for exemption, providing that the registration and plates could be canceled if the certification was not represented, and providing that intentionally giving false information was a criminal offense; deleted former (2) that provided that an applicant wishing to register a vehicle by mail was required to sign a statement that the applicant was in compliance with the financial liability requirements; and made minor changes in style.

1989 Amendment: In (4) changed "patrolman" to "patrol officer".

1987 Amendment: In (2), after "registration of", substituted "a motor vehicle" for "an automobile or a truck having a rated capacity of three-quarters of a ton or less".

1985 Amendments: Chapter 348 in (4) inserted "a city or municipal judge".

Chapter 503 in (1) in two places, in (3), and in (4) in two places substituted references to department of justice for references to division of motor vehicles.

1981 Amendments: Chapter 409 changed "certify and display to the county treasurer" to "certify to the county treasurer that he possesses" in (1); added last sentence of (1) relating to false information; added subsection (4) relating to insurance cards.

Chapter 614 added "Except as provided in subsection (2)" to the beginning of (1); and added subsection (2) requiring that an applicant sign a statement of compliance with financial liability requirements if he registers by mail an automobile or a truck having a rated capacity of a ton or less.

Source: Subsection (4) is based on 61-5-116.

Case Notes

Alternative Sentencing Recommendation — No Breach of Plea Agreement — Information Technology Surcharges: The defendant was charged with four crimes related to a vehicle accident and agreed to a plea agreement recommending a deferred sentence. The parties subsequently received a presentence investigation report that was consistent with the plea agreement. At the sentencing hearing, the state expressed concerns about the defendant's housing when asked by the District Court. The defendant did not object to the state's testimony. The District Court rejected the plea agreement, sentenced the defendant to imprisonment, and imposed information technology surcharges per count under 3-1-317. On appeal, the Supreme Court affirmed in part, holding that the District Court's sentence was fashioned to help the defendant address her chemical dependency issues and that the state did not breach the plea agreement with its comments based on the circumstances of the case. The Supreme Court also reversed in part, finding that the District Court incorrectly imposed the information technology surcharges per count rather than per user under the language of 3-1-317. St. v. Ellison, 2017 MT 88, 387 Mont. 243, 393 P.3d 192, following St. v. Bartosh, 2007 MT 59, 336 Mont. 212, 154 P.3d 58, and distinguishing St. v. LaMere, 2000 MT 45, 298 Mont. 358, 2 P.3d 204, and St. v. Rardon, 2002 MT 345, 313 Mont. 321, 61 P.3d 132.

State Required to Prove Lack of Insurance: After a traffic stop of a vehicle based on an observation that the vehicle did not have taillights, the officer approached the vehicle and requested the driver, who was Farmer's girlfriend, to produce her driver's license and proof of registration. She was unable to produce either document. The officer also requested the driver to produce proof of liability insurance on the vehicle, which she also was unable to produce. The officer then contacted dispatch to run a check on the license plate number of the vehicle, and dispatch informed him that the vehicle was registered to Farmer. At the time of the traffic stop, Farmer was seated in the vehicle's front passenger seat. Farmer also did not produce proof of liability insurance for the vehicle. Farmer received a citation for failure to carry valid liability insurance on his vehicle in violation of 61-6-301. At the trial in the District Court, the officer testified that he requested the driver to provide proof of insurance and she failed to do so. He further testified that Farmer was seated in the passenger seat, observed the interaction, and at no time made an effort to provide proof of insurance for the vehicle. The officer did not state that he directly requested Farmer to provide such proof, but rather testified that he "made a request to the driver and he [Farmer] was sitting right there, so I don't know if I made a direct request to him, but he was sitting right there when I asked for it." The state presented no other evidence, either direct or circumstantial, that Farmer did not have liability insurance for the vehicle at the time of the traffic stop. At the close of the state's case-in-chief, Farmer moved the District Court for a directed verdict, arguing that the state had failed to present evidence that his vehicle was not insured at the time of the traffic stop. The District Court determined that the state had presented sufficient evidence to convict Farmer under 61-6-301 for allowing his vehicle to be operated without valid liability insurance and found Farmer guilty of that offense. The court then sentenced Farmer and entered judgment on the conviction and sentence. Farmer appealed. The state contended that the officer's testimony that Farmer did not produce proof of insurance at the time of the traffic stop was sufficient to establish his failure to insure the vehicle. The state cited 61-6-302 and asserts that the statute imposed upon Farmer a duty to prove, upon demand, that his vehicle was insured. It was undisputed here that Farmer was not the "operator" of the vehicle at the time of the traffic stop. Farmer had no obligation pursuant to 61-6-302 to provide proof of insurance, and Farmer's failure to present proof of insurance did not support a finding that the insurance did not exist at the time of the traffic stop. The state argued 61-6-302 must be viewed as an enforcement mechanism for 61-6-301 because the only effective way to ascertain compliance with 61-6-301 is to place a duty upon the vehicle owner to provide proof of insurance. Interpreting the statutes in the manner advocated by the state would require the Supreme Court to either insert the term "owner" into 61-6-302 or insert language requiring an owner to provide proof of insurance upon request into 61-6-301 and the Court declined to do so. The case was reversed and remanded with instructions to vacate the judgment and dismiss the charge. St. v. Farmer, 2008 MT 354, 346 M 335, 195 P3d 800 (2008). (See 2009 amendment.)

Constitutionality: Enforcement of the provisions of this section requiring a person to carry proof of compliance with the required motor vehicle insurance law is not a violation of constitutional rights. Billings v. Skurdal, 224 M 84, 730 P2d 371, 43 St. Rep. 2036 (1986).

Minor's Driver's License Application — Time for Deposit of Proof of Financial Responsibility: Under 61-5-108, a parent, parents, guardian, or other responsible person may sign a minor's driver's license application and deposit proof of financial responsibility "in form and in amounts as required under the motor vehicle financial responsibility laws" and thereby escape imputation to them of the minor's negligence. This does not require the proof to be deposited when the minor's application is filed. From the time proof is deposited there is no imputed negligence, whether the deposit is before, in conjunction with, or after the filing of the minor's application, so long as insurance is in effect at the time of a given accident. Gaub v. Milbank Ins. Co., 220 M 424, 715 P2d 443, 43 St. Rep. 497 (1986).

Attorney General's Opinions

Every Vehicle to Have Its Own Coverage: Every motor vehicle registered and operated in Montana must have liability protection. The certification to the County Treasurer must be that the motor vehicle being registered is covered by a liability policy. The fact that an individual's liability policy may cover another vehicle under certain circumstances does not meet the requirement of continuous coverage. 40 A.G. Op. 5 (1983).

Carrying Proof of Insurance in Vehicle Not Required — No Probable Cause for Failure to Exhibit Proof After Accident: (Prior to 1981 amendment) it was not necessary that proof of compliance with the mandatory motor vehicle insurance law be carried with the operator or exhibited on demand following an accident. A notice to appear on sworn complaint alleging failure to comply with Montana's compulsory insurance law lacked reasonable cause if it was grounded solely on an operator's failure to provide proof of insurance at the scene of an accident. (See also 1995 amendment.) 38 A.G. Op. 49 (1979).

61-6-303. Exempt vehicles.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 4 deleted former (9) that read: "(9) a vehicle owned by a nonresident if it is currently registered in the owner's resident jurisdiction and the owner is in compliance with the motor vehicle liability insurance requirements, if any, of that jurisdiction"; and made minor changes in style. Amendment effective February 12, 2019.

Chapter 445 deleted former (2) and (3) that read: "(2) a vehicle for which cash, securities, or a bond has been deposited or filed with the department upon terms and conditions providing the same benefits available under a required motor vehicle liability insurance policy; (3) a vehicle owned by a self-insurer certified as provided in 61-6-143"; and made minor changes in style. Amendment effective May 10, 2019.

Saving Clause: Section 3, Ch. 4, L. 2019, was a saving clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendments: Chapter 212 inserted (9) exempting from required motor vehicle insurance a vehicle owned by a nonresident if it is registered in the owner's jurisdiction and if he is in compliance with motor vehicle insurance requirements of that jurisdiction.

Chapter 503 in (2) substituted reference to department of justice for reference to division of motor vehicles.

Chapter 516 in (7) after "motorcycle", inserted "or quadricycle" (effective January 1, 1986).

Case Notes

Coverage of Auto Dealer's Customer Using Vehicle Loaned by Dealer: Because the exclusions in 61-6-303 do not include an auto dealership, a dealership is an "owner of a motor vehicle" within the meaning of this section and must carry insurance on its vehicles. This insurance covers vehicles operated in the state by the owner or with his permission, including a customer to whom the dealer loans a vehicle, even if the customer has his own insurance. Bill Atkin Volkswagen, Inc. v. McClafferty, 213 M 99, 689 P2d 1237, 41 St. Rep. 1981 (1984).

61-6-304. Penalties.

Compiler's Comments

2017 Amendment: Chapter 321 in (1) in first sentence after "$250 or more than $500" and in second sentence after "a fine of $350" deleted "or by imprisonment in the county jail for not more than 10 days, or both", and in third sentence substituted "10 days" for "6 months"; deleted former (4) and (5) that read: "(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(5) A court may not defer imposition of penalties provided by this section"; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 44, Ch. 321, L. 2017, provided: "[This act] applies to offenses committed after June 30, 2017."

2007 Amendment: Chapter 329 in (2) substituted second sentence concerning surrender of registration receipt and plates for former text that read: "The court shall send the receipt and plates, along with a copy of the complaint and dispositional order, to the department, which shall immediately suspend the receipt and plates", in third sentence at beginning substituted "vehicle's registration status" for "receipt and plates", inserted fourth sentence concerning recycling or destroying surrendered plates, in fifth sentence near beginning after "61-6-301" inserted "and payment of fees required under 61-3-333 for replacement license plates and registration decal and under 61-3-341 for a replacement registration receipt" and near end after "receipt" deleted "and return the license plates", in sixth sentence at end inserted "until the date indicated on the restricted registration receipt", and deleted former sixth and seventh sentences that read: "Upon the expiration of the appropriate time period, the department shall issue a regular registration receipt to the owner of the vehicle. The department may establish fees for the restricted registration receipts issued pursuant to this subsection." Amendment effective January 1, 2008.

2005 Amendment: Chapter 394 in (2) at end of second sentence after "plates" deleted "for a period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction", in third sentence after "until" deleted "the expiration date of that period and until", inserted fourth sentence requiring the department to issue a restricted registration receipt and return the license plates to the offender upon proof of compliance with 61-6-301 during the 90-day period from the date of the second conviction or 180 days from the date of a third or subsequent conviction, inserted fifth sentence providing that a restricted registration receipt limits the use of a motor vehicle operated at the time of the offense to employment purposes only, inserted sixth sentence regarding issuance of regular registration receipt, and inserted seventh sentence authorizing department to establish fees for the restricted registration receipts issued under subsection; and made minor changes in style. Amendment effective July 1, 2005.

1997 Amendment: Chapter 452 in (2), in third sentence after "period", inserted "and until proof of compliance with 61-6-301 is furnished to the department"; inserted (3) concerning fourth and subsequent convictions; inserted (6) concerning previous convictions for purposes of sentencing; and made minor changes in style. Amendment effective July 1, 1997.

1995 Amendments: Chapter 393 deleted former (1) that read: "(1) It is unlawful for any person to operate a motor vehicle upon ways of this state open to the public without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless the person has been issued a certificate of self-insurance pursuant to 61-6-143 or has previously posted an indemnity bond with the department as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303"; in (1), near beginning, substituted "61-6-301 or 61-6-302" for "61-6-301 through 61-6-304"; in (2), near beginning, inserted "under 61-6-301 or 61-6-302"; and made minor changes in style.

Chapter 534 in (1), at end of third sentence, substituted "6 months" for "10 days"; and made minor changes in style.

1993 Amendment: Chapter 365 at beginning of first sentence of (2) substituted "Conviction of a first offense under 61-6-301 through 61-6-304 is punishable" for "A violation of 61-6-301 through 61-6-304 is a misdemeanor punishable" and inserted second and third sentences establishing fine of $350 and jail term of up to 10 days for second conviction and fine of $500 and jail term of up to 10 days, or both, for third or subsequent conviction; inserted (3) requiring court upon second or subsequent conviction to order surrender of the vehicle registration receipt and plates and to forward receipt, plates, and copy of complaint and dispositional order to Department, requiring Department to suspend receipt and plates for 90 days from date of second conviction and for 180 days from date of third or subsequent conviction, and allowing for reinstatement if vehicle is transferred to a new owner; inserted (4) allowing court to suspend fine only if it determines offender is unable to pay fine; inserted (5) prohibiting deferred imposition of penalties; and made minor changes in style.

1987 Amendment: Near end of section substituted "fine of not less than $250 and not to exceed $500" for "fine not to exceed $250".

1985 Amendments: Chapter 212 near beginning of first sentence substituted "ways of this state open to the public" for "highways, streets, or roadways of this state".

Chapter 440 at end of section inserted "or by imprisonment in the county jail for not more than 10 days, or both".

Chapter 503 substituted reference to department of justice for reference to division of motor vehicles.

1981 Amendments: Chapter 409 changed "punishable as provided in 61-3-601" to "punishable by a fine not to exceed $250" near end of section.

Chapter 575 substituted "61-6-143" for "[61-6-302]" and "division of motor vehicles" for "[commissioner of insurance]".

Case Notes

Incorrect Sentences for Operating Vehicle Without Insurance and Accident Involving Damage to Vehicle Reversed: Clark was charged on two occasions with multiple misdemeanor traffic offenses. The District Court properly based its sentencing on the factors in 46-18-101, but incorrectly applied the 1995 version of this section in sentencing Clark to 6 months in the county jail for operating a vehicle without valid liability insurance when the 1993 version of the statute in effect at the time that the crime was committed allowed a maximum sentence of 10 days. The court also sentenced Clark to 10 days' imprisonment and fined him $100 for a conviction under the 1995 version of 61-7-118 related to an accident involving damage to a vehicle, but the 1993 version in effect at the time that the crime was committed allowed for the imposition of imprisonment or a fine, but not both, upon a first conviction. These sentencing errors constituted reversible error as a matter of law, and the Supreme Court remanded for resentencing consistent with the applicable statutes. St. v. Clark, 2000 MT 40, 298 M 300, 997 P2d 107, 57 St. Rep. 185 (2000).

Insurer Liable for Payment When Liability Clear — Legislative Amendment Poor Evidence — Purpose of Statute — Leveraging Under One Coverage Prohibited — Juedeman Overruled: Guaranty National admitted 90% of the liability for an accident involving Ridley and its insured, Roope, but refused to pay Ridley's medical expenses without settling all of Ridley's claim against Roope. Ridley filed an action for a declaratory judgment against Guaranty National, asking the District Court to find that Guaranty National had a duty to pay medical expenses under 33-18-201. The District Court concluded that Guaranty National had no obligation to pay Ridley's medical expenses until final settlement of all claims arising from the accident. The Supreme Court reversed, holding that 33-18-201(6) and (13) impose an obligation on an insurer to pay claims when liability is reasonably clear, including claims submitted under the same type of coverage from an insurer. The Supreme Court based its decision on the following: (1) any contrary decisions by the U.S. District Court in Montana are not binding on Montana courts; (2) any construction of the statute based upon action that one Legislature failed to take to amend the statute was a "hazardous basis" for inferring intent of a previous Legislature when it enacted 33-18-201; (3) the purpose of the statute is to encourage prompt settlement of claims and is more consistent with the state's public policy expressed in 61-6-301 through 61-6-303 and this section; and (4) it was the "leveraging" of undisputed claims (using the payment of one claim to settle other claims in a manner to the insurer's advantage) that the Legislature sought to prohibit when it enacted the statute. To the extent that the Supreme Court implied in Juedeman v. Nat'l Farmers Union Property & Cas. Co., 253 M 278, 833 P2d 191 (1992), that the requirements of 33-18-201(6) and (13) apply only to one claim or more than one claim under different types of coverage, that implication was overruled by the Supreme Court. Ridley v. Guar. Nat'l Ins. Co., 286 M 325, 951 P2d 987, 54 St. Rep. 1430 (1997), followed in Watters v. Guar. Nat'l Ins. Co., 2000 MT 150, 300 M 91, 3 P3d 626, 57 St. Rep. 588 (2000).

"Free Men" Not Free to Ignore State Motor Vehicle Laws: Operation of a motor vehicle on public roads is a privilege and is subject to reasonable regulation by the state in the valid exercise of the state's police power. Reasonable regulations include mandatory vehicle registration, insurance, and seatbelt usage. The privilege may be revoked for failure to comply with regulations. No one in the state is exempt from the regulations, including appellant, who claims to be a "free man" who is not a 14th amendment citizen and who therefore does not need to obey state or federal law. St. v. Folda, 267 M 523, 885 P2d 426, 51 St. Rep. 1149 (1994).

Power of State to Enact and Courts to Enforce Laws Regulating Motor Vehicles: Appellant, appearing pro se, challenged as unconstitutional laws requiring driver's license, mandatory insurance, and vehicle registration. The Supreme Court held that the issues raised by the appellant were frivolous, unreasonable, and groundless in that the court had previously recognized the state's power to regulate motor vehicles in the interests of public safety at the expense of individual rights. Whitefish v. Hansen, 237 M 105, 771 P2d 976, 46 St. Rep. 657 (1989).

Attorney General's Opinions

Every Vehicle to Have Its Own Coverage: Every motor vehicle registered and operated in Montana must have liability protection. The certification to the County Treasurer must be that the motor vehicle being registered is covered by a liability policy. The fact that an individual's liability policy may cover another vehicle under certain circumstances does not meet the requirement of continuous coverage. 40 A.G. Op. 5 (1983).

Individual Operating Another's Uninsured Vehicle: Section 61-6-304 is aimed at preventing the harm that occurs when an uninsured motorist is involved in an accident, whether or not he is driving his own car. Therefore, an individual may be cited and convicted for failure to have liability insurance if he is discovered operating a third party's uninsured motor vehicle. 40 A.G. Op. 5 (1983).

Carrying Proof of Insurance in Vehicle Not Required — No Probable Cause for Failure to Exhibit Proof After Accident: (Prior to 1981 amendment) it was not necessary that proof of compliance with the mandatory motor vehicle insurance law be carried with the operator or exhibited on demand following an accident. A notice to appear on sworn complaint alleging failure to comply with Montana's compulsory insurance law lacked reasonable cause if it was grounded solely on an operator's failure to provide proof of insurance at the scene of an accident. 38 A.G. Op. 49 (1979).

Owner and Operator in Violation if Operator Is Not Insured: Both the owner and any nonowner operator of a motor vehicle are in violation if the operator is not insured. 38 A.G. Op. 49 (1979).

Peace Officers' Authority to Enforce Provisions of Mandatory Insurance Law: Peace officers who have reasonable grounds to believe that an individual is in violation of the mandatory motor vehicle insurance law may either effect the person's immediate arrest or issue a notice to appear. 38 A.G. Op. 49 (1979).

Power of "Accident Investigator" to Enforce Provisions of Mandatory Insurance Law: The role of an "accident investigator", who is not a peace officer, in enforcing the provisions of the mandatory insurance law is the same as that of a private person. If the accident investigator has reasonable cause to believe an offense has been committed, he must execute a sworn complaint pursuant to 46-6-201. 38 A.G. Op. 49 (1979).

Prosecutorial Responsibility — Dismissal by Prosecutor if Proof of Compliance Produced: Subsequent to the execution of a notice to appear on sworn complaint alleging failure to maintain motor vehicle liability protection, prosecution is the responsibility of the City or County Attorney. The prosecuting attorney may cause the dismissal of the charge upon proof that the defendant was, in fact, maintaining the required liability protection. 38 A.G. Op. 49 (1979).

61-6-309. Law enforcement use of verification system.

Compiler's Comments

2015 Amendment: Chapter 146 in (2)(a) after first "insurance card" inserted "or electronic document showing proof of compliance with 61-6-301", after "produced" inserted "or displayed", and after "display of an insurance card" inserted "or electronic document". Amendment effective October 1, 2015.

Effective Date: Section 29(1), Ch. 413, L. 2009, provided that this section is effective October 1, 2009.

CHAPTER 7
ACCIDENTS AND ACCIDENT REPORTS

Part 1
Uniform Accident Reporting Act

Part Case Notes

Weight and Admissibility of Evidence — Blood Tests: The suggestion that a change in the blood of accident victims between the time of their death in an accident and the time the blood was drawn 9 to 12 hours later might have caused clotting of the blood and a resultant higher blood alcohol reading went to the weight of the test results and not their admissibility. McAlpine v. Midland Elec. Co., 194 M 154, 634 P2d 1166, 38 St. Rep. 1577 (1981).

Part Attorney General's Opinions

Application of Uniform Accident Reporting Act: The provisions of the Uniform Accident Reporting Act, Title 61, ch. 7, part 1, apply on highways and elsewhere throughout the state, as specified in 61-7-102. The application of the Act is unaffected by the definition of "ways of this state open to the public" in 61-8-101, which applies only to Title 61, ch. 8, regarding traffic regulation. 41 A.G. Op. 54 (1986).

Part Collateral References

Uniform Motor Vehicle Accident Reparations Act, 14 U.L.A. 41.

61-7-101. Short title — definition.

Compiler's Comments

2011 Amendment: Chapter 235 inserted (2) defining accident; and made minor changes in style. Amendment effective October 1, 2011.

61-7-102. Application.

Attorney General's Opinions

Application of Uniform Accident Reporting Act: The provisions of the Uniform Accident Reporting Act, Title 61, ch. 7, part 1, apply on highways and elsewhere throughout the state, as specified in 61-7-102. The application of the Act is unaffected by the definition of "ways of this state open to the public" in 61-8-101, which applies only to Title 61, ch. 8, regarding traffic regulation. 41 A.G. Op. 54 (1986).

Application to Private Property: A statute regulating operation of motor vehicles which, by its terms, applies to conduct "upon the highways and elsewhere throughout the state", may be applied to conduct occurring on private property. 39 A.G. Op. 30 (1981).

61-7-103. Accidents involving another person or deceased person.

Compiler's Comments

2011 Amendment: Chapter 235 in first sentence near beginning substituted "vehicle who knows or reasonably should have known that the driver has been in an accident with another person or a deceased person" for "vehicle involved in an accident resulting in injury to or death of any person"; deleted former (2) and (3) that read: "(2) (a) Except as provided in subsection (2)(b), a driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment for a term of not less than 30 days or more than 1 year, by a fine of not less than $100 or more than $5,000, or by both fine and imprisonment.

(b) If the accident resulted in serious bodily injury or death of any person, a driver failing to stop or to comply with the requirements of subsection (1) shall upon conviction be punished by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, by a fine in an amount not to exceed $50,000, or by both fine and imprisonment.

(3) The department shall revoke the license or permit to drive of any resident and any nonresident operating privilege of a person convicted of violating this section for the period prescribed in 61-5-205"; and made minor changes in style. Amendment effective October 1, 2011.

2007 Amendment: Chapter 145 in (2)(a) at beginning inserted exception clause; inserted (2)(b) providing a felony penalty for failure to stop at an accident or to stop without obstructing traffic if the accident resulted in serious bodily injury or death; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendment: Chapter 556 in (2) at beginning substituted "driver" for "person"; in (3) at end substituted "61-5-205" for "61-5-208"; and made minor changes in style. Amendment effective May 5, 2003.

1985 Amendment: In (3) substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Alcohol-Related Conditions Reasonable Given Defendant's History of Alcohol Abuse: The defendant was involved in a hit-and-run. He was convicted of several charges related to the accident, and at sentencing the city introduced evidence of the defendant's criminal record, including his seven prior DUIs. As a part of his sentence, the Municipal Court placed four alcohol-related conditions related to his suspended sentence. On appeal, the defendant claimed that those conditions were not reasonable given that his last DUI had occurred 8 years earlier. The District Court and Supreme Court both affirmed, holding that the conditions were reasonable and had a sufficient nexus to the defendant's history of alcohol abuse and reckless driving. Billings v. Barth, 2017 MT 56, 387 Mont. 32, 390 P.3d 951.

Statute Not Unconstitutionally Vague: Steglich was charged with failure to remain at the scene of a fatal accident pursuant to 61-7-103. Steglich moved to dismiss on grounds that the statute was unconstitutionally vague. The District Court held that the statute was vague both facially and as applied to Steglich and granted the dismissal motion. After accepting supervisory control, the Supreme Court reversed. The District Court reasoned that the statute was vague on its face because the criminal intent element was based on a reasonableness determination made by a factfinder, so the statute lacked a specified standard of conduct required by law. The court also found that the statute was vague as applied to Steglich because Steglich could not have reasonably understood that leaving the accident scene to obtain help for the victim was prohibited and because the statute fails to provide sufficient guidelines to prevent arbitrary and discriminatory enforcement with regard to Steglich's conduct. The state argued that the statute was not void on its face because it was not void in all applications, noting that a person could be charged with failure to remain at an accident if the person offered no assistance. The state also argued that the statute was not vague as applied to Steglich because an ordinary person would have fair notice that the law applied to a person who leaves an accident victim alive but unconscious, walks home past several residences where help could be called, and then gives keys to friends to go back to the accident scene while the person launders his clothes and takes a shower. The Supreme Court found that the statute was not vague on its face because it provides persons of ordinary intelligence fair notice of the conduct that is prohibited. A criminal statute is not rendered unconstitutionally vague solely because a factfinder determines the reasonableness of a defendant's actions. Additionally, the District Court applied the wrong standard in determining constitutionality. Rather than indulging every possible presumption in an effort to uphold constitutionality, the District Court speculated about hypothetical situations that could render the statute unconstitutional. The proper inquiry is whether the statute is impermissibly vague in every application, not whether the statute is vague as applied to some but not all hypothetical scenarios. Steglich did not meet the burden of demonstrating that no standard of conduct was specified at all. The court also held that the statute was not vague as applied specifically to Steglich, because 61-7-103 provides actual notice to citizens of what conduct is prohibited and provides minimal guidelines to ensure that law enforcement officers will not arbitrarily and discriminatorily charge citizens with failing to remain at the scene of an accident that involves injury or death. The case was remanded for further proceedings. St. v. District Court, 2009 MT 163, 350 M 465, 208 P3d 408 (2009), following St. v. Dixon, 2000 MT 82, 299 M 165, 998 P2d 544 (2000).

Supervisory Control Appropriate to Address Constitutionality of Statute Requiring Person to Remain at Site of Fatal Accident: Steglich was charged with failure to remain at the scene of a fatal accident pursuant to 61-7-103. Steglich moved to dismiss on grounds that the statute was unconstitutionally vague. The District Court held that the statute was vague both facially and as applied to Steglich and granted the dismissal motion. The state filed a petition for supervisory control. The Supreme Court held that urgency or emergency factors existed that made the normal appeal process inadequate and that because the case involved purely legal questions as well as constitutional issues of statewide importance and because the District Court was proceeding under a mistake of law causing a gross injustice, supervisory control was appropriate. St. v. District Court, 2009 MT 163, 350 M 465, 208 P3d 408 (2009).

Motion to Dismiss Based on Insufficient Evidence of Negligent Homicide Properly Denied — Deviation From Reasonableness Standard Sufficient to Support Finding of Negligent Conduct: After consuming at least five shots of brandy and four beers at a tavern, Davis hit and killed a pedestrian on the way home, then left the accident scene. Upon arriving home, he told his girlfriend that he had hit a deer, ate dinner, and went to bed. Davis was later charged with negligent homicide and failure to remain at the scene of an accident that resulted in death or personal injuries. Following presentation of the state's case, Davis moved for dismissal based on insufficient evidence, which was denied. Davis was convicted and appealed. The Supreme Court affirmed, concluding that a rational trier of fact could have found the essential elements of negligent homicide beyond a reasonable doubt based on evidence that Davis consciously disregarded the risk posed by his driving under the influence of alcohol (even though blood alcohol content could not be tested because he left the scene) and that Davis's conduct immediately before, during, and after the accident revealed a gross deviation from the standard of conduct that a reasonable person not under the influence of alcohol would have observed. St. v. Davis, 2000 MT 199, 300 M 458, 5 P3d 547, 57 St. Rep. 773 (2000), followed in St. v. English, 2006 MT 177, 333 M 23, 140 P3d 454 (2006).

Knowledge of Personal Injury or Death Held Element of Crime: Defendant was convicted of leaving the scene of an accident involving personal injuries in violation of 61-7-103. In instructing the jury on the elements of the crime, the trial judge failed to include as an element that defendant knew that the accident had resulted in personal injuries. On appeal, the State argued that to require that such knowledge is an element of the crime would not be reasonable because it would encourage people to leave the scene of an accident to foreclose the opportunity of acquiring this knowledge. The Supreme Court ruled that knowledge of injury was an element of the crime but that knowledge of personal injury or death may be inferred from the seriousness of the accident. St. v. Stafford, 208 M 324, 678 P2d 644, 41 St. Rep. 377 (1984), followed in St. v. Zeltner, 2000 MT 319, 302 M 504, 15 P3d 384, 57 St. Rep. 1346 (2000).

61-7-105. Duty to give information and render aid.

Compiler's Comments

2011 Amendment: Chapter 235 in (1) substituted "required to stop pursuant to 61-7-103" for "involved in an accident resulting in injury to or death of any person or damage to any vehicle that is driven or attended by any person"; inserted (1)(c) relating to remaining at the scene of an accident; inserted (2) relating to delegation of duties; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: Near middle substituted "driver's license" for "operator's or chauffeur's license". Amendment effective January 1, 1988.

61-7-107. Duty upon striking fixtures or other property upon highway.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: Near end substituted "driver's license" for "operator's or chauffeur's license". Amendment effective January 1, 1988.

61-7-108. Immediate notice of accidents.

Compiler's Comments

2013 Amendment: Chapter 314 near middle after "extent of" substituted "$1,000" for "$500". Amendment effective October 1, 2013.

2011 Amendment: Chapter 235 inserted "who knows or reasonably should have known that the driver has been" and inserted "striking the body of a deceased person". Amendment effective October 1, 2011.

1999 Amendment: Chapter 115 in first sentence increased amount of damage that must be sustained in accident before driver is required to report from $250 to $500; and made minor changes in style. Amendment effective January 1, 2000.

1987 Amendment: Increased property damage amount from $100 to $250.

Case Notes

Alcohol-Related Conditions Reasonable Given Defendant's History of Alcohol Abuse: The defendant was involved in a hit-and-run. He was convicted of several charges related to the accident, and at sentencing the city introduced evidence of the defendant's criminal record, including his seven prior DUIs. As a part of his sentence, the Municipal Court placed four alcohol-related conditions related to his suspended sentence. On appeal, the defendant claimed that those conditions were not reasonable given that his last DUI had occurred 8 years earlier. The District Court and Supreme Court both affirmed, holding that the conditions were reasonable and had a sufficient nexus to the defendant's history of alcohol abuse and reckless driving. Billings v. Barth, 2017 MT 56, 387 Mont. 32, 390 P.3d 951.

Sufficient Evidence to Support Particularized Suspicion to Justify Investigatory Stop — Petition for Reinstatement of Driver's License Properly Denied: A highway patrol officer observed a vehicle swerve and hit the guardrail. The vehicle did not stop, so the officer followed the vehicle as it exited the freeway. The officer believed, in part, that the driver violated this section, failing to report an accident causing damage of $500 or more, so the officer stopped the vehicle and subsequently arrested Moore for DUI. When Moore refused a breath test, the officer seized Moore's driver's license. Moore petitioned for reinstatement of the license, arguing that the officer could formulate no suspicion that Moore was involved in wrongdoing that would warrant an investigative stop because the officer could not have known whether Moore was going to report the accident by the quickest means, which was for Moore to drive home and call. The District

Court denied the petition, and the Supreme Court affirmed. The officer testified that the damage to the guardrail alone exceeded $500 and that Moore passed up at least two opportunities to stop and use a pay telephone to report the accident before the investigatory stop. Although the evidence conflicted, it was within the province of the District Court to determine the weight of the evidence and credibility of the witnesses. The officer testified credibly, and there was sufficient evidence in the record to indicate that the officer had the requisite particularized suspicion to justify the investigatory stop. Therefore, Moore's petition to reinstate the driver's license was properly denied. Moore v. St., 2002 MT 315, 313 M 126, 61 P3d 746 (2002), followed in St. v. Schulke, 2005 MT 77, 326 M 390, 109 P3d 744 (2005). See also Weer v. St., 2010 MT 232, 358 Mont. 130, 244 P.3d 311.

Jurisdiction of Victimless Crime by Non-Indian on Reservation: The District Court held that state courts do not have jurisdiction over the crime of failing to report an accident when the incident occurred within the reservation, the driver was a non-Indian, and the property belonged to an Indian. The Supreme Court found that the offense should be analyzed as a victimless crime for purposes of determining jurisdiction because the alleged criminal act was failure to discharge a reporting duty, not infliction of damage upon property belonging to an Indian. Under the authority of U.S. v. Wheeler, 435 US 313, 55 L Ed 2d 303, 98 S Ct 1079 (1978), Draper v. U.S., 164 US 240, 41 L Ed 419, 17 S Ct 107 (1896), and 18 U.S.C. 1152, federal and tribal interests in providing a federal forum failed to outweigh the state's strong interest in public safety. The policy of providing a federal forum when criminal prosecutions pit the interests of non-Indian offenders against Indian victims was not furthered where, as here, the connection to destruction of Indian property was only tangential to the crime charged; therefore, the state's interests controlled. St. v. Thomas, 233 M 451, 760 P2d 96, 45 St. Rep. 1627 (1988), followed in St. v. Haskins, 269 M 202, 887 P2d 1189, 51 St. Rep. 1474 (1994).

Habitual Offender — Complaint Invalid for Lack of Substantiation of Prior Charge: The complaint to have defendant declared to be a habitual offender was invalid on its face since one of the offenses claimed against defendant, the point value of which was necessary to meet the 30-point requirement of 61-11-203, was a conviction under this section for failure to report an accident by the quickest means, but no summons or other information was appended sufficient to substantiate the conviction. With respect to that charge the complaint should have stated the date of the alleged charge, the place it occurred, the arresting officer, but most importantly, that there was bodily injury or death involved or that apparent property damage in the amount of $100 or more was incurred. State ex rel. Sol v. Orcutt, 180 M 15, 588 P2d 996 (1979).

61-7-109. Written reports of accidents — additional information — form of report.

Compiler's Comments

1999 Amendment: Chapter 115 in first sentences of (1) and (3) increased amount of property damage that must be sustained before officer is required to file written report from $400 to $1,000; and made minor changes in style. Amendment effective January 1, 2000.

1989 Amendments: Chapter 83 at end of (4) substituted "chapter 6 of this title" for "this part". Chapter 486 inserted (5) prohibiting use of reports as evidence in trial.

1987 Amendment: In (1) and (3) increased property damage amount from $250 to $400.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in four places.

1983 Amendment: At end of (1), after "division" inserted "unless" clause referring to requirement in (3) that law enforcement officer who investigates motor vehicle accident involving a death, injury, or damage exceeding $250 file within 10 days of investigation a written report of the accident to the division; in (3), after "motor vehicle accident" substituted "in which any person is killed or injured or in which damage to the property of any person exceeds $250" for "of which report must be made as required in this part".

Case Notes

Defendant's Car Crash Supported Trooper's Expansion into DUI Investigation — Sufficient Particularized Suspicion Present: The state charged the defendant with driving under the influence or, in the alternative, operating a noncommercial vehicle with an alcohol concentration of 0.08% or greater. In Justice Court, the defendant filed a motion to suppress and dismiss, arguing that the trooper unlawfully seized him, subjected him to a custodial interrogation without first advising him of his Miranda rights, and did not have sufficient particularized suspicion to expand a crash investigation into a DUI investigation. The Justice Court denied the motion and the Supreme Court affirmed, reasoning there were articulable, objective facts supporting the trooper's particularized suspicion that the defendant was operating his vehicle under the influence of alcohol, and the trooper properly expanded the crash investigation into a DUI investigation. St. v. Bailey, 2021 MT 157, 404 Mont. 384, 489 P.3d 889.

61-7-111. Accident report forms.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in three places.

1983 Amendment: Deleted last sentence of (3), which read: "Any person convicted of failing to report an accident by the quickest means of communication or failing to forward a written report as required herein is guilty of a misdemeanor and punishable by a fine of not more than $25."

61-7-112. Coroners and medical examiners to report.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

61-7-113. Garages to report.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

61-7-114. Accident reports confidential.

Compiler's Comments

2001 Amendment: Chapter 296 in (2) at beginning of second sentence inserted exception clause and in third sentence after "supplemental information" inserted "including witness statements"; inserted (2)(e) providing public with access, without court order, to motor vehicle reports and supplemental information, while prohibiting access to information identifying person or insurer; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 105 in (1), near middle of first sentence, substituted "governmental agencies for accident prevention, roadway design, motor carrier safety monitoring purposes" for "state agencies having use for the records for accident prevention purposes"; at end of (2)(b) inserted "or the insurance carrier of that person"; and made minor changes in style.

1989 Amendment: In (2), at beginning, inserted exception clause, in second sentence, after "examined", inserted "and copied, without obtaining a court order", and near end inserted "or by a party to a civil action arising from the accident"; deleted former (3) that read: "(3) No such report shall be used as evidence in any trial, civil or criminal, arising out of an accident, except that the department shall furnish upon demand of any person who has or claims to have made such a report or upon the demand of any court a certificate showing that a specified accident report has or has not been made to the department solely to prove a compliance or a failure to comply with the requirement that such a report be made to the department"; and made minor changes in phraseology.

1985 Amendment: In (1) in two places and in (3) in three places substituted references to department of justice for references to division of motor vehicles.

Case Notes

Admissibility of Blood Test Results: In a suit arising from a motor vehicle collision, laboratory test results of blood alcohol analyses of two victims of the accident were not inadmissible under this section and were not required or supplemental reports within the meaning of this section's prohibition against the admission of such reports in evidence. McAlpine v. Midland Elec. Co., 194 M 154, 634 P2d 1166, 38 St. Rep. 1577 (1981).

Admissibility of Copies: Where a technician who performed blood alcohol tests, ascertained readings on a graph made by gas chromatograph, and completed test result forms testified at trial and the result forms were introduced in evidence, it was not error to admit the forms without producing the graphs. The forms were admissible as copies in lieu of the graphs under the rule providing that a copy made in the regular course of business is admissible to the same extent as the original. McAlpine v. Midland Elec. Co., 194 M 154, 634 P2d 1166, 38 St. Rep. 1577 (1981).

Compliance With Administrative Rules: Although a criminal defendant is entitled to the safeguards of an administrative rule setting out blood testing procedures and implementing the statute providing for blood alcohol tests of drivers arrested for driving while under the influence before the presumption of being under the influence can arise from a certain blood alcohol level, it does not follow that the same procedural safeguards must be applied when blood test results are used in a civil proceeding, especially when the statutory presumption used in criminal cases is not relied upon. Therefore, where testimony in civil action established that witnesses for parties introducing test results followed good practice in the testing field, it was not error to fail, on a foundation for admitting test results, to prove compliance with the administrative rule. McAlpine v. Midland Elec. Co., 194 M 154, 634 P2d 1166, 38 St. Rep. 1577 (1981).

Plain Error in Admitting Evidence: Whenever the introduction in evidence of blood test results of a driver or passenger, in a suit arising from a motor vehicle collision, is prohibited by this section, it is plain error to allow the tests in evidence, even though an objection to their admission does not specifically refer to this section. McAlpine v. Midland Elec. Co., 194 M 154, 634 P2d 1166, 38 St. Rep. 1577 (1981).

Proof of Source of Blood Used for Blood Tests: There was no merit to the argument that defendants, sued for wrongful death, failed to prove that blood used for blood alcohol tests admitted in evidence came from motor vehicle accident victims where plaintiff did little more than selectively present testimony at trial and the persons who took the blood samples had no doubt that they were taken from victims. McAlpine v. Midland Elec. Co., 194 M 154, 634 P2d 1166, 38 St. Rep. 1577 (1981).

Inadmissibility in Evidence: In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte City Police Department was privileged, confidential, and inadmissible, and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. Morrison v. Butte, 150 M 106, 431 P2d 79 (1967).

Attorney General's Opinions

Insurance Carrier Entitled to Copy of Accident Report and Supplemental Information: A traffic accident report is confidential and may be disseminated only to those authorized by law to receive it. Under this section, the insurance carrier of a person involved in a traffic accident is entitled to copies of the accident report and supplemental information, including witness statements, whether or not the insurance carrier is referred to or named in the accident report. 51 A.G. Op. 8 (2005). See also 37 A.G. Op. 112 (1978).

Disclosure of Investigation Reports: County Attorneys, law enforcement personnel, and Coroners must release reports of accident investigations, autopsies, and related tests to persons specifically listed in statutes. Public access to the results of investigations not covered by statute is left to the discretion of the public official following the guidelines set forth in this opinion and 37 A.G. Op. 107 (1978). (See 2001 amendment.) 37 A.G. Op. 112 (1978).

61-7-115. Department to tabulate and analyze accident reports.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

61-7-116. Any incorporated city permitted to require accident reports.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Inadmissibility in Evidence: In negligence action by driver of automobile against city and driver of city road grader with whom he collided, accident report filed by city driver with Butte City Police Department was privileged, confidential, and inadmissible, and its admission into evidence over objection of city driver was prejudicial error even though case was heard by court without jury. Morrison v. Butte, 150 M 106, 431 P2d 79 (1967).

61-7-118. Penalty for violation.

Compiler's Comments

2011 Amendment: Chapter 235 in (1) at beginning inserted exception clause and substituted "61-7-103, 61-7-105" for "61-7-104"; inserted (2) and (3) relating to accidents resulting in injury or serious bodily injury; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 335 in (2) near end increased from $20 to $75 the dollar rate at which fines are satisfied based on each day of imprisonment; and made minor changes in style. Amendment effective July 1, 2009.

2003 Amendment: Chapter 364 in (1) increased fine for first conviction from not less than $10 or more than $100 to not less than $200 or more than $300 and increased imprisonment from 10 days to 20 days, increased fine for second conviction from not less than $25 or more than $200 to not less than $300 or more than $400 and increased imprisonment from 20 days to 30 days, and increased fine for third or subsequent conviction from not less than $50 or more than $500 to not less than $400 or more than $500; near end of (2) increased incarceration commutation fine rate from $10 to $20; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Incorrect Sentences for Operating Vehicle Without Insurance and Accident Involving Damage to Vehicle Reversed: Clark was charged on two occasions with multiple misdemeanor traffic offenses. The District Court properly based its sentencing on the factors in 46-18-101, but incorrectly applied the 1995 version of 61-6-304 in sentencing Clark to 6 months in the county jail for operating a vehicle without valid liability insurance when the 1993 version of the statute in effect at the time that the crime was committed allowed a maximum sentence of 10 days. The court also sentenced Clark to 10 days' imprisonment and fined him $100 for a conviction under the 1995 version of this section related to an accident involving damage to a vehicle, but the 1993 version in effect at the time that the crime was committed allowed for the imposition of imprisonment or a fine, but not both, upon a first conviction. These sentencing errors constituted reversible error as a matter of law, and the Supreme Court remanded for resentencing consistent with the applicable statutes. St. v. Clark, 2000 MT 40, 298 M 300, 997 P2d 107, 57 St. Rep. 185 (2000).

CHAPTER 8
TRAFFIC REGULATION

Chapter Case Notes

Juvenile — Traffic Violation — Guilty Plea — Ability to Waive Rights: The provisions of the Youth Court Act do not apply to traffic violations. The youth who was accused of failure to drive in a careful and prudent manner was not subject to a jail sentence if found guilty. He therefore did not have the right to counsel and could knowledgeably waive his rights without the presence of counsel or his parents. State ex rel. Maier v. City Court, 203 M 443, 662 P2d 276, 39 St. Rep. 1560 (1982).

Chapter Attorney General's Opinions

Application of Uniform Accident Reporting Act: The provisions of the Uniform Accident Reporting Act, Title 61, ch. 7, part 1, apply on highways and elsewhere throughout the state, as specified in 61-7-102. The application of the Act is unaffected by the definition of "ways of this state open to the public" in 61-8-101, which applies only to Title 61, ch. 8, regarding traffic regulation. 41 A.G. Op. 54 (1986).

Parochial School Vehicles and Head Start Vehicles as School Buses: Parochial school vehicles and Head Start vehicles used to transport children to and from school are school buses within the meaning of 61-1-116 (now repealed—see 61-8-102 for definitions), and as such they must comply with the provisions of Title 61 relative to school bus equipment, operation, and inspection. 39 A.G. Op. 63 (1982).

Chapter Law Review Articles

Undue Protection Versus Undue Punishment: Examining the Drinking and Driving Problems Across the United States, Black, 40 Suffolk U.L. Rev. 463 (2007).

Part 1
General Provisions

61-8-101. Application — exceptions — definition.

Compiler's Comments

2021 Amendment: Chapter 498 in (2)(b) substituted "61-8-1002(1) and (2)" for "61-8-401(1)(b), (1)(c), and (2)"; and in (2)(c) substituted "61-8-1002, except under the influence of a dangerous drug and 61-8-1002(2)" for "61-8-401 except subsections (1)(b), (1)(c), and (2) thereof, 61-8-402 through 61-8-405, and 61-8-465". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2011 Amendment: Chapter 282 in (2)(c) inserted reference to 61-8-465; and made minor changes in style. Amendment effective April 28, 2011.

Applicability — Retroactive Applicability: Section 13, Ch. 282, L. 2011, provided: "(1) [This act] applies to offenses committed on or after [the effective date of this act] [April 28, 2011].

(2) For the purpose of determining the number of prior refusals to submit to testing under 61-8-402 and of convictions for prior offenses referred to in [section 1] [61-8-465], [this act] applies retroactively, within the meaning of 1-2-109, to refusals made and to violations of 45-5-106, 45-5-205, 61-8-401, or 61-8-406 committed prior to [the effective date of this act] [April 28, 2011]."

1983 Amendments — Composite: Chapter 659 made the following changes: in (2)(b), after "61-8-301" substituted "61-8-401(1)(b), (1)(c), and (2) apply upon" for "61-8-401, with regard to operating a vehicle while under the influence of drugs, shall apply upon"; inserted (2)(c) which read: "(c) the provisions of 61-8-401, except subsections (1)(b), (1)(c), and (2) thereof, and 61-8-402 through 61-8-405 apply upon all ways of this state open to the public. For the purposes of this section and 61-8-401 through 61-8-404, "ways of this state open to the public" means any highway, road, alley, lane, parking area, or other public or private place adapted and fitted for public travel that is in common use by the public."; and in (3) near middle, before "provided" inserted "or on ways of this state open to the public".

Chapter 698 made the following changes: inserted (1) defining "ways of the state open to the public"; in (2)(b) after "apply" substituted "anywhere within this state" for "upon highways and elsewhere throughout the state"; and inserted (2)(c) which read: "The provisions of 61-8-301 and 61-8-401, with regard to operating a vehicle while under the influence of alcohol, apply upon all ways of this state open to the public."

The definitions of "ways of this state open to the public" in Ch. 659 and Ch. 698 are identical, except that the definition in Ch. 698 applies to all of Title 61, ch. 8, while the definition in Ch. 659 applies only to 61-8-101 and 61-8-401 through 61-8-404, and Ch. 659 uses "this state" in the definition while Ch. 698 uses "the state" in the definition. The Code Commissioner has codified the version having wider applicability and has used "this state" throughout the text for consistency.

Both Ch. 659 and Ch. 698 provided in (2)(b) for the application of the provisions of operating a vehicle under the influence of drugs anywhere within the state. The Code Commissioner has included portions of both amendments for clarity.

Both Ch. 659 and Ch. 698 provided in (2)(c) for the application of 61-8-401 with regard to operating a vehicle while under the influence of alcohol on all ways of the state open to the public. Chapter 698 included 61-8-301 in this subsection, and Ch. 659 included 61-8-402 through 61-8-405 in this subsection. The Code Commissioner has included all sections in the codified version.

Case Notes

Sufficient Evidence That Defendant Owned Vehicle and Drove on Public Way: At a DUI trial, Mooney contended that the state failed to prove that the vehicle that crashed into Ruff's fence belonged to Mooney and that the vehicle was ever driven on ways of the state open to the public. Mooney's arguments failed. It was Mooney who repeatedly appeared at Ruff's door and communicated that his vehicle had crashed into Ruff's fence, claiming that it was his car and apologizing for damaging the fence. Neither Ruff nor the investigating officer observed anyone else in the vicinity when Mooney came to the door. Based on this circumstantial evidence, a rational trier of fact could have concluded that Mooney was the driver of the vehicle. Additionally, a rational trier of fact could have concluded that the lane upon which Ruff's property sat qualified as a public or private place adapted for public travel in common use by the public, which constituted proof beyond a reasonable doubt that Mooney's car was driven on ways of the state open to the public. Mooney's DUI conviction was affirmed. St. v. Mooney, 2006 MT 121, 332 M 249, 137 P3d 532 (2006), overruled in part in St. v. Betterman, 2015 MT 39, 378 Mont. 182, 342 P.3d 971.

DUI Arrest in Restaurant Parking Area — Parking Lot Considered Way of State Open to Public: Hayes was arrested for DUI in the parking area of a restaurant. Following conviction, Hayes appealed on grounds that because the parking lot was privately owned, the implied consent law did not apply and the officer had no right to request a breath sample because Hayes' vehicle was not located on a way of the state open to the public pursuant to this section. The Supreme Court disagreed. The fact that the lot was unpaved and had potholes was inconsequential. Despite its poor condition, the lot was adapted and fitted for public travel and was in common use by the public. The public was encouraged to use the lot, including parking by restaurant patrons and selling by vendors in the lot. Therefore, the trial court did not err in concluding that the parking lot was within the definition of ways of this state open to the public, and Hayes' conviction was affirmed. Hayes v. St., 2005 MT 148, 327 M 346, 114 P3d 261 (2005).

Failure of Counsel to File Motion to Dismiss Not Considered Ineffective Assistance When Element of Offense Before Jury: Maki was arrested for DUI after being discovered slumped into the passenger seat of a running vehicle that was parked off the highway near a missile silo access site. Maki claimed ineffective assistance of counsel because his attorney did not file a motion to dismiss based on the fact that Maki was not on a way of the state open to the public. However, Maki's location on a way open to the public was an element of a DUI offense, so the issue was before the jury and Maki had an opportunity to contest the point. Counsel did not need to offer a motion to dismiss in order to raise the issue, and failure to do so neither prejudiced nor deprived Maki of a fair trial, so the ineffective assistance claim failed, and the DUI conviction was affirmed. St. v. Maki, 2004 MT 226, 322 M 420, 97 P3d 556 (2004).

Carport Not Considered Part of Home — Privacy Standard Inapplicable to DUI Search of Condominium Carport: Large was arrested for misdemeanor DUI while seated in her running car that was parked in the carport outside her condominium. Large moved to suppress the evidence because she was arrested at night at her home for a misdemeanor committed elsewhere, in violation of 46-6-105. She also contended that the arrest was in violation of her right to privacy. The motion was denied, and on appeal, the Supreme Court affirmed. Although a carport may be structurally contiguous with the rest of a private house or dwelling, presence in a carport does not equate to presence in the home, and although lot lines do convey certain concrete ownership rights, the right to be free from misdemeanor arrest at night is reserved for the home, not coterminous property appurtenant to the home. Further, under this section, ways of the state open to the public include parking areas and other public or private places adapted for public travel that are in common use by the public. Large could not be considered to be in her home while sitting in a car parked in the common-area parking lot in her condominium complex where officers could see what was readily visible to any visitor without being overly intrusive. Thus, Large had no reasonable expectation of privacy that prohibited her arrest in her own carport, nor did a violation of 46-6-105 occur. Whitefish v. Large, 2003 MT 322, 318 M 310, 80 P3d 427 (2003). See also St. v. Hubbel, 286 M 200, 951 P2d 971 (1997).

Privately Owned and Maintained Road as Way of This State Open to Public: As defined in this section, "ways of this state open to the public" does not include only those ways or places for travel that are legally dedicated to the public use. The term includes a privately owned and maintained unposted roadway adapted for public travel and commonly used by members of the public who are lost, curious, or use the road to access residences served by the road. St. v. Weis, 285 M 41, 945 P2d 900, 54 St. Rep. 1034 (1997), followed in St. v. Schwein, 2000 MT 371, 303 M 450, 16 P3d 373, 57 St. Rep. 1587 (2000).

Private Parking Lot Within Definition: A private bank parking lot commonly used by members of the public who are patrons of nearby taverns rather than bank customers is a parking area fitted for public travel and in common use by the public and is therefore within the definition of "ways open to the public". A person arrested for driving under the influence in the parking lot was subject to the provisions of the implied consent law, and the District Court did not err in suspending the driver's license for 90 days. Santee v. St., 267 M 304, 883 P2d 829, 51 St. Rep. 1034 (1994).

Driving Under Influence in Privately Owned Parking Garage — Definition Applicable: A privately owned parking facility fit the definition of "ways of this state open to the public"; therefore, defendant was properly charged under 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) when arrested for DUI in a hotel parking garage. Billings v. Peete, 224 M 158, 729 P2d 1268, 43 St. Rep. 2097 (1986), followed in Santee v. St., 267 M 304, 883 P2d 829, 51 St. Rep. 1034 (1994), St. v. Schwein, 2000 MT 371, 303 M 450, 16 P3d 373, 57 St. Rep. 1587 (2000), and St. v. Krause, 2021 MT 24, 403 Mont. 105, 480 P.3d 222.

Parking Lot — Traffic Laws Inapplicable: The duties of drivers on a parking lot are governed by general rules of negligence and not by traffic laws. Ashton v. Harris, 161 M 108, 505 P2d 413 (1973).

Attorney General's Opinions

Application of Uniform Accident Reporting Act: The provisions of the Uniform Accident Reporting Act, Title 61, ch. 7, part 1, apply on highways and elsewhere throughout the state, as specified in 61-7-102. The application of the Act is unaffected by the definition of "ways of this state open to the public" in 61-8-101, which applies only to Title 61, ch. 8, regarding traffic regulation. 41 A.G. Op. 54 (1986).

City Council — Lack of Authority to Regulate Crosswalk on Federal-Aid Highway in Manner Inconsistent With State Law: A city council may not enact an ordinance requiring a driver of a motor vehicle on a federal-aid or state highway to stop for a pedestrian within a crosswalk when the pedestrian is not on the half of the roadway on which the vehicle is traveling and when the pedestrian is not close enough to be in danger. 41 A.G. Op. 10 (1985).

Application to Private Property: A statute regulating operation of motor vehicles which, by its terms, applies to conduct "upon the highways and elsewhere throughout the state", may be applied to conduct occurring on private property. 39 A.G. Op. 30 (1981).

Law Review Articles

Determining Blood/Alcohol Concentration: Two Methods of Analysis, Thompson, 46 Mont. L. Rev. 364 (1985).

Montana's Legislative Attempt to Deal With the Drinking Driver: The 1983 DUI Statutes, Rohan, 46 Mont. L. Rev. 309 (1985).

61-8-102. Uniformity of interpretation — definitions.

Compiler's Comments

2021 Amendment: Chapter 498 in definition of ignition interlock device in (ii) substituted "61-8-1025" for "61-8-441". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2019 Amendment: Chapter 309 in (2)(o) at end substituted "61-1-101(10)(b)" for "61-1-101(9)(b)". Amendment effective October 1, 2019.

2015 Amendments — Composite Section: Chapter 255 in (2) in definition of bicycle substituted "irrespective of the number of wheels, except scooters, wheelchairs" for "and that has two tandem wheels and a seat height of more than 25 inches from the ground when the seat is raised to its highest position, except scooters", at end inserted sentence concerning electrically assisted bicycles, and deleted former (ii) that read: "(ii) a vehicle equipped with two or three wheels, foot pedals to permit muscular propulsion, and an independent power source providing a maximum of 2 brake horsepower. If a combustion engine is used, the maximum piston or rotor displacement may not exceed 3.05 cubic inches, 50 centimeters, regardless of the number of chambers in the power source. The power source may not be capable of propelling the device, unassisted, at a speed exceeding 30 miles an hour, 48.28 kilometers an hour, on a level surface. The device must be equipped with a power drive system that functions directly or automatically only and does not require clutching or shifting by the operator after the drive system is engaged"; in (2) inserted definitions of bicycle trailer, electrically assisted bicycle, laned roadway, and roadway; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 374 in definition of bicycle deleted former (ii) (see Ch. 255 note); inserted definition of moped; and made minor changes in style. Amendment effective October 1, 2015.

2011 Amendment: Chapter 296 in (2) in definition of noncommercial motor vehicle at end substituted "61-1-101(9)(b)" for "61-1-101(8)(b)". Amendment effective January 30, 2012.

2007 Amendments — Composite Section: Chapter 329 in definition of noncommercial motor vehicle at end substituted "61-8-101(8)(b)" for "61-8-101(7)(b)". Amendment effective January 1, 2008.

Chapter 449 in definition of authorized emergency vehicle near beginning after "vehicle of" substituted "a governmental fire agency organized under Title 7, chapter 33" for "the fire department or fire patrol"; and made minor changes in style. Amendment effective June 1, 2007.

2005 Amendment — Coordination: Chapter 542 inserted (2) defining authorized emergency vehicle, bicycle, business district, controlled-access highway, crosswalk, flag person, highway, ignition interlock device, intersection, local authorities, noncommercial motor vehicle, official traffic control devices, pedestrian, police vehicle, private road or driveway, residence district, right-of-way, school bus, sidewalk, traffic control signal, and urban district; and made minor changes in style. Amendment effective January 1, 2006.

Pursuant to sec. 7, Ch. 233, L. 2005, a coordination section, in definition of pedestrian at end inserted "or any person in a manually or mechanically propelled wheelchair or other low-powered, mechanically propelled vehicle designed specifically for use by a physically disabled person".

2003 Amendment: Chapter 20 substituted present language regarding interpretation of the chapter for former language that read: "This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." Amendment effective October 1, 2003.

Source: Chapter 263, L. 1955, was based on the provisions of the Traffic Laws Annotated promulgated by the National Highway Traffic Safety Administration, U.S. Department of Transportation (1979).

Case Notes

Unmarked Crosswalk at Every Intersection: Hanson was struck by Edwards's car while crossing an intersection that had no sidewalks, curbs, or painted lines delineating a crosswalk. Hanson moved for a directed verdict on grounds that because he was in an unmarked crosswalk, which gave him the right-of-way, Edwards was negligent as a matter of law. The motion was denied, and the trial court refused to instruct the jury that an unmarked crosswalk exists at every intersection pursuant to 61-1-209 (now repealed — see 61-8-102 for definitions). The Supreme Court examined legislative intent and, reading 61-1-209 (now repealed — see 61-8-102 for definitions) in pari materia with 61-8-502, concluded that Montana law provides for a crosswalk on any portion of a roadway at an intersection. The jury should have been so instructed, and failure to do so was reversible error. Hanson v. Edwards, 2000 MT 221, 301 M 185, 7 P3d 419, 57 St. Rep. 907 (2000).

Two Roads Not Highways — No Intersection: In a negligence action following a vehicular accident, the record showed that the road on which plaintiff was traveling was a paved through road; the short segment on which the defendant approached was not a through road and therefore could not form an intersection within the meaning of 61-1-212 (now repealed — see 61-8-102 for definitions) The evidence does not establish that the two roads joined were highways. To establish an "intersection", the two roads must be "highways" as defined in 61-1-201 (now repealed — see 61-1-101 for definitions). Kimes v. Herrin, 217 M 330, 705 P2d 108, 42 St. Rep. 1231 (1985).

Detour Signs and Barricades: Detour signs and "zebra board" barricades are official traffic-control devices when erected by public authority in conformity with provisions of the highway code. Their use to block off an unopened section of highway under construction negates any implied consent to use of the section. Gilleard v. Draine, 159 M 167, 496 P2d 83 (1972).

Nature of Roads Forming Intersection: An intersection is formed when two publicly maintained ways join at any angle. Rader v. Nicholls, 140 M 459, 373 P2d 312 (1962).

When Junction Is an Intersection: In order to show that a junction of two roads constitutes an "intersection", it must be shown that both roads are "highways" within the meaning of 61-1-201 (now repealed — see 61-1-101 for definitions). Leach v. Great N. Ry., 139 M 84, 360 P2d 94 (1961), followed in Kimes v. Herrin, 217 M 330, 705 P2d 108, 42 St. Rep. 1231 (1985).

Attorney General's Opinions

Parochial School Vehicles and Head Start Vehicles as School Buses: Parochial school vehicles and Head Start vehicles used to transport children to and from school are school buses within the meaning of 61-1-116 (now repealed — see 61-8-102 for definitions), and as such they must comply with the provisions of Title 61 relative to school bus equipment, operation, and inspection. 39 A.G. Op. 63 (1982).

61-8-103. Provisions uniform throughout state — power of local authorities.

Case Notes

City Ordinances Criminalizing Refusal to Take Requested Breath Test and Assessing Penalty Consistent With and Not Less Stringent Than State Law — Ordinances Enforceable: The city of Missoula enacted an ordinance providing for a misdemeanor for refusing to take a requested breath test and a second ordinance authorizing a $500 penalty for the misdemeanor. After being pulled over, the defendant refused to take a breath test. She was charged with violating the ordinance and was assessed the penalty. She challenged the charges, arguing that the city did not have the authority to enact the ordinances. After being convicted, she appealed to the Supreme Court, which held that Missoula had the authority to enact the ordinances given that the ordinances did not conflict with the state's DUI laws and were not less stringent than state law. Missoula v. Armitage, 2014 MT 274, 376 Mont. 448, 335 P.3d 736.

Attorney General's Opinions

City Council — Lack of Authority to Regulate Crosswalk on Federal-Aid Highway in Manner Inconsistent With State Law: A city council may not enact an ordinance requiring a driver of a motor vehicle on a federal-aid or state highway to stop for a pedestrian within a crosswalk when the pedestrian is not on the half of the roadway on which the vehicle is traveling and when the pedestrian is not close enough to be in danger. 41 A.G. Op. 10 (1985).

Board of County Commissioners — Right to Set Speed Limits: A Board of County Commissioners, constituted in a commission form of government, may alter otherwise statutorily established speed limits by compliance with 61-8-310. It may further adopt traffic ordinances to the extent permitted under 61-12-101(14), and any such ordinances may include penalty provisions. 40 A.G. Op. 51 (1984).

Authority to Regulate Parking on Private Lots: The uniform act regulating traffic on highways as adopted by the state precludes a municipal corporation from enacting an ordinance to regulate parking upon privately owned lots. 37 A.G. Op. 53 (1977).

61-8-104. Required obedience to traffic laws.

Compiler's Comments

1991 Amendment: Near middle, after "misdemeanor", inserted "punishable as provided in 61-8-711".

Case Notes

Permission to Search Car of Passenger's Parents — Warrantless Search Proper: The defendant was pulled over while driving a vehicle owned by his passenger's parents. The officer pulled the car over because it had a headlight out. The officer arrested the defendant for driving without a license and put him in the back of the police vehicle. The passenger then agreed to allow the officers to search his parent's car. After drugs and drug paraphernalia were found, the defendant was charged with drug-related crimes. The District Court subsequently denied the defendant's motion to exclude evidence obtained from the stop and warrantless search of the vehicle. The defendant eventually entered into an agreement to plead guilty, reserving the right to appeal. On appeal, the Supreme Court affirmed, finding that the District Court made sufficient findings of fact and conclusions of law, that the arresting officers had particularized suspicion, and that the passenger had common authority to grant consent for the search of the vehicle. St. v. Baty, 2017 MT 89, 387 Mont. 252, 393 P.3d 187.

61-8-105. Obedience to peace officers, flag persons, crossing guards, and public safety workers.

Compiler's Comments

2003 Amendment: Chapter 20 near middle of introductory clause substituted "flag person, crossing guard" for "highway patrol officer"; inserted definition of peace officer; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 431 in first sentence substituted "peace officer" for "police officer" and after "patrol officer" inserted "or public safety worker"; inserted second sentence defining public safety worker; and made minor changes in style.

1989 Amendment: Changed "patrolman" to "patrol officer".

Law Review Articles

The Highway Patrol Officer as Expert Witness, Tanzer, 44 Mont. L. Rev. 251 (1983).

61-8-107. Police vehicles and authorized emergency vehicles.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1981 Amendment: Changed language in (3) from "audible and visual signals" to "audible or visual signal, or both"; deleted "except that an authorized emergency vehicle operated as a police vehicle need not be equipped with or display a red light visible from in front of the vehicle" from the end of (3).

Case Notes

Public Duty Doctrine Inapplicable Based on Special Relationship Between Pursuing Officers and Pedestrian: Plaintiff was injured when defendant, a runaway juvenile probationer, hit plaintiff with a stolen vehicle while being pursued by law enforcement officers during a high-speed chase through Harlowton. Plaintiff sued the county and the County Sheriff for damages related to the crash. The District Court granted summary judgment to the county and the County Sheriff, holding that the public duty doctrine applied and that neither plaintiff's nor the juvenile's actions were foreseeable. On appeal, the Supreme Court disagreed. The public duty doctrine generally shields law enforcement officers from negligence claims, but an exception arises when there is a special relationship between an officer and an individual that gives rise to a special duty that is more particular than the duty owed to the public at large. Applying the circumstances set out in Nelson v. Driscoll, 1999 MT 193, 295 M 363, 983 P2d 972 (1999), the court noted that the first exception to the public trust doctrine is whether a statute intended to protect a specific class of persons, of which plaintiff is a member, creates a special relationship. Under this section, a duty of care is created on the part of the drivers of emergency vehicles to drive with due regard for the safety of all persons. Based on this special relationship, the court held that the public duty doctrine did not apply. As a bystander on a public road, plaintiff was within the scope of risk and was thus a foreseeable plaintiff. Last, the court considered the issue of causation. Plaintiff claimed negligence on the part of the county and the officers, but plaintiff was actually injured by the actions of the juvenile, so the question was whether the juvenile's actions were intervening superseding acts that broke the chain of causation as a matter of law. Whether plaintiff's injuries were caused primarily by the juvenile or by the officers was an issue that reasonable minds might disagree upon and therefore appropriately adjudicated by a jury, so the Supreme Court reversed the summary judgment and remanded for trial on the issues of breach of duty, causation, including intervening superseding cause, and damages. Eklund v. Trost, 2006 MT 333, 335 M 112, 151 P3d 870 (2006), applying Stenberg v. Neel, 188 M 333, 613 P2d 1007 (1980), and Day v. St., 980 P2d 1171 (Utah 1999). See also Whitefish v. Jentile, 2012 MT 185, 366 Mont. 94, 285 P.3d 515.

Duty to Drive With "Due Regard": In interpreting this section, the test for "due regard" is whether, with the privileges and immunities provided by that statute, the driver of an emergency vehicle acted in a reasonably careful manner. Stenberg v. Neel, 188 M 333, 613 P2d 1007, 37 St. Rep. 1170 (1980).

Attorney General's Opinions

Funeral Procession Vehicles Not to Be Exempted From Traffic Laws by City Ordinance: A city with self-government powers may not enact an ordinance exempting vehicles in a funeral procession from obeying traffic control devices by designating the vehicles as authorized emergency vehicles. 43 A.G. Op. 53 (1990).

Yield of Right-of-Way Required Upon Approach of Emergency Vehicle Using Only Visual Signals: Upon the immediate approach of an authorized emergency vehicle making use of only visual signals pursuant to 61-9-402, other drivers shall yield the right-of-way or stop. They may then proceed past the signal with caution and at a reasonable and proper speed. 43 A.G. Op. 11 (1989).

61-8-110. Forest development road, special service road defined.

Case Notes

Federal Law Applied to Road Building and Logging in National Forest: The U.S. District Court discussed the applicability of federal law to road building and logging activities in certain portions of Beaverhead National Forest. The case examined long-range management guidance, environmental assessments, environmental impact statements, the effects of a finding of no significant impact, and regeneration of timber sale areas as affected by the 1978 Beaverhead National Forest Land Management Plan, the Roadless Area Review Evaluation (RARE II), the Montana Wilderness Study Act of 1977, the National Environmental Policy Act, the National Forest Management Act of 1976, and the Multiple-Use Sustained-Yield Act of 1960. Big Hole Ranchers Ass'n, Inc. v. U.S. Forest Serv., 686 F. Supp. 256, 45 St. Rep. 908 (D.C. Mont. 1988).

Attorney General's Opinions

Law Enforcement on Forest Service Development Roads: Neither a Sheriff nor a county, by agreement with the federal government, may enlarge the enforcement jurisdiction of the Sheriff on special service roads. 37 A.G. Op. 9 (1977).

Application of Traffic Laws Upon Forest Service Development Roads: Only the traffic laws regulating parking, moving, safety, and related areas are enforceable by the Highway Patrol and county Sheriffs against vehicles operating on United States Forest Service development roads. 37 A.G. Op. 9 (1977).

61-8-111. State laws applicable on forest development roads — enforcement.

Attorney General's Opinions

Application of Traffic Laws Upon Forest Service Development Roads: Only the traffic laws regulating parking, moving, safety, and related areas are enforceable by the Highway Patrol and county Sheriffs against vehicles operating on United States Forest Service development roads. 37 A.G. Op. 9 (1977).

Forest Service Development Roads: The laws applicable to vehicle size and weight are enforceable upon highways but not United States Forest Service development roads. This chapter, however, generally extends its jurisdiction over these roads. 37 A.G. Op. 9 (1977).

Law Enforcement on Forest Service Development Roads: Neither a Sheriff nor a county, by agreement with the federal government, may enlarge the enforcement jurisdiction of the Sheriff on special service roads. 37 A.G. Op. 9 (1977).

Part 2
Traffic Control Devices

61-8-201. Obedience to traffic control devices — exception for certain vehicles and funeral processions.

Compiler's Comments

2005 Amendment: Chapter 542 in five places after reference to traffic control device inserted reference to flag person; in (2) near end of first sentence after "legible" inserted "or visible"; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 53 in (1) at beginning of first sentence inserted "Unless otherwise directed by a peace officer, flag person, crossing guard, or public safety worker" and at end deleted "unless otherwise directed by a highway patrol officer or police officer, subject to the exceptions granted in this chapter" and in second sentence after "emergency vehicle" inserted "a police vehicle, or a highway patrol vehicle" and at end after "procession" inserted "are exempt from obedience to official traffic control devices as provided in this chapter"; in (2) in four places substituted reference to traffic control device for reference to sign and near middle of second sentence after "particular section" inserted "of this chapter"; inserted (3) providing that conforming traffic control devices are presumed to have been placed by an official act or at the discretion of a lawful authority; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: At the end of (1) inserted exception concerning driver of a motor vehicle in funeral procession; and made minor changes in style.

1989 Amendment: In (1) changed "patrolman" to "patrol officer".

Case Notes

Through-Road Intersections: Montana law does not contemplate that if a road is designated as "through" it becomes the duty of persons approaching intersections with such through road to stop in the absence of stop signs. When two vehicles in this case collided in such an intersection, having entered at about the same time, the court assessed the negligence of each driver at 50%. Andrews v. U.S., 447 F. Supp. 434, 35 St. Rep. 350 (D.C. Mont. 1978).

Attorney General's Opinions

Funeral Procession Vehicles Not to Be Exempted From Traffic Laws by City Ordinance: A city with self-government powers may not enact an ordinance exempting vehicles in a funeral procession from obeying traffic control devices by designating the vehicles as authorized emergency vehicles. 43 A.G. Op. 53 (1990).

61-8-202. Department of transportation to adopt manual.

Compiler's Comments

2003 Amendment: Chapter 53 at beginning of second sentence substituted "The manual adopted by the department of transportation must" for "This uniform system shall" and at end inserted "published by the United States federal highway administration"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1981 Amendment: Deleted "and specifications" following "manual" in the first sentence; substituted "manual on uniform traffic control devices, as amended" for language relating to a system and sign manual adopted by the American association of state highway officials.

Case Notes

Violation of Manual Not Negligence Per Se — Compliance Not Necessarily Evidence of Due Care: The District Court did not err in refusing a proposed instruction that a violation of the Manual on Uniform Traffic Control Devices is negligence per se. If the Legislature mandates a department to adopt rules but does not act further to adopt the rules, the rules do not become part of a statute by reference. The manual was not a statute but rather an administrative regulation and as such was not incorporated into this section by reference. A violation of the manual is evidence of negligence but not negligence per se. It was not error to refuse an instruction that mere compliance with the traffic control regulations did not necessarily constitute due care. Brockie v. Omo Constr., Inc., 255 M 495, 844 P2d 61, 49 St. Rep. 1092 (1992).

State Law Governs: In a case involving a collision at a railroad crossing, the locality in charge of crossing had not made a determination as to the type of warning device to be installed at the crossing as permitted under the federal manual on uniform traffic control devices. Where the locality had not made this determination there was no federal regulation of the subject matter and the railroads duty of care was determinable under state law. Marshall v. Burlington N., Inc., 720 F2d 1149 (9th Cir. 1983).

Uniform Manual Improperly Excluded in Wrongful Death Action: In a wrongful death action in which the decedent's surviving spouse brought suit against the state and the state's contractor for negligently failing to warn the decedent of an abrupt edge at the shoulder of a highway construction project, the court committed reversible error in refusing to admit into evidence a copy of the Manual on Uniform Traffic Control Devices for Streets and Highways. While the manual does not have the force and effect of law, it may be considered to be a norm to be used for traffic-control devices and its contents may be considered by the jury in determining whether the defendants were negligent. Workman v. McIntyre Constr. Co., 190 M 5, 617 P2d 1281, 37 St. Rep. 1637 (1980).

Nonprejudicial Cumulative Error on Hazardousness of Crossing: The District Court admitted part and refused part of the State of Montana's Railroad Crossing Protection Policy on the ground that the hazard rating for the railroad crossing in question was not necessarily connected to its hazard rating at the time of the accident. The District Court also admitted some and refused other evidence relating to traffic counts and hazard indexes. The District Court by instruction defined ordinary care and by further instructions told the jury that public authorities have the duty to exercise ordinary or reasonable care to plan and design the highways to make them reasonably safe for the traveling public. The District Court also instructed that the duty of the county in maintaining the crossing was commensurate with the increased hazard occasioned by any obstructions, so that it was the duty of the county to exercise ordinary care under the circumstances shown. Evidence was presented for the jury to consider in determining whether or not the county exercised ordinary care in failing to provide additional signal devices at the crossing. The claimed errors were therefore not prejudicial to plaintiff, since they were only cumulative on one side or the other of the issue of how hazardous the crossing was. Wollaston v. Burlington N., 188 M 192, 612 P2d 1277, 37 St. Rep. 1015 (1980).

Jury Instruction on Negligence as Matter of Law — Effect of Department Manual: Plaintiff contended that it was error to refuse to instruct the jury that the state and Burlington Northern were negligent as a matter of law in failing to place signals on the railroad crossing where the accident occurred in conformity with the Department of Highway's (now Department of Transportation's) Manual on Traffic Control Devices. The manual, however, does not have equal dignity with statutory law. Before the defendants can be charged with negligence in violating the manual, it must first be determined: (1) that the crossing was extra hazardous, and (2) that failure to install additional warning signals was the proximate cause of defendant's injuries. These were questions of fact for the jury since conflicting evidence was offered at trial, so no error was committed by failing to give the requested instructions. Penn v. Burlington N., Inc., 185 M 223, 605 P2d 600, 37 St. Rep. 93 (1980).

Manual as Evidence: In action for wrongful death of driver of state highway truck killed while sanding road in snowstorm, it was error to admit into evidence Manual on Uniform Traffic Control Devices adopted by Highway Commission (now Transportation Commission) where manual required that appropriate signs be erected warning public of road work but did not specifically designate who was to erect them. Williams v. Maley, 150 M 261, 434 P2d 398 (1967).

Lack of Uniformity: Where plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection and was struck by defendant's truck as it started to make a left-hand turn, in reconciling this section with 61-8-325, which prohibits driving to the left of the center line 100 feet from intersection, it was not error on the judge's part to refuse to instruct jury on the latter section. Graveley v. Springer, 145 M 486, 402 P2d 41 (1965).

61-8-203. Department of transportation to place traffic control devices on highways it maintains and approve traffic control devices on highways under its jurisdiction.

Compiler's Comments

2009 Amendment: Chapter 447 inserted (5) prohibiting use of automated enforcement system; and made minor changes in style. Amendment effective May 5, 2009.

2003 Amendment: Chapter 53 in (1) near middle after "upon all" substituted "highways maintained by the department of transportation" for "state highways" and after "necessary to" deleted "indicate and to"; in (2) near beginning after "authority" inserted "or other entity" and after "department" inserted "of transportation"; in (3) deleted former first sentence that read: "Only the department may erect and maintain these traffic control devices conforming to its manual and specifications on a controlled-access highway or controlled-access facility", at beginning after "The" inserted "unauthorized", after "emblem" inserted "or other traffic control device", after "on a" deleted "controlled-access facility or controlled-access", after "highway" inserted "under the jurisdiction of the department of transportation", and after "by any other" substituted "entity is" for "public authority, or agent, or by a private individual, firm, or corporation is unlawful and"; in (4) near middle after "device on a" substituted "highway under the jurisdiction of the department of transportation" for "state highway except a controlled-access highway or controlled-access facility"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Administrative Rules

ARM 18.6.238 Community "welcome to" signs.

Title 18, chapter 7, subchapter 1, ARM Right-of-way encroachments.

Case Notes

No Statutory or Legal Duty When State Not Maintaining Highway: When the state is not maintaining a highway, its duty is limited to approving traffic control devices on highways under its jurisdiction. In this case, no additional plan was submitted by the subcontractor showing the locations of construction candles or flagging stations; therefore, the state could not be held negligent for not reviewing what was not submitted. Dick Irvin, Inc. v. St., 2013 MT 272, 372 Mont. 58, 310 P.3d 524.

Uniform Manual Improperly Excluded in Wrongful Death Action: In a wrongful death action in which the decedent's surviving spouse brought suit against the state and the state's contractor for negligently failing to warn the decedent of an abrupt edge at the shoulder of a highway construction project, the court committed reversible error in refusing to admit into evidence a copy of the Manual on Uniform Traffic Control Devices for Streets and Highways. While the manual does not have the force and effect of law, it may be considered to be a norm to be used for traffic-control devices and its contents may be considered by the jury in determining whether the defendants were negligent. Workman v. McIntyre Constr. Co., 190 M 5, 617 P2d 1281, 37 St. Rep. 1637 (1980).

Wrongful Death Action — Highway Patrolman as Expert in Traffic-Control Devices: In a wrongful death action in which the decedent's surviving spouse brought suit against the state and the state's contractor for negligently failing to warn the decedent of an abrupt edge at the shoulder of a highway construction project, a Highway Patrol officer was properly qualified as an expert in highway-control devices and could offer his opinion as to whether a highway was adequately signed. An expert witness may be qualified by reason of practical experience in an area of special knowledge not shared by mankind in general. Workman v. McIntyre Constr. Co., 190 M 5, 617 P2d 1281, 37 St. Rep. 1637 (1980).

Duty to Maintain Safe Crossings: The Federal-Aid Highway Act of 1973 represents an effort by the federal government to improve the safety of grade crossings and to provide funding for the same. That Act does not lessen in any degree the duty, statutory or common-law, of a railroad to maintain a good and safe crossing. The Manual on Uniform Traffic Control Devices promulgated by the Montana Department of Highways (now Department of Transportation) may be considered as a standard or norm to be used for traffic-control devices. It does not have the force and effect of law in determining the duties and responsibilities of a railroad with respect to the safety of grade crossings. The railroad is not absolved of its common-law duty to provide a good and safe crossing. It was a jury question whether, under the circumstances known to the railroad at and before this accident, the railroad itself should have reduced the speed of its trains at this crossing. Runkle v. Burlington N., 188 M 286, 613 P2d 982, 37 St. Rep. 995 (1980).

Attorney General's Opinions

City Council — Lack of Authority to Regulate Crosswalk on Federal-Aid Highway in Manner Inconsistent With State Law: A city council may not enact an ordinance requiring a driver of a motor vehicle on a federal-aid or state highway to stop for a pedestrian within a crosswalk when the pedestrian is not on the half of the roadway on which the vehicle is traveling and when the pedestrian is not close enough to be in danger. 41 A.G. Op. 10 (1985).

61-8-204. Reward for information on injury to or removal of sign or marker.

Compiler's Comments

2017 Amendment: Chapter 267 near end substituted "provided for in 15-70-125" for "in the state special revenue fund". Amendment effective July 1, 2017.

1995 Amendment: Chapter 509 substituted "highway nonrestricted account" for "state highway account"; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

61-8-206. Local traffic control devices.

Compiler's Comments

2009 Amendment: Chapter 447 inserted (2) prohibiting use of automated enforcement system; and made minor changes in style. Amendment effective May 5, 2009.

Case Notes

Through-Road Intersections: Montana law does not contemplate that if a road is designated as "through" it becomes the duty of persons approaching intersections with such through road to stop in the absence of stop signs. When two vehicles in this case collided in such an intersection, having entered at about the same time, the court assessed the negligence of each driver at 50%. Andrews v. U.S., 447 F. Supp. 434, 35 St. Rep. 350 (D.C. Mont. 1978).

Attorney General's Opinions

Authority to Close Road or Highway: Authority to temporarily close a state highway or county road due to hazardous conditions belongs to the Department of Highways (now Department of Transportation) and each Board of County Commissioners, respectively. Designation of a particular individual having this authority is left to the discretion of the Department and each Board. The latter may appoint a county road supervisor or superintendent capable of making this decision. Only in cases of extreme emergency may the Highway Patrol block traffic, and then only temporarily. 37 A.G. Op. 116 (1978).

61-8-207. Traffic control signal legend.

Compiler's Comments

2003 Amendment: Chapter 53 at beginning of introductory clause inserted exception clause, after "exhibiting" deleted "the words "Go", "Caution", or "Stop" or exhibiting", after "lights" inserted "or colored lighted arrows", and at end after "one at a time or" substituted "in combination, only the colors green, red, and yellow may be used" for "with arrows, the following colors only must be used and the terms and"; deleted former (1) introductory clause that read: "green alone or "Go""; in (1)(a) near beginning of first sentence after "facing" substituted "a circular green" for "the" and near middle after "unless a" substituted "traffic control device" for "sign"; inserted (1)(b) regarding movement of vehicular traffic facing a green arrow signal; in (1)(c) substituted present language regarding a pedestrian facing a green signal for former language that read: "Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk"; deleted former (2) introductory clause that read: "yellow alone or "Caution" when shown following the green or "Go" signal"; in (2)(a) near beginning of first sentence after "facing" substituted "a steady circular yellow or yellow arrow" for "the", after "warned that the" inserted "traffic movement permitted by the related green signal is being terminated or that a", and after "red" deleted "or "Stop"" and in second sentence after "red" deleted "or "Stop"" and at end inserted "after the yellow signal"; in (2)(b) substituted language regarding pedestrians facing a steady circular yellow or yellow arrow signal for former language that read: "Pedestrians facing the signals are advised that there is insufficient time to cross the roadway, and a pedestrian then starting to cross shall yield the right-of-way to all vehicles"; deleted former (3) introductory clause that read: "red alone or "Stop""; in (3)(a) near beginning of first sentence after "facing" substituted "a steady circular red" for "the" and at end after "stop" inserted "at a marked stop line", at beginning of second sentence inserted "If there is not a marked stop line, vehicular traffic must stop", and near middle of third sentence inserted exception clause, near end after "until" substituted "an indication to proceed" for "green or "Go"", and at end after "shown" deleted "alone, until a right turn can safely be made, or until a left turn can safely be made from the far left lane if the turn is made from a one-way street onto another one-way street going left. In making the turn, vehicular traffic must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red or no left turn on red may be made after a stop is posted at the intersection, the movement cannot be made until green or "Go" is shown alone"; in (3)(b) substituted language regarding traffic facing a steady red arrow signal for former language that read: "A pedestrian facing a signal may not enter the roadway unless the pedestrian can do so safely and without interfering with any vehicular traffic"; inserted (3)(c) regarding vehicular traffic facing a steady circular red signal; inserted (3)(d) regarding a pedestrian facing a steady circular red or red arrow signal; deleted former (4) that read: "(4) red with a green arrow:

(a) Vehicular traffic facing a signal may cautiously enter the intersection only to make the movement indicated by the arrow but must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

(b) A pedestrian facing a signal may not enter the roadway unless the pedestrian can do so safely and without interfering with vehicular traffic"; deleted former (5) introductory clause that read: "traffic control signal at a place other than an intersection"; and made minor changes in style. Amendment effective October 1, 2003.

1993 Amendment: Chapter 44 in (2)(a), after "enter", deleted "or be crossing"; and made minor changes in style.

1991 Amendment: Near end of (1)(a), after "intersection", substituted "or" for "of"; and made minor changes in style.

Case Notes

Failure to Keep Lookout at Light-Controlled Intersection — Liability as Matter of Law: With a green light, Vender pulled into an intersection to make a left-hand turn but had to wait for oncoming traffic before turning. While in the intersection, he was struck by Stone, who testified that he did not see a light and could not avoid colliding with the Vender car. The jury found 50% negligence with each driver. On appeal, the Supreme Court reversed, holding that as a matter of law, Stone was solely liable for the collision by failing to exercise reasonable care. A motorist's failure when approaching a controlled intersection to keep a lookout to see what is plainly visible or obviously apparent makes him chargeable for failure to see what he should have seen with the exercise of reasonable care. Vender v. Stone, 245 M 428, 802 P2d 606, 47 St. Rep. 2121 (1990).

61-8-208. Pedestrian control signals.

Compiler's Comments

2003 Amendment: Chapter 53 in introductory clause after ""Walk"" deleted "or "Wait"" and after ""Don't Walk"" inserted "or symbols of a walking person or an upraised palm"; in (1) near beginning after "signal" inserted "or a walking person symbol"; in (2) near beginning of first sentence after "signal" inserted "exhibiting a flashing or steady "Don't Walk" signal or upraised palm symbol", near middle after "signal" inserted "or walking person symbol", and near end after "while the" substituted ""Don't Walk" signal or upraised palm symbol" for "wait signal" and inserted second sentence requiring a vehicle operator to yield the right-of-way to a pedestrian who is crossing; inserted (3) prohibiting a pedestrian from starting to cross a roadway in the direction of a steady "Don't Walk" signal or upraised palm symbol; and made minor changes in style. Amendment effective October 1, 2003.

61-8-209. Flashing signals.

Compiler's Comments

2003 Amendment: Chapter 53 in (1) in introductory clause after "traffic" substituted "control device" for "sign or signal"; in (1)(a) at beginning deleted "Flashing red (stop signal)", at end of first sentence after "stop" inserted "at a marked stop line", at beginning of second sentence inserted "If there is no marked stop line, an operator shall stop" and at end deleted "or at a limit line when marked or, if none, then before entering the intersection, and the", inserted third sentence regarding where an operator must stop if there is no crosswalk, and in fourth sentence at end inserted "as provided in 61-8-344"; in (1)(b) at beginning deleted "Flashing yellow (caution signal)"; and made minor changes in style. Amendment effective October 1, 2003.

61-8-210. Display of unauthorized signs, signals, or markings.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) at end inserted "or flag person". Amendment effective January 1, 2006.

2003 Amendment: Chapter 53 in (1) near middle after "control device" deleted "or railroad sign, or signal" and at end deleted "or any railroad sign or signal"; in (2) near middle after "permit" deleted "upon any highway any traffic sign or signal bearing thereon any" and at end after "advertising" inserted "on an official traffic control device on a highway, except for business signs included as a part of official motorist service panels or roadside area information panels approved by the department of transportation"; deleted former (4) that read: "(4) The prohibition of this section shall not apply to portable "Caution" signs placed in the vicinity of schools at those times during which school children are going to and coming from school"; and made minor changes in style. Amendment effective October 1, 2003.

61-8-211. Lane use control signals.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

61-8-212. Inoperative traffic control device.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Part 3
Vehicle Operating Requirements

Part Case Notes

Questions of Duty of Care and Proximate Cause Inappropriate for Summary Judgment — Remand: Highway patrol officer Fisher was investigating a traffic accident when he was struck by a semitruck owned by Swift Transportation Company (Swift) that was being removed from the accident scene. Fisher sued Swift for negligence, alleging that the Swift driver owed Fisher a duty of care. The District Court found that Fisher was a foreseeable plaintiff as a matter of law, but granted partial summary judgment for Swift on the issue of causation, and held that Fisher's injuries were unforeseeable as a matter of law. Fisher appealed. The Supreme Court agreed that the Swift driver owed Fisher a duty of care based on the driver's legal duty to drive in a careful and prudent manner and at a reduced speed no greater than is reasonable and prudent under the conditions existing at the point of operation when approaching a stationary, authorized emergency vehicle. Citing Mang v. Eliasson, 153 M 431, 458 P2d 777 (1969), the court also agreed that Fisher was a foreseeable plaintiff because Fisher was within the foreseeable zone of risk and that the Swift driver could reasonably have foreseen that his negligent conduct could have resulted in injury to Fisher. Additionally, no policy considerations barred the imposition of statutory duties on the Swift driver. The court also disagreed with the District Court's conclusion that Fisher's injury was unforeseeable as a matter of law, concluding that reasonable minds could differ as to whether the injury was a foreseeable result of the Swift driver's negligence and that the issue of proximate cause was best left to the factfinder for resolution. Thus, the question of whether the Swift driver's conduct, in a natural and continuous sequence, helped produce Fisher's injury constituted a genuine issue of material fact that was inappropriate for resolution by summary judgment. The case was remanded for further proceedings. Fisher v. Swift Transp. Co., Inc., 2008 MT 105, 342 M 335, 181 P3d 601 (2008). See also Prindel v. Ravalli County, 2006 MT 62, 331 M 338, 133 P3d 165 (2006).

Comparative Negligence — Application to Cases of Negligence Per Se: In an action for negligence involving a rear-end collision between the plaintiff's and defendant's automobiles in which the evidence showed that both parties could have been guilty of negligence per se by the violation of motor vehicle traffic laws, the Supreme Court held that the District Court erred in holding that the doctrine of comparative negligence did not apply. Comparative negligence has been mandated by the Legislature to apply in every case in which negligence is an issue, even in those cases in which statutory violations provide the necessary evidence of negligence, and it is for the finder of fact to determine the degree of negligence on the part of each party. Reed v. Little, 209 M 199, 680 P2d 937, 41 St. Rep. 644 (1984), followed in Okland v. Wolf, 258 M 35, 850 P2d 302, 50 St. Rep. 412 (1993), and distinguished in Aemisegger v. Herman, 215 M 347, 697 P2d 925, 42 St. Rep. 420 (1985).

61-8-301. Reckless driving.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 567, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 478 in (1)(b) at end substituted "61-8-351(7)" for "61-8-351(6)". Amendment effective October 1, 2021.

2017 Amendment: Chapter 426 in (4)(a) in two places substituted "work zone" for "construction zone"; deleted former (4)(b)(i) that read: ""construction zone" has the same meaning as is provided in 61-8-314"; inserted (4)(b)(ii) defining work zone; and made minor changes in style. Amendment effective October 1, 2017.

2003 Amendments — Composite Section: Chapter 46 in (1)(b) at end of second sentence substituted "61-8-351(6)" for "61-8-351(5)". Amendment effective October 1, 2003.

Chapter 352 deleted former (1)(b) that read: "(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402"; in (3) near middle after "driving" inserted "or of reckless endangerment of a highway worker"; inserted (4) establishing the offense of reckless endangerment of a highway worker; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 379 deleted former (1)(b) that read: "(b) operates a vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 61-9-402"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 561 inserted (3) providing that a person who is convicted of the offense of reckless driving is subject to the penalties provided in 61-8-715; and made minor changes in style. Amendment effective October 1, 2001.

1985 Amendment: Inserted (1)(c) that includes as a reckless driving offense the operation of a vehicle in willful or wanton disregard for the safety of persons or property while passing a school bus which has stopped and is displaying visual flashing signals.

Case Notes

Citizen's Arrest Authority — Evidence Relevant to Criminal Charges Against Arresting Citizen — Conviction Reversed, New Trial Granted: The defendant was driving a truck with a trailer attached when he saw a motorcycle being chased by police in his rearview mirror. He turned into the oncoming lane of traffic to block the road, which led to the capture of the motorcyclist. As a result, the defendant was charged with negligent endangerment and reckless driving. At his trial, the defendant sought to introduce evidence and a jury instruction related to a citizen's arrest authority, which the Municipal Court denied and the District Court upheld. Following conviction, the defendant appealed. In a 4-3 decision, the Supreme Court reversed, holding that the defendant's asserted authority to make a citizen's arrest was a materially relevant factual consideration and that the Municipal Court had erred in not allowing evidence on the subject. The court remanded the matter for a new trial. Helena v. Parsons, 2019 MT 56, 395 Mont. 84, 436 P.3d 710.

Pursuit of Traffic Offender Onto Reservation Allowed — Good Faith Exception to Exclusionary Rule Applicable to Evidence Seized During Arrest of Tribal Member by Nontribal Officers on Reservation: Bird was observed by city police officer Olson driving recklessly in Cut Bank, but when Olson attempted to stop Bird, a chase ensued onto the Blackfeet Indian Reservation, where Bird was eventually stopped and held by the city police officer and an assisting county officer. When the officers were informed that Bird was an enrolled tribal member, they notified a tribal police officer, who arrested Bird and a passenger, and transported them off the reservation and back into Cut Bank in violation of the extradition provision of the Blackfeet Tribal Code. Bird was subsequently charged in City Court with reckless driving and was convicted. Bird appealed to District Court, moving to dismiss for lack of jurisdiction and to suppress evidence of activities and statements after the vehicle crossed onto the reservation. The District Court found that the city officer did not have jurisdiction to arrest Bird on the reservation and granted Bird's motion to suppress. The state appealed, and the Supreme Court reversed. Pursuant to U.S. v. Patch, 114 F3d 131 (9th Cir. 1997), under the doctrine of hot pursuit, once the officer observed an offense occur within his jurisdiction, he had authority to pursue the violator onto the reservation in order to make an arrest. Further, the evidence was erroneously suppressed because the good faith exception to the exclusionary rule, discussed in St. v. Nahee, 745 P2d 172 (Ariz. App. 1987), applied. The city and county officers acted in good faith reliance that the tribal officer would carry out the arrest and extradition in a manner conforming to tribal code procedures, and it was the tribal officer who neglected to follow the tribal code. The primary purpose of the exclusionary rule—to ensure that law enforcement is not rewarded by violating a defendant's constitutional rights and to deter such conduct in the future—would not be served by sanctioning the city and county officers for a mistake in which they had no part. Failure to follow tribal extradition procedures did not warrant exclusion of the evidence in this case. Cut Bank v. Bird, 2001 MT 296, 307 M 460, 38 P3d 804 (2001). See also State ex rel. Old Elk v. District Court, 170 M 208, 552 P2d 1394 (1976).

No District Court Jurisdiction of Appeal From Municipal Court When Defendant Not Incarcerated and Fine Less Than $300: Koestner was convicted in Municipal Court of reckless driving and was fined $175, court costs of $20, and a witness fee of $10, and no jail time was ordered. Koestner appealed the conviction and the denial of a request for a jury trial to District Court, but that court concluded that it did not have jurisdiction to hear the appeal. Koestner appealed to the Supreme Court, arguing that under the Montana Uniform Municipal Court Rules of Appeal to District Court (Title 25, ch. 30, part 2100), a city must have an ordinance in place to trigger the statutory amount necessary to bring an appeal and that because the city never presented evidence that such an ordinance existed, the District Court had jurisdiction under 3-6-110 to review the Municipal Court decision. The Supreme Court agreed that because Koestner was not incarcerated and the fine imposed was less than $300, the District Court properly concluded that it was bound by Rule 1(b)(2), U.M.C.R.App. (Title 25, ch. 30, part 2100), which limits appeals in criminal cases to those in which the minimum amount in controversy is greater than $300, unless jail time is ordered. Although Koestner, under Rule 3, U.M.C.R.App., could have petitioned the District Court to hear the appeal in the interests of justice, no petition was filed. Koestner's arguments regarding lack of a city ordinance were not raised before the District Court, and the Supreme Court declined to address the issue for the first time on appeal. Kalispell v. Koestner, 2001 MT 53, 304 M 315, 21 P3d 622 (2001).

Reckless Driving Not Lesser Included Offense of Criminal Endangerment: Reckless driving is a distinct offense and not an included offense of criminal endangerment. St. v. Beavers, 1999 MT 260, 296 M 340, 987 P2d 371, 56 St. Rep. 1035 (1999), following Blockburger v. U.S., 284 US 299, 76 L Ed 306, 52 S Ct 180 (1932).

Charge Not Based Upon Speed Alone — Injury Not Required for Conviction: Stanko was cited by the Montana Highway Patrol for two separate acts of reckless driving. One citation read "Reckless Driving! 117 mph over Crest of Hill on Narrow Road Moderate Traffic". The other read "operate a vehicle in a reckless manner 121 mph coming over crest of hill". The Supreme Court held that Stanko's argument that speed alone may not serve as the basis for a reckless driving charge was beside the point because the citations themselves showed that Stanko was not cited because of his speed alone. The testimony of the officers also showed that they based their citations on speed in combination with other factors. However, the Supreme Court did cite cases from other jurisdictions indicating that under some conditions, speed alone might serve as the basis for conviction of reckless driving. As to Stanko's argument that no one was injured, the Supreme Court pointed out that under this section, there is no requirement that anyone be injured in order for there to be a violation of that statute. The Supreme Court also noted that although Stanko's driving abilities may be "legend in his own mind", the court was "not impressed" and pointed out that racing conditions are not the same as highway conditions. St. v. Stanko, 1998 MT 323, 292 M 214, 974 P2d 1139, 55 St. Rep. 1313 (1998).

Reckless Driving — No Requirement for Evidence of Serious Injury — Jury Instruction Properly Refused: Stanko was charged with two counts of reckless driving, one for driving 117 miles an hour on U.S. 87 and the other for driving 121 miles an hour on the same highway, over the crest of a hill. At the conclusion of his trial, Stanko submitted a jury instruction that read: ""Willful or Wanton Disregard" means that the defendant had an intentional lack of regard concerning the safety of others, or that he intentionally did something with knowledge that serious injury is a probable result." The District Court refused Stanko's instruction in favor of the state's instruction, which did not mention serious injury. The Supreme Court noted that it reviews jury instructions to see whether the instructions, as a whole, fully and fairly instruct the jury on the law applicable to the case and also pointed out that the District Court has broad discretion when it instructs the jury. Using these standards, the Supreme Court held that the District Court properly refused Stanko's instruction. St. v. Stanko, 1998 MT 323, 292 M 214, 974 P2d 1139, 55 St. Rep. 1313 (1998).

Statute Not Void for Vagueness — Failure to Satisfy Burden of Proof: Stanko was charged with two counts of reckless driving, one for driving 117 miles an hour on U.S. 87 and the other for driving 121 miles an hour on the same highway, over the crest of a hill. Stanko claimed that the statute failed to give him fair notice of what type of driving was prohibited by the statute, that the lack of specificity in the statute leads to selective enforcement of its provisions, and that the statute should therefore be held void for vagueness as applied to the facts of his case. The Supreme Court, citing several cases for the proposition that statutes are not automatically invalidated as vague simply because difficulty is found in determining whether certain marginal offenses fall within their language, disagreed with Stanko's proposition that the two Montana Highway Patrol officers who cited him disagreed between themselves as to what speed would warrant a reckless driving citation; both officers who cited Stanko had no difficulty in concluding that the speeds at which Stanko was driving warranted the citation. The Supreme Court therefore held that Stanko had not satisfied his burden of proving beyond a reasonable doubt that this section is, as applied to the facts of his case, so vague that he could not have reasonably understood what conduct is prohibited. St. v. Stanko, 1998 MT 323, 292 M 214, 974 P2d 1139, 55 St. Rep. 1313 (1998).

Reasonable Time for Preliminary Examination or Leave to File Information — Time for Commencement of "Reasonable Time" — Higley Clarified: McElderry was arrested on October 14 for DUI, fifth offense; reckless driving; and driving while her license was revoked. On October 16, she made her initial appearance in Lake County Justice's Court and was charged by complaint with the offenses for which she was arrested. On October 25, the state filed a motion in District Court for leave to file an information. The motion was granted on October 28, and an information was filed the same day. On October 29, McElderry filed a motion in District Court to dismiss the charges, arguing that 46-10-105, as interpreted by the Supreme Court in St. v. Higley, 190 M 412, 621 P2d 1043 (1980), required that a determination of probable cause be made within 10 days after a defendant's initial appearance. The District Court dismissed the information, reasoning that the state failed to hold a preliminary examination in Justice's Court or to obtain leave from the District Court to file the information within the reasonable time required by 46-10-105. The Supreme Court held that the District Court erred in calculating the reasonable time as beginning with the time of McElderry's arrest because the plain language of 46-10-105 requires that the period be calculated from the date of initial appearance of the defendant. The Supreme Court therefore recalculated the total delay at 12 days, rather than 14 days. The Supreme Court further explained that its use of the 10-day time period in Higley was intended to mean that the 10-day period at issue in that case was not unreasonable but was not intended to limit the period of reasonable time to 10 days in all cases. Therefore, the Supreme Court held that the District Court erred in interpreting Higley to apply a 10-day limitation in every case. Because the District Court erred in determining the start of the reasonable time and in applying Higley, the Supreme Court held that a new time must be calculated. However, the Supreme Court was unable to tell how the District Court would properly apply its discretion in redetermining a reasonable time and therefore vacated the judgment of the District Court and remanded the case for further proceedings consistent with the Supreme Court's opinion. St. v. McElderry, 284 M 365, 944 P2d 230, 54 St. Rep. 922 (1997), followed in St. v. Robison, 2003 MT 198, 317 M 19, 75 P3d 301 (2003).

Dismissal for Failure to Charge Offense of Which Convicted — Reckless Driving Not Lesser Included Offense of DUI: Barker was charged with DUI but was convicted of reckless driving by the Ravalli County Justice of the Peace. Barker appealed to the District Court and filed a motion to dismiss, which the District Court granted. The Supreme Court affirmed, holding that the reckless driving charge and the DUI charge were inapposite charges and that reckless driving was not a lesser included offense of DUI. The Supreme Court also held that the conviction should be set aside because Barker did not have notice that he was charged with reckless driving, which violated Barker's constitutional right to due process. St. v. Barker, 260 M 85, 858 P2d 360, 50 St. Rep. 970 (1993).

Sufficient Evidence to Affirm Conviction of Recklessly Eluding a Police Officer: Testimony of three law enforcement officers that Palmer's car was the one being pursued in a 14-mile, late night car chase in rain and snow at speeds averaging 94 miles an hour, including evidence that the car was within sight of one or more of the officers at nearly all times, was sufficient to find Palmer guilty beyond a reasonable doubt of recklessly eluding a police officer, despite a clever but unconfirmed argument by Palmer's counsel that in order to cover the distance involved, a car would have had to travel at speeds approaching 160 miles an hour. St. v. Palmer, 247 M 210, 805 P2d 580, 48 St. Rep. 166 (1991).

Failure to Use Siren — Reckless Driving Conviction Affirmed: Appellant contended he was not guilty of reckless driving because the officer who pursued him at speeds of up to 110 miles an hour did not use his siren. The argument was without merit. Section 61-9-402 simply requires that a police car be equipped with a siren. The mere presence of the siren on the car does not mandate its use; therefore, use of a siren is not an essential element of the offense of reckless driving. St. v. Keil, 231 M 187, 751 P2d 680, 45 St. Rep. 532 (1988).

Reckless Driving and Criminal Mischief From Same Transaction: The State of Montana is barred from prosecuting a criminal mischief charge under 46-11-504 where the defendant was previously convicted of reckless driving. The acts that are concerned with reckless driving are also those necessary to establish the felony crime of criminal mischief; the "same transaction" test as required in 46-11-501 (now repealed) is met. St. v. Houser, 192 M 164, 626 P2d 256, 38 St. Rep. 538 (1981).

61-8-302. Careless driving.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 552, L. 2023. Amendment effective October 1, 2023.

2001 Amendment: Chapter 561 in (1) near beginning after "vehicle" deleted "of any character" and after "public highway" deleted "of this state"; inserted (2) providing that a person who is convicted of the offense of careless driving is subject to the penalties provided in 61-8-711 or 61-8-716; and made minor changes in style. Amendment effective October 1, 2001.

Case Notes

Discovery Sanctions Not Warranted by Failure to Admit or Deny Statutory Violations: The plaintiff sued the defendant after the two were involved in a car crash. During discovery, the plaintiff asked the defendant to admit that she operated her motor vehicle in violation of several statutes. The defendant denied the request for admission but admitted she failed to yield the right-of-way. The plaintiff moved for sanctions, which the District Court denied. On appeal, the Supreme Court affirmed the denial, holding that the single request for admission was not framed in the form of particular facts for the defendant to admit or deny and that the admission of statutory violations was distinct from legal conclusions sought by the discovery requests. Tempel v. Benson, 2015 MT 84, 378 Mont. 401, 346 P.3d 342.

30-Day Incarceration for Careless Driving Unlawful: Since the penalty for careless driving is a fine between $10 and $100, the District Court erred when it imposed a 30-day jail sentence for the offense. The defendant did not attack the validity of the sentence; therefore, the sentence could be corrected by the District Court by striking the illegal jail time imposed for the careless driving sentence. St. v. Kime, 2013 MT 14, 368 Mont. 261, 295 P.3d 580.

Questions of Duty of Care and Proximate Cause Inappropriate for Summary Judgment — Remand: Highway patrol officer Fisher was investigating a traffic accident when he was struck by a semitruck owned by Swift Transportation Company (Swift) that was being removed from the accident scene. Fisher sued Swift for negligence, alleging that the Swift driver owed Fisher a duty of care. The District Court found that Fisher was a foreseeable plaintiff as a matter of law, but granted partial summary judgment for Swift on the issue of causation, and held that Fisher's injuries were unforeseeable as a matter of law. Fisher appealed. The Supreme Court agreed that the Swift driver owed Fisher a duty of care based on the driver's legal duty to drive in a careful and prudent manner and at a reduced speed no greater than is reasonable and prudent under the conditions existing at the point of operation when approaching a stationary, authorized emergency vehicle. Citing Mang v. Eliasson, 153 M 431, 458 P2d 777 (1969), the court also agreed that Fisher was a foreseeable plaintiff because Fisher was within the foreseeable zone of risk and that the Swift driver could reasonably have foreseen that his negligent conduct could have resulted in injury to Fisher. Additionally, no policy considerations barred the imposition of statutory duties on the Swift driver. The court also disagreed with the District Court's conclusion that Fisher's injury was unforeseeable as a matter of law, concluding that reasonable minds could differ as to whether the injury was a foreseeable result of the Swift driver's negligence and that the issue of proximate cause was best left to the factfinder for resolution. Thus, the question of whether the Swift driver's conduct, in a natural and continuous sequence, helped produce Fisher's injury constituted a genuine issue of material fact that was inappropriate for resolution by summary judgment. The case was remanded for further proceedings. Fisher v. Swift Transp. Co., Inc., 2008 MT 105, 342 M 335, 181 P3d 601 (2008). See also Prindel v. Ravalli County, 2006 MT 62, 331 M 338, 133 P3d 165 (2006).

No Evidence of Endangerment to Other Vehicle or Pedestrian Required to Prove Careless Driving: Morris asserted that evidence at trial failed to prove careless driving absent a showing of endangerment because Morris did not come into close proximity to any other vehicle, driver, or pedestrian. The District Court disagreed, and on appeal, the Supreme Court affirmed. This section requires careful and prudent driving at all times, and the statutory concern with endangerment does not require that the driver come into close proximity to any other vehicle, driver, or pedestrian to prove carelessness. Great Falls v. Morris, 2006 MT 93, 332 M 85, 134 P3d 692 (2006).

Motorist's Duty to See: A motorist is negligent in either not looking or looking and not seeing if the object is so visible that all reasonable minds would agree that a person must see the object if he were to look with reasonable diligence. In this case, all reasonable minds could not agree that Payne was visible. He was wearing dark clothing on a coal black, rainy night and was walking in the travel portion of a wet highway with his back to the oncoming traffic. This court will not disturb the jury's determination if the evidence in the record furnishes reasonable grounds for different conclusions. Payne v. Sorenson, 183 M 323, 599 P2d 362, 36 St. Rep. 1610 (1979), followed in Okland v. Wolf, 258 M 35, 850 P2d 302, 50 St. Rep. 412 (1993).

61-8-303. Speed restrictions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 161, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 299 in (1)(a) at beginning substituted "on an interstate highway" for "on a federal-aid interstate highway" and near middle after "vehicles traveling on" deleted "federal-aid". Amendment effective October 1, 2019.

2017 Amendment: Chapter 125 in (2) after first "speed limits imposed in subsection (1)" deleted "traveling on a two-lane road" and at end inserted "under the following circumstances"; inserted (2)(a) and (2)(b) regarding travel on two-lane roads and in designated passing zones; and made minor changes in style. Amendment effective October 1, 2017.

2015 Amendment: Chapter 395 in (1)(a) substituted "80 miles an hour" for "75 miles an hour". Amendment effective October 1, 2015.

2013 Amendment: Chapter 393 in (4) substituted "in this section" for "in 61-8-312 and in this section or established as authorized in 61-8-309 through 61-8-311 and 61-8-313". Amendment effective May 6, 2013.

2007 Amendment: Chapter 349 deleted former (2) that read: "(2) The speed limit for vehicles traveling on U.S. highway 93 between reference marker 133 northwest of Whitefish and the Idaho border is 65 miles an hour at all times. The speed limit imposed by this subsection ceases to be effective if U.S. highway 93 is upgraded to a continuous four-lane highway"; and made minor changes in style. Amendment effective October 1, 2007.

2003 Amendments — Composite Section: Chapter 352 inserted (1)(c) establishing a speed limit of 25 miles an hour in an urban district; in (5) near beginning after "compliance with" substituted "subsection (4)" for "subsections (1) and (2), the speed of a vehicle not in excess of", after "section" inserted "and in 61-8-312", and at end after "61-8-313" substituted "are the maximum lawful speeds allowed" for "is lawful, but a speed in excess of 25 miles an hour in an urban district is unlawful"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 540 in (2) in first sentence after "between" substituted "reference marker 133 northwest of Whitefish and the Idaho border" for "the Canadian and Idaho borders". Amendment effective May 23, 2003.

1999 Amendment: Chapter 43 inserted (1) through (3) establishing speed limits; in (4) at beginning of first sentence inserted "Subject to the maximum speed limits set forth in subsections (1) and (2)", near middle before "rate" inserted "reduced", after "reasonable and" substituted "prudent" for "proper", at end substituted "visibility, weather, and roadway conditions" for "condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to the view ahead", and deleted former second sentence that read: "The person operating or driving the vehicle shall drive the vehicle so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway"; in (5) near beginning inserted reference to subsection (2), near end substituted "25 miles an hour in an urban district" for "the following limits", and deleted former subsections (2)(a) and (2)(b) that read: "(a) 25 miles per hour in an urban district;

(b) 55 miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is 65 miles per hour"; deleted former (5) that read: "(5) The driver of a vehicle shall, consistent with subsection (1), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition"; and made minor changes in style. Amendment effective May 28, 1999.

Severability: Section 8, Ch. 43, L. 1999, was a severability clause.

1997 Amendment: Chapter 473 deleted former (2)(b) establishing as unlawful speeds in excess of "35 miles per hour on a highway under construction or repair or on a highway being surveyed, unless the department establishes and posts a different limit due to traffic conditions or the condition of the construction, repair, or survey project"; at end of (4) inserted "and 61-8-314"; and made minor changes in style. Amendment effective May 1, 1997.

1995 Amendments — Phrase Change — Composite Section: Section 6, Ch. 75, L. 1995, directed the Code Commissioner to change references in the MCA to Highway Commission to Transportation Commission. In this section, the Code Commissioner has made the change in (4). Amendment effective July 1, 1995.

Chapter 78 in (2), before "limits", substituted "the following" for "those"; at end of (2)(b) inserted "unless the department establishes and posts a different limit due to traffic conditions or the condition of the construction, repair, or survey project"; and made minor changes in style.

Chapter 287 in (4), after "commission", inserted "or a local authority"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the most appropriate.

1989 Amendment: In (2)(b), after "repair", inserted "or on a highway being surveyed".

Case Notes

Speeding Ticket Not Misdemeanor for Expungement Purposes — Venue Improper — Petition to Expunge Dismissed: The petitioner filed a petition in Flathead County to expunge his criminal record under the Misdemeanor Expungement Clarification Act. The Flathead County Attorney consented to expungement, noting that the only record of offense in that county was a speeding ticket. After the District Court granted the petition, Gallatin County appeared and moved to dismiss the expungement. Gallatin County argued that Flathead County was an improper venue because a petition for expungement must be filed in a county in which the petitioner has committed a misdemeanor. Gallatin County argued that the speeding ticket in Flathead County was not a misdemeanor and, in fact, the only misdemeanors the petitioner had committed were in Gallatin County. The District Court agreed, vacated its order, and dismissed the petition without prejudice. On appeal, the Supreme Court affirmed, confirming that a speeding ticket is not a criminal offense and therefore could not establish venue under the Act. In re Expungement of Records of Dickey, 2021 MT 3, 402 Mont. 409, 478 P.3d 821.

No Error in Refusal to Instruct Jury in UTPA Claim — Proposed Instructions Properly Denied: In a bad faith insurance claim filed pursuant to the Montana Unfair Trade Practices Act (UTPA), the plaintiff sought a jury instruction stating in part that a person shall operate a vehicle at a reduced speed no greater than is reasonable and prudent. The plaintiff also sought an instruction stating that "the lack of any traffic citations does not equate to the lack of civil negligence." The District Court did not err in refusing the instructions since the ultimate issue in the bad faith insurance case was the reasonableness of the insured's conduct. Peterson v. St. Paul Fire & Marine Ins. Co., 2010 MT 187, 357 Mont. 293, 239 P.3d 904.

Evidence of Malfunctioning Speedometer Not Admissible in DUI Case: Spencer was stopped for speeding and subsequently cited for DUI. Spencer sought to call an expert to testify that the speedometer in Spencer's vehicle had not been functioning properly, but the trial court excluded the expert testimony as irrelevant. On appeal, Spencer asserted that the speed of a vehicle is relevant in determining whether a driver's ability to safely operate a vehicle has been diminished. However, the state did not attempt to prove that Spencer was intoxicated because he was speeding, and whether Spencer justifiably thought that he was going slower than he was was not relevant to whether he was driving under the influence. The Supreme Court affirmed. St. v. Spencer, 2005 MT 338, 330 M 80, 125 P3d 1151 (2005), distinguishing St. v. Palmer, 247 M 210, 805 P2d 580 (1991), and Bauer v. St., 275 M 119, 910 P2d 886 (1996).

Smell of Alcohol and Driver's Admission of Minority Age — Sufficient Probable Cause for Search of Vehicle: When Shaw was stopped for speeding, she told the officer that she was 18 years old, could not produce proof of insurance, and had a suspended driver's license. During the conversation, the officer smelled alcohol on Shaw and in the vehicle. Shaw consented to a search of the car, and the officer discovered an open container of alcohol and drug paraphernalia. Following conviction, Shaw appealed on grounds that the officer threatened to impound the car and illegally obtained the evidence underlying the charges. The Supreme Court affirmed. The smell of alcohol, coupled with Shaw's admission that she was a minor, provided sufficient probable cause for a search of the vehicle, and Shaw knowingly and voluntarily consented to the search. Despite conflicting evidence, the trial court assessed the credibility and demeanor of the witnesses, and the Supreme Court declined to impose its own resolution of the conflicts on appeal. St. v. Shaw, 2005 MT 141, 327 M 281, 114 P3d 198 (2005), overruled, to the extent that a finding of probable cause is required in conjunction with the consent exception to the search warrant requirement, in St. v. Copelton, 2006 MT 182, 333 M 91, 140 P3d 1074 (2006).

Sufficient but Conflicting Evidence of Speeding — Conviction Affirmed: The nighttime speed limit on noninterstate highways is 65 mph. Larson testified that he was driving 60 to 65 mph at the time of an accident. Larson's expert witness estimated the speed at 63 to 71 mph. A passenger in the vehicle initially agreed with Larson's estimate, but later contradicted that rate and estimated the speed at 80 to 85 mph. Investigating officers estimated Larson's speed at 84 to 89 mph. Despite the conflicting testimony, the jury convicted Larson of speeding, but on appeal, Larson contended that the state failed to present sufficient evidence to support the conviction. The Supreme Court affirmed. Based on the evidence, a rational trier of fact could have found that Larson was driving in excess of the posted speed limit. St. v. Larson, 2004 MT 345, 324 M 310, 103 P3d 524 (2004).

Improper Jury Instruction Regarding Speed of Train — Applicable Law of Case: Mickelson was injured when the fire truck that he was driving was struck by a Montana Rail Link (MRL) train and sought damages. MRL moved for summary judgment, arguing that the subject of train speed was preempted by CSX Transp., Inc. v. Easterwood, 507 US 658, 123 L Ed 2d 387, 113 S Ct 1732 (1993). The District Court denied MRL's motion, ruling that a negligence action based on a state law duty to slow or stop a train to avoid a specific individual hazard was not preempted under CSX. Nevertheless, the court's instructions to the jury stated that "Under the laws governing the speed of trains, a train crew has no duty to slow a train until a reasonable and prudent train operator has reason to believe, based upon the circumstances present, that the operator of a motor vehicle will not yield to the train and there is a substantial risk of a collision" and that "Montana law does not provide the driver of an emergency vehicle any special privilege in relation to railroad crossings. Emergency vehicle drivers must follow the requirements when approaching and crossing railroad crossings as any other vehicle driver". Following jury deliberations, MRL was found not liable. The Supreme Court held that the District Court abused its discretion in instructing the jury on the speed of trains because the instructions did not state the applicable law of the case. As set out in Runkle v. Burlington N., Inc., 188 M 286, 613 P2d 982 (1980), whether a railroad is negligent in a particular manner, such as failing to reduce train speed, is a question of fact for the jury. Here, the jury instructions improperly removed the question of train speed from jury consideration, compelling the jury to conclude that the train crew did not have a duty to do anything more than they did, rather than deciding whether the facts and circumstances of this case constituted a specific individual hazard. Mickelson v. Mont. Rail Link, Inc., 2000 MT 111, 299 M 348, 999 P2d 985, 57 St. Rep. 446 (2000).

Limited Applicability of Involuntary Action Rule to Negligence Per Se in Driving Accidents When Driver Violates Traffic Law While Reacting to Highway Obstacle or Hazard: Seeking to reconcile past disparate holdings regarding liability of a motor vehicle driver who violates a traffic law while reacting to a highway obstacle or hazard and injures another party who has complied with traffic laws, the Supreme Court held that drivers must anticipate certain obstacles and adverse driving conditions that are common to Montana roads, such as small furry animals, deer, chuckholes, and swirling snow. Only under extremely limited circumstances, such as sudden brake failure, will a violation of a motor vehicle statute not constitute negligence per se. In this case, Craig was involved in an auto accident when the other vehicle swerved to avoid a deer and the driver and passenger in the other vehicle died. Injuries resulting from swerving to miss the deer arose from negligence per se, and Craig's motion for partial summary judgment on the issue of liability should have been granted. Craig v. Schell, 1999 MT 40, 293 M 323, 975 P2d 820, 56 St. Rep. 167 (1999), following Duchesneau v. Silver Bow County, 158 M 369, 492 P2d 926 (1971), overruling Lyndes v. Scofield, 180 M 177, 589 P2d 1000 (1979), and clarifying Graham v. Rolandson, 150 M 270, 435 P2d 263 (1967), Farris v. Clark, 158 M 33, 487 P2d 1307 (1971), Kudrna v. Comet Corp., 175 M 29, 572 P2d 183 (1977), Eslinger v. Ringsby Truck Lines, Inc., 195 M 292, 636 P2d 254, 38 St. Rep. 1863 (1981), Simonson v. White, 220 M 14, 713 P2d 983, 43 St. Rep. 133 (1986), Palmer v. Farmers Ins. Exch., 233 M 515, 761 P2d 401, 45 St. Rep. 1694 (1988), and Cameron v. Mercer, 1998 MT 134, 289 M 172, 960 P2d 302, 55 St. Rep. 531 (1998).

Vagueness of Statute — Standing to Challenge Vagueness — "Reasonable and Prudent" Speed Limit Held Void: Stanko was arrested by Officer Breidenbach of the Montana Highway Patrol for driving 85 miles an hour on a stretch of Highway 200 that was narrow, that had no shoulders, that had occasional frost heaves in the surface of the highway, and where Stanko's view of the road was occasionally obstructed by hills and curves in the highway. Relying on Parker v. Levy, 417 US 733 (1974), the Supreme Court held that Stanko's conduct was, under the circumstances, not so clearly prohibited that Stanko lacked standing to challenge the speed limit on the basis of facial vagueness. The Supreme Court held, citing Grayned v. Rockford, 408 US 104 (1972), Kolender v. Lawson, 461 US 352 (1983), Whitefish v. O'Shaughnessy, 216 M 433, 704 P2d 1021 (1985), and St. v. Crisp, 249 M 199, 814 P2d 981 (1991), that subsection (1) of this section (but see 1999 amendments) was void for vagueness because there was no numerical speed limit in the statute and because it was dependent upon each driver of a motor vehicle or each law enforcement officer to determine what the speed limit was under any given set of circumstances. St. v. Stanko, 1998 MT 321, 292 M 192, 974 P2d 1132, 55 St. Rep. 1302 (1998).

Instruction on Duty to Reduce Speed Improperly Denied — Important Theory of Case: The District Court improperly denied defendant's proposed instruction on relative duties between a pedestrian on a highway and a driver approaching the pedestrian, citing as grounds for denial: (1) this section does not apply to pedestrians not in a crosswalk; and (2) under evidence in the case, the driver, prior to the accident, did not perceive any special hazard with respect to the pedestrian. The Supreme Court remanded because this section applied to all pedestrians whether or not in a crosswalk and because the second reason was an issue for determination by the jury. The duty of the driver to reduce speed was an important part of the theory of plaintiff's case. Refusal to instruct constituted reversible error. Smith v. Rorvik, 231 M 85, 751 P2d 1053, 45 St. Rep. 451 (1988).

Proof of Exact Speed Not Necessary: Defendant in a speeding case was cited for "driving 50 miles per hour in a 25 mile per hour zone". He alleged that jury instructions and the verdict form prejudiced him by allowing the jury to find him guilty of speeding without finding him guilty of driving the exact speed alleged in the complaint. The Supreme Court found that the jury was not misled or the law misstated by an instruction generally charging the defendant with speeding, when coupled with an instruction properly apprising the jury of the prosecution's burden of proof beyond a reasonable doubt, and that the prosecution need not prove the exact speed of the defendant. Billings v. Briner, 228 M 518, 744 P2d 877, 44 St. Rep. 1728 (1987).

Failure to Prevent Rear-End Collision — Negligence as Matter of Law: Appellant was stopped at a traffic light. The road conditions were icy. Respondent approached the intersection in the same lane and direction of travel as the appellant. Respondent braked and slowed his vehicle but failed to reach a complete stop and collided with appellant's vehicle. Respondent's exercise of care was not sufficient to avoid the collision, and under the facts of this case he was negligent as a matter of law. Aemisegger v. Herman, 215 M 347, 697 P2d 925, 42 St. Rep. 420 (1985), distinguished in Brookings v. Thompson, 248 M 249, 811 P2d 64, 48 St. Rep. 418 (1991), in which it was held that simply because there is an accident does not mean someone must be negligent.

Violation in Another State Included in Habitual Offender Calculation: Defendant was declared a habitual traffic offender. In order to reach the point designation, a speeding violation from the state of Washington was included. Defendant contended that because violations of Montana speed limits mandated by federal fuel conservation conditions may not be included in the calculation, the Washington violation should not be included. The court found that the Washington violation would not be a mere conservation violation in Montana but a violation of the interstate nighttime speed limit. Under 61-5-401, Montana has adopted a Driver License Compact giving effect to violations committed in other jurisdictions. The Washington violation was correctly treated as a speeding violation in the habitual traffic offender calculation. State ex rel. Landon v. Macek, 208 M 172, 676 P2d 228, 41 St. Rep. 247 (1984).

Collision of Left-Turning and Approaching Vehicles: Where the plaintiff brought an action against the defendant for damages sustained in a collision after the defendant stopped on a two-lane highway to turn left in front of a stopped truck and did not see the plaintiff's car approaching at approximately 50 mph toward her from behind the truck, the District Court did not err in denying the plaintiff's motion to set aside the jury's verdict finding the plaintiff 50% negligent for the resulting accident. The speed at which plaintiff entered the intersection and the fact that her view was obstructed at the time constituted sufficient evidence to support the jury's finding. Lackey v. Wilson, 205 M 476, 668 P2d 1051, 40 St. Rep. 1439 (1983).

Validity as Police Power Regulation: A driver was convicted of violating the provision of 61-8-304 (now repealed) that the Attorney General must set a conservation speed limit in conformance with limits imposed by federal law as a prerequisite to the state's receipt of federal highway money. The driver claimed the provision violated due process in that he had a right to use the highway in his vehicle and with his gasoline and that his use could not be regulated in an attempt to provide for the general welfare and safety of the people of the state. The court found that the driver did not meet his burden of clearly showing that this provision was unreasonable. St. v. Deitchler, 201 M 70, 651 P2d 1020, 39 St. Rep. 1959 (1982).

Speed Limit to Ensure Federal Funds as Exception to This Section: Defendant was adjudged a habitual traffic offender by the District Court upon presentation of evidence that he had accumulated 30 habitual offender points by violating 61-8-312 on 10 occasions in less than 3 years. Defendant appealed, claiming that 61-8-312 had been preempted by 61-8-304 (now repealed). No habitual offender points are assessed for violation of 61-8-304 (now repealed). The Supreme Court affirmed, holding that 61-8-304 (now repealed) itself clearly indicated the Legislature's intention that 61-8-312 and this section remain in effect; that 61-8-304 (now repealed) is an exception to this section; that the purpose of 61-8-304 (now repealed) was not to revise the statutory scheme regarding speed limits but rather to ensure continued receipt of federal highway funds; and that there had been no implied repeal of 61-8-312 or this section. State ex rel. Sol v. Bakker, 199 M 385, 649 P2d 456, 39 St. Rep. 1471 (1982).

Constitutionality — 55-Mile-Per-Hour Case: Section 61-8-304 (now repealed), by delegating a mandatory duty upon the Attorney General to issue a proclamation setting the Montana highway speed limit in conformance with federal law, was an unconstitutional delegation of state sovereign power to the federal government. To prevent loss of federal highway funds to the state, the effective date of this decision was prospective, to take effect October 1, 1981, or such earlier date as corrective legislation became effective. Lee v. St., 195 M 1, 635 P2d 1282, 38 St. Rep. 1729 (1981), rehearing denied, 195 M 1, 635 P2d 1282, 38 St. Rep. 1931 (1981).

Statutory Violations a Jury Question: The plaintiff sued the defendants for injuries he suffered when he drove his truck into the rear of their car. The plaintiff alleged that the defendants violated various motor vehicle statutes and the duty of care owed to the plaintiff, but the Supreme Court found that these were questions of fact for the jury and substantial evidence supported the findings for the defendants. Substantial and sufficient evidence also was found to support the jury's determination that the defendants' actions did not proximately cause the plaintiff's injury. Gunnels v. Hoyt, 194 M 265, 633 P2d 1187, 38 St. Rep. 1492 (1981).

Admissibility Dependent on Nature of Treatise: Learned treatises are permissible for use in cross-examination of an expert if the treatise is "established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice". Here, a treatise on design of grade railway-highway crossings was properly used to test the knowledge of an expert witness in cross-examination. Another treatise concerning the visibility and audibility of trains approaching crossings was properly held to be inadmissible, as it was merely advisory in nature. Treatises may be admitted upon the foundation that they (1) show what is feasible to the jury, or (2) show what the defendant knew or should have known about safety precautions. Runkle v. Burlington N., 188 M 286, 613 P2d 982, 37 St. Rep. 995 (1980).

Reasonable and Proper — Jury Question: Defendant, driving on a snowy, slippery road, hit a large chuckhole causing the car to skid across the center line and collide with plaintiff's car. It is a question of fact, to be determined by the jury, whether the defendant was operating her car at a reasonable and proper speed under the conditions. Lyndes v. Scofield, 180 M 177, 589 P2d 1000 (1979), explained in Hall v. Big Sky Lumber & Supply, Inc., 261 M 328, 863 P2d 389, 50 St. Rep. 1345 (1993), and overruled, to the extent that a driver who violates a traffic law while reacting to a highway obstacle or hazard and injures another party who has complied with traffic laws should be found negligent per se, in Craig v. Schell, 1999 MT 40, 293 M 323, 975 P2d 820, 56 St. Rep. 167 (1999).

Negligence Per Se: Violation of this statute is negligence per se. Roberts v. Burlington N. R.R., 171 M 143, 556 P2d 1243, 33 St. Rep. 1144 (1976).

Assured Clear Distance: Operator of disabled vehicle stalled on the highway was not bound to foresee or anticipate that other vehicles approaching the scene would come over the crest of a hill too fast to stop within their assured clear distance ahead. In an action by persons injured in a resulting collision, trial court should have directed verdict for defendant owner of the disabled vehicle on the ground of independent intervening cause. Halsey v. Uithof, 166 M 319, 532 P2d 686 (1975), followed in O'Connor v. Nigg, 254 M 416, 838 P2d 422, 49 St. Rep. 817 (1992).

Icy Road: Mere showing of a collision killing a horse in open range country, an icy road condition, and existence of uninterpreted skid marks failed to show violation of subsection (1) of this section. Fries v. Shaughnessy, 159 M 307, 496 P2d 1159 (1972).

Ordinary Negligence: This section refers to ordinary, prudent driving standards, and therefore is a standard for ordinary negligence and not gross negligence required for recovery by guest in action against driver. Hoffman v. Herzog, 158 M 296, 491 P2d 713 (1971).

Speed as Factor in Determining Negligence: The actual speed in miles per hour a person is driving does not determine whether the motorist is negligent, but the question is one of fact as to whether he was driving as a reasonable and prudent person would under the conditions existing. Nissen v. Johnson, 135 M 329, 339 P2d 651 (1959).

Snow Conditions: When traveling under snow conditions a driver should be alert for approaching vehicles and should take steps to keep his vehicle under control while passing through a snow cloud. Similarly, a driver following such a cloud should remain a safe distance behind, taking into consideration the probability that other vehicles will be coming through the cloud under conditions of reduced visibility. Merithew v. Hill, 167 F. Supp. 320 (D.C. Mont. 1958).

Passenger Carriers: Although carrier of persons for hire must exercise the highest degree of care, it is not an insurer of passenger's safety. Wilson v. Northland Greyhound Lines, Inc., 166 F. Supp. 667 (D.C. Mont. 1958).

Negligence in Civil Actions: Where the rate of speed was alleged as an element of negligence, the pertinent question was whether the rate of speed was so excessive as to affect defendant's control over the car under the conditions which actually existed at the time and place or as they reasonably appeared to him to exist, this being the import of section 32-1101, R.C.M. 1947 (now repealed), relating to the matter of speed regulations on public highways. The mere happening of an accident is not proof of negligence. Baatz v. Noble, 105 M 59, 69 P2d 579 (1937).

Danger Signs: Evidence was presented that there were danger signs which the defendant did not see but could have seen. Defendant saw many smaller holes and tried to avoid them but did not slow down when approaching them and continued at a rate of speed not substantially less than his usual speed on good roads. This was sufficient to take the question of his gross negligence to the jury. Baatz v. Noble, 105 M 59, 69 P2d 579 (1937).

Statutory Limit of Speed: The only restriction or limit placed on the rate of speed at which automobiles shall travel on state highways was that prescribed by section 32-1101, R.C.M. 1947 (now repealed), the import of which is that the speed, whatever it may have been, should not have been so excessive as to have affected the driver's control over his car under the conditions which existed at the particular time and place or as they reasonably appeared to him to have existed. Cowden v. Crippen, 101 M 187, 53 P2d 98 (1936).

Curves: The contention was made that there was error in giving an instruction that the law is that the driver of an automobile must slow down at curves and have his car under complete control. There was no evidence that defendant knew or should have known there was a curve at the point of collision. It was held, that a person is presumed to see, and therefore know, that which he could see by keeping a lookout. McNair v. Berger, 92 M 441, 15 P2d 834 (1932).

Reduction of Speed for Hazards: Section 32-1102, R.C.M. 1947 (now repealed), imposing the duty upon drivers of motor vehicles of slowing down at curves and having their cars under complete control was not invalid as imposing an unreasonable obligation upon drivers, and therefore unenforceable. McNair v. Berger, 92 M 441, 15 P2d 834 (1932).

Attorney General's Opinions

Board of County Commissioners — Right to Set Speed Limits: A Board of County Commissioners, constituted in a commission form of government, may alter otherwise statutorily established speed limits by compliance with 61-8-310. It may further adopt traffic ordinances to the extent permitted under 61-12-101(14), and any such ordinances may include penalty provisions. 40 A.G. Op. 51 (1984).

61-8-308. Permission of authorities to hold speed contest.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 161, L. 2023. Amendment effective October 1, 2023.

Case Notes

Negligence Per Se: Violation of this statute is negligence per se. Roberts v. Burlington N. R.R., 171 M 143, 556 P2d 1243, 33 St. Rep. 1144 (1976).

Drag Racing — Injury to Person — Liability: Two automobiles were drag racing on a public highway. An oncoming car was struck and the driver killed. Motorists using the highways must exercise ordinary care to avoid inflicting injury to others. Those who use the highways for racing do so at their own peril. All those engaged in the racing are liable for injuries caused even though only one of the participant's cars comes in contact with the injured person. Jones v. NW. Auto Supply Co., 93 M 224, 18 P2d 305 (1932).

61-8-309. Establishment of special speed zones and temporary special reduced speed limits — engineering and traffic investigation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 480, L. 2023. Amendment effective October 1, 2023.

2019 Amendments — Composite Section: Chapter 299 in (2) near middle substituted "an interstate highway" for "the federal-aid interstate highway system". Amendment effective October 1, 2019.

Chapter 440 in (1)(a) in first sentence after "under its jurisdiction" inserted "or on a highway corridor under its jurisdiction greater than 50 miles in length on which increased crash frequency or fatal crash data is observed" and after "at that location" inserted "or corridor"; inserted (1)(a)(ii) regarding temporary special reduced speed limits for safety events; and made minor changes in style. Amendment effective October 1, 2019.

2015 Amendment: Chapter 395 in (1)(a) after "61-8-303" inserted "or 61-8-312"; inserted (2) regarding temporary speed limits; in (6)(a) after "under this section" inserted "except subsection (2)"; inserted (6)(b) regarding violation of temporary speed limits; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendments — Composite Section: Chapter 261 in (1)(a) at end inserted last sentence regarding school zone adjacent to state highway; and in (2) inserted second sentence concerning consideration of electronic signs in school zone. Amendment effective October 1, 2013.

Chapter 393 inserted (5) concerning misdemeanors. Amendment effective May 6, 2013.

2001 Amendment: Chapter 93 inserted (1)(d) regarding requests by local authorities for special reduced or increased speed zones; and made minor changes in style. Amendment effective March 21, 2001.

1999 Amendment: Chapter 43 in (1)(a) near middle after "dangerous location" substituted "or on a segment of a highway less than 50 miles in length" for "or any other part of a highway"; in (1)(c)(ii) in second sentence after "list" deleted "must be completed by October 1, 1997, and"; and made minor changes in style. Amendment effective May 28, 1999.

Severability: Section 8, Ch. 43, L. 1999, was a severability clause.

1997 Amendment: Chapter 206 in (1)(a), near beginning, substituted "commission" for "department of transportation"; in (1)(b), near beginning after "transportation", inserted "or an engineer, as provided in subsection (1)(c)(i)"; and inserted (1)(c) relating to engineering and traffic investigation.

1995 Amendment: Chapter 73 at end of (1)(a) substituted "location" for "part"; inserted (1)(b) providing for an engineering and traffic investigation on a speed limit on request of a local authority; in (2), after "department", inserted "of transportation"; and made minor changes in style.

Retroactive Applicability: Section 2, Ch. 73, L. 1995, provided: "[Section 1] [61-8-309] applies retroactively, within the meaning of 1-2-109, to all engineering and traffic investigations conducted on or after January 1, 1991."

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-8-310. When local authorities may and shall alter limits or establish or alter area of school zone.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 174 in (1)(d) in first sentence after second reference to senior citizen center deleted "not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but"; in (2) substituted "subsections (1)(c) and (1)(d)" for "subsection (1)(c)"; in (5) at beginning deleted "Except as provided in subsection (1)(d)"; and made minor changes in style. Amendment effective October 1, 2019.

Chapter 299 in (5) near middle of first sentence substituted "state highways or highways located on the commission-designated highway system as defined in 60-1-103" for "federal-aid highways or extensions of federal-aid highways"; and in (6) at end substituted "a highway located on the commission-designated highway system as defined in 60-1-103" for "a federal-aid highway or extension of a federal-aid highway". Amendment effective October 1, 2019.

2013 Amendment: Chapter 393 inserted (9) concerning misdemeanors. Amendment effective May 6, 2013.

2011 Amendment: Chapter 204 in (1)(c) inserted "on a paved road or less than 25 miles an hour on an unpaved road"; and inserted (8) pertaining to speed limit on unpaved road. Amendment effective October 1, 2011.

2009 Amendment: Chapter 83 in (1)(d) near beginning after "limit in" substituted "school zone or in an area near" for "area near a school"; inserted (4)(b) requiring signage if a local authority decreases a speed limit in a school zone; inserted (6) requiring a local authority to consult with the department and the commission if the school zone includes a state highway or a federal-aid highway or extension; inserted (7) requiring a local authority to consult with district officials when establishing or altering a school zone or setting a speed limit in a school zone; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendment: Chapter 542 in (1)(d) near beginning after "crosswalk" deleted "as crosswalk is defined in 61-1-209"; in (2) at end after "county road" deleted "as defined in 60-1-103"; and made minor changes in style. Amendment effective January 1, 2006.

1999 Amendment: Chapter 43 in (1)(b) increased possible nighttime limit from 55 to 65 miles an hour; and in (1)(c) increased possible limit outside an urban district from not less than 15 to not less than 35 miles an hour. Amendment effective May 28, 1999.

Severability: Section 8, Ch. 43, L. 1999, was a severability clause.

1995 Amendment: Chapter 287 in (1)(d), in first sentence, changed minimum speed limit decrease in certain areas from 25 to 15 miles an hour and inserted second sentence allowing adoption of variable speed limits based on time of day; and made minor changes in style.

1993 Amendment: Chapter 213 in (1)(d), in two places, inserted reference to senior citizen center and substituted "that is close to" for "near"; and made minor changes in style.

1991 Amendment: Inserted (1)(d) allowing a local authority to decrease the speed limit in areas near schools or designated crosswalks to a percentage of the limit that would be set on the basis of an engineering and traffic investigation; in (3), after "jurisdiction", substituted "may" for "shall" and after "determine" deleted "by an engineering and traffic investigation"; at beginning of (5) inserted exception clause; and made minor changes in style. Amendment effective April 27, 1991.

1985 Amendment: In (1)(c) reduced speed limit from 35 m.p.h. to 15 m.p.h.; and inserted (2) authorizing the board of county commissioners to decrease to 15 m.p.h. speed limits outside an urban district without an engineering and traffic investigation.

Case Notes

Instructions to Jury: In an action for damages arising out of an automobile accident which is based on a violation of a city ordinance relating to the speed at which vehicles may be driven on its streets, the court should not instruct the jury on the law of the state on the same subject. Marinkovich v. Tierney, 93 M 72, 17 P2d 93 (1932).

Conflict Between Statutes and Ordinances: A city or town had, pursuant to section 32-1101, R.C.M. 1947 (now repealed), which delegated the power to cities and towns by ordinance to regulate the speed of automobiles upon the streets within corporate limits, enacted an ordinance on the subject. The ordinance had the force of statute, and in case of conflict with the state statute the ordinance controlled so long as the legislative delegation of authority remained unrepealed; otherwise the statute would control. Carey v. Guest, 78 M 415, 258 P 236 (1927).

Attorney General's Opinions

Board of County Commissioners — Right to Set Speed Limits: A Board of County Commissioners, constituted in a commission form of government, may alter otherwise statutorily established speed limits by compliance with 61-8-310. It may further adopt traffic ordinances to the extent permitted under 61-12-101(14), and any such ordinances may include penalty provisions. 40 A.G. Op. 51 (1984).

61-8-311. Minimum speed regulations.

Compiler's Comments

2003 Amendment: Chapter 352 in (2) near beginning of first sentence after "because of" substituted "oncoming traffic" for "traffic in the opposite direction", after "conditions" inserted "the operator of", after "slow-moving vehicle" deleted "including a passenger vehicle", and after "nearest" substituted "area where a sufficient and" for "place designated as a turnout by signs erected by the authority having jurisdiction over the highway or wherever sufficient area for a", in second sentence after "right of the" substituted "slow-moving" for "overtaken" and after "travel" substituted "the operator of the slow-moving vehicle" for "the driver of the overtaken vehicle", and in fourth sentence after "erect" substituted "official traffic control devices" for "signs"; in (3) near middle after "highway" deleted "consistently" and near end after "may not" substituted "operate" for "drive"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: In (2), inserted second sentence allowing a driver to travel on the shoulder of a two-lane highway.

Case Notes

Slow Operation of Vehicle and Buildup of Traffic Behind Vehicle Establishing Particularized Suspicion That Driver Impeding Traffic — Stop Warranted: Benders was driving between 25 and 40 miles an hour in a 50-mile-an-hour zone and continued to drive at the reduced speed when the speed limit increased to 70 miles an hour. No vehicles were in front of Benders, but at least four vehicles were following, and additional vehicles were quickly approaching. An officer was concerned that Benders' slow driving was creating a dangerous situation even though there was nothing to indicate a need to drive at a reduced speed. The officer stopped Benders for impeding traffic pursuant to this section, and Benders was subsequently arrested for DUI. Benders moved to suppress all evidence relating to the initial stop, but the motion was denied. On appeal, Benders asserted that the motion should have been granted because the officer did not have a particularized suspicion to justify the stop. The Supreme Court affirmed. The combination of slow speed and the buildup of vehicles provided the officer with sufficient information that Bender was impeding traffic, justifying the stop. Benders also argued that the state failed to establish the minimum speed required under this section and thus failed to show that his speed was slow enough to violate the law. However, the relevant determination under this section is not the speed of the vehicle, but the effect of the slow speed on the flow of traffic. Benders also claimed that a violation of this section requires a showing that a defendant has created unsafe driving conditions and an increased risk of an accident. However, such a showing is not required under the statute, and it would be inappropriate to conclude that an officer must wait for an unsafe driving condition to arise before concluding that traffic was being impeded. St. v. Benders, 2006 MT 275, 334 M 231, 146 P3d 751 (2006).

Statute Prohibiting Impeding Traffic Not Vague or Fundamentally Unfair: Benders argued that this section, which prohibits driving in a manner that impedes traffic, is unconstitutionally vague and fundamentally unfair. The Supreme Court held that none of the circumstances of Benders' case were applicable to the constitutional claim, but considered whether the claim warranted review under the plain error doctrine on the issue of unfairness. The fairness issue was based on the assertion that it was unfair to convict Benders of impeding traffic when there was no finding that Benders had violated a minimum speed limit. However, the relevant determination under this section is not the speed of the vehicle, but the effect of the slow speed on the flow of traffic. Therefore, Benders failed to demonstrate that the statutory language was vague, much less that it amounted to a fundamental unfairness resulting in plain error. The challenge to the constitutionality of this section failed. St. v. Benders, 2006 MT 275, 334 M 231, 146 P3d 751 (2006).

Instructions: Plaintiff's son was killed when car in which he was riding struck rear of defendant's truck which had just turned onto highway. It was reversible error for court to instruct jury on slow speed statute (this section) without requiring that plaintiff show truck had been on road sufficient time to attain a normal speed. Hageman v. Townsend, 144 M 510, 398 P2d 612 (1965).

Purpose: The purpose of this section is rooted in the recognition that the slow driver may be the cause of fatal highway accidents as well as the fast driver. Hageman v. Townsend, 144 M 510, 398 P2d 612 (1965).

61-8-312. Special speed limitations on trucks, truck tractors, and motor-driven cycles.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 161, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 89 in (2) near end substituted "61-10-124(3)" for "61-10-124(4)". Amendment effective October 1, 2021.

2019 Amendments — Composite Section: Chapter 299 in (1)(a) substituted "an interstate highway, as defined in 60-1-103" for "a federal-aid interstate highway". Amendment effective October 1, 2019.

Chapter 438 in (1)(a) substituted "70 miles an hour" for "65 miles an hour"; and in (1)(b) substituted "65 miles an hour" for "60 miles an hour during the daytime and 55 miles an hour during the nighttime as those terms are defined in 61-8-303". Amendment effective October 1, 2019.

2015 Amendment: Chapter 395 in (2) near end substituted "65 miles an hour" for "55 miles an hour". Amendment effective October 1, 2015.

2003 Amendment: Chapter 352 in (1)(a) at beginning substituted "a federal-aid interstate highway" for "completed sections of interstate"; and in (1)(b) at beginning substituted "any other public highway" for "four-lane divided highways and completed sections of primary and secondary highways". Amendment effective October 1, 2003.

1999 Amendment: Chapter 43 substituted (1) establishing speed limits for a truck or tractor of more than 1 ton for former text that read: "A person may not operate a truck or truck tractor, the gross weight of which exceeds 8,000 pounds, at a speed greater than 65 miles an hour on those completed sections of interstate and four-lane divided highways and 60 miles an hour on those completed sections of primary and secondary highways. However, the truck nighttime speed limit may not exceed that of automobiles, as stated in 61-8-303"; in (2) at beginning substituted "Except as provided in 61-8-303, 61-8-309, and 61-8-310, the speed limit for" for "A person may not operate" and at end inserted "unless otherwise stated in the permit"; deleted former (4) that read: "(4) A person may not operate a vehicle that is towing a housetrailer at a speed greater than a maximum of 50 miles an hour"; and made minor changes in style. Amendment effective May 28, 1999.

Severability: Section 8, Ch. 43, L. 1999, was a severability clause.

1997 Amendment: Chapter 232 in (2), near beginning, substituted "61-10-124(2)(d)" for "61-10-124(3)(d)" and near end substituted "61-10-124(4)" for "61-10-124(6)"; and made minor changes in style. Amendment effective January 1, 1998.

1991 Amendment: In (2) corrected citation to subsection of 61-10-124; and made minor changes in style.

1989 Amendment: In (2) inserted reference to a vehicle subject to a term permit. Amendment effective April 4, 1989.

Termination Provision Repealed: Section 1, Ch. 10, L. 1989, repealed sec. 8, Ch. 474, L. 1987, which terminated subsection (2) July 1, 1989. Repealer effective February 15, 1989.

1987 Amendment: Inserted (2) prohibiting operation faster than 55 miles per hour of truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits.

Case Notes

This Section Not Repealed by Implication: Defendant was adjudged a habitual traffic offender by the District Court upon presentation of evidence that he had accumulated 30 habitual offender points by violating this section 10 times in less than 3 years. Defendant appealed, claiming that this section had been preempted by 61-8-304 (now repealed). No habitual offender points are assessed for violation of 61-8-304 (now repealed). The Supreme Court affirmed, holding that 61-8-304 (now repealed) itself clearly indicated the Legislature's intention that this section remain in effect; that the purpose of 61-8-304 (now repealed) was not to revise the statutory scheme regarding speed limits but rather to ensure continued receipt of federal highway funds; and that there had been no implied repeal of this section. State ex rel. Sol v. Bakker, 199 M 385, 649 P2d 456, 39 St. Rep. 1471 (1982).

61-8-313. Special speed limitations.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-8-314. Traffic violations in work zone — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 219, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 426 in (1) deleted former (1)(a) that read: "(a) "Construction zone" means an area on a public highway or on the adjacent right-of-way where construction, repair, maintenance, or survey work is being performed by the department of transportation, a local authority, a utility company, or a private contractor under contract with the department of transportation or a local authority. A construction zone may include a work zone"; inserted (1)(a) defining highway worker; in (1)(c) substituted first sentence for ""Work zone" means the area where the construction, repair, maintenance, or survey work is actually taking place"; in (2) and (3) before "in a work zone" deleted "in a construction zone or"; in (4)(a) after "work zones" deleted "or construction zones"; in (4)(a)(ii) before "the work zone" deleted "the construction zone and"; in (4)(a)(iii) substituted "the work zone" for "both zones"; in (4)(b) substituted "work zone" for "construction zone"; in (5)(a) inserted "if a highway worker was present in the work zone at the time and place of the traffic violation"; inserted (5)(b) regarding penalty if no highway worker present in work zone; deleted former (5)(b) that read: "(b) A person convicted of a traffic violation in a construction zone is guilty of a misdemeanor. Upon arrest and conviction, the person is subject to the penalty provided for the violation in part 7 of this chapter"; and made minor changes in style. Amendment effective October 1, 2017.

1999 Amendment: Chapter 430 in definition of work zone inserted second sentence concerning posting signs; in (4)(a) at end inserted "determines, based on traffic conditions or the condition of the construction, repair, maintenance, or survey project, that special speed limits in work zones or construction zones are warranted, then the department, the local authority, the utility company, or the private contractor"; inserted (4)(d) concerning removing or covering signs; and made minor changes in style. Amendment effective October 1, 1999.

Effective Date: Section 6, Ch. 473, L. 1997, provided that this section is effective on passage and approval. Approved May 1, 1997.

Case Notes

Establishment of Work and Construction Zone Speed Limits by Appropriate Entities Not Unconstitutional Delegation of Legislative Authority: Mathis was cited for speeding in a construction zone in violation of this section. Mathis challenged the constitutionality of the statute on grounds that the Legislature improperly delegated its authority to the Executive Branch by allowing speed limits in particular work and construction zones to be set by the Department of Transportation, local authorities, or private entities, such as utility companies and private contractors, rather than setting the speed limit by law. The Supreme Court disagreed. Although the authority to establish speed limits is legislative in nature, the delegation of authority in this case did not grant an unfettered discretion to other entities to establish traffic regulations in work and construction zones. The statute provided limitations on that discretion with reasonable clarity and provided policy guidelines to the entities. The rationale behind the statute is to protect drivers and workers in work and construction zones, as evidenced by the enhanced penalties applicable to the crime. Because of the diverse nature of work and construction zones, establishing a speed limit for every construction project would be an impractical if not impossible task for the Legislature, so it was rational for the Legislature to delegate that duty to the entities most familiar with the nuances of each project. Unable to overcome the implied constitutionality of this section, Mathis's assertion of improper delegation of legislative authority was properly rejected. St. v. Mathis, 2003 MT 112, 315 M 378, 68 P3d 756 (2003), following Duck Inn, Inc. v. Mont. St. Univ.-N., 285 M 519, 949 P2d 1179 (1997).

Substantial Evidence of Proof of Speeding in Construction Zone — Directed Verdict Properly Denied: Mathis was charged with speeding in a construction zone and, following submission of the state's case, moved for a directed verdict on grounds that the state failed to provide sufficient proof of the crime. The motion was denied, and Mathis appealed. The Supreme Court found sufficient proof that the elements of the crime had been proved. Administrative authority was properly granted to appropriate entities to set the applicable speed limit, and the proper requisite action was taken by the entities to establish a speed limit in accordance with state uniform traffic control guidelines and to adequately post the construction zone. A reasonable person could conclude that the state proved the elements of the offense; thus, Mathis's motion for a directed verdict was properly denied. St. v. Mathis, 2003 MT 112, 315 M 378, 68 P3d 756 (2003).

61-8-316. Fleeing from or eluding peace officer.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

61-8-317. Right-of-way for vehicles engaged in mobile highway maintenance.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

61-8-320. Right-of-way for bicycles.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

61-8-321. Drive on right side of roadway — exceptions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 567, L. 2023. Amendment effective October 1, 2023.

2019 Amendment: Chapter 299 in (4) substituted "60-1-103" for "60-5-102". Amendment effective October 1, 2019.

2017 Amendment: Chapter 236 inserted (1)(g) regarding police or emergency vehicle performing job-related duty; in (3) substituted current language requiring vehicles to be driven in right-hand lane on roadway having two or more lanes of traffic moving in same direction and providing exceptions for former text that read: "A vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing must be operated in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the roadway except when overtaking and passing another vehicle proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway"; inserted (4) requiring vehicles to be driven in right-hand lane on interstate highway when within boundaries of a city or town unless otherwise directed or permitted by a traffic control device; and made minor changes in style. Amendment effective October 1, 2017.

2003 Amendment: Chapter 352 in (1) after "vehicle" substituted "must be operated" for "shall be driven"; in (1)(d) after "designated" substituted "by official traffic control devices" for "and signposted"; inserted (1)(e) and (1)(f) providing that a vehicle need not be driven on the right half of the roadway when the operator is complying with 61-8-346 or when an obstruction exists; inserted (2) providing that a person operating a vehicle to the left of the center of the roadway shall yield the right-of-way to all vehicles traveling in the proper direction on the unobstructed portion of the roadway that are within a distance that constitutes an immediate hazard; in (3) at beginning deleted "Upon all roadways" and after "existing" substituted "must be operated" for "shall be driven"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Erratic U-Turn Sufficient Particularized Suspicion for Investigative Stop: After an officer observed Trombley make an erratic U-turn, drift over the fog line, fail to signal when switching lanes, and straddle the center line, Trombley was stopped and cited for DUI. Trombley contended, and the District Court agreed, that state law did not prohibit the U-turn, but under the totality of the circumstances, Trombley's actions rose to the level of particularized suspicion sufficient to warrant the investigative stop. On appeal, the Supreme Court agreed. Trombley's erratic driving was enough for the officer to suspect that Trombley was engaged in wrongdoing and gave the officer a particularized suspicion to justify the investigative stop under the totality of the circumstances. Trombley's motion to dismiss was properly denied. St. v. Trombley, 2005 MT 174, 327 M 507, 116 P3d 771 (2005), following St. v. Steen, 2004 MT 343, 324 M 272, 102 P3d 1251 (2004).

Officer's Testimony and Videotape Sufficient Evidence of Reasonable Grounds for DUI Stop: Clark's driver's license was suspended after he refused to take a breath test when arrested for DUI. In petitioning for reinstatement of the license, Clark contended that the arresting officer lacked a particularized suspicion to make a stop and failed to articulate a reason for the stop at the hearing on the license suspension. The Supreme Court applied the reasonable grounds test in St. v. Brander, 2004 MT 150, 321 M 484, 92 P3d 1173 (2004), and held that the trial court properly concluded, on the basis of the officer's testimony that Clark hit a curb and swerved across lanes, coupled with a videotape of the stop, that the officer had reasonable grounds to investigate Clark for DUI. The trial court properly analyzed the factors in 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10), and the analysis was not clearly erroneous. Denial of the petition to reinstate Clark's license was affirmed. Clark v. State ex rel. Driver Improvement Bureau, 2005 MT 65, 326 M 278, 109 P3d 244 (2005), followed in St. v. Rodriguez, 2011 MT 36, 359 Mont. 281, 248 P.3d 850.

Crossing Centerline Sufficient Particularized Suspicion for Investigative Stop: An officer observed Loney crossing the centerline several times, and Loney was stopped for a traffic violation and subsequently charged with DUI. The District Court granted Loney's motion to dismiss for lack of particularized suspicion, citing Morris v. St., 2001 MT 13, 304 M 114, 18 P3d 1003 (2001). The state appealed, and the Supreme Court reversed. Morris was distinguishable because in that case, defendant was stopped only for DUI and not for driving in a manner justifying a traffic stop, while Loney violated this section. Crossing the centerline constituted a sufficient particularized suspicion to justify the stop, and the case was remanded for further proceedings. St. v. Loney, 2004 MT 204, 322 M 305, 95 P3d 691 (2004), following Widdicombe v. State ex rel. LaFond, 2004 MT 49, 320 M 133, 85 P3d 1271 (2004), and followed in St. v. Otto, 2004 MT 338, 324 M 217, 102 P3d 522 (2004), and St. v. Murray, 2011 MT 10, 359 Mont. 123, 247 P.3d 721.

Issues for Consideration in Petition for Review of Seizure of Driver's License: As established in Bush v. Dept. of Justice, 1998 MT 270, 291 M 359, 968 P2d 716 (1998), the three issues to be determined by a District Court in a petition for review of a seizure of a driver's license are whether: (1) the arresting officer had a particularized suspicion that a person was driving or in actual control of a vehicle on the ways of this state while under the influence of alcohol or drugs; (2) the petitioner was lawfully under arrest, including the existence of probable cause; and (3) the petitioner in fact declined to submit to a breath test. In this case, Widdicombe contested the first two determinations, but the Supreme Court affirmed. While leaving town on a two-lane highway, the arresting officer and another officer in the patrol car observed Widdicombe crossing the center lane three times, in violation of this section, and this fact was corroborated by videotape evidence. Thus, Widdicombe failed to meet the burden of proving a lack of particularized suspicion for the initial stop. Further, it was not necessary for the arresting officer to testify to probable cause when another officer witnessed the event and testified. Thus, Widdicombe failed to prove that the officers did not have probable cause for the arrest. Widdicombe v. State ex rel. LaFond, 2004 MT 49, 320 M 133, 85 P3d 1271 (2004), distinguishing St. v. Lafferty, 1998 MT 247, 291 M 157, 967 P2d 363 (1998).

Limited Applicability of Involuntary Action Rule to Negligence Per Se in Driving Accidents When Driver Violates Traffic Law While Reacting to Highway Obstacle or Hazard: Seeking to reconcile past disparate holdings regarding liability of a motor vehicle driver who violates a traffic law while reacting to a highway obstacle or hazard and injures another party who has complied with traffic laws, the Supreme Court held that drivers must anticipate certain obstacles and adverse driving conditions that are common to Montana roads, such as small furry animals, deer, chuckholes, and swirling snow. Only under extremely limited circumstances, such as sudden brake failure, will a violation of a motor vehicle statute not constitute negligence per se. In this case, Craig was involved in an auto accident when the other vehicle swerved to avoid a deer and the driver and passenger in the other vehicle died. Injuries resulting from swerving to miss the deer arose from negligence per se, and Craig's motion for partial summary judgment on the issue of liability should have been granted. Craig v. Schell, 1999 MT 40, 293 M 323, 975 P2d 820, 56 St. Rep. 167 (1999), following Duchesneau v. Silver Bow County, 158 M 369, 492 P2d 926 (1971), overruling Lyndes v. Scofield, 180 M 177, 589 P2d 1000 (1979), and clarifying Graham v. Rolandson, 150 M 270, 435 P2d 263 (1967), Farris v. Clark, 158 M 33, 487 P2d 1307 (1971), Kudrna v. Comet Corp., 175 M 29, 572 P2d 183 (1977), Eslinger v. Ringsby Truck Lines, Inc., 195 M 292, 636 P2d 254, 38 St. Rep. 1863 (1981), Simonson v. White, 220 M 14, 713 P2d 983, 43 St. Rep. 133 (1986), Palmer v. Farmers Ins. Exch., 233 M 515, 761 P2d 401, 45 St. Rep. 1694 (1988), and Cameron v. Mercer, 1998 MT 134, 289 M 172, 960 P2d 302, 55 St. Rep. 531 (1998).

Crossing Fog Line Not Illegal Driving: The fact that a motorist was observed to have crossed the fog line on the far right side of the traffic lane did not rise to the particularized suspicion necessary to justify an investigative stop by the officer because crossing over the fog line is not illegal driving under Montana law. St. v. Lafferty, 1998 MT 247, 291 M 157, 967 P2d 363, 55 St. Rep. 1019 (1998), distinguished in Weer v. St., 2010 MT 232, 358 Mont. 130, 244 P.3d 311. See also St. v. Cameron, 2011 MT 276, 362 Mont. 411, 264 P.3d 1136, and St. v. LeMay, 2011 MT 323, 363 Mont. 172, 266 P.3d 1278, which, following Weer, held that the defendant's illegal U-turn constituted an unusual turn or movement sufficient to establish particularized suspicion.

Driving on Wrong Side — Summary Judgment Proper: Summary judgment for the defendant was proper in a personal injury case where it was shown by survey of the accident scene, by examination of the vehicles and their positions following the accident, and by the conclusions of investigating officers and accident investigation experts that the plaintiff was driving on the wrong side of the road at the time of a head-on collision. Medders v. Joyes, 233 M 183, 758 P2d 769, 45 St. Rep. 1409 (1988).

Violation of Statute — Not Negligence Per Se: Defendant, driving on a snowy, slippery road, hit a large chuckhole causing the car to skid across the center line and collide with plaintiff's car. It is not negligent as a matter of law to cross the center line; it is prima facie evidence of negligence which may be rebutted. It is a question of fact to be determined by the jury whether it was negligent to cross the center line. Lyndes v. Scofield, 180 M 177, 589 P2d 1000 (1979), explained in Hall v. Big Sky Lumber & Supply, Inc., 261 M 328, 863 P2d 389, 50 St. Rep. 1345 (1993), followed in Cameron v. Mercer, 1998 MT 134, 289 M 172, 960 P2d 302, 55 St. Rep. 531 (1998), and overruled, to the extent that a driver who violates a traffic law while reacting to a highway obstacle or hazard and injures another party who has complied with traffic laws should be found negligent per se, in Craig v. Schell, 1999 MT 40, 293 M 323, 975 P2d 820, 56 St. Rep. 167 (1999).

Application: Defendant proposed an instruction in an automobile accident case placing a duty upon plaintiff to drive on right side of roadway at all times and under all conditions, and which made plaintiff absolutely negligent as matter of law if she failed to do so. This was not an entirely correct statement of law and therefore was properly refused since this section and

61-8-323 provide exceptions to the rule that one must drive upon right side of roadway. Lamb v. Page, 153 M 171, 455 P2d 337 (1969).

Backing Over Centerline: Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway centerline into decedent's traffic lane, defendant's driver was negligent as a matter of law. Hurly v. Star Transfer Co., 141 M 176, 376 P2d 504 (1962).

No Traffic on Road: The fact that a motorist was driving on the left side of the road was not alone sufficient to show negligence on his part, since where the road is open and free from traffic, the entire road is free for his use. Harrington v. H. D. Lee Mercantile Co., 97 M 40, 33 P2d 553 (1934).

Collision — Complaint Allegation: In an action for damages for injuries sustained in a collision between plaintiff's motorcycle and defendant's automobile, the allegation in the complaint that defendant was on the left side of the road at the time of the accident, in disregard of the provision of the statute that vehicles must keep to the right, made out a prima facie charge of negligence. McGinnis v. Phillips, 62 M 223, 205 P 215 (1922).

Prima Facie Negligence: A person driving an automobile on the wrong side of the road was prima facie guilty of a violation of section 32-1101, R.C.M. 1947 (now repealed), failing to exercise the precaution necessary to avoid frightening animals being driven on the road, and thus imperiling the safety of the drivers of such animals. Savage v. Boyce, 53 M 470, 164 P 887 (1917).

61-8-322. Passing vehicles proceeding in opposite directions.

Case Notes

Jury Instructions — Refusal to Instruct as to Statute: Where there was no evidence that an accident occurred while vehicles were passing but that the vehicles collided when one vehicle slid and struck the other, there was no error in refusing to instruct regarding this section. Allen v. Moore, 167 M 330, 538 P2d 1352, 32 St. Rep. 478 (1975).

Assumption of Risk: Plaintiff who was legally attempting to pass a logging truck in a clear passing lane with no oncoming traffic and who could not anticipate that the truck would turn left, did not assume any risk. Beebe v. Johnson, 165 M 96, 526 P2d 128 (1974).

Civil Liability: The driver of an automobile, who failed to turn to the right of the way sufficiently to permit a vehicle coming from the opposite direction to pass in safety, was at fault and liable for damages for injury resulting therefrom. Savage v. Boyce, 53 M 470, 164 P 887 (1917).

61-8-323. Overtaking vehicle on left.

Compiler's Comments

2003 Amendment: Chapter 352 at end of introductory clause substituted "chapter" for "part"; and near beginning of (1) and in (2) in two places substituted "operator" for "driver". Amendment effective October 1, 2003.

1997 Amendment: Chapter 119 in (2), in first sentence after "audible signal", inserted "or the use of signal lamps as provided in 61-9-218"; and made minor changes in style.

1983 Amendment: In (2), inserted last sentence allowing driver, when giving way to the right on a two-lane highway, to travel upon the shoulder at a safe speed until passed.

Case Notes

Audible Signal: Finding of contributory negligence was proper under the "but for" test since driver making left turn might have been warned in time "but for" the failure of the plaintiff to sound his horn sufficiently in advance of passing. Sedlacek v. Ahrens, 165 M 479, 530 P2d 424 (1974).

Duty of Overtaking Vehicle: Undisputed evidence that defendant waited until he was 20 to 25 feet behind plaintiff's vehicle, which was traveling at 55 m.p.h., before moving to the left to pass on an interstate with divided lanes and a clear passing lane, showed that defendant was negligent in following too closely under the conditions. Summary judgment for plaintiff on issue of liability was proper even though there was evidence that defendant's power steering failed when he tried to move to left. Farris v. Clark, 158 M 33, 487 P2d 1307 (1971).

Duty of Overtaken Vehicle: There is no duty resting upon a motorist to slow down his speed when he becomes aware of the fact that another car desires to pass him from the rear, the only requirement being the provisions of this section declaring that he must without unnecessary delay make every reasonable effort to permit him to do so. Cowden v. Crippen, 101 M 187, 53 P2d 98 (1936).

Permissible Assumption: The driver of an automobile proceeding in a lawful manner on the proper side of the highway has the right to assume that one attempting to pass him from the rear will proceed in a lawful manner and on his own side of the road, as required by this section. Cowden v. Crippen, 101 M 187, 53 P2d 98 (1936).

Passing With Approaching Traffic: Under this section, automobile traffic must at all times keep to the right. Where two vehicles are moving in the same direction, the one passing must turn to the left and the one being passed must turn to the right. The one passing is negligent if he so carelessly manages his automobile that a collision results, or attempts to pass at a time or under conditions which are not reasonably safe, as where he attempts to pass when another vehicle is approaching. McDonough v. Smith, 86 M 545, 284 P 542 (1930).

Returning to Lane — Duty to Clear Car: Ordinarily, the driver of a car overtaking and passing another must keep to the left and not turn to the right until entirely clear of the other car and is in duty bound to look out for the car ahead. McDonough v. Smith, 86 M 545, 284 P 542 (1930).

City Street: Plaintiff riding a motorcycle in a city street was endeavoring to pass a truck going in the same direction to the left and sounded the horn. The driver of the truck suddenly turned to the left without giving the warning required by this section, causing a collision. There was no evidence that plaintiff had time to stop or change his course. Plaintiff was not guilty of contributory negligence as a matter of law. Haney v. Mut. Creamery Co., 67 M 278, 215 P 656 (1923).

61-8-324. Overtaking vehicle on right.

Compiler's Comments

2015 Amendment: Chapter 255 in (2) at end inserted exception clause; and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 352 in (1) near beginning substituted "operator" for "driver"; in (1)(b) at beginning after "upon a" substituted "roadway" for "street or highway", after "pavement" deleted "not occupied by parked vehicles", and after "two or more" substituted "lanes of vehicles moving lawfully in the direction being traveled by the overtaking vehicle" for "lines of moving vehicles in each direction"; deleted former (1)(c) that read: "(c) upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles"; in (2) at beginning of first sentence substituted "operator" for "driver"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Particularized Suspicion That Driver Violated Traffic Code Based on Observation Not Clearly Erroneous: Two men encountered a vehicle on Rogers Pass that was weaving between lanes and at one point appeared to nearly roll over. They followed the vehicle to Great Falls and then contacted local police by cellular telephone to report their observations and provide updates on the vehicle's location. Great Falls police responded and observed the driver, later found to be Herbenson, pull into the right-hand emergency lane of 10th Avenue South, pass two vehicles, and turn onto 13th Street. The officers stopped the vehicle, and Herbenson exhibited signs of intoxication. He was given field sobriety tests, which he failed. He also failed two breath tests. A review of Herbenson's driving record revealed four previous DUI convictions. Herbenson contended that the officers did not have a particularized suspicion that he was engaging in criminal activity necessary to justify the stop. The District Court found two factual bases in support of the particularized suspicion. The first was a suspicion that Herbenson was driving under the influence based on the citizens' reports of Herbenson's driving patterns, along with the officers' corroboration of that information. However, the Supreme Court found that particularized suspicion to be clearly erroneous because it was not based on record evidence. The state failed to introduce any evidence of the citizen reports, and the arresting officer did not testify that he personally observed any objective facts prior to stopping Herbenson from which to reasonably infer that Herbenson was driving under the influence. The second basis was that Herbenson had violated the traffic code by making an unsafe pass in violation of this section, and that finding was not clearly erroneous. Passing two vehicles that are stopped at an intersection and in the outermost lane of traffic by driving between those vehicles and the curb could certainly be characterized as unsafe and illegal, and a law enforcement officer's personal observation of illegal activity is a sufficient justification for stopping a vehicle. Because the second particularized suspicion was sufficient, the erroneous reliance on nonrecord evidence in the first particularized suspicion was irrelevant, and the denial of Herbenson's motion to suppress was affirmed. St. v. Herbenson, 2001 MT 75, 305 M 68, 22 P3d 1128 (2001).

61-8-325. Limitations on overtaking on the left.

Compiler's Comments

2003 Amendment: Chapter 352 in (1) deleted former second sentence that read: "In every event the overtaking vehicle must return to the right-hand side of the roadway before coming within 100 feet of any vehicle approaching from the opposite direction"; in (2)(b) at end after "crossing" inserted "unless otherwise indicated by an official traffic control device"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Signs or Road Markings Designate No-Passing Zone: A stretch of highway was marked with a sign designating a no-passing zone, and the highway was marked with double yellow lines also indicating a no-passing zone, but the highway was snow-covered and the double lines were not visible. Fitzgerald attempted to pass, but collided head-on with another vehicle. The District Court concluded that Fitzgerald passed in a no-passing zone, but Fitzgerald appealed on grounds that road markings must be visible in addition to posted signs for a portion of a roadway to be designated as a no-passing zone. The Supreme Court disagreed and affirmed. Use of the disjunctive particle "or" in 61-8-326 means that only one of the stated factors must exist, so either signs or markings may designate a no-passing zone. Contreras v. Fitzgerald, 2002 MT 208, 311 M 257, 54 P3d 983 (2002).

Negligence of Driver Compared to State's Duty to Sign Highways — Proximate Cause Not Shown: A driver breached a duty by exceeding limitations on overtaking on the left, thus causing an accident. The driver failed to produce evidence from which it could be inferred that the state's negligent conduct in failing to sign a no-passing zone (in addition to the existing striped markings on the road) was the proximate cause of the driver's injuries. Summary judgment on negligence as a matter of law was proper. Brohman v. St., 230 M 198, 749 P2d 67, 45 St. Rep. 139 (1988), distinguished in Dillard v. Doe, 251 M 379, 824 P2d 1016, 49 St. Rep. 85 (1992), in which there was substantial active negligence by both parties upon which reasonable minds could differ as to the degree of comparative negligence.

Negligence Per Se — Directed Verdict: The court should have granted a directed verdict against defendant truckdriver who carelessly placed himself in a position of not being able to stop behind codefendant's truck and negligently passed to avoid collision but collided instead with an oncoming vehicle in which plaintiff's husband was a passenger. The court was in error to instruct the jury on sudden emergency when the driver's negligence created his own emergency. Kudrna v. Comet Corp., 175 M 29, 572 P2d 183 (1977).

Contributory Negligence: Plaintiff driving to the left side of the roadway while within 100 feet of or traversing an intersection in attempting to pass truck was guilty of contributory negligence in collision with truck attempting to make a left turn. Dzikowski v. Jacobs, 170 M 302, 552 P2d 1102 (1976); Rader v. Nicholls, 140 M 459, 373 P2d 312 (1962), distinguished in Faucette v. Christensen, 145 M 28, 400 P2d 883 (1965).

Highway Intersecting Gravel Road: Where highway intersects with gravel road, no Department of Highways (now Department of Transportation) markings or signs indicate an intersection, and a broken line indicates a passing zone, passing is not prohibited. Dzikowski v. Jacobs, 170 M 302, 552 P2d 1102, 33 St. Rep. 753 (1976).

"Intersection" Defined:

An intersection is formed when two publicly maintained ways join at any angle. Dzikowski v. Jacobs, 170 M 302, 552 P2d 1102 (1976); Rader v. Nicholls, 140 M 459, 373 P2d 312 (1962), distinguished in Faucette v. Christensen, 145 M 28, 400 P2d 883 (1965).

Reading 61-1-211 and 61-1-212 (both now repealed — see 61-8-102 for definitions of intersection and controlled-access highway) together, an intersection within the meaning of this section is formed by the joining of two ways publicly maintained which are open to the public for vehicular travel. Leach v. Great N. Ry., 139 M 84, 360 P2d 94 (1961), overruled on other grounds in Graham v. Rolandson, 150 M 270, 435 P2d 263 (1967).

Left Turn: Prohibition of driving on left side of highway does not apply to vehicle making left turn, and where the issue before the jury was negligence in turning, jury instructions setting forth the requirements of this statute were prejudicial. Rude v. Neal, 165 M 520, 530 P2d 428 (1974).

Turning Vehicle: Plaintiff traveling at slow rate of speed on highway and indicating left turn with automatic signal, then turning left onto country road, was exercising proper care in turning. The driver who struck plaintiff while attempting to pass while plaintiff was turning was negligent and proximate cause of accident, even though area may not have been an intersection within the meaning of this section and even though highway markings did not prohibit passing. Gammel v. Dees, 159 M 461, 498 P2d 1204 (1972), distinguished in Dzikowski v. Jacobs, 170 M 302, 552 P2d 1102 (1976).

Passing at Intersection: Plaintiff attempted to pass defendant's truck 250 feet from unmarked intersection and was struck by defendant's truck as it started to make a left-hand turn. In reconciling this section with 61-8-202, which provides for a uniform system of traffic control devices, it was not error on the judge's part to refuse to instruct the jury on the provisions of this section. Graveley v. Springer, 145 M 486, 402 P2d 41 (1965).

Reliance on Markings: Defendant, who attempted to pass plaintiff's truck within 100 feet of intersection, in violation of this section, was not negligent per se, since defendant was entitled to rely on the broken white center line which indicated that passing could be done lawfully at the point where the accident occurred. Faucette v. Christensen, 145 M 28, 400 P2d 883 (1965), distinguished in Gammel v. Dees, 159 M 461, 498 P2d 1204 (1972).

61-8-326. No-passing zones.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 161, L. 2023. Amendment effective October 1, 2023.

2015 Amendment: Chapter 255 in (1) after "left" inserted "side"; in (2)(a) inserted exception clause and before "roadway" inserted "center of the"; inserted (2)(b) concerning nonapplicability of subsection (2)(a); and made minor changes in style. Amendment effective October 1, 2015.

2003 Amendment: Chapter 352 in (1) near beginning of first sentence after "transportation" inserted "and local authorities", after "highway" inserted "in their respective jurisdictions", after "left of the" inserted "center of the", and after "may by" substituted "official traffic control devices on the highway" for "appropriate signs or markings on the roadway" and in second sentence near beginning substituted "official traffic control devices" for "signs or markings", near middle after "person" substituted "an operator" for "every driver", and at end substituted "devices" for "signs"; in (2) at beginning substituted "official traffic control devices" for "signs or markings" and after "subsection (1)" substituted "an operator of a vehicle" for "a driver"; inserted (3) providing that the provisions of this section do not apply under the conditions provided in 61-8-321(1) or to the operator of a vehicle that is turning left into or from an alley, private road, or driveway; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Case Notes

Degrees of Comparative Negligence in Automobile Accident — Summary Judgment on Comparative Negligence Improper: Issues of comparative negligence are particularly difficult to resolve as a matter of law. Normally, the issue of contributory negligence and the degree of comparative negligence, if any, is an issue for the trier of fact to resolve even if the opposing party is negligent as a matter of law. In this case, a question of material fact remained regarding the specific facts of an automobile accident, and the District Court erred in granting summary judgment to plaintiff after finding that defendant's negligence exceeded any negligence that could be found on plaintiff's part. The question of degrees of negligence was properly left to the jury. Contreras v. Fitzgerald, 2002 MT 208, 311 M 257, 54 P3d 983 (2002), distinguishing Brohman v. St., 230 M 198, 749 P2d 67 (1988).

Signs or Road Markings Designate No-Passing Zone: A stretch of highway was marked with a sign designating a no-passing zone, and the highway was marked with double yellow lines also indicating a no-passing zone, but the highway was snow-covered and the double lines were not visible. Fitzgerald attempted to pass, but collided head-on with another vehicle. The District Court concluded that Fitzgerald passed in a no-passing zone, but Fitzgerald appealed on grounds that road markings must be visible in addition to posted signs for a portion of a roadway to be designated as a no-passing zone. The Supreme Court disagreed and affirmed. Use of the disjunctive particle "or" in this section means that only one of the stated factors must exist, so either signs or markings may designate a no-passing zone. Contreras v. Fitzgerald, 2002 MT 208, 311 M 257, 54 P3d 983 (2002).

Negligence of Driver Compared to State's Duty to Sign Highways — Proximate Cause Not Shown: A driver breached a duty by exceeding limitations on overtaking on the left, thus causing an accident. The driver failed to produce evidence from which it could be inferred that the state's negligent conduct in failing to sign a no-passing zone (in addition to the existing striped markings on the road) was the proximate cause of the driver's injuries. Summary judgment on negligence as a matter of law was proper. Brohman v. St., 230 M 198, 749 P2d 67, 45 St. Rep. 139 (1988), distinguished in Dillard v. Doe, 251 M 379, 824 P2d 1016, 49 St. Rep. 85 (1992), in which there was substantial active negligence by both parties upon which reasonable minds could differ as to the degree of comparative negligence.

Passing — Statutory Violation as Negligence: A motorist was attempting to pass defendant's preceding pickup truck at a speed of 65 to 70 miles an hour in a clearly marked no-passing zone in violation of statute and struck the rear of the truck. He was guilty of contributory negligence, even though the truck failed to signal a left turn. Sumner v. Amacher, 150 M 544, 437 P2d 630 (1968).

Duty of Other Driver: This section does not absolve a driver intending to turn left from the obligation under 61-8-336 of making certain that the turn can be made with reasonable safety. Plaintiff was contributorily negligent in failing to look to the rear before turning even though defendant was passing him in a no-passing zone. Bellon v. Heinzig, 347 F2d 4 (9th Cir. 1965).

61-8-327. One-way roadways, rotary traffic islands, and roundabouts.

Compiler's Comments

2003 Amendment: Chapter 352 in (1) near beginning after "transportation" inserted "or a local authority", after "highway" deleted "or a separate", after "roadway" inserted "part of a roadway, or specific lanes", after "under its" inserted "respective", and after "erect" substituted "official traffic control devices" for "appropriate signs"; in (2) after "designated" substituted "by official traffic control devices" for "and signposted"; in (3) near middle after "island" inserted "or a roundabout" and at end after "island" inserted "or the center of the roundabout"; inserted (4) defining roundabout for purposes of this section; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-8-328. Driving on roadways laned for traffic.

Compiler's Comments

2003 Amendment: Chapter 352 in (1) near beginning after "must be" substituted "operated" for "driven" and after "until the" substituted "operator" for "driver"; in (2) in introductory clause after "lanes" inserted "and that provides for two-way movement of traffic" and after "not be" substituted "operated" for "driven"; in (2)(a) after "vehicle" substituted "traveling in the same direction where passing is allowed" for "where the roadway is clearly visible"; deleted former (2)(b) that read: "(b) in preparation for a left turn"; in (2)(b) after "proceeding and" deleted "is signposted to give notice of" and after "allocation" inserted "is designated by official traffic control devices"; in (3) at beginning of first sentence after "Official" substituted "traffic control devices" for "signs" and after "directing" substituted "specified" for "slow-moving" and at beginning of second sentence substituted "Operators" for "Drivers" and after "official" substituted "traffic control device" for "sign"; in (4) after "parking lot" inserted "private road, private driveway"; inserted (5) allowing installation of traffic control devices that prohibit the changing of lanes on sections of a roadway; inserted (6) providing that a motor vehicle may not be driven or parked in a bicycle lane; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 119 inserted (4) concerning turn-across lane marked with two yellow lines; and made minor changes in style.

Case Notes

Crossing of Yellow Center Line — Sufficient Particularized Suspicion to Justify Stop: An officer stopped a driver after his vehicle crossed over the yellow center line of a road. The driver was arrested for refusal to take a breath alcohol test, and his driver's license was suspended pursuant to 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10). On a petition by the driver to reinstate his license, the District Court held that the officer had particularized suspicion sufficient to justify the stop when the driver slightly crossed the center line. On appeal, the Supreme Court affirmed, reasoning that the plain language of 61-8-328 prohibits crossing of the center line to the extent that it is feasible for a vehicle to be operated within the lane of traffic. Mitchell v. St., 2015 MT 120, 379 Mont. 127, 347 P.3d 1278, distinguishing St. v. Lafferty, 1998 MT 247, 291 Mont. 157, 967 P.2d 363.

Erratic Driving and Occupants Switching Drivers — Sufficient Particularized Suspicion to Justify Investigative Stop: The fact that an officer observed that the occupants had switched drivers during the time that the officer lost sight of a vehicle and that the vehicle was driving in the center of a gravel road constituted a sufficient particularized suspicion under the totality of the circumstances, including the officer's 27 years of experience, to warrant an investigative stop. St. v. Britt, 2005 MT 101, 327 M 1, 111 P3d 217 (2005).

Driver on Four-Lane Highway Not Required to Use Only Right-Hand Lane: Cady, while driving in the left-hand lane of a four-lane highway, struck and killed Hislop. The authorities determined that no action or inaction on Cady's part was responsible for the accident. The personal representative for Hislop's estate initiated a civil action and argued that Cady was liable as a matter of law because the provisions of 61-8-361 require a driver to stay to the right when traveling through a mountainous region. The Supreme Court held that the statute only applies to two-lane roads where head-on collisions are a danger. Hislop v. Cady, 261 M 243, 862 P2d 388, 50 St. Rep. 1304 (1993).

Backing Over Centerline: Where the evidence conclusively established that defendant's tractor-trailer was backed over the highway centerline into decedent's traffic lane, defendant's driver was negligent as a matter of law. Hurly v. Star Transfer Co., 141 M 176, 376 P2d 504 (1962).

61-8-329. Following too closely.

Compiler's Comments

2003 Amendment: Chapter 352 in (1) at end substituted "roadway" for "highway"; deleted former (2) that read: "(2) The driver of any truck tractor, truck, or motor vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district and which is following another truck tractor, truck, or motor vehicle drawing another vehicle shall, whenever conditions permit, leave sufficient space so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a truck tractor, truck, or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Rear-End Collision — Liability of Following Driver Who Must Make Sudden Stop: Although the court has held that a following driver has the primary duty of avoiding a collision with a driver in front of him, the court has never addressed a situation where the following defendant must make an emergency stop when the plaintiff in front unexpectedly collides with a third vehicle that suddenly pulls in front of the plaintiff. Summary judgment for the following defendant was proper where he was not speeding and all the evidence showed the driver who pulled in front of the plaintiff was at fault and not the defendant. The mere fact that defendant was behind plaintiff and hit her vehicle was not prima facie evidence of negligence. Birky v. Johnson, 220 M 413, 716 P2d 198, 43 St. Rep. 488 (1986).

Negligence Per Se — Directed Verdict: The court should have granted a directed verdict against defendant truckdriver who carelessly placed himself in a position of not being able to stop behind codefendant's truck and negligently passed to avoid collision but collided instead with an oncoming vehicle in which plaintiff's husband was a passenger. The court was in error to instruct the jury on sudden emergency when the driver's negligence created his own emergency. Kudrna v. Comet Corp., 175 M 29, 572 P2d 183 (1977).

Primary Duty to Avoid Collision — Following Driver: Defendant was following the car owned by plaintiff, which was following a semitrailer. The semitrailer was kicking up a skiff of snow making visibility difficult. A vehicle passed the cars going in the opposite direction making visibility even more difficult. Defendant lost sight of plaintiff's car until he hit the rear end of it. The Supreme Court held that the primary duty of avoiding a collision rests upon the following driver. Defendant was guilty of negligence, and plaintiff was entitled to a directed verdict. Custer Broadcasting Corp. v. Brewer, 163 M 519, 518 P2d 257 (1974).

Preparing to Overtake: Undisputed evidence that defendant, rapidly approaching from behind, waited until he was 20 to 25 feet from plaintiff's vehicle, which was traveling at 55 m.p.h., before moving to the left to pass on an interstate with divided lanes and a clear passing lane, showed that defendant was negligent in following too closely under the conditions. Summary judgment for plaintiff on issue of liability was proper even though there was evidence that defendant's power steering failed when he tried to move to left. Farris v. Clark, 158 M 33, 487 P2d 1307 (1971).

Following Closely as Negligence: Driving an automobile at a rapid rate of speed so close to a car ahead that, if the driver of the latter slows down, it becomes necessary for the driver of the first to turn to the left to avoid striking it, is negligence, particularly when in doing so he must turn in front of a car coming from the opposite direction. McDonough v. Smith, 86 M 545, 284 P 542 (1930).

61-8-330. Driving on divided highways.

Compiler's Comments

2003 Amendment: Chapter 352 in (1) near beginning after "two" inserted "or more", after "leaving" substituted "a space delineated by two double yellow lines or two yellow lines with a crosshatch pattern" for "an intervening space", and at end inserted "unless directed or permitted by official traffic control devices or police officers to use another roadway"; in (2) near beginning after "or section" inserted "described in subsection (1)", near middle after "space or at" inserted "an established", and after "intersection" substituted "unless specifically prohibited by a" for "established by"; and made minor changes in style. Amendment effective October 1, 2003.

61-8-331. Restricted and controlled access.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 161, L. 2023. Amendment effective October 1, 2023.

2003 Amendment: Chapter 352 in (1) and (2)(a) at beginning substituted "operate" for "drive"; in (2)(b) at end after "line" inserted "if travel through the opening is not prohibited by an official traffic control device"; in (2)(c) and (2)(d) at beginning substituted "operate a" for "drive any"; in (2)(e) near middle after "from the" substituted "public" for "highway" and at end after "jurisdiction" deleted "and, with the exception of an interstate highway, from the local governing body"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Inapplicable to Driving in Emergency Lanes: The purpose of this section is to forbid crossing over by vehicles into the driving lanes reserved for opposite-direction traffic. This section does not apply to vehicles that may occasionally be driven over or into the emergency lane of an interstate highway. Damjanovich v. W. Fire Ins. Co., 204 M 455, 665 P2d 1128, 40 St. Rep. 999 (1983).

61-8-332. Restrictions on use of controlled-access roadway.

Compiler's Comments

2003 Amendment: Chapter 352 in (1) near middle after "ordinance" inserted "regulate or" and at end after "jurisdictions by" substituted "any class or kind of traffic that is found to be incompatible with the normal and safe movement of traffic or by any vehicle" for "pedestrians, bicycles, or other nonmotorized traffic or by a person operating a motor-driven cycle"; in (2) near middle of first sentence after "official" substituted "traffic control devices" for "signs" and after "controlled-access" substituted "highway" for "roadway" and at end of second sentence substituted "the official traffic control devices" for "those signs"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-8-333. Required position and method of turning at intersections.

Compiler's Comments

2003 Amendment: Chapter 352 in (1) at beginning of introductory clause, in (1)(c) in first sentence, and in (3) in second sentence substituted "operator" for "driver"; in (3) in three places substituted "official traffic control devices" for "markers, buttons, or signs"; inserted (4) concerning special lanes allowing vehicle operators proceeding in opposite directions to make left turns; and made minor changes in style. Amendment effective October 1, 2003.

The amendments to this section made by sec. 17, Ch. 352, L. 2003, were rendered void by sec. 51(2)(a), Ch. 352, L. 2003, a coordination section.

1983 Amendment: Inserted (1)(d) authorizing full use of turning lane at intersections; and inserted (2) requiring bicyclist to follow turning procedures established for drivers of motor vehicles and describing procedures for left-hand turns.

Case Notes

Observation of Traffic Violation Constituting Objective Data of Wrongdoing — Investigative Stop Justified: Thompson contended that because an officer did not observe Thompson speeding, driving erratically, or causing an accident or near accident and because the officer did not charge Thompson with any driving offense other than DUI, the officer did not have reasonable cause to justify an investigative stop. The Supreme Court disagreed. The officer testified that Thompson's vehicle made a wide turn and crossed over the centerline into the oncoming lane of traffic and that after Thompson overcorrected, Thompson continued to swerve in his own driving lane, rode the centerline, and swerved off the right side of the road, which led the officer to believe that

Thompson might be intoxicated. The officer's observations constituted objective data from which an experienced officer could infer that the occupant of the vehicle was engaged in wrongdoing that was sufficient to justify the investigative stop. St. v. Thompson, 2006 MT 274, 334 M 226, 146 P3d 756 (2006), following St. v. Steen, 2004 MT 343, 324 M 272, 102 P3d 1251 (2004), and distinguishing St. v. Lafferty, 1998 MT 247, 291 M 157, 967 P2d 363 (1998), and Morris v. St., 2001 MT 13, 304 M 114, 18 P3d 1003 (2001).

Improper Left Turn Sufficient Particularized Suspicion for Investigative Stop: At about 1:10 a.m., an officer observed Steen make a wide left-hand turn at an intersection and swerve to straddle the center of two eastbound lanes. The officer stopped Steen for violating this section and subsequently arrested Steen for DUI. Steen contended that the officer lacked a particularized suspicion to make an investigative stop and moved to suppress the evidence. The motion was denied, and Steen was convicted. On appeal, the Supreme Court affirmed. Steen's erratic driving was enough for the officer to suspect that Steen was engaged in wrongdoing and gave the officer a particularized suspicion to justify the investigative stop under the totality of the circumstances. Steen's motion to suppress was properly denied. St. v. Steen, 2004 MT 343, 324 M 272, 102 P3d 1251 (2004). See also Moore v. St., 2002 MT 315, 313 M 126, 61 P3d 746 (2002).

Cutting Corners: The driver of a motor vehicle who, in violation of statute and city ordinance, cuts a corner at a street intersection and enters the wrong side of the street, whereby a traveler is injured, is guilty of negligence per se. March v. Ayers, 80 M 401, 260 P 702 (1927).

Strict Compliance Impracticable: A pedestrian brought an action against the driver of an automobile for personal injuries sustained at a street crossing. An instruction based upon subsections (1) and (2), section 32-1102, R.C.M. 1947 (now repealed), requiring the driver in turning corners to keep close to the curb, was prejudicially erroneous where the presence of a telephone pole in the highway about 6 feet from the curb near the point of the accident rendered it impossible for the driver to obey the mandate of the statute. The statutory provisions were elastic, not rigid, and were to be applied in the light of physical conditions existing in the avenues of traffic. McGregor v. Weinstein, 70 M 340, 225 P 615 (1924).

61-8-334. Limitation on U-turns — turning on curve or crest of grade prohibited.

Compiler's Comments

2003 Amendment: Chapter 352 inserted (1) prohibiting the turning of a vehicle to proceed in the opposite direction unless the movement can be made safely and without interfering with other traffic; in (2) near middle substituted "operator" for "driver"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Erratic U-Turn Sufficient Particularized Suspicion for Investigative Stop: After an officer observed Trombley make an erratic U-turn, drift over the fog line, fail to signal when switching lanes, and straddle the center line, Trombley was stopped and cited for DUI. Trombley contended, and the District Court agreed, that state law did not prohibit the U-turn, but under the totality of the circumstances, Trombley's actions rose to the level of particularized suspicion sufficient to warrant the investigative stop. On appeal, the Supreme Court agreed. Trombley's erratic driving was enough for the officer to suspect that Trombley was engaged in wrongdoing and gave the officer a particularized suspicion to justify the investigative stop under the totality of the circumstances. Trombley's motion to dismiss was properly denied. St. v. Trombley, 2005 MT 174, 327 M 507, 116 P3d 771 (2005), following St. v. Steen, 2004 MT 343, 324 M 272, 102 P3d 1251 (2004).

61-8-335. Starting parked vehicle.

Case Notes

Four-Way Stops: The vehicle approaching from the right that would otherwise have the right-of-way loses the preference on approaching a four-way stop because it is required to stop. Where two drivers approached a four-way stop, neither had a statutory right-of-way or "preferred" or "favored" driver status and both were required to exercise ordinary care as they proceeded into or through the intersection. Elliott v. Hansen, 164 M 107, 519 P2d 411 (1974).

61-8-336. Turning movements and required signals.

Compiler's Comments

2005 Amendment: Chapter 542 in (2) after "business" and "residence" inserted "district" and after "urban district" deleted "as defined in 61-1-408 through 61-1-410". Amendment effective January 1, 2006.

2003 Amendment: Chapter 352 in (1) at end of first sentence after "safety" inserted "and until an appropriate signal has been given" and at end of second sentence after "provided in" substituted "this section" for "the event any other traffic may be affected by such movement"; deleted former (4) that read: "(4) A signal by hand and arm need not be given continuously by the person operating a bicycle if the hand is needed in the control or operation of the bicycle"; in (4) near middle substituted "operator" for "driver"; and made minor changes in style. Amendment effective October 1, 2003.

1983 Amendment: Inserted (4) excusing bicyclist from using continuous hand signals if hand is needed to control bicycle.

1981 Amendment: Inserted "other than when passing" and added the last phrase beginning "in any business . . ." in (2); inserted subsection (3) requiring continuous turning signal at least 300 feet before turning.

Case Notes

Sufficient Evidence of Violation of Turn Signal Law to Justify Plaintiff's Comparative Negligence: Hoffman was rear-ended by a logging truck while attempting a turn off of a two-lane highway, and the jury found that Hoffman was 50% negligent in the collision. Hoffman appealed on grounds that insubstantial evidence supported the jury's verdict. Although the evidence was conflicting regarding Hoffman's use of turn signals prior to the accident, Hoffman himself testified that he began signaling as much as 225 feet before stopping. However, this section requires use of a turn signal not less than 300 feet before making a turn in a nonurban area. A jury is not free to disregard uncontradicted, credible, nonopinion testimony, and Hoffman's admission that he failed to signal for the full 300 feet was substantial credible evidence to support the jury's finding that Hoffman contributed to the crash and to his own injuries. The Supreme Court declined to disturb the verdict, and denial of Hoffman's motion for a new trial was affirmed. Hoffman v. Austin, 2006 MT 289, 334 M 357, 147 P3d 177 (2006), following Thompson v. Bozeman, 284 M 440, 945 P2d 48 (1997).

Turn Signal Required Regardless of Any Effect on Other Traffic: The defendant convicted in a drug-related case argued that the officer had no grounds for originally stopping him for a traffic violation because he was not required to use his turn signal unless not doing so would affect other traffic. The Supreme Court pointed out that the statute had been changed in 2003 by the Legislature and that it now required the use of a turn signal regardless of whether or not other traffic would be affected by the lack of using the turn signal when turning. St. v. Meza, 2006 MT 210, 333 M 305, 143 P3d 422 (2006).

Erratic U-Turn Sufficient Particularized Suspicion for Investigative Stop: After an officer observed Trombley make an erratic U-turn, drift over the fog line, fail to signal when switching lanes, and straddle the center line, Trombley was stopped and cited for DUI. Trombley contended, and the District Court agreed, that state law did not prohibit the U-turn, but under the totality of the circumstances, Trombley's actions rose to the level of particularized suspicion sufficient to warrant the investigative stop. On appeal, the Supreme Court agreed. Trombley's erratic driving was enough for the officer to suspect that Trombley was engaged in wrongdoing and gave the officer a particularized suspicion to justify the investigative stop under the totality of the circumstances. Trombley's motion to dismiss was properly denied. St. v. Trombley, 2005 MT 174, 327 M 507, 116 P3d 771 (2005), following St. v. Steen, 2004 MT 343, 324 M 272, 102 P3d 1251 (2004).

Failure to Use Turn Signal Not Grounds for Traffic Stop: An officer responded to an anonymous complaint reporting a careless driver and observed a vehicle matching the description in a restaurant parking lot, but observed no activity that would justify a stop. The officer followed the vehicle when it departed and stopped it after the driver failed to signal a right-hand turn at an intersection, in violation of this section. Grindeland was subsequently arrested for DUI, but petitioned for reinstatement of his driving privileges on grounds that his failure to use turn signals did not violate the law and that the stop was thus not supported by a particularized suspicion of a criminal offense. The District Court agreed and reinstated Grindeland's driving privileges. The state appealed. The Supreme Court noted that under subsection (1) of this section, a driver is required to use a turn signal only when there is other traffic that might be affected by the turn. Although there were other vehicles in the area, there was insufficient objective data by which the officer could infer that the other vehicles may have been affected by Grindeland's turn, so the turn could not be considered illegal. Absent that objective data, the officer lacked a particularized suspicion upon which to make the stop, so the stop was illegal, and reinstatement of Grindeland's driving privileges was affirmed. (See 2003 amendment.) Grindeland v. St., 2001 MT 196, 306 M 262, 32 P3d 767 (2001).

Erratic Driving at Night in Proximity to Bars — Totality of Circumstances Justifying Traffic Stop: Shortly after midnight, an officer observed Loiselle's vehicle drifting across the right traffic lane, crossing the white fog line, making several turns without signaling, and weaving. The officer pulled Loiselle over for an investigative stop, which resulted in a DUI charge. At trial, Loiselle moved to suppress evidence obtained during the stop, but the motion was denied, and Loiselle appealed. To make an investigatory stop, an officer must have a particularized and objective basis for suspecting criminal activity, and whether particularized suspicion exists is a question of fact determined by considering the totality of the circumstances. In this case, the totality of the circumstances justified the stop. Loiselle did not merely touch the fog line, but actually drove over it and proceeded on the shoulder of the road for at least 3 seconds. The behavior was preceded by erratic driving that caught the officer's attention and that occurred late at night in the proximity of several nearby bars. Irrespective of Loiselle's failure to use turn signals, to a 5-year veteran of the Sheriff's office, there was sufficient objective data from which the officer could suspect that the occupant of the vehicle had engaged in wrongdoing and commence an investigatory stop. St. v. Loiselle, 2001 MT 174, 306 M 166, 30 P3d 1097 (2001).

Jury Instruction — Contributory Negligence: When evidence was such that a jury could conclude that turn signal was not functioning until after accident, it was proper to instruct jury as to contributory negligence. Dzikowski v. Jacobs, 170 M 302, 552 P2d 1102, 33 St. Rep. 753 (1976).

Passing Laws Not Applicable: In action for negligence in making left turn near the crest of a hill, it was error to instruct jury on inapplicable laws prohibiting anyone from driving on left side of road, especially when the instruction was combined with an instruction that statutory violations are negligence as a matter of law. Rude v. Neal, 165 M 520, 530 P2d 428 (1974).

Jury Decision: Conflicting testimony as to whether or not the driver of a truck looked to the rear before making a left turn and as to whether or not his turn-signal lights were operating was a question for the jury to decide. They could have properly concluded from the evidence that the plaintiff's car was in the passing lane prior to the time the defendant's truck turned left across the centerline. Beebe v. Johnson, 165 M 96, 526 P2d 128 (1974).

Duty to Signal — Safety Requirement: Defendant was driving a pickup truck which was struck from the rear by plaintiff's automobile. The accident occurred when plaintiff attempted to pass defendant's truck. Defendant was guilty of negligence, which proximately caused the accident in that he failed to signal for a left turn off the highway into a private driveway sufficiently in advance, and cut off plaintiff who was passing him. Sumner v. Amacher, 150 M 544, 437 P2d 630 (1968).

Duty to Look to Rear: Since there is no exception to this section for unlawful passing, plaintiff had the affirmative duty to look to the rear, as well as forward, and was contributorily negligent in not looking to the rear before making a left-hand turn. He could not rely on the presumption that he would not be passed in a no-passing zone. Bellon v. Heinzig, 347 F2d 4 (9th Cir. 1965).

Knowledge of Safety Not Required: This section requires that a person making a turning movement take reasonable precautions under the circumstances, but it does not require that such person know with absolute certainty that the turning movement can be made with safety. Holland v. Konda, 142 M 536, 385 P2d 272, 6 ALR 3d 824 (1963).

61-8-338. Method of giving hand-and-arm signals.

Compiler's Comments

2003 Amendment: Chapter 352 in (1) near end after "vehicle" inserted "by the operator of the vehicle"; in (1)(b) near end substituted "forearm" for "arm"; and made minor changes in style. Amendment effective October 1, 2003.

The amendments to this section made by sec. 20, Ch. 352, L. 2003, were rendered void by sec. 51(2)(b), Ch. 352, L. 2003, a coordination section.

1983 Amendment: At beginning of (1), inserted exception clause; and inserted (2) permitting bicyclist to signal right turn by extending right hand and arm horizontally.

61-8-339. Vehicle approaching or entering intersection.

Compiler's Comments

2011 Amendment: Chapter 104 in (1)(a) at beginning inserted exception clause; inserted (1)(b) regarding highway that intersects another highway without crossing it; and made minor changes in style. Amendment effective October 1, 2011.

1997 Amendment: Chapter 106 in (1), near beginning after "two", inserted "or more", after "highways" deleted "at approximately the same time", and at end substituted "all vehicles approaching from the right that are close enough to constitute an immediate hazard" for "the vehicle on the right".

Case Notes

Two Roads Not Forming Intersection: In a negligence action based upon a vehicular accident, the record showed that the road on which plaintiff was traveling was a paved through road; the short segment on which the defendant approached was not a through road and therefore could not form an "intersection" within the meaning of 61-1-212 (now repealed — see 61-8-102 for definitions). The evidence did not show that the two roads joined were highways. The trial court therefore erred in establishing that the collision took place at an "intersection", which would have required the plaintiff's driver to yield the right-of-way. Kimes v. Herrin, 217 M 330, 705 P2d 108, 42 St. Rep. 1231 (1985).

Error to Direct Verdict — Factual Dispute on Entering Intersection at Same Time: It was error to grant a directed verdict on the issue of liability under this section when there was a factual issue on whether the vehicles entered the intersection at the same time. Thibaudeau v. Uglum, 201 M 260, 653 P2d 855, 39 St. Rep. 2096 (1982).

Driver on Left Must Yield: The Supreme Court rejected the lower court's finding that since respondent's vehicle had entered the intersection first and that appellant was guilty of negligence for having entered the intersection while looking to her right, away from the direction respondent came into the intersection, that this section was inapplicable. The driver on the left coming into an uncontrolled intersection must yield to the driver on the right. Marcoff v. Buck, 179 M 295, 587 P2d 1305, 35 St. Rep. 1953 (1978).

Accelerating to "Beat" Vehicle With Right-of-Way: The plaintiff proximately caused the collision with the defendant's vehicle by accelerating to "beat" the defendant's vehicle through the intersection, since the defendant's vehicle had the right-of-way under this section. Yates v. Hedges, 178 M 488, 585 P2d 1290, 35 St. Rep. 1488 (1978).

Through-Road Intersections: Montana law does not contemplate that if a road is designated as "through" it becomes the duty of persons approaching intersections with such through road to stop in the absence of stop signs. When two vehicles in this case collided in such an intersection, having entered at about the same time, the court assessed the negligence of each driver at 50%. Andrews v. U.S., 447 F. Supp. 434, 35 St. Rep. 350 (D.C. Mont. 1978).

Improper Signaling: Improper signal between drivers creates no legal duty to look out for maneuver which is a failure to yield right-of-way. Slagsvold v. Johnson, 168 M 490, 544 P2d 442, 32 St. Rep. 1273 (1975).

"Preferred" Driver Status: Where two vehicles collided at four-way stop, one vehicle traveling south to north and other vehicle traveling east to west, both drivers had duty to make full stop before entering intersection and to exercise ordinary care to determine whether it was safe to proceed through intersection, but neither driver had "preferred" driver status. Elliott v. Hansen, 164 M 107, 519 P2d 411 (1974).

Failure to Anticipate Failure to Yield — Not Negligence: There was no indication to plaintiffs that defendant, driving northbound, would not yield the right-of-way to them while they were traveling westbound, when both approached an uncontrolled intersection. Plaintiffs' failure to anticipate that defendant would accelerate to pass in front of them was not negligence on their part. Defendant's failure to yield the right-of-way at an uncontrolled intersection was a breach of this section. DeVerniero v. Eby, 159 M 146, 496 P2d 290 (1972).

Vehicles Meeting at Crossing: Plaintiff's automobile which he had driven from the west and which he was attempting to turn south on an intersecting road collided with defendant's truck which was being driven from the north over a slight hill. The accident occurred at an uncontrolled intersection just inside Jordan, Montana. Testimony showed that defendant's speed was approximately 60 miles per hour. Plaintiff was not required to look for miles up a road in order to ascertain that there were no vehicles approaching. All that was required of him was that he look sufficiently far to be sure there were no approaching vehicles which, in the mind of a reasonably prudent person, would be likely to cause an accident if he proceeded into the intersection. Jessen v. O'Daniel, 136 M 513, 349 P2d 107 (1960).

Collision at Intersection — Presumption of Proper Control: An automobile driver approaching an intersection observed a taxicab 150 feet away coming on the right at an excessive speed but continued on its course. The automobile driver was justified in assuming that the driver of the taxicab would keep a proper lookout, observe the law, slow down, and have his car under complete control. If he had done so, he could have avoided plaintiff's car which had proceeded too far into the intersection to stop in a zone of safety. The taxidriver was relying blindly on his right to the right-of-way under a city ordinance. Flynn v. Helena Cab & Bus Co., 94 M 204, 21 P2d 1105 (1933).

61-8-340. Vehicle turning left at intersection.

Compiler's Comments

2003 Amendment: Chapter 352 throughout section substituted references to operator for references to driver; at end of third sentence after "directed by" substituted "official traffic control devices" for "appropriate signs or signals"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Failure to Keep Lookout at Light-Controlled Intersection — Liability as Matter of Law: With a green light, Vender pulled into an intersection to make a left-hand turn but had to wait for oncoming traffic before turning. While in the intersection, he was struck by Stone, who testified that he did not see a light and could not avoid colliding with the Vender car. The jury found 50% negligence with each driver. On appeal, the Supreme Court reversed, holding that as a matter of law, Stone was solely liable for the collision by failing to exercise reasonable care. A motorist's failure when approaching a controlled intersection to keep a lookout to see what is plainly visible or obviously apparent makes him chargeable for failure to see what he should have seen with the exercise of reasonable care. Vender v. Stone, 245 M 428, 802 P2d 606, 47 St. Rep. 2121 (1990).

Collision of Left-Turning and Approaching Vehicles: Where the plaintiff brought an action against the defendant for damages sustained in a collision after the defendant stopped on a two-lane highway to turn left in front of a stopped truck and did not see the plaintiff's car approaching at approximately 50 mph toward her from behind the truck, the District Court did not err in denying the plaintiff's motion to set aside the jury's verdict finding the plaintiff 50% negligent for the resulting accident. The speed at which plaintiff entered the intersection and the fact that her view was obstructed at the time constituted sufficient evidence to support the jury's finding. Lackey v. Wilson, 205 M 476, 668 P2d 1051, 40 St. Rep. 1439 (1983).

Additional Duties: This section does not purport to catalogue all the rights and duties of a driver intending to turn left and does not negate the existence of an additional duty to maintain a proper lookout for vehicles approaching from the rear, even where plaintiff was making a left turn in a no-passing zone. Bellon v. Heinzig, 347 F2d 4 (9th Cir. 1965).

61-8-341. Vehicle entering through highway — definition.

Compiler's Comments

2005 Amendment: Chapter 542 inserted (2) defining through highway; and made minor changes in style. Amendment effective January 1, 2006.

2003 Amendment: Chapter 352 throughout section substituted references to operator for references to driver; deleted former (2) that read: "(2) The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Degrees of Comparative Negligence in Automobile Accident — Summary Judgment on Comparative Negligence Improper: Issues of comparative negligence are particularly difficult to resolve as a matter of law. Normally, the issue of contributory negligence and the degree of comparative negligence, if any, is an issue for the trier of fact to resolve even if the opposing party is negligent as a matter of law. In this case, a question of material fact remained regarding the specific facts of an automobile accident, and the District Court erred in granting summary judgment to plaintiff after finding that defendant's negligence exceeded any negligence that could be found on plaintiff's part. The question of degrees of negligence was properly left to the jury. Contreras v. Fitzgerald, 2002 MT 208, 311 M 257, 54 P3d 983 (2002), distinguishing Brohman v. St., 230 M 198, 749 P2d 67 (1988).

Material Fact Remaining Regarding Circumstances of Automobile Accident — Summary Judgment Improper: Contreras entered a highway from a side road and collided with Fitzgerald, who was passing a truck in the same lane that Contreras entered. Fitzgerald requested summary judgment regarding Contreras's negligence as a matter of law for failure to yield the right-of-way. The District Court found that whether Contreras was negligent was a question best left to the jury and denied the motion for summary judgment. The Supreme Court affirmed. Although violation of a motor vehicle statute will not constitute negligence as a matter of law only under extremely limited circumstances, in this case, it was uncertain from the record about what occurred immediately preceding the accident. Evidence conflicted concerning when Contreras entered the highway, whether Contreras and Fitzgerald entered the same lane simultaneously, and how much time Contreras had to react and prevent the accident. These material questions of fact were for the trier of fact to decide, and summary judgment was not proper when these material fact questions remained. Contreras v. Fitzgerald, 2002 MT 208, 311 M 257, 54 P3d 983 (2002).

Forfeiture of Bond in Payment of Fine Not Evidence of Guilty Plea for Failure to Yield Right-of-Way: Allen sought to exclude evidence that she had received a citation for failure to yield the right-of-way after an accident with Spinler. Spinler asserted that Allen had pleaded guilty to the cited offense and urged that a guilty plea to a traffic offense was admissible in the civil proceeding to determine liability for the accident. The District Court correctly determined that Allen had merely appeared in City Court and essentially forfeited bond in payment of the fine without contesting the merits of the citation. Nothing in the docket affirmatively indicated that Allen entered a guilty plea to the cited offense, so evidence of the citation was properly disallowed. Spinler v. Allen, 1999 MT 160, 295 M 139, 983 P2d 348, 56 St. Rep. 632 (1999).

Failure to Yield Versus Failure to Maintain Lookout — Favored Driver Versus Disfavored Driver — Speed Not Material Factual Issue in Failure to Yield: Roe contended that material issues of fact precluded summary judgment against her for failure to yield at an intersection, arguing that Kornder-Owen's negligent failure to maintain an adequate lookout was a genuine issue that was not addressed. In Montana, automobiles approaching an intersection are accorded the status of favored or disfavored drivers in order to facilitate the orderly movement of traffic. A favored driver cannot blindly rely on the right-of-way, but instead must maintain a proper lookout and use reasonable care. However, a favored driver has the right to assume that a disfavored driver will yield the right-of-way when required by law. As favored driver, Kornder-Owen had the right to rely on Roe's compliance with this section and was not required to anticipate Roe's right-of-way violation. The predicate for imposition of a duty on Kornder-Owen, as favored driver, did not occur. Further, the speed at which Kornder-Owen was traveling did not contribute as a substantial factor to the collision and did not satisfy Roe's burden of demonstrating a material fact that would preclude summary judgment. Roe v. Kornder-Owen, 282 M 287, 937 P2d 39, 54 St. Rep. 366 (1997), distinguishing Sweet v. Edmonds, 171 M 106, 555 P2d 504 (1976), and Ryan v. Bozeman, 279 M 507, 928 P2d 228 (1996). Roe was distinguished and Sweet was compared in Spinler v. Allen, 1999 MT 160, 295 M 139, 983 P2d 348, 56 St. Rep. 632 (1999).

Failure to Yield at Limited Visibility Intersection: Although there was conflicting testimony as to the length of time Dotting waited at a stop sign at a limited visibility intersection before proceeding into traffic, there was substantial evidence to support the trial court's finding that Dotting could have yielded to oncoming traffic if he had waited for traffic obscured by a hill to become visible. It was proper for the court to apply 61-8-344 and this section to Dotting's actions in entering traffic from the limited visibility intersection. Yellowstone Water Serv. v. Dotting, 280 M 1, 928 P2d 233, 53 St. Rep. 1271 (1996).

Through-Road Intersections: Montana law does not contemplate that if a road is designated as "through" it becomes the duty of persons approaching intersections with such through road to stop in the absence of stop signs. When two vehicles in this case collided in such an intersection, having entered at about the same time, the court assessed the negligence of each driver at 50%. Andrews v. U.S., 447 F. Supp. 434, 35 St. Rep. 350 (D.C. Mont. 1978).

Jury Question: A directed verdict should not have been granted on the basis that the plaintiff failed to prove a causal relationship between the defendant's acts and the collision when the evidence was undisputed: the defendant was speeding, he had been drinking, and he did not see the plaintiff's automobile until immediately before the collision. Sweet v. Edmonds, 171 M 106, 555 P2d 504, 33 St. Rep. 1017 (1976), followed in Spinler v. Allen, 1999 MT 160, 295 M 139, 983 P2d 348, 56 St. Rep. 632 (1999).

Improper Signaling: Improper signal between drivers creates no legal duty to look out for maneuver which is a failure to yield right-of-way. Slagsvold v. Johnson, 168 M 490, 544 P2d 442, 32 St. Rep. 1273 (1975).

Four-Way Stops: The vehicle approaching from the right that would otherwise have the right-of-way loses the preference on approaching a four-way stop because it is required to stop. Where two drivers approached a four-way stop, neither had a statutory right-of-way or "preferred" or "favored" driver status and both were required to exercise ordinary care as they proceeded into or through the intersection. Elliott v. Hansen, 164 M 107, 519 P2d 411 (1974).

61-8-342. Vehicles approaching "Yield" sign.

Compiler's Comments

2003 Amendment: Chapter 352 at beginning of introductory clause substituted "An operator" for "When the intersection is designated by the department of transportation, or the local authority having jurisdiction, as a "Yield" intersection, the driver"; in (1) near beginning after "speed" substituted "that is reasonable for existing conditions and, if required for safety, shall stop before entering the intersection" for "of not more than 15 miles per hour and yield right-of-way to all vehicles approaching from the right or left on the intersecting roads or streets which are so close as to constitute an immediate hazard"; inserted (2) requiring an operator to yield the right-of-way to any vehicle in the intersection or approaching on another roadway close enough to constitute an immediate hazard during the time that the operator is moving across or within the intersection or junction of roadways; inserted (3) requiring an operator to yield the right-of-way to pedestrians within crosswalks at the intersection; in (4) at beginning after "If" substituted "an operator of a vehicle, after having driven past a "Yield" sign" for "a driver", after "a collision" inserted "with another vehicle", after "intersection or" substituted "junction of roadways or with a pedestrian in an adjacent crosswalk" for "interferes with the movement of other vehicles after driving past a "Yield" sign", after "the collision" substituted "is considered prima facie" for "or interference shall be deemed", and near end substituted "operator's" for "driver's"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Case Notes

Failure to Yield as Negligence as Matter of Law — Summary Judgment Proper: Defendant, who was involved in an automobile collision, admitted that he failed to yield the right-of-way to plaintiff's vehicle. Because defendant had a duty to yield, his failure to do so was negligence as a matter of law, and the District Court erred in denying defendant partial summary judgment. Olson v. Parchen, 249 M 342, 816 P2d 423, 48 St. Rep. 718 (1991), distinguished in Okland v. Wolf, 258 M 35, 850 P2d 302, 50 St. Rep. 412 (1993).

61-8-343. Vehicle entering roadway from private road, driveway, alley, or public approach ramp.

Compiler's Comments

2003 Amendment: Chapter 352 at beginning substituted "operator" for "driver", after "cross a" substituted "roadway" for "highway", after "driveway" inserted "alley", and at end substituted "roadway" for "highway"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Discovery Sanctions Not Warranted by Failure to Admit or Deny Statutory Violations: The plaintiff sued the defendant after the two were involved in a car crash. During discovery, the plaintiff asked the defendant to admit that she operated her motor vehicle in violation of several statutes. The defendant denied the request for admission but admitted she failed to yield the right-of-way. The plaintiff moved for sanctions, which the District Court denied. On appeal, the Supreme Court affirmed the denial, holding that the single request for admission was not framed in the form of particular facts for the defendant to admit or deny and that the admission of statutory violations was distinct from legal conclusions sought by the discovery requests. Tempel v. Benson, 2015 MT 84, 378 Mont. 401, 346 P.3d 342.

Degrees of Comparative Negligence in Automobile Accident — Summary Judgment on Comparative Negligence Improper: Issues of comparative negligence are particularly difficult to resolve as a matter of law. Normally, the issue of contributory negligence and the degree of comparative negligence, if any, is an issue for the trier of fact to resolve even if the opposing party is negligent as a matter of law. In this case, a question of material fact remained regarding the specific facts of an automobile accident, and the District Court erred in granting summary judgment to plaintiff after finding that defendant's negligence exceeded any negligence that could be found on plaintiff's part. The question of degrees of negligence was properly left to the jury. Contreras v. Fitzgerald, 2002 MT 208, 311 M 257, 54 P3d 983 (2002), distinguishing Brohman v. St., 230 M 198, 749 P2d 67 (1988).

Material Fact Remaining Regarding Circumstances of Automobile Accident — Summary Judgment Improper: Contreras entered a highway from a side road and collided with Fitzgerald, who was passing a truck in the same lane that Contreras entered. Fitzgerald requested summary judgment regarding Contreras's negligence as a matter of law for failure to yield the right-of-way. The District Court found that whether Contreras was negligent was a question best left to the jury and denied the motion for summary judgment. The Supreme Court affirmed. Although violation of a motor vehicle statute will not constitute negligence as a matter of law only under extremely limited circumstances, in this case, it was uncertain from the record about what occurred immediately preceding the accident. Evidence conflicted concerning when Contreras entered the highway, whether Contreras and Fitzgerald entered the same lane simultaneously, and how much time Contreras had to react and prevent the accident. These material questions of fact were for the trier of fact to decide, and summary judgment was not proper when these material fact questions remained. Contreras v. Fitzgerald, 2002 MT 208, 311 M 257, 54 P3d 983 (2002).

Public Approach Ramp: An exit on state right-of-way from gravel road intersecting paved frontage road to interstate highway was a public approach ramp within the meaning of this section. Pachek v. Norton Concrete Co., 160 M 16, 499 P2d 766 (1972).

Intersection Rules Inapplicable: The word "crossing" as used in section 32-1102, R.C.M. 1947 (now repealed), with relation to the duty of drivers at crossings, referred to the intersection of a highway and a railroad or of two highways. An instruction based upon that section offered by defendant, through whose negligence in driving on a private way across the highway with the intention of entering a gate on the opposite side, plaintiff was injured, was properly refused as not applicable. Knott v. Pepper, 74 M 236, 239 P 1037 (1925).

61-8-344. Vehicles to stop at stop signs.

Compiler's Comments

2003 Amendment: Chapter 352 deleted former (2) that read: "(2) The sign shall bear the word "Stop" in letters not less than 8 inches in height, and it shall be made luminous at nighttime by steady or flashing internal illumination or by a fixed floodlight projected on the face of the sign or by efficient reflecting elements on the face of the sign"; in (2) near beginning after "sign" substituted "and its placement must conform to the sign manual adopted by the department of transportation" for "shall be erected as near as practicable to the nearest line of the crosswalk on the near side of the intersection or, if there is no crosswalk, then as close as practicable to the nearest line of the roadway"; throughout (3) substituted "operator" for "driver"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1989 Amendment: At end of (4) changed "patrolman" to "patrol officer".

Case Notes

Officer Did Not Misrepresent Consequences of Test Refusal — DUI Stop: The defendant was arrested during a traffic stop. The officer said to the defendant that if he took the breath test he would not lose his license, but if he refused to provide a sample, he would lose his license. The defendant took the breath alcohol test. Later, the defendant refused to take the blood test because he was afraid of needles. The officer then seized the defendant's license. On appeal, the defendant argued that the state was estopped from taking his license based on lack of reasonable grounds for the stop, the alleged misstatements by the officer, and his fear of needles. The Supreme Court disagreed, holding that there were reasonable grounds for the traffic stop, that the officer's statements did not misrepresent the consequences of refusing a test, and that the defendant's fear of needles was not credible. Kummerfeldt v. St., 2015 MT 109, 378 Mont. 522, 347 P.3d 1233.

Failure to Yield at Limited Visibility Intersection: Although there was conflicting testimony as to the length of time Dotting waited at a stop sign at a limited visibility intersection before proceeding into traffic, there was substantial evidence to support the trial court's finding that Dotting could have yielded to oncoming traffic if he had waited for traffic obscured by a hill to become visible. It was proper for the court to apply 61-8-341 and this section to Dotting's actions in entering traffic from the limited visibility intersection. Yellowstone Water Serv. v. Dotting, 280 M 1, 928 P2d 233, 53 St. Rep. 1271 (1996).

Through-Road Intersections: Montana law does not contemplate that if a road is designated as "through" it becomes the duty of persons approaching intersections with such through road to stop in the absence of stop signs. When two vehicles in this case collided in such an intersection, having entered at about the same time, the court assessed the negligence of each driver at 50%. Andrews v. U.S., 447 F. Supp. 434, 35 St. Rep. 350 (D.C. Mont. 1978).

Improper Signaling: Improper signal between drivers creates no legal duty to look out for maneuver which is a failure to yield right-of-way. Slagsvold v. Johnson, 168 M 490, 544 P2d 442, 32 St. Rep. 1273 (1975).

Four-Way Stops: The vehicle approaching from the right that would otherwise have the right-of-way loses the preference on approaching a four-way stop because it is required to stop. Where two drivers approached a four-way stop, neither had a statutory right-of-way or "preferred" or "favored" driver status and both were required to exercise ordinary care as they proceeded into or through the intersection. Elliott v. Hansen, 164 M 107, 519 P2d 411 (1974).

61-8-345. Stop before emerging from alley, driveway, private road, or building.

Compiler's Comments

2003 Amendment: Chapter 352 at beginning of first sentence substituted "operator" for "driver", in two places after "driveway" inserted "private road", and after "right-of-way to" substituted "pedestrians" for "any pedestrian as may be necessary to avoid collision" and in second sentence after "roadway" inserted "the operator"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Discovery Sanctions Not Warranted by Failure to Admit or Deny Statutory Violations: The plaintiff sued the defendant after the two were involved in a car crash. During discovery, the plaintiff asked the defendant to admit that she operated her motor vehicle in violation of several statutes. The defendant denied the request for admission but admitted she failed to yield the right-of-way. The plaintiff moved for sanctions, which the District Court denied. On appeal, the Supreme Court affirmed the denial, holding that the single request for admission was not framed in the form of particular facts for the defendant to admit or deny and that the admission of statutory violations was distinct from legal conclusions sought by the discovery requests. Tempel v. Benson, 2015 MT 84, 378 Mont. 401, 346 P.3d 342.

61-8-347. Obedience to signal indicating approach of train or other on-track equipment.

Compiler's Comments

2017 Amendment: Chapter 323 in (1) near middle inserted "slow the vehicle in order to"; in (1)(c) near beginning substituted "approaching the crossing emits an audible signal" for "approaching within approximately 1,500 feet of the crossing emits a signal audible from that distance"; inserted (1)(e) concerning insufficient space to drive completely through crossing without stopping; inserted (1)(f) concerning insufficient undercarriage clearance; and made minor changes in style. Amendment effective October 1, 2017.

2009 Amendment: Chapter 256 in (1)(a), (1)(b), and (1)(d) after "train" inserted "or other on-track equipment". Amendment effective October 1, 2009.

2003 Amendments — Composite Section: Chapter 352 throughout section substituted reference to operation of a vehicle for reference to driving a vehicle; in (1) near middle of introductory clause after "stop" substituted "as close as practicable" for "within 50 feet"; in (1)(b) after "gives" deleted "or continues to give"; in (2) after "railroad" inserted "grade"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 527 throughout section substituted references to operating for references to driving; in (1) near beginning of first sentence after "railroad" deleted "grade"; in (1)(a) after "warning of the" inserted "presence or"; in (1)(c) near beginning after "1,500 feet of the" deleted "highway" and at end substituted "that distance, except at crossings within quiet zones established under 69-14-620, indicating that the train is an immediate hazard because of its speed or nearness to the crossing" for "such distance and such railroad train, by reason of its speed or nearness to such crossing, is an immediate hazard"; and made minor changes in style. Amendment effective April 26, 2003.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Case Notes

Admissibility of Evidence to Rebut Affirmative Defense — "Plain Visibility" of Oncoming Train: Mickelson was injured when the fire truck that he was driving was struck by a Montana Rail Link (MRL) train and sought damages. In basing its defense on Mickelson's comparative negligence in failing to see the train, MRL was allowed to allege and represent to the jury that the train was plainly visible, in part because of its yellow blinking light, thereby triggering Mickelson's alleged duty to stop for the train. Mickelson sought to refute that contention by offering testimony that the train's lighting configuration did not make the train visible to approaching motorists, but the evidence was held inadmissible on grounds that MRL met federal requirements regarding lighting and thus could not be held liable for its particular lighting configuration. However, Mickelson's evidence was not offered to impose liability upon MRL for failing to change its lighting configuration, but rather to demonstrate that, contrary to MRL's experts, the lighting configuration did not make the train so plainly visible that Mickelson was comparatively negligent for failing to see it. Under Pitasi v. Stratton Corp., 968 F2d 1558 (2nd Cir. 1992), evidence that is not admissible to prove culpability may nevertheless be introduced to rebut an affirmative defense. By denying Mickelson the right to rebut MRL's evidence in support of its contention that Mickelson was comparatively negligent, the trial court essentially directed a verdict in favor of MRL on the comparative negligence issue, which was an abuse of the court's discretion, constituting reversible error. Mickelson v. Mont. Rail Link, Inc., 2000 MT 111, 299 M 348, 999 P2d 985, 57 St. Rep. 446 (2000), distinguishing Marshall v. Burlington N., Inc., 720 F2d 1149 (9th Cir. 1983), and Herold v. Burlington N., Inc., 761 F2d 1241 (8th Cir. 1985).

Improper Jury Instruction Regarding Speed of Train — Applicable Law of Case: Mickelson was injured when the fire truck that he was driving was struck by a Montana Rail Link (MRL) train and sought damages. MRL moved for summary judgment, arguing that the subject of train speed was preempted by CSX Transp., Inc. v. Easterwood, 507 US 658, 123 L Ed 2d 387, 113 S Ct 1732 (1993). The District Court denied MRL's motion, ruling that a negligence action based on a state law duty to slow or stop a train to avoid a specific individual hazard was not preempted under CSX. Nevertheless, the court's instructions to the jury stated that "Under the laws governing the speed of trains, a train crew has no duty to slow a train until a reasonable and prudent train operator has reason to believe, based upon the circumstances present, that the operator of a motor vehicle will not yield to the train and there is a substantial risk of a collision" and that "Montana law does not provide the driver of an emergency vehicle any special privilege in relation to railroad crossings. Emergency vehicle drivers must follow the requirements when approaching and crossing railroad crossings as any other vehicle driver". Following jury deliberations, MRL was found not liable. The Supreme Court held that the District Court abused its discretion in instructing the jury on the speed of trains because the instructions did not state the applicable law of the case. As set out in Runkle v. Burlington N., Inc., 188 M 286, 613 P2d 982 (1980), whether a railroad is negligent in a particular manner, such as failing to reduce train speed, is a question of fact for the jury. Here, the jury instructions improperly removed the question of train speed from jury consideration, compelling the jury to conclude that the train crew did not have a duty to do anything more than they did, rather than deciding whether the facts and circumstances of this case constituted a specific individual hazard. Mickelson v. Mont. Rail Link, Inc., 2000 MT 111, 299 M 348, 999 P2d 985, 57 St. Rep. 446 (2000).

Coordination of Statutes: Section 61-8-347 setting forth the obligation of a motorist to stop at a railroad crossing when a train by reason of its speed or proximity to the crossing, is a hazard establishes the applicable duty of motorists. Section 61-8-347 controls over the provisions of 61-8-349(1) setting forth a duty to stop whenever a moving train is within sight or hearing. Marshall v. Burlington N., Inc., 720 F2d 1149 (9th Cir. 1983).

Admissibility Dependent on Nature of Treatise: Learned treatises are permissible for use in cross-examination of an expert if the treatise is "established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice". Here, a treatise on design of grade railway-highway crossings was properly used to test the knowledge of an expert witness in cross-examination. Another treatise concerning the visibility and audibility of trains approaching crossings was properly held to be inadmissible, as it was merely advisory in nature. Treatises may be admitted upon the foundation that they (1) show what is feasible to the jury, or (2) show what the defendant knew or should have known about safety precautions. Runkle v. Burlington N., 188 M 286, 613 P2d 982, 37 St. Rep. 995 (1980).

Jury Instructions: Failure of trial court to instruct jury that decedent had been contributorily negligent if he failed to stop, look, and listen when either tracks or highway signs indicated the presence of a railway crossing was reversible error. O'Brien v. Great N. Ry., 145 M 13, 400 P2d 634 (1965), certiorari denied 387 US 920, 87 S Ct 2034 (1967).

61-8-348. All vehicles to stop at certain railroad grade crossings.

Compiler's Comments

2009 Amendment: Chapter 256 in (2), (2)(a), and (2)(b) after reference to trains inserted "or other on-track equipment". Amendment effective October 1, 2009.

2003 Amendment: Chapter 352 in (1) near middle of first sentence after "authorities" inserted "in their respective jurisdictions" and in second sentence after "erected" substituted "the operator" for "the driver" and after "stop" substituted "as close as practicable" for "within 50 feet"; inserted (2) concerning when a vehicle operator must stop at a highway grade crossing where a flag person or mechanical device is not in place; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Case Notes

Improper Jury Instruction Regarding Speed of Train — Applicable Law of Case: Mickelson was injured when the fire truck that he was driving was struck by a Montana Rail Link (MRL) train and sought damages. MRL moved for summary judgment, arguing that the subject of train speed was preempted by CSX Transp., Inc. v. Easterwood, 507 US 658, 123 L Ed 2d 387, 113 S Ct 1732 (1993). The District Court denied MRL's motion, ruling that a negligence action based on a state law duty to slow or stop a train to avoid a specific individual hazard was not preempted under CSX. Nevertheless, the court's instructions to the jury stated that "Under the laws governing the speed of trains, a train crew has no duty to slow a train until a reasonable and prudent train operator has reason to believe, based upon the circumstances present, that the operator of a motor vehicle will not yield to the train and there is a substantial risk of a collision" and that "Montana law does not provide the driver of an emergency vehicle any special privilege in relation to railroad crossings. Emergency vehicle drivers must follow the requirements when approaching and crossing railroad crossings as any other vehicle driver". Following jury deliberations, MRL was found not liable. The Supreme Court held that the District Court abused its discretion in instructing the jury on the speed of trains because the instructions did not state the applicable law of the case. As set out in Runkle v. Burlington N., Inc., 188 M 286, 613 P2d 982 (1980), whether a railroad is negligent in a particular manner, such as failing to reduce train speed, is a question of fact for the jury. Here, the jury instructions improperly removed the question of train speed from jury consideration, compelling the jury to conclude that the train crew did not have a duty to do anything more than they did, rather than deciding whether the facts and circumstances of this case constituted a specific individual hazard. Mickelson v. Mont. Rail Link, Inc., 2000 MT 111, 299 M 348, 999 P2d 985, 57 St. Rep. 446 (2000).

Law Review Articles

The Standard of Care of a Vehicle Operator Crossing Railroad Tracks, Contributory Negligence and Its Effects, Sverdrup, 26 Mont. L. Rev. 229 (1965).

61-8-349. Certain vehicles to stop at all railroad grade crossings.

Compiler's Comments

2009 Amendment: Chapter 256 in (1)(a) in two places after "train" inserted "or other on-track equipment"; and made minor changes in style. Amendment effective October 1, 2009.

2003 Amendment: Chapter 352 deleted former (1) that read: "(1) A person driving a motor vehicle upon a public highway of this state outside of corporate limits of incorporated cities or towns where the view is obscure or when a moving train is within sight or hearing shall bring the vehicle to a full stop not less than 10 or more than 100 feet from the intersection of the highway and the railroad tracks, before crossing the railroad tracks, at all crossings where a flagman or a mechanical device is not maintained to warn the traveling public of approaching trains or cars"; in (1)(a) near middle of first sentence after "stop the vehicle" substituted "as close as practicable" for "within 50 feet" and in second and third sentences substituted "operator" for "driver"; in (1)(b) and in (2) substituted "official traffic control device" for "traffic control signal"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: At beginning of (2)(a) inserted exception clause, before "passengers" inserted "seven or more", and after "school bus" inserted "with or without passengers"; deleted (2)(c) that read: "(c) This subsection (2) shall not apply at street railway grade crossings within a business or residence district"; inserted (3) concerning meaning of traffic control signal; and made minor changes in style.

1989 Amendment: In (2)(b) changed "patrolman" to "patrol officer".

Case Notes

Coordination of Statutes: Section 61-8-347 setting forth the obligation of a motorist to stop at a railroad crossing when a train by reason of its speed or proximity to the crossing, is a hazard establishes the applicable duty of motorists. Section 61-8-347 controls over the provisions of 61-8-349(1) setting forth a duty to stop whenever a moving train is within sight or hearing. Marshall v. Burlington N., Inc., 720 F2d 1149 (9th Cir. 1983).

Train on Crossing — Sufficient Warning: A traveler in an automobile at a point on the highway from which he can observe a train moving over a crossing, who instead of remaining in a zone of safety proceeds regardless of the apparent danger, is considered to have seen the train had he looked, and failed to make a vigilant use of his senses. He is barred from recovering on the ground of contributory negligence, even though negligence on the part of the railroad may have existed. A train standing on or passing over a railroad crossing is in itself a sufficient warning of danger to the traveling public, unless the crossing is extra hazardous. Incret v. Chicago, Milwaukee, St. Paul & Pac. R.R., 107 M 394, 86 P2d 12 (1938).

Law Review Articles

The Standard of Care of a Vehicle Operator Crossing Railroad Tracks, Contributory Negligence and Its Effects, Sverdrup, 26 Mont. L. Rev. 229 (1965).

61-8-350. Moving heavy equipment at railroad grade crossings.

Compiler's Comments

2009 Amendment: Chapter 256 in (3) in two places after "train" inserted "or other on-track equipment"; in (4) after "car" inserted "or other on-track equipment". Amendment effective October 1, 2009.

2003 Amendment: Chapter 352 in (1) at beginning of introductory clause substituted "A person shall comply with the provisions of this section before operating or moving upon or across the tracks at a railroad grade crossing" for "No person shall operate or move"; in (1)(b) after "clearance" inserted "measured above the surface of the roadway"; in (1)(b)(ii) substituted "at least 9 inches" for "in any event of less than 9 inches, measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section"; in (2) substituted "representative" for "station agent"; in (3) near middle of first sentence after "stop the" substituted "vehicle or equipment as close as practicable but" for "same" and after "15 feet" deleted "or more than 50 feet"; in (4) near middle of first sentence after "flag person or" substituted "other official traffic control device" for "otherwise"; and made minor changes in style. Amendment effective October 1, 2003.

61-8-351. Meeting or passing school bus — vehicle operator liability for violation — penalty.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 613, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 478 in (1)(a) at beginning substituted "When a school bus" for "Upon overtaking from either direction a school bus", substituted "roadway" for "highway, after "receive or discharge school children" inserted "has actuated flashing red lights as specified in 61-9-402", and at end inserted "that is approaching the school bus from either direction"; in (1)(a)(i) substituted "30 feet from the school bus" for "30 feet before reaching the school bus when there is in operation on the bus a visual flashing red signal as specified in 61-9-402"; in (1)(a)(ii) substituted "proceed past the school bus until" for "proceed until the children have entered the school bus or have alighted and reached the side of the highway or street and until" and at end substituted "flashing red lights" for "visual flashing red signal"; inserted (1)(b) concerning overtaking a stopped school bus on the right side of the school bus; in (2) at beginning substituted "When" for "The driver of a motor vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be prepared to stop when meeting or overtaking from either direction", after "receive or discharge school children" substituted "has actuated" for "as indicated by", and at end inserted "a driver of a motor vehicle that is approaching the school bus from either direction shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and must be prepared to stop on the actuation of flashing red lights when the school bus has stopped"; in (4)(a) at beginning inserted "Each bus used for the transportation of school children" and in last sentence substituted "school bus only when the school bus is stopped on the highway or street" for "school bus whenever but only whenever the school bus is stopped on the highway or street whether inside or outside the corporate limits of any city or town"; inserted (4)(c) concerning when a school bus is stopped outside the roadway and the school bus will receive or discharge children outside the roadway; deleted former (4) (see 2021 Session Law for text); inserted (5) concerning when an extended stop arm must be used and the specifications for an extended stop arm; inserted (8)(c) concerning reporting and investigation of an observation of a violation of this section; inserted (9)(b) concerning punishment for a violation of subsection (1)(b) of this section; inserted (9)(c) concerning offense of making contact with a stopped school bus or a child within 30 feet of a school bus and punishment for violation; and made minor changes in style. Amendment inserting (5) effective July 1, 2022; all other amendments effective October 1, 2021.

2013 Amendment: Chapter 58 in (1)(a) increased distance between stopped school bus and motor vehicle from 15 feet to 30 feet. Amendment effective October 1, 2013.

2005 Amendment: Chapter 417 in (1) in introductory clause at beginning substituted "Upon" for "The driver of a vehicle upon a highway or street either inside or outside the corporate limits of any city or town upon meeting or" and at end inserted "a driver of a motor vehicle"; in (1)(a) near beginning inserted "motor" and after "not less than" substituted "approximately 15 feet" for "10 feet"; in (2) near beginning inserted "motor"; in (3) in third sentence near middle after "whenever the" substituted "school bus" for "vehicle" and in fourth sentence near middle before "bus" inserted "school"; in (6) near beginning inserted "motor"; substituted (7) regarding report of violation for former text that read: "Whenever a vehicle is established to have been in violation of subsection (1), the person in whose name the vehicle is registered is prima facie the driver of the vehicle at the time of the alleged violation"; and made minor changes in style. Amendment effective April 25, 2005.

2003 Amendment: Chapter 46 inserted (4) concerning requirements of driver when school bus is receiving or discharging children and establishing requirements for pullouts; and made minor changes in style. Amendment effective October 1, 2003.

1993 Amendment: Chapter 132 near middle of (1)(b), after "street", deleted "on which they live" and at end substituted "ceases operation of its visual flashing red signal" for "resumes motion or the driver has signaled traffic to proceed"; near middle of (4), after "from school", inserted "or for school functions"; in (6), after "subsection (1)", deleted "and the identity of the driver of said vehicle cannot be established"; and made minor changes in style.

1985 Amendments: Chapter 221 near beginning of (2) substituted "shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and be prepared to stop" for "must slow and proceed with caution".

Chapter 366 inserted (6) establishing that if the identity of a driver of a vehicle which illegally passes a stopped school bus cannot be established, the person in whose name the vehicle is prima facie the driver at the time of the violation; and inserted (7) establishing that conviction for overtaking a stopped school bus is punishable by a fine of not more than $500.

Attorney General's Opinions

Covering of School Bus Markings — Field Trips or Athletic Events: School bus markings need not be covered or concealed where school buses are being utilized to transport children to or from school on school sponsored field trips or in connection with school athletic events or other authorized activities. 38 A.G. Op. 104 (1980).

Duty to Display Flashing Lights: Red lights on school buses need not be activated when a bus is stopped to load or unload students inside the corporate limits of a city or town. However, it is appropriate to maintain flashing amber lights on such vehicle while stopped to load or unload children as a warning to motorists in the interest of safety. 37 A.G. Op. 93 (1977).

61-8-353. Stopping, standing, or parking outside of business or residence districts.

Case Notes

Stop for Alleged Parking Violation Pretextual for Suspected Drug Investigation — Tainted Evidence Excluded: Defendant, on parole for a felony drug conviction, attracted the attention of a highway patrol officer who was aware of defendant's conviction and suspected reinvolvement in illegal drug activity. When defendant parked behind an acquaintance's car along the side of an unpaved street, the officer followed and subsequently cited both vehicles for illegal parking violations. During the stop, officers searched both vehicles and discovered drugs and a stolen handgun. Upon indictment for possession of the drugs and the firearm, the District Court denied defendant's claim that the evidence gathered as a result of the vehicle search should be suppressed as a violation of defendant's fourth amendment rights. On appeal, the Ninth Circuit Court reversed, holding that the officer's use of an alleged parking violation was merely a pretext to search for evidence of defendant's illegal drug involvement, requiring exclusion of all evidence seized during an illegal search. U.S. v. Hernandez, 55 F3d 443 (9th Cir. 1995).

Parked and Disabled Vehicle Not Proximate Cause of Accident — Verdict Supported by Substantial Evidence: Where the defendant parked his stalled pickup truck at the side of a frontage road and turned on the floodlights of the haygrinder he was pulling before leaving the truck to seek help, but the truck was nevertheless struck by the plaintiff's vehicle, the Supreme Court found that the jury verdict for the defendant was supported by substantial evidence. The record showed that the plaintiff had seen the defendant's lights from one-half mile away but failed to avoid the accident. The jury found defendant 0% negligent and plaintiff 100% negligent; it was entitled to conclude, as it did, that negligence on the part of the defendant was not the proximate cause of the accident. Griffel v. Faust, 205 M 372, 668 P2d 247, 40 St. Rep. 1370 (1983).

Statutory Violations a Jury Question: The plaintiff sued the defendants for injuries he suffered when he drove his truck into the rear of their car. The plaintiff alleged that the defendants violated various motor vehicle statutes and the duty of care owed to the plaintiff, but the Supreme Court found that these were questions of fact for the jury and substantial evidence supported the findings for the defendants. Substantial and sufficient evidence also was found to support the jury's determination that the defendants' actions did not proximately cause the plaintiff's injury. Gunnels v. Hoyt, 194 M 265, 633 P2d 1187, 38 St. Rep. 1492 (1981).

Visibility Impaired: This section prohibits stopping in a traffic lane even under weather conditions causing poor visibility. Kirby v. Kelly, 161 M 66, 504 P2d 683 (1972).

Disabled Vehicle: Where truck had run out of gas, its driver was negligent in not removing the vehicle from the highway when the operator of a passing vehicle offered to assist. Burns v. Fisher, 132 M 26, 313 P2d 1044, 67 ALR 2d 1 (1957).

Right to Stop — Incident to Highway Use: A motorist ticked the fender of a car stopped to repair a flat tire. The motorist stopped to see if he had done any damage to the car. He stepped from his car and was struck by an approaching car. While the motorist who stopped was required to exercise reasonable care for his own safety, he was not required to anticipate that an oncoming car would not see him. The right to stop on the highway when occasion demands is incident to the right to use the highway even though it places such person in a dangerous position. The negligence of the parties involved is a question for the jury. Fulton v. Chouteau County Farmers' Co., 98 M 48, 37 P2d 1025 (1934).

Stopping on Highway — Driver to Use Diligence in Removing: The right to stop an automobile on the public highway when occasion demands is an incident to the right to travel. When an automobile becomes disabled on the highway causing its stoppage, the driver should employ due diligence to remove it in a reasonable time. In the absence of any showing of lack of diligence, the driver is not liable in negligence for injuries arising from a collision with the stopped automobile. Morton v. Mooney, 97 M 1, 33 P2d 262 (1934).

61-8-354. Stopping, standing, or parking prohibited in specified places — exceptions — definition.

Compiler's Comments

2005 Amendment: Chapter 542 inserted (4) defining safety zone. Amendment effective January 1, 2006.

2003 Amendment — Coordination: Chapter 352 in (1) near middle of introductory clause after "allowed under" substituted "[section 13 of LC 200]" for "subsection (2)" and near end before "traffic" inserted "official"; in (1)(g) substituted "official traffic control device" for "traffic control signal"; in (1)(n) after "official" substituted "traffic control devices" for "signs"; deleted former (2) that read: "(2) A bicycle may be parked on a sidewalk and other such places if the parking does not impede normal and reasonable movement of pedestrians or other traffic"; in (2) at end of second sentence substituted "the authority having jurisdiction" for "a local government", in third sentence after "established" deleted "by ordinance", and deleted former fourth sentence that read: "Such establishment is subject to review and approval by the department of transportation if the bus stop is to be established on a street or highway under its jurisdiction"; and made minor changes in style. Amendment effective October 1, 2003.

Section 51(1), Ch. 352, L. 2003, a coordination section, deleted "[as allowed under [section 13 of LC 200] or]".

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1989 Amendment: In (1) changed "patrolman" to "patrol officer".

1983 Amendment: Near beginning of (1), after "except" inserted "as allowed under subsection (2) or"; and inserted (2) allowing a bicycle to be parked on a sidewalk if pedestrian or other traffic is not impeded.

Source: Chapter 450, L. 1983, was based on the provisions of the Uniform Vehicle Code, promulgated by the National Committee on Uniform Traffic Laws and Ordinances, relating to bicycles.

1981 Amendment: Inserted subsection (2) relating to bus stops.

Case Notes

Failure to Keep Lookout at Light-Controlled Intersection — Liability as Matter of Law: With a green light, Vender pulled into an intersection to make a left-hand turn but had to wait for oncoming traffic before turning. While in the intersection, he was struck by Stone, who testified that he did not see a light and could not avoid colliding with the Vender car. The jury found 50% negligence with each driver. On appeal, the Supreme Court reversed, holding that as a matter of law, Stone was solely liable for the collision by failing to exercise reasonable care. A motorist's failure when approaching a controlled intersection to keep a lookout to see what is plainly visible or obviously apparent makes him chargeable for failure to see what he should have seen with the exercise of reasonable care. Vender v. Stone, 245 M 428, 802 P2d 606, 47 St. Rep. 2121 (1990).

Negligence Issue Not Normally Susceptible to Summary Judgment: Plaintiff was injured when a car struck her as she was crossing a street at an intersection. Plaintiff sued the driver of the car and a beer distributing company whose truck was at least partially blocking one of four lanes of traffic and the intersection. The District Court granted summary judgment to the distributor. On appeal, the Supreme Court vacated the District Court's decision, holding that issues of negligence are not ordinarily susceptible to summary judgment. There was a material issue of fact as to whether the truck was illegally parked, and if so, whether the truck's position was a proximate cause of the accident. Hendrickson v. Neiman, 204 M 367, 665 P2d 219, 40 St. Rep. 909 (1983).

Negligence as Matter of Law: Crane driver whose crane was blocking bridge was not negligent as matter of law even though he parked crane on bridge in violation of statute proscribing drivers from parking vehicles upon bridge where suit was between driver of automobile which stopped to avoid crane and driver of second automobile which rear-ended first. Jimison v. U.S., 427 F2d 1133 (9th Cir. 1970), affirming Jimison v. U.S., 267 F. Supp. 674 (D.C. Mont. 1967).

61-8-355. Additional parking regulations.

Compiler's Comments

2019 Amendment: Chapter 299 in (3) near middle substituted "any commission-designated highway system or state highway, as defined in 60-1-103" for "any federal-aid or state highway"; and made minor changes in style. Amendment effective October 1, 2019.

2003 Amendment: Chapter 352 in (1) near middle after "upon a" inserted "two-way", after "roadway" deleted "where there are adjacent curbs", and at end after "curb" inserted "or as close as practicable to the right edge of the right-hand shoulder"; in (2) at beginning substituted "Except when otherwise provided by the authority having jurisdiction, a vehicle that is stopped or parked upon a one-way roadway must be stopped or parked parallel to the curb or edge of the roadway in the direction of authorized traffic movement, with its right-hand wheels within 18 inches of the right-hand curb or as close as practicable to the right edge of the right-hand shoulder" for "A local authority may by ordinance permit parking of a vehicle", after "wheels" deleted "adjacent to and", and at end after "curb" substituted "or as close as practicable to the left edge of the left-hand shoulder" for "of a one-way roadway"; in (4) at beginning substituted "authority having" for "department with respect to highways under its" and after "place" substituted "official traffic control devices" for "signs" and deleted former second sentence that read: "These signs shall be official signs, and a person may not stop, stand, or park a vehicle in violation of the restrictions stated on these signs"; and made minor changes in style. Amendment effective October 1, 2003.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Case Notes

Negligence Issue Not Normally Susceptible to Summary Judgment: Plaintiff was injured when a car struck her as she was crossing a street at an intersection. Plaintiff sued the driver of the car and a beer distributing company whose truck was at least partially blocking one of four lanes of traffic and the intersection. The District Court granted summary judgment to the distributor. On appeal, the Supreme Court vacated the District Court's decision, holding that issues of negligence are not ordinarily susceptible to summary judgment. There was a material issue of fact as to whether the truck was illegally parked, and if so, whether the truck's position was a proximate cause of the accident. Hendrickson v. Neiman, 204 M 367, 665 P2d 219, 40 St. Rep. 909 (1983).

61-8-356. Prohibition against parking or leaving vehicles on public property — presumption of ownership.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 161, L. 2023. Amendment effective October 1, 2023.

2003 Amendment: Chapter 352 in (2) in three places before "vehicle" deleted "motor" and near beginning after "vehicle" inserted "other than a bicycle"; and in (3) near beginning after "filing of a" deleted "verified". Amendment effective October 1, 2003.

1997 Amendment: Chapter 42 in (1) substituted "48 hours or upon a city street or state, county, or city property" for "48 hours, upon a city street, or upon state, county, or city property". Amendment effective March 12, 1997.

1995 Amendment: Chapter 283 inserted (2) and (3) regarding presumption of ownership of abandoned vehicles; and made minor changes in style. Amendment effective March 29, 1995.

61-8-357. Unattended motor vehicles.

Compiler's Comments

2017 Amendment: Chapter 50 substituted "safely securing it" for "stopping the engine and effectively setting the brake thereon and, when standing upon any grade, turning the front wheels to the curb or side of the highway"; and made minor changes in style. Amendment effective February 23, 2017.

61-8-358. Limitations on backing.

Case Notes

Statutory Violations a Jury Question: The plaintiff sued the defendants for injuries he suffered when he drove his truck into the rear of their car. The plaintiff alleged that the defendants violated various motor vehicle statutes and the duty of care owed to the plaintiff, but the Supreme Court found that these were questions of fact for the jury and substantial evidence supported the findings for the defendants. Substantial and sufficient evidence also was found to support the jury's determination that the defendants' actions did not proximately cause the plaintiff's injury. Gunnels v. Hoyt, 194 M 265, 633 P2d 1187, 38 St. Rep. 1492 (1981).

61-8-359. Riding on motorcycles or quadricycles.

Compiler's Comments

2017 Amendment: Chapter 434 in throughout section after "motorcycle" deleted "or quadricycle"; in (5) after "in subsections (5)(a) and (5)(b)" inserted "and subject to 61-9-101(4)"; inserted (9) requiring operation of a motorcycle or quadricycle in a reasonable and prudent manner; and made minor changes in style. Amendment effective May 22, 2017.

2003 Amendment: Chapter 352 in (3) near middle after "would" inserted "prevent the operator from keeping both hands on the handlebars or that would"; in (4) substituted "A person may ride upon a motorcycle or quadricycle only while sitting astride the seat, facing forward, with one leg on each side of the motorcycle or quadricycle" for ""Sidesaddle" riding on a motorcycle or quadricycle is prohibited"; in (5) at beginning of first sentence inserted exception clause and at end after "public" substituted "roadway" for "highway or street"; inserted (5)(b) allowing a motorcycle or quadricycle to be operated without lights while being driven to the nearest repair facility for headlamp repair; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendment: In (1) in three places, in (2) through (4), and (8) inserted "or quadricycle"; and in (5) and (7), inserted "and quadricycles" (effective January 1, 1986).

1983 Amendment: In (5), inserted collector's item exception.

Case Notes

Contributory Negligence: The fact that plaintiffs were riding double in violation of this section did not prevent them from recovering under the Federal Tort Claims Act for injuries arising out of a collision with a mail truck, where the evidence did not indicate that plaintiffs' violation was a contributing cause of the collision. Chavez v. U.S., 192 F. Supp. 263 (D.C. Mont. 1961).

61-8-360. Obstruction to driver's view or driving mechanism.

Compiler's Comments

2003 Amendment: Chapter 352 throughout section substituted references to operator for references to driver; in (1) substituted "operate a vehicle, other than a bicycle" for "drive a vehicle"; and made minor changes in style. Amendment effective October 1, 2003.

61-8-361. Driving on mountain highways.

Compiler's Comments

2003 Amendment: Chapter 352 near end after "edge of the" substituted "roadway" for "highway"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Driver on Four-Lane Highway Not Required to Use Only Right-Hand Lane: Cady, while driving in the left-hand lane of a four-lane highway, struck and killed Hislop. The authorities determined that no action or inaction on Cady's part was responsible for the accident. The personal representative for Hislop's estate initiated a civil action and argued that Cady was liable as a matter of law because the provisions of this section require a driver to stay to the right when traveling through a mountainous region. The Supreme Court held that the statute only applies to two-lane roads where head-on collisions are a danger. Hislop v. Cady, 261 M 243, 862 P2d 388, 50 St. Rep. 1304 (1993).

61-8-362. Coasting prohibited.

Compiler's Comments

2003 Amendment: Chapter 352 near middle after "coast with the" substituted "transmission" for "gears"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Emergency Action: Violation of this section by traveling on a downgrade with the clutch manually disengaged was not negligence per se where violation was involuntary in an emergency due to circumstances beyond driver's control. Duchesneau v. Silver Bow County, 158 M 369, 492 P2d 926 (1971), followed, with regard to applicability of liability for involuntary action rule, in Craig v. Schell, 1999 MT 40, 293 M 323, 975 P2d 820, 56 St. Rep. 167 (1999).

61-8-363. Following fire apparatus prohibited.

Compiler's Comments

2003 Amendment: Chapter 352 at beginning substituted "operator" for "driver", near middle after "fire" substituted "call" for "alarm", after "drive into or" substituted "stop the vehicle within 500 feet of" for "park such vehicle within the block", and at end after "fire" substituted "call" for "alarm"; and made minor changes in style. Amendment effective October 1, 2003.

61-8-364. Crossing firehose.

Compiler's Comments

2007 Amendment: Chapter 449 near beginning after "hose of a" substituted "governmental fire agency organized under Title 7, chapter 33" for "fire department" and near end after "consent of the" substituted "agency" for "fire department"; and made minor changes in style. Amendment effective June 1, 2007.

2003 Amendment: Chapter 352 near beginning substituted "operated" for "driven" and after "on any" substituted "roadway, private road" for "street"; and made minor changes in style. Amendment effective October 1, 2003.

61-8-365. Putting refuse on highway prohibited.

Compiler's Comments

2003 Amendment: Chapter 352 in (1) at end of first sentence after "paper" inserted "or any other debris"; in (5) at end of second sentence increased maximum fine from $500 to $1,000 and inserted third sentence requiring the department to make information available at all weigh stations; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 513 in (1) near end of first sentence after "cans" inserted "plastic bottles, plastic"; in (4) near beginning of first sentence after "61-8-372" inserted "and subsection (5) of this section" and at end after "fined" substituted "not more than $250" for "not less than $50" and at beginning of second sentence after "Except for" substituted "the maximum fine of $250" for "the minimum fine of $50" and near middle after "except for" substituted "the maximum fine of $500" for "the minimum fine of $100"; inserted (5) prohibiting a person from throwing or depositing upon a highway plastic bottles or any other containers in which urine or feces have been deposited and setting a fine for the offense; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 67 at beginning of first sentence of (4) inserted exception clause and in middle of second sentence inserted "and except for the minimum fine of $100 as provided in 61-8-372"; and made minor changes in style.

61-8-368. Opening and closing vehicle doors.

Compiler's Comments

2003 Amendment: Chapter 352 in second sentence after "vehicle" substituted "adjacent" for "available"; and made minor changes in style. Amendment effective October 1, 2003.

1983 Amendment: After "shall open" changed "the" to "any"; after "motor vehicle" deleted "on the side available to moving traffic"; after "to do so" inserted "without interfering with the movement of other traffic"; and after "open on" changed "the" to "a".

Source: Chapter 450, L. 1983, was based on the provisions of the Uniform Vehicle Code, promulgated by the National Committee on Uniform Traffic Laws and Ordinances, relating to bicycles.

61-8-369. Shooting from or across road or highway right-of-way.

Compiler's Comments

2015 Amendment: Chapter 449 substituted "87-2-803(5)" for "87-2-803(4)". Amendment effective March 1, 2016.

2003 Amendment: Chapter 352 at end after "right-of-way of" substituted "a highway" for "any state or federal highway or county road"; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendments: Chapter 214 substituted "right-of-way" for "roadway".

Chapter 416 at beginning inserted exception clause.

61-8-370. Securing of load — requirement — exemptions — violation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 196, L. 2023. Amendment effective October 1, 2023.

2017 Amendment: Chapter 426 in (2)(d) substituted "work zone" for "construction zone". Amendment effective October 1, 2017.

2009 Amendment: Chapter 428 in (1) near middle following "public highway" substituted "shall load the vehicle or" for "for the purpose of transporting solid waste as defined in 75-10-203, except a commercial motor vehicle or a vehicle transporting unprocessed agricultural products, shall attach, cover, or otherwise"; inserted (2) providing exemptions for certain vehicles; and made minor changes in style. Amendment effective October 1, 2009.

61-8-371. Operation of motor vehicle or off-highway vehicle below high-water mark on certain state or federal lands prohibited — exceptions.

Compiler's Comments

2009 Amendment: Chapter 472 in (1) at beginning after "provided in" inserted "77-1-111(3), 77-1-806(4), and"; and made minor changes in style. Amendment effective May 6, 2009.

Preamble: The preamble attached to Ch. 472, L. 2009, provided: "WHEREAS, the Department of Natural Resources and Conservation has asserted regulatory jurisdiction over the beds of various rivers and streams based on the premise that the streams are navigable and that the state therefore owns the riverbeds and streambeds; and

WHEREAS, very few Montana rivers or streams have been adjudicated as navigable, either in whole or in part; and

WHEREAS, it is not economically feasible for either the Department of Revenue or the Department of Natural Resources and Conservation to obtain judicial determinations of riverbed or streambed ownership by statewide quiet title actions, yet that ownership determination may not be made legally by unilateral administrative decisions; and

WHEREAS, if the Department of Natural Resources and Conservation wishes to assert regulatory control over the bed of a river or stream that has not been adjudicated to be navigable and was not determined navigable at the time of the original federal government surveys of the public land as evidenced by the recorded and monumented surveys of the meander lines of the river, it is required to provide written notice of the claim of state ownership to the affected property owners; and

WHEREAS, because the present claims of state ownership of riverbeds and streambeds is contrary to longstanding administrative practice and because the test for navigability depends upon evidence concerning the log floating capability of a stream at the time of statehood, there is no presumption of correctness attached to a navigability claim made by any state agency."

Legislative Findings: Section 1, Ch. 472, L. 2009, provided: "The legislature finds that:

(1) for 120 years since the admission of Montana as a state in 1889, the department of revenue and its predecessor agencies have taxed some landowners whose property abuts a river or stream on the assumption that those riparian landowners owned the property to the middle of the river or stream;

(2) in Montana v. United States, 450 U.S. 544 (1981), the United States supreme court recognized that if a river or stream is not navigable, the abutting riparian landowners own the land in the bed of the stream to the middle of the stream, but if a river or stream is navigable, the state owns the bed of the river or stream, having acquired ownership from the United States when the state was admitted to the union, and therefore Montana owns the bed of the Bighorn River where it flows through the Crow reservation;

(3) for the purpose of determining the ownership of a riverbed or streambed, the test of navigability is whether logs could be floated in the stream at the time of statehood as stated in Montana Coalition for Stream Access v. Curran, 210 Mont. 38, 682 P.2d 163 (1984), based upon The Montello, 87 U.S. 430 (1874), Sierra Pacific Power Co. v. Federal Energy Regulatory Commission, 681 F.2d 1134 (9th Cir. 1982), and State of Oregon v. Riverfront Protection Association, 672 F.2d 792 (9th Cir. 1982);

(4) beginning with tax assessments that were effective January 1, 2008, the lien date for real property taxes, the department of revenue reassessed the property of riparian landowners whose land abuts various rivers and streams by reducing the amount of land assessed based upon the premise that the landowners did not own to the middle of the river or stream because the river or stream was navigable and these reassessments, if correct, have enormous impact upon the riparian landowners because they affect land titles, acreage owned, qualification for various conservation and price support programs, and ownership of water diversion facilities and other structures that the riparian landowners have constructed for water usage;

(5) the 2008 reassessments were made by simply sending out tax bills without any notice that they were based upon a claim of state ownership of the riverbeds or streambeds and some riparian landowners have paid the first installment of 2008 real property taxes based upon the reassessments without realizing that a claim of state ownership of the riverbeds and streambeds was the basis for the reassessments;

(6) procedural due process requires that if a claim of change in ownership is involved, the state agency involved shall afford the affected property owners both notice of the claim and the opportunity to be heard;

(7) the 2008 real property tax assessments based upon claims of state ownership did not comply with the constitutional requirement for procedural due process and under that circumstance payment by the property owners of taxes based on the reassessment does not constitute acquiesence in the underlying state ownership claim;

(8) The department of revenue is required to provide written notice to the affected property owners of the state's claim of ownership so that the affected property owners have a fair opportunity to be heard and to dispute the government's claim."

2005 Amendment: Chapter 542 in (1) after "motor vehicle" deleted "as defined in 61-1-102" and after "off-highway vehicle" deleted "as defined in 23-2-801"; and made minor changes in style. Amendment effective January 1, 2006.

Law Review Articles

The Remarkable Odyssey of Stream Access in Montana, Lane, 36 Pub. Land & Resources L. Rev. 69 (2015).

61-8-372. Littering with lighted matches, cigarettes, and other burning material and dumping ashtray prohibited — penalty — posting.

Compiler's Comments

2001 Amendment: Chapter 513 in (3) at end after "fined" substituted "a maximum of $500" for "a minimum of $100". Amendment effective October 1, 2001.

61-8-375. Unlawful operation of motorized nonstandard vehicle — exception.

Compiler's Comments

Effective Date: Section 15, Ch. 468, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 28, 2005.

61-8-376. Authorized operation of electric personal assistive mobility devices.

Compiler's Comments

2005 Amendment — Coordination: Section 12, Ch. 468, L. 2005, a coordination section, amended this section by changing "[section 2]" to "61-1-101".

Effective Date: Section 15, Ch. 468, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 28, 2005.

61-8-377. Medium-speed electric vehicle — operating requirements.

Compiler's Comments

Effective Date: Section 6, Ch. 233, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 23, 2007.

61-8-378. Low-speed electric vehicle — golf cart operated by person with low-speed restricted driver's license — operating requirements.

Compiler's Comments

Effective Date: Section 16, Ch. 209, L. 2011, provided that this section is effective January 1, 2012.

Grandfather Clause: Section 17, Ch. 209, L. 2011, provided: "A low-speed electric vehicle or golf cart that meets the definitions provided in 61-1-101 and that was titled and registered under a one-time registration provision as a light vehicle or quadricycle prior to [the effective date of this act] [effective January 1, 2012] is considered legally titled and registered if operated by a person with a low-speed restricted driver's license."

61-8-379. Definitions.

Compiler's Comments

Effective Date: Section 246(1), Ch. 542, L. 2005, provided that this section is effective January 1, 2006.

61-8-380. Funeral procession right-of-way — funeral lead vehicle and funeral escort vehicle in funeral procession.

Compiler's Comments

2005 Amendment: Chapter 542 in (3) in third sentence after "comply with the" substituted "requirements for a flag person as defined in 61-8-102" for "provisions of 61-1-411"; and in (4) in first sentence near middle after "requirements of" substituted "61-8-379" for "61-1-413 through 61-1-415 and 61-8-380". Amendment effective January 1, 2006.

61-8-383. Vehicles not in funeral procession.

Compiler's Comments

2005 Amendment: Chapter 542 in (4) near middle of first sentence substituted "61-8-379" for "61-1-413 through 61-1-415 and 61-8-380". Amendment effective January 1, 2006.

61-8-384. Liability.

Compiler's Comments

2005 Amendment: Chapter 542 near end of first sentence substituted "61-8-379" for "61-1-413 through 61-1-415 and 61-8-380"; and made minor changes in style. Amendment effective January 1, 2006.

61-8-385. Short title.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

61-8-386. Definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

61-8-387. Yielding to moving emergency vehicle.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

2023 Enactment — Coordination: The enactment of this section by sec. 3, Ch. 567, L. 2023, was replaced by sec. 14, Ch. 567, L. 2023, a coordination section.

61-8-388. Approaching stationary emergency vehicle or stationary highway worker vehicle.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

61-8-389. Reckless endangerment of emergency personnel — reckless endangerment of highway workers.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

61-8-390. Duty of emergency driver — duty of highway worker.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

61-8-391. Operation of golf carts — unlawful operation — exception — required equipment.

Compiler's Comments

Effective Date: Section 12, Ch. 247, L. 2011, provided: "[This act] is effective on passage and approval." Chapter 247, L. 2011, was enacted into law without the governor's signature on April 22, 2011.

61-8-392. Lane filtering for motorcycles — definition.

Compiler's Comments

Effective Date: This section is effective October 1, 2021.

Part 5
Pedestrian Traffic

61-8-501. Pedestrians subject to traffic regulations.

Compiler's Comments

2005 Amendment: Chapter 233 inserted (5) providing that, with certain exceptions, persons in wheelchairs are considered to be pedestrians for purposes of traffic regulations. Amendment effective October 1, 2005.

2003 Amendment: Chapter 374 inserted (1) requiring pedestrians to obey traffic control devices; in (2) after "traffic control signals" inserted "and pedestrian control signals", after "61-8-207" deleted "unless required by local ordinance to comply strictly with such signals, but", and inserted "and 61-8-208"; in (4) after "authorities" deleted "are hereby empowered by ordinance to require that pedestrians shall strictly comply with the directions of any official traffic control signal and", after "roadway" deleted "in a business district or any designated highways" and inserted "within a local government's jurisdiction", before "crosswalk" inserted "marked", and after "crosswalk" inserted "or in an unmarked crosswalk at an intersection"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Street Crossing Accident — Responsibilities of Parties: Plaintiff was crossing the street at the corner during the night. When he reached the middle of the street he observed an automobile approaching from about 50 feet distant at a rate of 30 miles an hour. The speed limit was 15 miles an hour. Plaintiff hastened towards the opposite corner but was struck by defendant's automobile about 5 feet from the curb. Plaintiff was not guilty of contributory negligence. Pedestrians and automobilists have equal rights in the use of streets or highways, in the exercise of which pedestrians are required to use ordinary care for their own safety. The driver must operate his automobile in a careful, prudent manner, and at a rate of speed no greater than is reasonable and proper under existing traffic and road conditions and the requirements of city ordinances. McKeon v. Kilduff, 85 M 562, 281 P 345 (1929).

61-8-502. Pedestrians' right-of-way in crosswalk — school children.

Compiler's Comments

2003 Amendment: Chapter 374 throughout section substituted reference to operator or operation of vehicle for reference to driver or driver of vehicle; in (3) before "vehicle" deleted "motor", in two places substituted "roadway" for "street or highway", in three places substituted references to school crossing guard or crossing guard for references to school safety patrol members, and near end after "official" substituted "sign" for "signal"; and made minor changes in style. Amendment effective October 1, 2003.

1993 Amendment: Chapter 484 at beginning of (1)(a) inserted exception clause and near middle of first sentence substituted "within a marked crosswalk or within an unmarked crosswalk at an intersection" for "within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger"; inserted (1)(b) allowing the driver of a vehicle stopped at a crosswalk or intersection to make a right-hand turn if the pedestrian is in the opposite half of the roadway and not in danger; and made minor changes in style.

Case Notes

Failure to Yield to Pedestrian Negligence as Matter of Law Despite No Injury: Five months after being injured by a vehicle driven by Karns, plaintiff was struck while crossing the roadway in an unmarked intersection crosswalk by a vehicle driven by Gondeiro. Plaintiff filed suit, alleging that because her injuries from the two accidents were indivisible, both Karns and Gondeiro were liable for her injuries. Although the jury concluded that Gondeiro's vehicle did not strike plaintiff, the District Court granted plaintiff's motion for judgment against Gondeiro as a matter of law. Gondeiro appealed, claiming that the evidence showed that his vehicle did not strike plaintiff. However, the Supreme Court affirmed, ruling that whether Gondeiro's vehicle actually struck plaintiff was irrelevant. Gondeiro's failure to yield to a pedestrian crossing the roadway within a crosswalk at an intersection violated this section and constituted negligence as a matter of law. Armstrong v. Gondeiro, 2000 MT 326, 303 M 37, 15 P3d 386, 57 St. Rep. 1381 (2000).

Disallowance of Jury Instruction Regarding Heightened Standard of Care of Driver in Vicinity of Children: Fifteen-year-old Hanson was struck by Edwards's car while crossing an intersection near a school. The intersection had no sidewalks, curbs, or painted lines delineating a crosswalk. Hanson sought a jury instruction that a motorist operating in an area in which children are known to likely be present has a heightened standard of care, relying on Okland v. Wolf, 258 M 35, 850 P2d 302 (1993). The instruction was denied. On appeal, the Supreme Court noted that a person's duty of care varies depending on the circumstances at the time and place in question, so in this case, as in Okland, the standard negligence instruction permitted Hanson to argue that the circumstances required a heightened standard and was thus considered adequate. Hanson v. Edwards, 2000 MT 221, 301 M 185, 7 P3d 419, 57 St. Rep. 907 (2000).

Disallowance of Jury Instruction Regarding Motorist's Affirmative Duty to Ascertain Whether Intersection Clear and to Anticipate Presence of Pedestrians: Hanson was struck by Edwards's car while crossing an intersection that had no sidewalks, curbs, or painted lines delineating a crosswalk. Hanson sought a jury instruction that a motorist has an affirmative duty to ascertain whether an intersection is clear before proceeding and a duty to anticipate that pedestrians may be present in the intersection. The instruction was denied. On appeal, the Supreme Court held that the instruction that was given, which clarified a driver's obligation to yield the right-of-way to a pedestrian in a crosswalk and a pedestrian's obligation to avoid moving into the path of a vehicle that is too close for the driver to yield, was a proper statement of law under 61-8-504 and that the trial court did not err in refusing to give Hanson's proposed instruction regarding a driver's affirmative duties. Hanson v. Edwards, 2000 MT 221, 301 M 185, 7 P3d 419, 57 St. Rep. 907 (2000).

Unmarked Crosswalk at Every Intersection: Hanson was struck by Edwards's car while crossing an intersection that had no sidewalks, curbs, or painted lines delineating a crosswalk. Hanson moved for a directed verdict on grounds that because he was in an unmarked crosswalk, which gave him the right-of-way, Edwards was negligent as a matter of law. The motion was denied, and the trial court refused to instruct the jury that an unmarked crosswalk exists at every intersection pursuant to 61-1-209 (now repealed — see 61-8-102 for definitions). The Supreme Court examined legislative intent and, reading 61-1-209 (now repealed) in pari materia with this section, concluded that Montana law provides for a crosswalk on any portion of a roadway at an intersection. The jury should have been so instructed, and failure to do so was reversible error. Hanson v. Edwards, 2000 MT 221, 301 M 185, 7 P3d 419, 57 St. Rep. 907 (2000).

Attorney General's Opinions

City Council — Lack of Authority to Regulate Crosswalk on Federal-Aid Highway in Manner Inconsistent With State Law: A city council may not enact an ordinance requiring a driver of a motor vehicle on a federal-aid or state highway to stop for a pedestrian within a crosswalk when the pedestrian is not on the half of the roadway on which the vehicle is traveling and when the pedestrian is not close enough to be in danger. 41 A.G. Op. 10 (1985).

61-8-503. Crossing at other than crosswalks.

Case Notes

Capacity of Children — Contributory Negligence: Although this section makes no express exceptions for children, if the child lacked the capacity for compliance with the statute, the statutory violation may be excused and there is no contributory negligence. Ranard v. O'Neil, 166 M 1000, 531 P2d 1000, 32 St. Rep. 138 (1975).

Care Required of Pedestrian: Pedestrian must use ordinary care for his own safety in attempting to cross highway. Hightower v. Alley, 132 M 349, 318 P2d 243 (1957).

Last Clear Chance: Decedent, who was killed while crossing highway, did not come into a position of peril any appreciable length of time before the injury. Had he stood still, defendant would have avoided striking him. The evidence showed that it was the sudden running of deceased into the moving automobile that produced his injuries and death. Under the evidence defendant had no reasonable opportunity to avoid striking decedent after he took the perilous step. Under such circumstances an instruction on last clear chance had no place in the case. Hightower v. Alley, 132 M 349, 318 P2d 243 (1957).

Crossing in Middle of Street: The fact that a pedestrian is crossing the street between crossings does not absolve a motorist from the duty to exercise reasonable care to avoid injuring him. This is especially true where plaintiff's stooped posture and bearing showed that he was oblivious to approaching traffic. Sorrels v. Ryan, 129 M 29, 281 P2d 1028 (1955).

Questions of Fact: Under the evidence presented, it was a jury question as to whether defendant acted as a reasonably prudent person would have acted under all the circumstances in traveling at the point of collision at the speed of 18 or 20 miles per hour, as she admitted, even though the streetcar had not come to a full stop when defendant met it. Whether, in the exercise of reasonable care, she should have seen plaintiff in time to avoid the collision, was for the jury. Hill v. Haller, 108 M 251, 90 P2d 977 (1939).

Duty of Drivers: Pedestrians and automobiles have equal rights in the use of streets or highways. Pedestrians are required to use ordinary care for their own safety. The driver of an automobile must operate it in a careful, prudent manner, and at a rate of speed no greater than is reasonable and proper under existing traffic and road conditions and the requirements of city ordinances. McKeon v. Kilduff, 85 M 562, 281 P 345 (1929). See also Green v. Bohm, 65 M 399, 211 P 320 (1922).

Care Required of Pedestrian: In an action for personal injuries sustained in an automobile accident on a city street, it appeared that plaintiff was struck while attempting to cross a business street between crossings. The court erred in refusing defendant's offered instruction to the effect that greater caution is required of a pedestrian where he crosses between crossings than at crossings, and that automobiles must be more cautious at crossings than between crossings, although ordinary caution must be observed by drivers and pedestrians at and between crossings. Such instruction was in harmony with the law declared by subsection (1) of section 32-1102, R.C.M. 1947 (now repealed), and applicable to the conditions presented. Carey v. Guest, 78 M 415, 258 P 236 (1927).

61-8-504. Operators to exercise due care.

Compiler's Comments

2003 Amendment: Chapter 374 after "Notwithstanding" substituted "61-8-501 through 61-8-503" for "the foregoing provisions of this part", substituted reference to operator for reference to driver, after "person" substituted "propelling a human-powered vehicle or using an assistive mobility device" for "operating a bicycle", before "confused" inserted "obviously", and after "incapacitated" inserted "or intoxicated"; and made minor changes in style. Amendment effective October 1, 2003.

1983 Amendment: Near middle of section, after "pedestrian" inserted "or with any person operating a bicycle".

Source: Chapter 450, L. 1983, was based on the provisions of the Uniform Vehicle Code, promulgated by the National Committee on Uniform Traffic Laws and Ordinances, relating to bicycles.

Case Notes

Clear Dispute of Facts — Motion for Summary Judgment on Negligence Claim Properly Denied: The District Court properly denied the plaintiff's motion for summary judgment on negligence per se because there was a clear dispute of fact of whether the plaintiff was within the unmarked crosswalk at the time of the collision. Maier v. Wilson, 2017 MT 316, 390 Mont. 43, 409 P.3d 878.

Disallowance of Jury Instruction Regarding Heightened Standard of Care of Driver in Vicinity of Children: Fifteen-year-old Hanson was struck by Edwards's car while crossing an intersection near a school. The intersection had no sidewalks, curbs, or painted lines delineating a crosswalk. Hanson sought a jury instruction that a motorist operating in an area in which children are known to likely be present has a heightened standard of care, relying on Okland v. Wolf, 258 M 35, 850 P2d 302 (1993). The instruction was denied. On appeal, the Supreme Court noted that a person's duty of care varies depending on the circumstances at the time and place in question, so in this case, as in Okland, the standard negligence instruction permitted Hanson to argue that the circumstances required a heightened standard and was thus considered adequate. Hanson v. Edwards, 2000 MT 221, 301 M 185, 7 P3d 419, 57 St. Rep. 907 (2000).

Disallowance of Jury Instruction Regarding Motorist's Affirmative Duty to Ascertain Whether Intersection Clear and to Anticipate Presence of Pedestrians: Hanson was struck by Edwards's car while crossing an intersection that had no sidewalks, curbs, or painted lines delineating a crosswalk. Hanson sought a jury instruction that a motorist has an affirmative duty to ascertain whether an intersection is clear before proceeding and a duty to anticipate that pedestrians may be present in the intersection. The instruction was denied. On appeal, the Supreme Court held that the instruction that was given, which clarified a driver's obligation to yield the right-of-way to a pedestrian in a crosswalk and a pedestrian's obligation to avoid moving into the path of a vehicle that is too close for the driver to yield, was a proper statement of law under this section and that the trial court did not err in refusing to give Hanson's proposed instruction regarding a driver's affirmative duties. Hanson v. Edwards, 2000 MT 221, 301 M 185, 7 P3d 419, 57 St. Rep. 907 (2000).

Materiality of Facts in Negligence Action — Summary Judgment Improperly Granted: In an action for damages caused by the wrongful death of the plaintiff's son as a result of the negligent operation of the defendant's automobile, the trial court erred in granting the defendant's motion for summary judgment. The affidavits submitted by the parties show discrepancies in whether there were other children on the highway where the decedent was struck and as to the location where the decedent, a 5-year-old boy, ran onto the highway. Contrary to defendant's assertions, these facts are material to the case as they bear upon the defendant's ability and duty to exercise due care. Because material facts are in dispute, the motion was improperly granted. Big Man v. St., 192 M 29, 626 P2d 235, 38 St. Rep. 362 (1981).

Motorist's Duty to See: A motorist is negligent in either not looking or looking and not seeing if the object is so visible that all reasonable minds would agree that a person must see the object if he were to look with reasonable diligence. In this case, all reasonable minds could not agree that Payne was visible. He was wearing dark clothing on a coal black, rainy night and was walking in the travel portion of a wet highway with his back to the oncoming traffic. This court will not disturb the jury's determination if the evidence in the record furnishes reasonable grounds for different conclusions. Payne v. Sorenson, 183 M 323, 599 P2d 362, 36 St. Rep. 1610 (1979), followed in Okland v. Wolf, 258 M 35, 850 P2d 302, 50 St. Rep. 412 (1993), and Chambers v. Pierson, 266 M 436, 880 P2d 1350, 51 St. Rep. 921 (1994).

Crossing in Middle of Street: The fact that a pedestrian is crossing the street between crossings does not absolve a motorist from the duty to exercise reasonable care to avoid injuring him. This is especially true where plaintiff's stooped posture and bearing showed that he was oblivious to approaching traffic. Sorrels v. Ryan, 129 M 29, 281 P2d 1028 (1955).

Care at Crossing — Pedestrian and Driver: At a street crossing a pedestrian need only exercise such reasonable care as the case requires, for he has the right to assume that a driver will also exercise due care and approach the crossing with his vehicle under proper control. Both are required to exercise the degree of care that conditions demand. Webster v. Mtn. St. Tel. & Tel. Co., 108 M 188, 89 P2d 602 (1939).

Children in Street — Measure of Caution Required: Plaintiff's son was struck and injured by an automobile driven by an employee of defendant. The driver observed the child playing football in the street while about 200 feet away. He sounded his horn, but testified that it did not appear that the child heard it. As he approached, the child dashed across the street and was struck by the automobile. Defendant was found negligent in the operation of his automobile. The Supreme Court affirmed saying that a driver is charged with knowledge of childish traits, and though not an insurer of a child's safety, must exercise a higher degree of care upon observing a child. The driver must proceed with such measure of caution as a reasonably prudent man faced with such a situation would exercise. LeSage v. Largey Lumber Co., 99 M 372, 43 P2d 896 (1935).

Failure to Anticipate Child's Actions: A driver on a city street seeing a child in a place of apparent safety is not called upon to presume that the child will suddenly dart from the side of the street in front of his car. The driver does have the duty to be vigilant commensurate with the surrounding conditions, and by failure to anticipate the child's action he risks being held negligent by a jury. Autio v. Miller, 92 M 150, 11 P2d 1039 (1932).

Street Crossing Accident — Responsibilities of Parties: Plaintiff was crossing the street at the corner during the night. When he reached the middle of the street he observed an automobile approaching from about 50 feet distant at a rate of 30 miles an hour. The speed limit was 15 miles an hour. Plaintiff hastened towards the opposite corner but was struck by defendant's automobile about 5 feet from the curb. Plaintiff was not guilty of contributory negligence. Pedestrians and automobilists have equal rights in the use of streets or highways, in the exercise of which pedestrians are required to use ordinary care for their own safety. The driver must operate his automobile in a careful, prudent manner, and at a rate of speed no greater than is reasonable and proper under existing traffic and road conditions and the requirements of city ordinances. McKeon v. Kilduff, 85 M 562, 281 P 345 (1929).

61-8-506. Pedestrians on roadways and highways — wheelchair use on highways.

Compiler's Comments

2005 Amendment: Chapter 233 inserted (3) allowing wheel chair use on highways if sidewalk use is unsafe or impractical. Amendment effective October 1, 2005.

2003 Amendment: Chapter 374 in (1) after "provided" inserted "and their use is practicable"; in (2) after "pedestrian" inserted exception for intoxicated person and after "highway" substituted "may walk only on the shoulder, as far as practicable from the edge of the roadway" for "shall, when practicable, walk only on the left side of the roadway or its shoulder facing traffic which may approach from the opposite direction"; and made minor changes in style. Amendment effective October 1, 2003.

Case Notes

Motorist's Duty to See: A motorist is negligent in either not looking or looking and not seeing if the object is so visible that all reasonable minds would agree that a person must see the object if he were to look with reasonable diligence. In this case, all reasonable minds could not agree that Payne was visible. He was wearing dark clothing on a coal black, rainy night and was walking in the travel portion of a wet highway with his back to the oncoming traffic. This court will not disturb the jury's determination if the evidence in the record furnishes reasonable grounds for different conclusions. Payne v. Sorenson, 183 M 323, 599 P2d 362, 36 St. Rep. 1610 (1979), followed in Okland v. Wolf, 258 M 35, 850 P2d 302, 50 St. Rep. 412 (1993).

Walking With Back to Traffic — Negligence: It is negligent as a matter of law to fail to walk on the left side of the roadway facing the oncoming traffic. Payne v. Sorenson, 183 M 323, 599 P2d 362, 36 St. Rep. 1610 (1979).

Pedestrian — Auto Collision — Negligence: A 13-year-old boy walking with others on the unpaved portion of a highway could not be held guilty of contributory negligence in stepping on the paved portion directly in front of an approaching truck. This was true even though he was warned by one of his companions of the danger of walking on the pavement, where it was in evidence that he had no knowledge of the proximity of the approaching truck. Pierce v. Safeway Stores, Inc., 93 M 560, 20 P2d 253 (1933).

61-8-507. Pedestrian soliciting rides, business, or contributions.

Compiler's Comments

2003 Amendment: Chapter 374 at end of (1) after "ride" deleted "employment, or business from the occupant of any vehicle"; in (2) after "stand on" deleted "or in proximity to", before "highway" deleted "street or", and after "soliciting" inserted reference to unauthorized soliciting of employment, business, or contributions for "the watching or guarding of any vehicle while parked or about to be parked on a street or highway"; and made minor changes in style. Amendment effective October 1, 2003.

61-8-508. Intoxicated pedestrian.

Compiler's Comments

2003 Amendment: Chapter 374 substituted language prohibiting persons under the influence from walking or standing on a roadway or shoulder except in authorized crosswalk for former language that read: "No person shall walk upon or along the highway while under the influence of intoxicating liquor." Amendment effective October 1, 2003.

Case Notes

No Repeal by Implication: Section 53-24-106 did not repeal this section by implication. The two statutes are not irreconcilable with each other. The former provides that intoxication in public is not a crime while the latter makes walking along a highway in such a condition a criminal offense. Kuchan v. Harvey, 179 M 7, 585 P2d 1298, 35 St. Rep. 1547 (1978).

61-8-509. Pedestrian's right-of-way on sidewalks.

Compiler's Comments

Source: Chapter 450, L. 1983, was based on the provisions of the Uniform Vehicle Code, promulgated by the National Committee on Uniform Traffic Laws and Ordinances, relating to bicycles.

61-8-515. Pedestrian to yield to authorized emergency vehicle.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

61-8-516. Operator of vehicle to yield to blind pedestrian.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

61-8-517. Pedestrians at railroad crossings.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Part 6
Bicycle Traffic

Part Case Notes

Failure of Bicyclist to Wear Helmet — Evidence Inadmissible on Question of Negligence or Damages: Applying the rationale set out in Kopischke v. First Cont. Corp., 187 M 471, 610 P2d 668 (1980), the Supreme Court held that because Montana law does not require a bicyclist to wear a helmet, the bicyclist's failure to wear a helmet ordinarily does not constitute negligence on the part of the state. Therefore, the jury was properly instructed that the bicyclist's failure to wear a helmet was not a legal cause of the accident and did not constitute negligence on the part of the state. The evidence was not admissible on the question of damages under the *Kopischke* rationale. Walden v. St., 250 M 132, 818 P2d 1190, 48 St. Rep. 893 (1991).

61-8-601. Effect of regulations.

Compiler's Comments

2015 Amendment: Chapter 374 in (2) at beginning inserted "Subject to the exceptions stated in this part"; in (2)(a) after "bicycle" inserted "or moped"; in (2)(b) at beginning inserted "a bicycle is operated on" and at end deleted "subject to those exceptions stated herein"; and made minor changes in style. Amendment effective October 1, 2015.

61-8-602. Traffic laws applicable to persons operating bicycles or mopeds.

Compiler's Comments

2015 Amendment: Chapter 374 at beginning after "bicycle" inserted "or moped"; and made minor changes in style. Amendment effective October 1, 2015.

1983 Amendment: Near beginning of section, after "person" substituted "operating" for "riding"; after "bicycle" deleted "upon a roadway"; after "driver of" changed "a" to "any other"; and inserted two references to chapter 7.

Source: Chapter 450, L. 1983, was based on the provisions of the Uniform Vehicle Code, promulgated by the National Committee on Uniform Traffic Laws and Ordinances, relating to bicycles.

61-8-603. Riding on bicycles or mopeds.

Compiler's Comments

2015 Amendment: Chapter 374 after "bicycle" inserted "or moped"; and made minor changes in style. Amendment effective October 1, 2015.

61-8-604. Clinging to vehicles.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 255 after "bicycle trailer" deleted "or bicycle semitrailer" and at end deleted "if that trailer or semitrailer has been designed for attachment"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 374 after "coaster" inserted "moped"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: At end of section, inserted "but" clause.

Source: Chapter 450, L. 1983, was based on the provisions of the Uniform Vehicle Code, promulgated by the National Committee on Uniform Traffic Laws and Ordinances, relating to bicycles.

61-8-605. Riding on roadways.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 255 deleted former (1) that read: "(1) As used in this section:

(a) "laned roadway" means a roadway that is divided into two or more clearly marked lanes for vehicular traffic; and

(b) "roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, including the paved shoulder"; in (1) after "speed of traffic" substituted "shall ride in the right-hand lane of the roadway, subject to the following provisions" for "at the time and place and under the conditions then existing shall ride as near to the right side of the roadway as practicable except when"; inserted (1)(a) concerning the right-hand lane; in (1)(b) inserted introductory clause; in (1)(b)(i) substituted "a slower vehicle" for "another vehicle proceeding in the same direction"; inserted (1)(b)(iii) concerning when the right-hand lane is a dedicated right-turn lane; in (1)(b)(iv) substituted "ride in the right-hand lane of the roadway" for "continue along the right side of the roadway, including but not limited to a fixed or moving object, parked or moving vehicle, pedestrian, animal, surface hazard, or a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane"; in (2) substituted "roadway" for "highway" and substituted "judged safe by the bicyclist" for "practicable"; in (3)(d) after "abreast" inserted "only"; deleted former (5) that read: "(5) A bicycle, as defined in 61-8-102(2)(b)(ii), is excluded from the provisions of subsections (2) and (3)"; inserted (4) concerning expectations of a bicyclist; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 374 in former (5) substituted "moped" for "bicycle" and substituted "61-8-102(2)(k)" for "61-8-102(2)(b)(ii)"; and made minor changes in style. Amendment effective October 1, 2015. Amendment rendered void by Ch. 255 amendment.

2005 Amendment: Chapter 542 inserted (1)(a) defining laned roadway; in (5) after "defined in" substituted "61-8-102(2)(b)(ii)" for "61-1-123(2)"; and made minor changes in style. Amendment effective January 1, 2006.

1991 Amendment: In (1) inserted definition of roadway; deleted former (4) that read: "(4) Whenever a usable path for bicycles has been provided adjacent to a roadway, bicycle riders shall use such path and shall not use the roadway. A person riding a bicycle defined in 61-1-123(2) is excluded from the provisions of this subsection when such bicycle is prohibited from using such paths"; in (5) changed subsection references; and made minor change in style.

1983 Amendment: In (1) through (3) substituted language relating to proper operation of a bicycle on a roadway for former (1) and (2), which read: "(1) Every person operating a bicycle upon a roadway shall ride as near to the right side of the roadway as practicable, exercising due care when passing a standing vehicle or one proceeding in the same direction.

(2) Persons riding bicycles upon a roadway shall ride in single file except on paths or parts of roadways set aside for the exclusive use of bicycles. A person riding a bicycle may overtake and pass another bicycle when safe to do so and when other traffic is not obstructed by so doing.".

Source: Chapter 450, L. 1983, was based on the provisions of the Uniform Vehicle Code, promulgated by the National Committee on Uniform Traffic Laws and Ordinances, relating to bicycles.

61-8-606. Carrying articles.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 255 substituted "person" for "driver"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 374 after "bicycle" inserted "or moped"; and made minor changes in style. Amendment effective October 1, 2015.

61-8-607. Lamps and other equipment on bicycles and mopeds.

Compiler's Comments

2017 Amendment: Chapter 275 in (1)(a) and (2) substituted "the bicycle or moped" for "the bicycle [or moped]". Amendment effective October 1, 2017.

2015 Amendments — Composite Section — Code Commissioner Correction: Chapter 255 in (1) before "nighttime" inserted "dawn, dusk, or"; in (1)(a) substituted second sentence concerning placement of a lamp, (1)(b) concerning use of a red light or reflector, and (1)(c) concerning reflective material for "A lamp emitting a red light visible from a distance of 500 feet to the rear may be used in addition to rear-facing reflectors required by this section"; deleted former (2), (3), and (4) that read: "(2) Every bicycle when in use at nighttime shall be equipped with an essentially colorless front-facing reflector, essentially colorless or amber pedal reflectors, and a red rear-facing reflector. Pedal reflectors shall be mounted on the front and back of each pedal.

(3) Every bicycle when in use at nighttime shall be equipped with either tires with retroflective sidewalls or reflectors mounted on the spokes of each wheel. Spoke mounted reflectors shall be within 76 millimeters (3 inches) of the inside of the rim and shall be visible on each side of the wheel. The reflectors on the front wheel shall be essentially colorless or amber and the reflectors on the rear wheel shall be amber or red.

(4) Reflectors required by this section shall be of a type approved by the department"; in (5) substituted "stop the bicycle within no more than 25 feet from a speed of 10 miles an hour" for "make the braked wheels skid"; deleted former (6) that read: "(6) Every bicycle is encouraged to be equipped with a flag clearly visible from the rear and suspended not less than 6 feet above the roadway when the bicycle is standing upright. The flag shall be fluorescent orange in color"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 374 throughout section after "bicycle" inserted "or moped"; and made minor changes in style. Amendment effective October 1, 2015.

The code commissioner after "bicycle" inserted bracketed references to moped to reflect the compositing of the chapters.

1985 Amendment: In (4) substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Encouragement for Bicycles to Be Equipped With Flags — Jury Instruction on Encouragement as Reversible Error: Chad was hit, while on his bicycle, by a car driven by Matt. Matt testified that he stopped and looked at the intersection but did not see Chad on his bicycle. Chad's counsel requested and received a jury instruction that the Legislature encourages all bicycles to be equipped with flags. The Supreme Court held that although the applicable portion of the statute states no law and creates no legal duty, it is only a legislative desire and that the District Court erred by instructing the jury that the Legislature encourages that every bicycle be equipped with a flag. Chambers v. Pierson, 266 M 436, 880 P2d 1350, 51 St. Rep. 921 (1994).

61-8-608. Bicycles or mopeds on sidewalks and bike lanes.

Compiler's Comments

2015 Amendment: Chapter 374 throughout section after "bicycle" inserted "or moped"; in (1) at beginning inserted "Subject to the provisions of subsection (3)(b)"; inserted (3)(b) and (3)(c) concerning a moped powered by human propulsion or an independent power source; and made minor changes in style. Amendment effective October 1, 2015.

Source: Chapter 450, L. 1983, was based on the provisions of the Uniform Vehicle Code, promulgated by the National Committee on Uniform Traffic Laws and Ordinances, relating to bicycles.

61-8-609. Bicycle or moped racing — when lawful.

Compiler's Comments

2015 Amendment: Chapter 374 throughout section after "bicycle" inserted "or moped"; and made minor changes in style. Amendment effective October 1, 2015.

Part 7
Enforcement — Penalties

61-8-701. Charging violations.

Law Review Articles

The Highway Patrol Officer as Expert Witness, Tanzer, 44 Mont. L. Rev. 251 (1983).

61-8-702. Use of radar — evidence admissible.

Case Notes

Use of Radar Valid: Use of radar to measure the speed of motor vehicles is valid and appropriate under this section. Billings v. Skurdal, 224 M 84, 730 P2d 371, 43 St. Rep. 2036 (1986).

61-8-703. Arrest without warrant in radar cases.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Probable Cause to Stop for Speeding — No Infringement of Liberty Interest: Defendant was stopped and charged by a highway patrol officer with speeding and operating a motor vehicle without a valid driver's license following the officer's visual observation of the speed of defendant's vehicle, confirmed by a radar reading. Defendant refuses to procure and carry a driver's license on various constitutional grounds. His right to liberty was not violated when the officer stopped and detained him because the officer had probable cause to believe defendant was speeding. Defendant's further contention that his liberty interest was infringed because he was not engaged in commercial travel when he was stopped is baseless in law. St. v. Skurdal, 235 M 291, 767 P2d 304, 45 St. Rep. 2394 (1988).

61-8-704. Erection of signs — definition.

Compiler's Comments

2005 Amendment: Chapter 542 inserted (4) defining arterial street; and made minor changes in style. Amendment effective January 1, 2006.

61-8-705. Officers or highway patrol officers authorized to remove illegally stopped vehicles.

Compiler's Comments

1989 Amendment: In four places changed "patrolman" to "patrol officer".

1981 Amendment: Substituted "roadway" for "causeway" near beginning of (2) and the final phrase beginning with "pursuant to Title 61 . . ." for "to the nearest place of safety".

61-8-706. Removal of unauthorized sign.

Administrative Rules

Title 18, chapter 7, subchapter 1, ARM Right-of-way encroachments.

Case Notes

Duty to Maintain Safe Crossings: The Federal-Aid Highway Act of 1973 represents an effort by the federal government to improve the safety of grade crossings and to provide funding for the same. That Act does not lessen in any degree the duty, statutory or common-law, of a railroad to maintain a good and safe crossing. The Manual on Uniform Traffic Control Devices promulgated by the Montana Department of Highways (now Department of Transportation) may be considered as a standard or norm to be used for traffic-control devices. It does not have the force and effect of law in determining the duties and responsibilities of a railroad with respect to the safety of grade crossings. The railroad is not absolved of its common-law duty to provide a good and safe crossing. It was a jury question whether, under the circumstances known to the railroad at and before this accident, the railroad itself should have reduced the speed of its trains at this crossing. Runkle v. Burlington N., 188 M 286, 613 P2d 982, 37 St. Rep. 995 (1980).

61-8-711. Violation of chapter — penalty.

Compiler's Comments

1995 Amendment: Chapter 134 at end of (1), after "felony", deleted "by this chapter or other law of this state"; in (2), at end of first sentence after "$100", deleted "or by imprisonment for not more than 10 days", at end of second sentence, after "$200", deleted "or by imprisonment for not more than 20 days or by both such fine and imprisonment", and at end of third sentence, after "$500", deleted "or by imprisonment for not more than 6 months or by both such fine and imprisonment"; in (3), at beginning, deleted "On failure of payment of a fine, the offender in case of a misdemeanor" and inserted current language providing for contempt and enforcement on failure of payment of fine; in (4), at beginning, inserted "If property is not found in an amount necessary to satisfy the unpaid portion of the fine and if the court makes a written finding that community service is inappropriate, the person" and after "the imprisonment shall be" substituted "the number of days that the fine is divisible by the dollar amount of the incarceration credit contained in 46-18-403" for "computed upon the basis of 1 day's incarceration for each $25 of the fine"; and made minor changes in style.

1991 Amendment: In (3) increased basis of fine for 1 day of incarceration from $10 to $25.

1987 Amendment: In (3) increased amount of fine credited for a day's incarceration from $2 to $10.

Case Notes

Assessment of Fines, Surcharges, Prosecution Costs, and Public Defender Fees Upheld: After scrupulously and meticulously examining the defendant's ability to pay, the District Court understood the burden and hardship the defendant would experience when he began making payments. The defendant's right to a jury trial also was not chilled because of the court's careful examination of his financial circumstances. Finally, the imposition fine was mandated by statute and was therefore appropriate. St. v. Reynolds, 2017 MT 317, 390 Mont. 58, 408 P.3d 503.

30-Day Incarceration for Careless Driving Unlawful: Since the penalty for careless driving is a fine between $10 and $100, the District Court erred when it imposed a 30-day jail sentence for the offense. The defendant did not attack the validity of the sentence; therefore, the sentence could be corrected by the District Court by striking the illegal jail time imposed for the careless driving sentence. St. v. Kime, 2013 MT 14, 368 Mont. 261, 295 P.3d 580.

Attorney General's Opinions

City Authority to Enact Photo-Radar Ordinance: No state agency is given exclusive power to establish administrative rules governing speed of traffic in cities and towns, nor is the enforcement of speed regulations exclusively vested in a state agency. Therefore, the city of Billings, under its self-government charter, is not precluded by statute from enacting a photo-radar ordinance providing either for accountability on the part of the registered owner for illegal speeding by any person operating the vehicle with the owner's permission or for a permissive inference that the registered owner was the speeding violator. 45 A.G. Op. 7 (1993).

Imprisonment in County Jail Upon Failure to Pay Traffic Fine: Both this section and 46-19-102 concern imprisonment upon failure to pay fines for traffic offenses. Because a particular statute governs when a general statute and a particular statute on the same subject are inconsistent, this section governs. However, if the failure to pay is based on indigency, constitutional issues arise. The courts have recognized the infirmity of imposing a fine as a sentence and then converting it into a jail term simply because the defendant is indigent and cannot forthwith pay the fine in full. 38 A.G. Op. 61 (1980).

61-8-712. Penalty for erection of unauthorized sign.

Administrative Rules

Title 18, chapter 7, subchapter 1, ARM Right-of-way encroachments.

Case Notes

Duty to Maintain Safe Crossings: The Federal-Aid Highway Act of 1973 represents an effort by the federal government to improve the safety of grade crossings and to provide funding for the same. That Act does not lessen in any degree the duty, statutory or common-law, of a railroad to maintain a good and safe crossing. The Manual on Uniform Traffic Control Devices promulgated by the Montana Department of Highways (now Department of Transportation) may be considered as a standard or norm to be used for traffic-control devices. It does not have the force and effect of law in determining the duties and responsibilities of a railroad with respect to the safety of grade crossings. The railroad is not absolved of its common-law duty to provide a good and safe crossing. It was a jury question whether, under the circumstances known to the railroad at and before this accident, the railroad itself should have reduced the speed of its trains at this crossing. Runkle v. Burlington N., 188 M 286, 613 P2d 982, 37 St. Rep. 995 (1980).

61-8-713. Injury to or removal of sign or marker as misdemeanor — penalty — definition.

Compiler's Comments

2009 Amendment: Chapter 256 in (3) after "train" inserted "or other on-track equipment". Amendment effective October 1, 2009.

2005 Amendment: Chapter 542 inserted (3) defining railroad sign or signal; and made minor changes in style. Amendment effective January 1, 2006.

61-8-715. Reckless driving — reckless endangerment of emergency personnel or highway workers — failure to yield to an emergency vehicle — penalty.

Compiler's Comments

2023 Amendments — Composite Section: Section 2, Ch. 258, L. 2023, inserted (3) regarding the failure to yield to an emergency vehicle. Amendment effective October 1, 2023.

Section 3, Ch. 552, L. 2023, in (1) in last sentence substituted "5 days" for "10 days". Amendment effective October 1, 2023.

Section 9, Ch. 567, L. 2023, in (1) substituted "61-8-389" for "61-8-301(4)", after "reckless endangerment of emergency personnel" inserted "or reckless endangerment of highway workers", and substituted "61-8-389" for "61-8-346"; in (2) after "reckless endangerment of emergency personnel" inserted "or reckless endangerment of highway workers" and substituted "under 61-8-389" for "under 61-8-346"; and made minor changes in style. Amendment effective October 1, 2023.

2021 Amendment: Chapter 385 in (1) near middle of first sentence inserted "or convicted of reckless endangerment of emergency personnel under 61-8-346", near end of first sentence substituted "not less than $100 or more than $500" for "not less than $25 or more than $300", and near end of second sentence substituted "not less than $500 or more than $1,000" for "not less than $50 or more than $500"; in (2) near beginning inserted "or convicted of reckless endangerment of emergency personnel under 61-8-346"; and made minor changes in style. Amendment effective October 1, 2021.

2007 Amendment: Chapter 44 in (2) deleted former second sentence that read: "Section 61-8-351(8) does not apply to a prosecution under 61-8-301(1)(b) that is punishable under this subsection"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 417 in (2) in second sentence near beginning substituted "61-8-351(8)" for "61-8-351(7)". Amendment effective April 25, 2005.

2003 Amendments — Composite Section: Chapter 46 in (2) at beginning of second sentence substituted "61-8-351(7)" for "61-8-351(6)". Amendment effective October 1, 2003.

Chapter 352 in (1) near middle of first sentence after "61-8-301(1)(a) or" substituted "(1)(b)" for "(1)(c)" and after "highway" substituted "worker under 61-8-301(4)" for "workers under 61-8-315"; deleted former (2) that read: "(2) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for a term of not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than $300 or more than $500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added, at the discretion of the court, a fine of not less than $500 or more than $1,000"; in (2) near end substituted "61-8-301(1)(b)" for "61-8-301(1)(c)"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 379 in (1) near beginning of first sentence substituted "61-8-301(1)(a) or (1)(b)" for "61-8-301(1)(a) or (1)(c)"; deleted former (2) that read: "(2) Except as provided in subsection (3), a person convicted of reckless driving under 61-8-301(1)(b) shall be punished by imprisonment in the county or city jail for a term of not less than 10 days or more than 6 months to which may be added, at the discretion of the court, a fine of not less than $300 or more than $500. On a second or subsequent conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added, at the discretion of the court, a fine of not less than $500 or more than $1,000"; near end of (2) substituted "61-8-301(1)(b)" for "61-8-301(1)(c)"; and made minor changes in style. Amendment effective October 1, 2003.

2001 Amendment: Chapter 561 at beginning of (1) and (2) inserted exception clause; inserted (3) establishing the penalty for a person who is convicted of reckless driving under 61-8-301 and whose offense results in the death or serious bodily injury of another person; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 473 near beginning of first sentence in (1), after "(1)(c)", inserted "or convicted of reckless endangerment of highway workers under 61-8-315"; and made minor changes in style. Amendment effective May 1, 1997.

Amendment Not Codified: Section 7, Ch. 473, L. 1997, provided: "[Section 4(3)] terminates 6 months following [the effective date of this act]." Effective May 1, 1997. The uncodified amendment inserted (3) providing for a 6-month grace period beginning May 1, 1997, in which peace officer would issue warning citations for endangering highway worker.

1985 Amendment: In (1) inserted reference to 61-8-301(1)(c).

61-8-716. Careless driving — penalty.

Compiler's Comments

2001 Amendment: Chapter 561 in (1) near middle inserted exception clause; inserted (2) establishing the penalty for a person whose careless driving violation results in the death or serious bodily injury of another person; and made minor changes in style. Amendment effective October 1, 2001.

61-8-719. Penalty for leaving vehicle on public property.

Compiler's Comments

Severability Clause: Section 10, Ch. 288, L. 1967, was a severability clause.

61-8-720. Controlled-access violation — penalty.

Compiler's Comments

1995 Amendment: Chapter 134 after "$100" deleted "or by imprisonment in the city or county jail for not less than 5 days or more than 90 days or by both fine and imprisonment"; and made minor changes in style.

61-8-723. Offenses committed by persons under 18 years of age.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Former Law — Minor Operating Bicycle: Section 61-12-601, the predecessor to this section that was repealed upon this section's enactment, did not apply to traffic offenses involving the use of a bicycle, as defined in 61-1-123 (now repealed — see 61-8-102 for definitions), by a person under the age of 18 years because the section was concerned only with unlawful operation of a motor vehicle. 42 A.G. Op. 3 (1987).

61-8-724. No-passing zone violation — penalty.

Compiler's Comments

Effective Date: Section 3, Ch. 334, L. 1995, provided that this section is effective on passage and approval. Approved April 7, 1995.

61-8-725. Penalty for violation of speed limits — no record for certain violations.

Compiler's Comments

2015 Amendment: Chapter 395 in (1) substituted "A person shall be fined for violating the maximum speed limit" for "A person violating the speed limit imposed pursuant to 61-8-303 shall be fined"; inserted (1)(a) providing a schedule of fines for certain violations; in (1)(b) at beginning inserted "for a violation of 61-8-303(1)(b), 61-8-309, or 61-8-312", substituted "70" for "40", substituted "120" for "70", and substituted "200" for "100"; in (2)(a) substituted "subsection (2)(b) or (4)" for "subsection (4)"; inserted (2)(b) regarding exceeding 90 miles an hour; and made minor changes in style. Amendment effective October 1, 2015.

2013 Amendment: Chapter 393 inserted (5) concerning special speed zone violations. Amendment effective May 6, 2013.

2005 Amendment: Chapter 428 in (2) near middle after "61-8-711 and" inserted exception clause; and inserted (4) providing that recordkeeping restrictions do not apply to speed limit violations committed by a Montana resident in another state whose violation or conviction was reported to the department by a court or the licensing authority in the state in which the violation occurred or by a person who holds a commercial driver's license regardless of whether or not the violation occurred while the person was operating a commercial motor vehicle. Amendment effective October 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

1999 Special Session Amendment: Chapter 4 in (1) at beginning deleted "Subject to subsection (2)" and after "61-8-303" deleted "is guilty of a misdemeanor and"; in (2) after "61-8-303" inserted "is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and"; inserted (3) concerning exemption from surcharge in 3-1-317; and made minor changes in style. Amendment effective June 22, 1999.

Severability: Section 8, Ch. 43, L. 1999, was a severability clause.

Effective Date: Section 11, Ch. 43, L. 1999, provided: "[This act] is effective May 28, 1999."

61-8-726. Violating speed limit in school zone — penalty doubled — disposition of fines.

Compiler's Comments

2009 Amendment: Chapter 83 in (1) near beginning of first sentence after "limit" substituted "in a school zone" for "near a school"; in (2)(b) near end before "penalty" inserted "school zone, the speed limit, and the"; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: This section is effective October 1, 2005.

Part 8
Commercial Motor Vehicle Safety

61-8-801. Purpose.

Compiler's Comments

2011 Amendment: Chapter 296 deleted former (3) that read: "As used in this part, "hazardous material" means a substance or material, defined or listed as a hazardous material in Title 49, Code of Federal Regulations, in a quantity and form that may pose an unreasonable risk to health and safety or property when transported." Amendment effective January 30, 2012.

2005 Amendment: Chapter 542 inserted (3) defining hazardous material; and made minor changes in style. Amendment effective January 1, 2006.

2001 Amendment: Chapter 207 near end of (1) after "are" deleted "determined to be"; and in (1)(d) after "commercial" substituted "driver licensing" for "motor vehicle operator's endorsements" and after "Public Law 99-570" inserted "as amended". Amendment effective October 1, 2001.

Applicability: Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

61-8-802. Suspension of commercial driver's license — disqualification — major offenses.

Compiler's Comments

2005 Amendment: Chapter 428 in (1) at end after "license" inserted "and disqualify the person from operating a commercial motor vehicle"; in (2) near beginning after "consent law" inserted "in this or any other jurisdiction, a test result under an implied consent law in any other jurisdiction that shows an alcohol concentration of 0.08 or more while operating a noncommercial motor vehicle or an alcohol concentration of 0.04 or more while operating a commercial motor vehicle" and near end after "conviction" substituted "in this or any other jurisdiction of" for "of or forfeiture of bail not vacated for"; and made minor changes in style. Amendment effective October 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2003 Amendment — Coordination: Chapter 428 in (1) at beginning of introductory clause substituted "Upon receipt of a report of a major offense committed by a person who holds a commercial driver's license or a person required to have a commercial driver's license" for "Except as provided in subsection (3), if the department receives notice from a court or from another licensing jurisdiction that a person holding a commercial driver's license has been convicted of any offense or conduct requiring driver disqualification under 49 U.S.C. 31310 or 49 CFR 383.51"; in (1)(a) at beginning after "upon" substituted "receipt of a report of a first major offense" for "notice of a first conviction" and near middle after "if the" inserted "major"; in (1)(b) at beginning after "upon" substituted "receipt of a report of a second or subsequent major offense arising from an incident that is separate from the prior major offense" for "notice of a second conviction of the same offense or conduct" and after "subject to" inserted "department rules adopted to implement"; in (2) at beginning of introductory clause substituted "For purposes of this section, the term "major offense" refers to a refusal to take a test under an implied consent law or" for "The department is required by federal law to suspend a person's commercial driver's license upon the report of", after "conviction of" inserted "or forfeiture of bail not vacated for", and after "offenses" deleted "or conduct"; in (2)(a) at beginning substituted "driving or being in actual physical control of a" for "operating a commercial" and after "alcohol" substituted "a drug, or a combination of the two" for "or a controlled substance"; inserted (2)(b) including driving with certain alcohol concentrations in definition of major offense; in (2)(c) at end after "involving" substituted "death or personal injury or failing to give information and render aid" for "a commercial motor vehicle operated by the person"; in (2)(d) at beginning after "using a" deleted "commercial"; deleted former (2)(f) that read: "(f) committing one of the following railroad grade crossing violations:

(i) for drivers who are not required to always stop:

(A) failing to slow down and check that the tracks are clear of an approaching train; or

(B) failing to stop before reaching the crossing if the tracks are not clear;

(ii) for drivers who are always required to stop, failing to stop before driving onto the crossing;

(iii) for all drivers:

(A) failing to have sufficient space to drive completely through the crossing without stopping;

(B) failing to obey a traffic control device or the directions of an enforcement official at the crossing; or

(C) failing to negotiate a crossing because of insufficient undercarriage clearance"; deleted former (3) that read: "(3) The department shall suspend the commercial driver's license of a person who is convicted of a railroad grade crossing violation for:

(a) 60 days upon a first conviction;

(b) 120 days upon a second conviction within a 3-year period; or

(c) 1 year upon a third or subsequent conviction within a 3-year period"; deleted former (4) that read: "(4) A person whose commercial driver's license is suspended under this section:

(a) is not eligible for a restricted probationary driver's license; and

(b) may not operate a commercial motor vehicle until the suspension is lifted and the person's commercial driver's license is restored"; and made minor changes in style. Amendment effective October 1, 2003.

Section 22, Ch. 428, L. 2003, a coordination section, amended this section in (2)(b)(i) by substituting "0.08" for "0.10".

Applicability: Section 23(3), Ch. 428, L. 2003, provided that this section applies to conduct or offenses that occur on or after October 1, 2003.

2001 Amendment: Chapter 207 at beginning of (1) inserted exception clause, inserted language requiring department to suspend license upon notice of conviction or disqualifying conduct from court or other licensing jurisdiction, and after "license" deleted "of any commercial operator if the department's records or information received from federal authorities shows that the person is disqualified under federal law"; inserted (1)(a) requiring 1-year suspension upon notice of first conviction or 3 years for offense while transporting placardable hazardous material; inserted (1)(b) requiring life suspension upon notice of second conviction of same offense, subject to federal rule providing for reinstatement upon completion of 10-year suspension period; substituted language in (2) outlining offenses or conduct requiring suspension of license under federal law for former (2) that read: "(2) A commercial driver's license suspended pursuant to this section remains suspended for the duration of the period of disqualification under federal regulations"; inserted (3) outlining length of suspension of license for convictions of railroad grade crossing violations; at end of (4) after "section" deleted "due to disqualification"; in (4)(a) substituted "is not eligible for a restricted probationary driver's license" for "may appeal the suspension as provided in 61-5-211"; in (4)(b) after "commercial" inserted "motor"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

1993 Amendment: Chapter 195 throughout section substituted "commercial driver's license" for "commercial vehicle operator's endorsement"; and made minor changes in style.

61-8-803. Suspension of commercial driver's license — serious traffic violations.

Compiler's Comments

2021 Amendment: Chapter 385 in (2)(b) at end inserted "reckless endangerment of a highway worker, or reckless endangerment of emergency personnel"; and made minor changes in style. Amendment effective October 1, 2021.

2011 Amendment: Chapter 296 inserted (2)(i) relating to sending text messages; and made minor changes in style. Amendment effective January 1, 2012.

2005 Amendment: Chapter 428 inserted (3) providing that a person is considered to have committed a second or subsequent serious traffic violation if less than 3 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction. Amendment effective October 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2003 Amendment: Chapter 428 in (1) near middle of introductory clause after "holding" inserted "or required to hold"; and in (2)(h) at end substituted "without the proper class of commercial driver's license or endorsements, or both, for the specific vehicle type or types being operated or for the passengers or type or types of cargo being transported" for "when the minimum testing standards for the class of vehicle operated or the type of cargo carried have not been satisfied by the individual". Amendment effective October 1, 2003.

Applicability: Section 23(3), Ch. 428, L. 2003, provided that this section applies to conduct or offenses that occur on or after October 1, 2003.

2001 Amendment: Chapter 207 inserted in definition of serious traffic violation (2)(f) through (2)(h) providing that serious traffic violation includes conviction for operating commercial motor vehicle without commercial driver's license, operating commercial motor vehicle without possessing commercial license or refusing to display license upon request, and operating commercial motor vehicle when minimum testing standards for vehicle class or cargo type not satisfied; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

1997 Amendment: Chapter 105 substituted current text concerning suspension of commercial driver's license for former text that read: "If a commercial motor vehicle operator's record shows that the operator has been convicted of a serious traffic violation as defined in federal regulations, the department shall suspend the commercial driver's license:

(1) for 60 days if the operator was convicted of two hazardous moving violations within 3 years; or

(2) for 120 days if the operator was convicted of three hazardous moving violations within 3 years."

1993 Amendment: Chapter 195 at end of introductory clause substituted "commercial driver's license" for "commercial vehicle operator's endorsement"; and made minor changes in style.

61-8-804. Suspension of commercial driver's license — felony involving a controlled substance while driving a commercial vehicle.

Compiler's Comments

2003 Amendment: Chapter 428 near beginning after "that a" substituted "person who holds or is required to hold a commercial driver's license" for "commercial motor vehicle operator", after "commercial" inserted "or noncommercial", near end after "suspend the" substituted "person's" for "operator's", and at end after "life" inserted "and may not reinstate the license at any time for any reason". Amendment effective October 1, 2003.

Applicability: Section 23(3), Ch. 428, L. 2003, provided that this section applies to conduct or offenses that occur on or after October 1, 2003.

1993 Amendment: Chapter 195 at end substituted "commercial driver's license" for "commercial vehicle operator's endorsement"; and made minor changes in style.

61-8-805. Suspension for operating commercial vehicle with alcohol concentration of 0.04 or more — hearing.

Compiler's Comments

2021 Amendment: Chapter 498 in (4) substituted "61-8-1002(1)(a), (1)(b), (1)(c), (1)(d), or (1)(e)" for "61-8-401 or 61-8-406". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2003 Amendment: Chapter 428 in (4) near middle after "vehicle" inserted "or a prior refusal to be tested under an implied consent law". Amendment effective October 1, 2003.

Applicability: Section 23(3), Ch. 428, L. 2003, provided that this section applies to conduct or offenses that occur on or after October 1, 2003.

2001 Amendment: Chapter 207 inserted (4) providing that conviction of violation of 61-8-401 and 61-8-406 while operating commercial motor vehicle is to be treated as a prior report of 0.04 alcohol concentration and used in determining license suspension length. Amendment effective October 1, 2001.

Applicability: Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

1997 Amendments — Composite: Chapter 88 in third sentence in (1), after "receives", substituted "a report certified under penalty of law" for "a sworn report".

Chapter 105 in (1) inserted second sentence concerning seizure of license and in third sentence substituted "certified report" for "sworn report"; in (1)(a), near middle, substituted "violation" for "offense" and after "transporting" inserted "placardable"; at end of (1)(b) substituted "subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension" for "unless a restricted license or endorsement is allowed by federal rules governing commercial drivers"; deleted former (4) that read: "(4) The department shall immediately notify in writing any person whose commercial driver's license is suspended under this section. The person may file a petition within 30 days after the notice is given for a hearing in the matter in the district court in the county in which the finding of alcohol concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county in which the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether the person was driving or had actual physical control of a commercial motor vehicle while the person's alcohol concentration was 0.04 or more. The court shall determine whether the petitioner is entitled to a commercial driver's license or is subject to suspension as provided in this section. The provisions of 61-8-404 apply to any proceedings under this section"; and made minor changes in style.

Style changes in the chapters were slightly different. In each case, the codifier chose the more appropriate.

1993 Amendment: Chapter 195 throughout section substituted "commercial driver's license" for "commercial vehicle operator's endorsement"; and made minor changes in style.

1991 Amendments: Chapter 563 in (1)(b) increased the suspension period from 10 years to life and at end inserted "unless a restricted license or endorsement is allowed by federal rules governing commercial drivers"; and in (2) substituted "operator has any measured amount or detected presence of alcohol in his body while operating a commercial motor vehicle" for "operator's blood alcohol concentration is 0.04 or more".

Chapter 789 in two places in (1), in (2) (rendered void by Ch. 563), and in two places in (4), before "alcohol concentration", deleted "blood"; and in (4), in second sentence after "person", deleted "suspended".

61-8-806. Blood and breath tests of commercial vehicle operators — procedure — suspension.

Compiler's Comments

2003 Amendment: Chapter 428 in (5)(b) near middle of first sentence after "subject to" inserted "department rules adopted to implement" and inserted second sentence providing that the conviction has the same effect as a previous testing refusal if the person has a prior conviction of a major offense arising from a separate incident. Amendment effective October 1, 2003.

Applicability: Section 23(3), Ch. 428, L. 2003, provided that this section applies to conduct or offenses that occur on or after October 1, 2003.

1997 Amendments: Chapter 88 throughout section substituted references to one or more tests for references to a test; in first sentence in (1), after "consent", deleted "subject to the provisions of 61-8-401 and 61-8-805" and after "breath" deleted "or urine" and in second sentence, after "breath", deleted "or urine"; in second sentence in (3), after "department", substituted "along with a report certified under penalty of law" for "along with a sworn report"; and made minor changes in style.

Chapter 105 in (1), in first sentence after "consent", deleted "subject to the provisions of 61-8-401 and 61-8-805" and at end of second sentence inserted "and may request that the person submit to a preliminary alcohol screening test before a blood, breath, or urine test is taken"; in (3), at beginning of first sentence, substituted "If a person refuses" for "If a commercial motor vehicle operator who is a resident of Montana refuses upon the request of a peace officer" and near middle, after "along with a", substituted "report certified under penalty of law" for "sworn report"; in (4), at end, substituted "5-day noncommercial driving permit effective 12 hours after the time of issuance, and shall provide the person with written notice of the license suspension and the right to a hearing under 61-8-808" for "The temporary driving permit is valid for 72 hours after issuance"; at beginning of (5) substituted "Upon receipt of the officer's certified report" for "If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3)"; in (5)(a), after "transporting", inserted "placardable"; at end of (5)(b) substituted "subject to federal rules allowing for driver rehabilitation and license reinstatement, if otherwise eligible, upon service of a minimum period of 10 years' suspension" for "with no provision for a restricted probationary license or endorsement unless allowed by federal rules governing commercial drivers"; deleted former (6) that read: "(6) A nonresident commercial motor vehicle operator who refuses to submit to a test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be given a temporary driving permit as provided in subsection (4)"; and made minor changes in style.

1995 Amendment: Chapter 53 in (1), near middle of first sentence after "measured", inserted "or detected" and at end substituted "having any measurable or detectable alcohol concentration" for "the person's blood alcohol concentration was 0.04 or more"; in (3), near end of second sentence, substituted "having any measurable or detectable alcohol concentration" for "alcohol concentration of 0.04 or more"; and made minor changes in style. Amendment effective February 9, 1995.

1993 Amendment: Chapter 195 in (3), near beginning of second sentence, substituted "person's commercial driver's license" for "person's driver's license showing the commercial vehicle operator's endorsement"; in (4) substituted "resident's commercial driver's license" for "resident's driver's license showing a commercial vehicle operator's endorsement" and substituted "temporary noncommercial driving permit" for "temporary driving permit without the commercial vehicle operator's endorsement"; at end of (5) substituted "commercial driver's license" for "commercial vehicle operator's endorsement"; and made minor changes in style.

1991 Amendments: Chapter 563 in (5)(b) increased suspension period from 10 years to life and at end inserted "unless allowed by federal rules governing commercial drivers".

Chapter 789 throughout section, before "test", deleted "chemical" and before "alcohol concentration" deleted "blood"; in (1) substituted "any measured amount of alcohol in his body" for "the alcohol content of his blood"; in (6) substituted "must be given" for "may receive"; and made minor changes in style.

61-8-807. Administration of tests.

Compiler's Comments

2021 Amendment: Chapter 498 substituted "61-8-1019" for "61-8-405". Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2005 Amendment: Chapter 428 deleted former (2) that read: "(2) The department may authorize a private individual, institution, or corporation to administer required driving examinations that would otherwise be administered by the department if they have been officially trained and certified to conduct them by the department and the third party has entered into an agreement with the department that complies with the requirements of 49 CFR part 383.75"; and made minor changes in style. Amendment effective October 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

61-8-808. Right of appeal to court.

Compiler's Comments

1997 Amendment: Chapter 105 substituted (1) concerning challenge of suspension of license for former text that read: "The department shall immediately notify in writing any person whose commercial driver's license has been suspended under the provisions of 61-8-806, and the person may, within 30 days after receipt of notification, file a petition for a hearing on the matter in the district court in the county where the person resides or in the district court in the county where the finding of refusal was made"; inserted (3)(a) concerning suspension under 61-8-805; at beginning of (3)(b) inserted "with regard to a suspension under 61-8-806"; and made minor changes in style.

1995 Amendment: Chapter 53 near end of fourth sentence substituted "any measurable or detectable alcohol concentration" for "a blood alcohol concentration of 0.04 or more"; and made minor changes in style. Amendment effective February 9, 1995.

1993 Amendment: Chapter 195 near beginning and end substituted "commercial driver's license" for "commercial vehicle operator's endorsement".

61-8-812. Operation of out-of-service vehicle — criminal and civil penalties — suspension of commercial driver's license.

Compiler's Comments

2021 Amendment: Chapter 535 in (3)(b) at end deleted "or in the first judicial district"; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 323 in (3)(a) at end substituted "a civil penalty not to exceed $2,985 for a first offense and a civil penalty of $5,970 for a second or subsequent offense" for "a civil penalty of not less than $1,100 or more than $2,750". Amendment effective October 1, 2017.

2011 Amendment: Chapter 296 in (4)(b) substituted "2 years" for "1 year". Amendment effective January 1, 2012.

2005 Amendment: Chapter 428 inserted (1) through (3) prohibiting and establishing penalties for the operation of a commercial vehicle during a period of a state or federal out-of-service order; and made minor changes in style. Amendment effective October 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

1997 Amendment: Chapter 105 substituted current text concerning suspension of license upon receipt of notice from another jurisdiction for former text that read: "(1) Upon receipt of information that a commercial motor vehicle operator has been convicted of a violation of operating a commercial motor vehicle that has been placed out of service, the department shall suspend the operator's commercial driver's license for 6 months for a first conviction and for 1 year for a second or subsequent conviction.

(2) A temporary or probationary commercial driver's license may not be issued while a commercial driver's license is suspended under subsection (1)."

61-8-813. Suspension of commercial driver's license — railroad crossing offenses.

Compiler's Comments

2009 Amendment: Chapter 256 in (1)(a)(i) after "train" inserted "or other on-track equipment". Amendment effective October 1, 2009.

Effective Date: This section is effective October 1, 2003.

Applicability: Section 23(3), Ch. 428, L. 2003, provided that this section applies to conduct or offenses that occur on or after October 1, 2003.

61-8-814. Probationary driver's license ineligibility.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Applicability: Section 23(3), Ch. 428, L. 2003, provided that this section applies to conduct or offenses that occur on or after October 1, 2003.

61-8-815. Employer not to permit operation of commercial motor vehicle in violation of state law or federal regulation — criminal and civil penalties.

Compiler's Comments

2021 Amendment: Chapter 535 in (3)(c) at end deleted "or in the first judicial district". Amendment effective October 1, 2021.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Effective Date: Section 40(1), Ch. 428, L. 2005, provided that this section is effective October 1, 2005.

61-8-816. Commencement of commercial driver's license suspension or disqualification.

Compiler's Comments

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Effective Date: Section 40(1), Ch. 428, L. 2005, provided that this section is effective October 1, 2005.

61-8-817. Notification to other states of traffic violations.

Compiler's Comments

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

Effective Date: Section 40(1), Ch. 428, L. 2005, provided that this section is effective October 1, 2005.

61-8-818. Permanent revocation of commercial driver's license — felony involving use of commercial motor vehicle for trafficking of persons.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 35, Ch. 167, L. 2023. Amendment effective April 19, 2023.

Severability: Section 38, Ch. 167, L. 2023, was a severability clause.

Effective Date: Section 14, Ch. 445, L. 2019, provided that this section is effective on passage and approval. Approved May 10, 2019.

Part 9
Professional Tow Trucks

Part Compiler's Comments

1995 Statement of Intent: The statement of intent attached to Ch. 283, L. 1995, provided: "(1) A statement of intent is required for this bill because it requires the department of justice to adopt rules implementing the provisions of [sections 1 through 11] [Title 61, ch. 8, part 9]. At a minimum, the rules must address:

(a) the handling of wrecked, disabled, or abandoned motor vehicles carrying hazardous materials;

(b) the classification of noncommercially manufactured or modified tow truck equipment;

(c) the procedure for hearing disputes over the classification of noncommercially manufactured tow truck equipment;

(d) the protection of property taken into custody and the reclaiming of that property;

(e) inspection fees;

(f) the admission, suspension, or termination of tow truck operators on the law enforcement rotation system; and

(g) the certification of inspectors.

(2) It is the intent of the legislature that the Montana highway patrol be charged with the administration of [sections 1 through 11] [Title 61, ch. 8, part 9]."

Effective Date: Section 19, Ch. 283, L. 1995, provided: "[This act] [sections 61-8-901 through 61-8-911] is effective on passage and approval." Approved March 29, 1995.

61-8-903. Definitions.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 136 in definition of rotation area deleted second sentence that read: "For class C tow truck operators, a rotation area includes at least the entire county in which the operation is located but may be expanded to other counties." Amendment effective October 1, 2011.

Chapter 143 in definition of commercial tow truck operator substituted "an individual, partnership, corporation, or other business entity" for "a person, firm, or other entity"; inserted definition of letter of appointment; in definition of qualified tow truck driver inserted (a)(iv) relating to a letter of appointment; deleted definition that read ""Satellite operation" means a second or subsequent operation in another rotation area"; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 88 inserted definitions of boom, rotation area, and satellite operation; in definition of qualified tow truck operator inserted (a)(iii) requiring operator to meet requirements of subsection (5)(b), inserted (b)(i) requiring operator that is a firm or other entity to have at least 75% of employees operating tow truck to hold certification from nationally recognized certification program or have a minimum of 1 year of experience in Montana towing business, and inserted (b)(ii) requiring individual operator to hold certification from nationally recognized certification program or have a minimum of 1 year of experience in Montana towing business; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 23.6.101 Definitions.

61-8-904. Prohibition — exception.

Compiler's Comments

2011 Amendments — Composite Section: Chapter 80 in (3) at beginning inserted exception clause; and made minor changes in style. Amendment effective October 1, 2011.

Chapter 143 in (3) inserted reference to 61-8-920; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 88 at end of (2) substituted "this part" for "61-8-905 through 61-8-907". Amendment effective October 1, 2003.

61-8-905. Classification standards.

Compiler's Comments

2003 Amendment: Chapter 88 in (1)(a), (1)(b), and (1)(c) after "manufacturer's" inserted "boom or combined boom"; at beginning of first sentence of (1)(d) after "Class D" deleted "is class A, B, or C" and at end after "ratings" substituted "of 10,000 pounds and over" for "ranging from 10,000 pounds to 30,000 pounds" and inserted third sentence providing that class D includes any piece of towing equipment without a boom; deleted former (2)(b) and (2)(c) that read: "(b) (i) The department shall establish a committee composed of members selected from the:

(A) tow truck industry;

(B) the motor carrier services division of the department of transportation; and

(C) the highway patrol.

(ii) The committee is responsible for hearing disputes that may arise regarding the classification of noncommercially manufactured or modified tow truck equipment.

(iii) The department shall establish by rule a procedure for hearing a dispute.

(c) After October 1, 1995"; in (3) inserted second sentence requiring modifications to classified equipment to be recertified; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 23.6.103 Classification of tow truck equipment.

61-8-906. Liability insurance — storage requirements.

Compiler's Comments

2009 Amendment: Chapter 224 in (2) at end substituted "department" for "public service commission". Amendment effective October 1, 2009.

2005 Amendment: Chapter 130 in (1)(c) at beginning after "garage" inserted "keepers legal liability insurance". Amendment effective October 1, 2005.

2003 Amendments — Composite Section: Chapter 88 in (1)(b) inserted "in an amount not less than $20,000"; in (1)(c) after "keepers" inserted "or on-hook" and after "insurance" inserted "in an amount not less than $50,000"; inserted (2) requiring commercial tow truck operator to provide proof of insurance to public service commission; inserted (3)(e) requiring tow truck operator who provides fenced lot to construct 6-foot high chain link fence or fence constructed of materials sufficient to deter trespassing or vandalism; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 114 in (1)(c) after "garage" deleted "keepers legal". Amendment effective October 1, 2003.

Administrative Rules

ARM 23.6.108 Vehicle tow and storage requirements — insurance.

61-8-907. Inspection — fees — decal.

Compiler's Comments

2017 Amendment: Chapter 267 in (3) at end substituted "highway nonrestricted account provided for in 15-70-125" for "state highway account in the state special revenue fund". Amendment effective July 1, 2017.

2003 Amendment: Chapter 88 in first sentence in (3) after "establish" substituted "inspection and decal fees" for "an inspection fee" and at end inserted "and the decal" and in second sentence inserted "for the inspection and decal"; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 23.6.109 Safety inspection process.

ARM 23.6.110 General tow truck equipment safety standards.

61-8-908. State law enforcement rotation system — letter of appointment — local government rotation system.

Compiler's Comments

2011 Amendment: Chapter 143 in (1) in first sentence at end inserted "and receive a letter of appointment under 61-8-920"; inserted (2)(d) relating to a letter of appointment; inserted (3) and (4) relating to display of name, location, and numbers and charges for towing service; deleted former (3) through (5) that read: "(3) (a) If more than one qualified tow truck operator using a single storage or impoundment facility applies to be placed on the rotation system, the operators shall provide to the complaint resolution committee established in 61-8-912 information regarding each operator's individual accounting system, the information required in subsection (2), and proof that each operator has the insurance required in 61-8-906.

(b) Based on the information provided to it pursuant to subsection (3)(a), the complaint resolution committee shall, upon written request, verify that operators using a single storage or impoundment facility applying to be placed on the rotation system have individual accounting systems, adequate identification information, and individual insurance policies.

(4) Only one qualified tow truck operation for each owner may be included on a rotation area list.

(5) (a) An owner of a qualified tow truck operation who has an existing tow truck operation in a rotation area separate from the rotation area where the owner is participating in the rotation system may establish a satellite operation to be included on a rotation area list if:

(i) the owner has a business office in the second rotation area;

(ii) the business office is open and accessible from 8 a.m. to 5 p.m. Monday through Friday;

(iii) the facilities have a secure yard as provided in 61-8-906(3)(e); and

(iv) the tow truck operation has a local 24-hour phone number.

(b) Any charges for towing service from the satellite operation must be calculated from the satellite operation area and not the area of the owner's base operation"; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 88 in (1) after "establish" inserted "and maintain"; inserted (2) outlining items tow truck operator participating in rotation system must show upon request of law enforcement officer; inserted (3) requiring one or more tow truck operators using single storage or impoundment facility who apply for placement on rotation system to provide accounting and identification information and proof of insurance and requiring committee, upon written request, to verify accounting information, identification, and operator's insurance policies; inserted (4) allowing only one qualified tow truck operation for each owner to be included on rotation area list; inserted (5) outlining when owner of tow truck operation with existing tow truck operation in area separate from the rotation area where owner is participating in rotation system may establish satellite operation for inclusion on rotation area list; at end of (9) substituted "this part" for "61-8-905 through 61-8-907"; in (10) at end of first sentence inserted "that complies with the provisions of this part"; inserted (11) requiring highway patrol or local law enforcement to provide record of rotation system calls for all tow truck classes upon request; inserted (12) requiring complaints about rotation system to be referred in writing to tow truck complaint resolution committee; and made minor changes in style. Amendment effective October 1, 2003.

Administrative Rules

ARM 23.6.105 Tow truck complaint resolution committee — establishment.
ARM 23.6.106 Tow truck complaint resolution committee — jurisdiction and procedure.
ARM 23.6.113 State law enforcement rotation system — admission and suspension.

61-8-910. Violation — penalty.

Compiler's Comments

2003 Amendment: Chapter 88 substituted "this part" for "61-8-906 or 61-8-907". Amendment effective October 1, 2003.

61-8-911. Rulemaking authority.

Administrative Rules

Title 23, chapter 6, subchapter 1, ARM Tow trucks.

61-8-912. Tow truck complaint resolution committee — membership — responsibilities.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Administrative Rules

ARM 23.6.105 Tow truck complaint resolution committee — establishment.
ARM 23.6.106 Tow truck complaint resolution committee — jurisdiction and procedure.

61-8-913. Notice to owner — payment of removal and storage costs — request for reissuance of certificate of title.

Compiler's Comments

2013 Amendment: Chapter 185 in (3) in first sentence near beginning after "have not been paid within" substituted "30 days" for "60 days". Amendment effective October 1, 2013.

2005 Amendment: Chapter 130 in (3) in two places and in (4) in three places after "certificate of" substituted "title" for "ownership". Amendment effective October 1, 2005.

Effective Date: This section is effective October 1, 2003.

61-8-920. Rotation system — letter of appointment — requirements.

Compiler's Comments

Effective Date: This section is effective October 1, 2011.

Part 10
Driving Under Influence of Alcohol or Drugs

Part Compiler's Comments

Effective Date: Section 47, Ch. 498, L. 2021, provided: "[This act] is effective January 1, 2022."

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 46, Ch. 498, L. 2021, was a saving clause.

Part Administrative Rules

ARM 23.3.954 Low breath volume medical exemption.
ARM 23.3.992 Imposition of administrative fee for alcohol or drug test refusal.
ARM 23.3.993 Payment.
ARM 23.3.994 Fees deposited in state special revenue fund.
Title 23, chapter 4, subchapter 2, ARM Drug and/or alcohol analysis.
Title 37, chapter 27, subchapter 5, ARM Chemical dependency educational courses.

Part Case Notes

DECISIONS PRIOR TO 2021 GENERAL REVISION

Imposition of Mandatory Minimum Fine for DUI Per Se Not Exercise of Discretion — COVID-19 Stimulus Funds Are Protected Payment, But Municipal Court Did Not Require Defendant to Use Stimulus Funds to Pay Required Fine — No Error by Municipal Court. Whitefish v. Curran, 2023 MT 118, 412 Mont. 499, 531 P.3d 547.

Sentencing Courts Must Impose Mandatory Minimum Punishments But Retain Discretion Regarding How Defendants May Satisfy Punishment After Imposed — Failure of Municipal Court to Consider Alternate Method for Indigent Defendant to Satisfy Minimum Fine for DUI Per Se Was Abuse of Discretion. Whitefish v. Curran, 2023 MT 118, 412 Mont. 499, 531 P.3d 547.

Warrantless Investigatory Stop Unlawfully Prolonged — Field Sobriety Testing More Than 20 Minutes Into Investigatory Stop — Community Care Doctrine — Subsequent Drug Investigation Invalid — Scope of Pat Down — District Court Decision Overturned. St. v. Zeimer, 2022 MT 96, 408 Mont. 433, 510 P.3d 100.

Prior Conviction Not Constitutionally Infirm for Purposes of Enhancement of Current Conviction — Counsel Present When Defendant Absent — Omnibus Order Signed by Defendant. St. v. Wellknown, 2022 MT 95, 408 Mont. 411, 510 P.3d 84.

Record Sufficient to Support District Court's Ruling of State's Race-Neutral Explanation Not Pretextual — Potential Juror Excluded Based on Prior History With Prosecutor's Office — Abridged Record. St. v. Wellknown, 2022 MT 95, 408 Mont. 411, 510 P.3d 84.

Audio-Video Testimony Violated Defendant's Constitutional Right to Confront Witness: The state moved the Justice Court to allow a toxicologist who conducted the blood alcohol concentration toxicology tests on the defendant's blood and prepared the toxicology report to testify at trial via audio-video conferencing. The state acknowledged that the testimony was material but argued that requiring the toxicologist to travel from Missoula to Helena for brief testimony would be impracticable due to distance, expense, and timing. The state also argued that the trip would be impracticable given the backlog of work facing the crime lab. The defendant objected, arguing that it would violate his constitutional right to confront testimonial witnesses under Art. II, sec. 24, Mont. Const., and the sixth amendment to the U.S. Constitution. The Justice Court granted the state's motion, and the toxicologist, who testified via audio-video conferencing, was sworn in. The jury and the defendant could see and hear the toxicologist, and both parties examined him in real time. The toxicologist testified that the defendant's blood alcohol content measured more than the legal limit, and the defendant was convicted by a jury for driving with a blood alcohol concentration exceeding the legal limit. On appeal, the Supreme Court reversed, holding that the Justice Court could not constitutionally allow the state's expert witness to testify via two-way video without an adequate showing that the video appearance was necessary to further an important public policy. St. v. Bailey, 2021 MT 157, 404 Mont. 384, 489 P.3d 889.

Defendant's Car Crash Supported Trooper's Expansion into DUI Investigation — Sufficient Particularized Suspicion Present: The state charged the defendant with driving under the influence or, in the alternative, operating a noncommercial vehicle with an alcohol concentration of 0.08% or greater. In Justice Court, the defendant filed a motion to suppress and dismiss, arguing that the trooper unlawfully seized him, subjected him to a custodial interrogation without first advising him of his Miranda rights, and did not have sufficient particularized suspicion to expand a crash investigation into a DUI investigation. The Justice Court denied the motion and the Supreme Court affirmed, reasoning there were articulable, objective facts supporting the trooper's particularized suspicion that the defendant was operating his vehicle under the influence of alcohol, and the trooper properly expanded the crash investigation into a DUI investigation. St. v. Bailey, 2021 MT 157, 404 Mont. 384, 489 P.3d 889.

Unanimity Instruction Not Required — Limit to Specificity: Actual physical control of a vehicle includes but is not limited to driving, pushing, coasting, or parking a vehicle. Further, acts alleged that are so closely related in time, location, and nature that they form part of the same transaction or course of conduct, rather than completely independent occurrences, do not require jurors to agree on a single method of commission of the alleged crime. St. v. Wells, 2021 MT 103, 404 Mont. 105, 485 P.3d 1220.

Defendant Engaged in Lawful Behavior — No Particularized Suspicion to Initiate Stop: An officer observed the defendant from across the street as the defendant exited a brewery and got into his car. The officer then drove his patrol vehicle to a four-way intersection, arriving at the intersection just before the defendant and thereby obtaining the right-of-way. The defendant waited 8 to 10 seconds and then activated his turn signal. After 2 to 4 more seconds, he made a left-hand turn, passing in front of the officer. The officer then initiated a traffic stop and eventually took the defendant to the hospital for a blood draw, which showed his blood alcohol content to be above the legal limit. The defendant filed a motion to dismiss, claiming that the officer lacked particularized suspicion for the traffic stop, and the county court granted the motion. On appeal, the District Court denied the same motion and convicted the defendant of aggravated driving under the influence. On further appeal, the Supreme Court reversed, finding that the defendant's delay at the intersection could easily be explained by the officer's failure to claim his right-of-way. Because the defendant committed no traffic violations and his driving behaviors were entirely consistent with a law-abiding person driving in a safe and prudent manner, the Supreme Court concluded that the officer did not have objective data available to support a particularized suspicion that the defendant was committing an offense. St. v. Reeves, 2019 MT 151, 396 Mont. 230, 444 P.3d 394.

Bifurcation of Trial for Aggravated DUI — Appropriate When Aggravating Factor Is Prior DUIs: The defendant in a trial for aggravated DUI had two prior DUI convictions. She requested that the trial be bifurcated so that if the jury found her guilty of driving under the influence of alcohol in the particular instance at issue in the first phase of trial, then the state could introduce evidence of her prior convictions in the second phase of trial. The Justice Court denied the request and allowed the state to discuss the prior DUIs in the opening and closing statements and during testimony. The District Court affirmed the Justice Court's decision. The Supreme Court reversed and remanded, concluding that the introduction of the prior convictions was inherently prejudicial under Rules 403, 404(b), and 609, M.R.Ev. (Title 26, ch. 10). Because the aggravated DUI statute requires the commission of a "standard" DUI plus the existence of an aggravating factor, the Supreme Court found that bifurcation was a solution that would both remove unfair prejudice from the defendant and allow the state to present each element of the defense to the jury. St. v. Holland, 2019 MT 128, 396 Mont. 94, 443 P.3d 519.

Daytime Welfare Check on Car Parked on Side of Highway — Caretaker Doctrine Applied: The defendant was parked on the side of the highway during the day when a police officer stopped to perform a welfare check on her. The officer smelled alcohol on the defendant and had her give a breath sample, which indicated she was above the legal limit. At trial on DUI per se charges, the defendant moved to suppress the evidence from the stop, arguing that she did not exhibit any stress or need for a welfare check in the first place and, therefore, the community caretaker doctrine did not apply. The District Court denied her motion to suppress and the defendant was convicted. On appeal, the Supreme Court affirmed, ruling that the officer had an affirmative duty to make sure the defendant was not in need of help and that the record demonstrated that the basis for the stop was not pretextual. St. v. Grmoljez, 2019 MT 82, 395 Mont. 279, 438 P.3d 802.

Blood Test Administered by EMT Supervised by Physician Assistant Under Instructions of Supervising Physician — No Violation: After the defendant was arrested and transported to jail, a search warrant was issued to draw blood and test for alcohol. An advanced emergency medical technician (EMT) drew blood and sent it to the state crime laboratory for testing. The defendant argued that because the EMT was under the supervision of only a physician assistant, rather than a physician or a registered nurse, the plain language of 61-8-405 (now repealed and content reorganized in Title 61, chapter 8, part 10) was violated. The Supreme Court found that when 61-8-405 is read together with 37-20-403 and meaning is given to both statutes, a physician assistant who is under the supervision of a physician will meet the statutory requirements of 61-8-405, considering that the physician assistant acts as an agent of the supervising physician. St. v. Heath, 2018 MT 318, 394 Mont. 41, 432 P.3d 141.

Blood Test Administered Without Reading Right to Independent Blood Test — No Due Process Violation: A defendant was pulled over by a highway patrol trooper after crossing the center line. The trooper observed signs of intoxication and arrested the defendant. The defendant refused a preliminary breath test, and the trooper began reading the implied consent advisory. However, the defendant interrupted and commented that he would refuse further testing without an attorney before the trooper read the portion stating the defendant could seek an independent sobriety test. The trooper successfully obtained a warrant authorizing a blood draw. The blood draw indicated a blood alcohol concentration above the legal limit. The defendant moved to suppress the results of the blood draw, asserting a due process violation from the trooper's failure to advise him of his right to an independent blood draw. The District Court denied the motion to suppress, and the defendant appealed his conviction on the suppression issue. The Supreme Court affirmed, holding that the substantial circumstances, including that the defendant himself impeded the reading of the advisory, demonstrated that there was no fundamental unfairness. St. v. Moore, 2018 MT 110, 391 Mont. 256, 417 P.3d 328.

Indistinguishable DUI Reports — No Error in Denying Motion to Suppress Field Sobriety Tests: Despite the fact that a police officer had identical or nearly identical language about suspect behavior in 29 reports, including the same typographical errors, the officer's reported observations and video of the defendant's behavior during a traffic stop objectively demonstrated that the officer had particularized suspicion to administer field sobriety tests. Thus, the District Court did not err in denying the defendant's motion to suppress the field sobriety tests. St. v. Zimmerman, 2018 MT 94, 391 Mont. 210, 417 P.3d 289.

Transportation of Intoxicated Suspect to Home Instead of Hospital — No Obstruction of Right to Independent Blood Test: An officer did not unreasonably impede a DUI suspect's right to obtain an independent blood test at her own expense because the suspect requested that the officer drive her to the hospital rather than asking to be released so that she could walk there, and the officer had no obligation to drive her. Furthermore, the officer notified the suspect of her right to the test but did not promise to transport her to get the test, and the officer's affirmative action of driving the intoxicated suspect to her home 10 miles from the hospital to ensure her safety while encouraging her to arrange transportation to have the test promptly performed did not frustrate her ability to obtain it. St. v. Neva, 2018 MT 81, 391 Mont. 149, 415 P.3d 481.

Sentencing Condition Proper — Court Not Required to Determine Ability to Pay Costs: The District Court did not err when it imposed a condition in the presentence investigation report without first determining whether the defendant was financially able to pay the costs of imprisonment, probation, or alcohol treatment. On appeal, the defendant argued that the court was obligated to calculate, or at least estimate, the anticipated sum of the costs and to more thoroughly inquire into his financial assets, debts, recurring obligations, and future ability to pay. The Supreme Court affirmed the order, holding that the imposition of the condition complied with the plain language of 61-8-731 (now repealed and content reorganized in Title 61, chapter 8, part 10) and that the District Court had properly deferred to the Department of Corrections the responsibility for assessing the defendant's ability to pay. St. v. Daricek, 2018 MT 31, 390 Mont. 273, 412 P.3d 1044.

"Most Reasonable" Circumstantial Evidence Jury Instruction Proper: The defendant was charged with a DUI per se when her blood alcohol content registered approximately 0.107 nearly 2 hours after she was pulled over. At trial, the defendant contended that there were two possible interpretations of the blood alcohol content evidence. The defendant also objected to the District Court instructing the jury that when two interpretations are possible and one supports guilt and the other supports innocence, the jury must determine which interpretation is most reasonable. After conviction, the defendant appealed, contending that the instruction had lowered the prosecution's standard of proof. The Supreme Court affirmed, ruling that the defendant had failed to show how the instruction had adversely affected her due process rights. St. v. Iverson, 2018 MT 27, 390 Mont. 260, 411 P.3d 1284.

Improper Line of Rehabilitative Questioning — Denial of Removal of Juror for Cause Still Proper: During the defendant's trial on a DUI charge, a prospective juror was disqualified for cause based on her statements. Subsequently, another prospective juror indicated that he had feelings similar to those of the disqualified juror; however, he also affirmed that he could be fair. The District Court denied the defendant's request to remove the latter juror for cause. Following his conviction, the defendant appealed to the Supreme Court. The court affirmed the denial of the request for removal for cause, holding that despite the state's line of rehabilitative questioning being improper the juror had demonstrated the ability to remain neutral. St. v. Russell, 2018 MT 26, 390 Mont. 253, 411 P.3d 1260.

Assessment of Fines, Surcharges, Prosecution Costs, and Public Defender Fees Upheld: After scrupulously and meticulously examining the defendant's ability to pay, the District Court understood the burden and hardship the defendant would experience when he began making payments. The defendant's right to a jury trial also was not chilled because of the court's careful examination of his financial circumstances. Finally, the imposition fine was mandated by statute and was therefore appropriate. St. v. Reynolds, 2017 MT 317, 390 Mont. 58, 408 P.3d 503.

Argument That Defendant Was Not Informed of Right to Independent Blood Test Not Raised in Lower Court — No Violation of Due Process Rights: The District Court did not err in failing to consider the merits of the defendant's contention that, after an arrest for a suspected DUI, he did not receive the implied consent advisory prior to his blood draw. The defendant argued that the police deputy failed to read the implied consent advisory. This failure, the defendant argued, was fatal to the search warrant application's validity. On appeal, the Supreme Court opined that due process requires that the arresting officer inform the accused of his or her right to obtain an independent blood test, regardless of whether the accused consents to the test designated by the officer. However, the Supreme Court concluded that whether the police deputy supplied the implied consent advisory was not at issue in the Municipal Court and the District Court correctly declined to address the matter. For the same reason, the Supreme Court also declined to address the defendant's contention. Missoula v. Williams, 2017 MT 282, 389 Mont. 303, 406 P.3d 8.

Search Warrant Supported by Four Corners of Affidavit for Blood in DUI Investigation — Legal Inquiry by Police Deputy or Judge Issuing Warrant of Whether Another State's DUI Statute Is Similar Not Required — McNally Discussed: The District Court did not err in affirming a telephonic search warrant issued pursuant to 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10) to draw the defendant's blood to support an aggravated DUI charge. The defendant challenged the legality of the search warrant application that allowed his blood to be drawn, contending on appeal that, under St. v. McNally, 2002 MT 160, 310 Mont. 396, 50 P.3d 1080, Arizona and Montana's DUI statutes are not "similar" and, without similarity, there was insufficient evidence to authorize a blood draw under 61-8-402. Therefore, the defendant concluded, the search warrant was illegal and the blood draw results should have been suppressed. On appeal, the Supreme Court declined to conduct a legal inquiry into the similarity of Montana's statutes with those of Arizona, reasoning that its review and that of the issuing judge was constrained to the facts within the four corners of the affidavit. Here, the police deputy represented under oath that the defendant had a prior conviction for a DUI or substantially similar offense in Arizona. Neither the police deputy nor the judge that issued the telephonic search warrant was compelled to conduct an exhaustive legal analysis into similarity of the statutes in order to meet the requirements of 61-8-402 for issuance of a search warrant. In the absence of inaccurate, misleading, or illegally obtained information, it was unnecessary to excise from the affidavit the police deputy's representations that Williams had a prior conviction in Arizona for DUI. Missoula v. Williams, 2017 MT 282, 389 Mont. 303, 406 P.3d 8.

Excessive Smoke and Revving — Particularized Suspicion Justifying Stop: A police officer's observation of excessive smoke being emitted from a vehicle supported a reasonable suspicion that the defendant was operating a vehicle in noncompliance with 61-9-403. This observation, together with another officer's earlier observation of the vehicle excessively revving its engine in a parking garage, provided sufficient particularized suspicion to stop the defendant. Helena v. Brown, 2017 MT 248, 389 Mont. 63, 403 P.3d 341.

Failure of Officer to Notify Defendant of Right to Independent Blood Test — No Violation of Due Process Rights: The defendant was pulled over for driving erratically. After the defendant failed field sobriety tests, the police officer asked him to submit to a preliminary alcohol screening, which he refused. The defendant was then arrested for DUI and taken to a detention center. The officer never informed the defendant that he had the right to obtain an independent alcohol blood test. At trial, the defendant filed a motion to dismiss the charge based on the officer's failure to read him the implied consent advisory, which, he argued, violated his due process rights. The Municipal Court denied the motion and, on appeal, the District Court affirmed, ruling that the appropriate remedy is suppression of any blood or breath tests taken by the state. The defendant then appealed to the Supreme Court, which also affirmed, holding that the officer's failure to notify the defendant of his rights under 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10) did not violate his due process rights. St. v. Berger, 2017 MT 229, 388 Mont. 498, 402 P.3d 1200.

Evidence of Prior Convictions — Aggravated DUI — No Unlawful Prejudice at Trial: Evidence of a prior DUI conviction in an aggravated DUI proceeding is a substantive requirement that the state must prove beyond a reasonable doubt to secure a conviction, rather than a recidivism element used as a sentencing consideration. Therefore, although it was prejudicial, the defendant's driving record indicating his prior DUI convictions was not erroneously admitted at trial because it was proof of a statutory element of the offense. St. v. Meyer, 2017 MT 124, 387 Mont. 422, 396 P.3d 1265, distinguished in St. v. Holland, 2019 MT 128, 396 Mont. 94, 443 P.3d 519, in which the introduction of prior DUI convictions was found unduly prejudicial. However, see St. v. Zimmerman, 2018 MT 94, 391 Mont. 210, 417 P.3d 289, distinguishing Meyer when a defendant stipulates to his prior DUI convictions as an element of the offense and holding that the District Court erred by admitting evidence of prior DUI convictions to establish the offense of aggravated DUI under those circumstances.

Texas DUI Statutes Similar to Montana DUI Statutes — Fourth or Subsequent DUI Charge Affirmed: The appellant was arrested and subsequently pleaded guilty to the charge of driving under the influence of alcohol, fourth or subsequent offense, but challenged the use of three prior out-of-state DUI convictions, one in Georgia and two in Texas. He argued that he was convicted in those states under a lower standard than that of Montana law, but the District Court concluded that, at a minimum, the two Texas convictions were obtained under statutes similar to Montana law and could be used, along with a prior Montana conviction, to add up to the appellant's fourth offense. On appeal, the Supreme Court affirmed, concluding that Texas's DUI law was similar to Montana's DUI law at the time of the appellant's convictions, under both the DUI per se and the standard DUI provisions, and therefore the Texas convictions were prior convictions for the purposes of the appellant's felony DUI conviction. St. v. Olson, 2017 MT 101, 387 Mont. 318, 400 P.3d 214. See also St. v. Lund, 2020 MT 53, 399 Mont. 159, 458 P.3d 1043, holding that Alaska and Montana DUI similar and thus fourth or subsequent DUI affirmed; and St. v. Pankhurst, 2022 MT 89, 408 Mont. 309, 509 P.3d 15.

Alternative Sentencing Recommendation — No Breach of Plea Agreement — Information Technology Surcharges: The defendant was charged with four crimes related to a vehicle accident and agreed to a plea agreement recommending a deferred sentence. The parties subsequently received a presentence investigation report that was consistent with the plea agreement. At the sentencing hearing, the state expressed concerns about the defendant's housing when asked by the District Court. The defendant did not object to the state's testimony. The District Court rejected the plea agreement, sentenced the defendant to imprisonment, and imposed information technology surcharges per count under 3-1-317. On appeal, the Supreme Court affirmed in part, holding that the District Court's sentence was fashioned to help the defendant address her chemical dependency issues and that the state did not breach the plea agreement with its comments based on the circumstances of the case. The Supreme Court also reversed in part, finding that the District Court incorrectly imposed the information technology surcharges per count rather than per user under the language of 3-1-317. St. v. Ellison, 2017 MT 88, 387 Mont. 243, 393 P.3d 192, following St. v. Bartosh, 2007 MT 59, 336 Mont. 212, 154 P.3d 58, and distinguishing St. v. LaMere, 2000 MT 45, 298 Mont. 358, 2 P.3d 204, and St. v. Rardon, 2002 MT 345, 313 Mont. 321, 61 P.3d 132.

Defendant Unresponsive to Request for Blood Test — Consent Implied Absent Verbal or Nonverbal Action Indicating Otherwise — Proper Denial of Motion to Suppress Results of Blood Test: The defendant was arrested for DUI and taken to the hospital. At the hospital, the officer asked if she was willing to take a blood test. The defendant closed her eyes and said nothing, and the officer directed medical staff to draw her blood. At trial, the defendant moved to have the results of the blood test suppressed, arguing that her silence indicated that she had withdrawn her consent to the blood test. The District Court disagreed and denied the motion to suppress. On appeal, the Supreme Court affirmed, noting that under the implied consent law the burden is on the defendant to demonstrate that he or she has withdrawn consent and agreeing that the defendant's inaction was insufficient to withdraw her consent. Great Falls v. Allderdice, 2017 MT 58, 387 Mont. 47, 390 P.3d 954.

Commercial Trucking Closely Regulated Industry — Warrantless Inspection Permitted — Evidence of Alcoholic Beverage Consumption Properly Obtained: The District Court did not err in upholding a stop and warrantless inspection of the defendant's truck by an officer of the Montana Department of Transportation (MDT). Because commercial trucking is a closely regulated activity in Montana, and because Montana's regulatory scheme complies with the notice and focus requirements of New York v. Burger, 482 US 691 (1987), an MDT officer was authorized to stop the defendant's vehicle for inspection without a warrant and without particularized suspicion of a violation. After detecting evidence that the defendant might be under the influence of alcohol, the MDT officer was authorized to make further investigation and to enlist the assistance of the Montana Highway Patrol as a matter of public safety. After the initial stop of the defendant's truck, evidence of his consumption of alcohol was in plain view in the truck and could be seized and used in a subsequent prosecution. St. v. Beaver, 2016 MT 332, 386 Mont. 12, 385 P.3d 956.

Express Verbal Consent Provided by Defendant and Not Subsequently Withdrawn — Denial of Motion to Suppress Results of DUI Blood Test Proper: The District Court properly weighed the evidence and did not err in denying the defendant's motion to suppress the results of a DUI blood test when the defendant conceded that he verbally consented to the test and that he neither informed the deputy or hospital personnel that he had later changed his mind and withdrawn his consent nor gave any verbal indication that he refused consent. St. v. Shepp, 2016 MT 306, 385 Mont. 425, 384 P.3d 1055.

Burden to Prove Qualifying Conviction for Felony DUI Charge — Burden on State, Not Defendant: The defendant was charged with felony DUI. One of the prior convictions relied on by the state for the felony charge was a 1988 conviction from North Dakota. The defendant claimed that the state could not use that conviction as a qualifying conviction because it was impossible to determine whether it was an "under the influence" conviction or a "blood alcohol concentration" conviction. The state asserted that it was the defendant's burden to prove the 1988 conviction did not qualify. The District Court agreed with the state, and the defendant was convicted. On appeal, the Supreme Court reversed and remanded, holding that the state had the burden of providing "competent proof" that the 1988 conviction qualified as a predicate for the felony charge and that it had not done so. St. v. Krebs, 2016 MT 288, 385 Mont. 328, 384 P.3d 98.

Forfeiture Statutes Operate as Penalty — Right to Jury Trial: Where title and possession to real property are at issue, the action is legal and entitles a party to a jury trial under Art. II, sec. 26, Mont. Const. The Supreme Court noted that forfeiture statutes operate to transfer property rights to the state, as a penalty against the owners for misuse of the property, and it is too narrow of an interpretation to characterize a forfeiture proceeding as only one of determining title. St. v. Chilinski, 2016 MT 280, 385 Mont. 249, 383 P.3d 236.

Jury Instructions on Implications of Refusal to Take Breath Test — Applicable Law Fully and Fairly Set Forth by Instructions — Refusal to Allow Defendant's Instructions Proper: The defendant was charged with DUI. At trial, he attempted to offer jury instructions that a refusal to take a breath test does not prove a person is under the influence of drugs or alcohol. The Justice Court refused the instructions because they were not accurate statements of law. After a jury convicted him of DUI, the defendant appealed. The Supreme Court reviewed the instructions that had been provided to the jury and concluded they were accurate. Holding that because a trial court has discretion to formulate jury instructions as long as they fully and fairly set forth the law, the Supreme Court affirmed the trial court's refusal to allow the defendant's proposed instructions. St. v. Krenning, 2016 MT 202, 384 Mont. 352, 383 P.3d 721.

Reliability of Citizen's Tip — No Indicia of Fabrication at Time of Stop — Denial of Motion to Suppress Proper: The defendant was charged with aggravated DUI after the police received a 9-1-1 tip from a citizen informant and investigated. Although the informant told the dispatcher that he had witnessed the defendant driving, he actually was a friend of the defendant who had instead witnessed her leave his residence after she had been drinking. At trial, the defendant filed a motion to suppress all evidence related to the investigation and argued that the informant's report was not reliable under the Pratt factors. After the District Court denied her motion to suppress and she was convicted, the defendant appealed to the Supreme Court. The court affirmed the denial of the motion to suppress because at the time the police stopped her, there was no indication that the informant had fabricated any information in his report. Missoula v. Tye, 2016 MT 153, 384 Mont. 24, 372 P.3d 1286.

Consideration of Suspension of License Prior to Enactment of Aggravated DUI Law — Not Ex Post Facto Violation: In 2007, the defendant's driver's license was suspended when she declined to submit to the preliminary alcohol screening test after being arrested for DUI. In 2011, the Legislature enacted 61-8-465 (now repealed and content reorganized in Title 61, chapter 8, part 10), the aggravated DUI statute, which provides that a person has committed an aggravated DUI when the person operates a vehicle under the influence of alcohol, refuses to provide a breath or blood sample required under 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10), and has had his or her license suspended for refusing to give a breath or blood sample within 10 years of the current DUI. In 2013, the defendant was again arrested for DUI and again refused to provide a breath or blood sample. She was charged with aggravated DUI based on her refusal to submit to a breath or blood test in 2007. The defendant moved to dismiss the charge, asserting that it violated the prohibition against ex post facto laws because it relied on her 2007 refusal, which predated the enactment of the aggravated DUI statute. The Justice Court denied the motion, concluding that a conviction would rely on the defendant's 2013 conduct rather than her 2007 conduct, and subsequently the defendant was convicted of aggravated DUI. The defendant appealed the denial of her motion to dismiss to the District Court, which affirmed the Justice Court, and the defendant then appealed to the Supreme Court. The Supreme Court affirmed, holding that the defendant was punished for her conduct in 2013, while her conduct in 2007 was merely taken into account in meeting the elements of the aggravated DUI statute and that the statute therefore did not constitute ex post facto legislation. St. v. Hislop, 2016 MT 130, 383 Mont. 482, 373 P.3d 834.

Failure to Use Turn Signal Sufficient to Establish Particularized Suspicion for Initial Investigative Stop: A police officer observed the defendant's vehicle parked late one night and proceeded to discuss the driver's whereabouts with another police officer on patrol that night. When the first officer drove past the vehicle, the defendant turned around and headed in the opposite direction. The officer continued to patrol the area and observed the defendant pull over and change directions twice. The officer began to follow the defendant and watched the defendant turn right without using his turn signal, so the officer initiated a traffic stop. On appeal, the defendant argued that the officer manufactured the traffic stop because the officer had observed no wrongdoing before following the defendant. The Supreme Court disagreed, upholding the District Court's conclusion that the initial investigative stop was objectively reasonable and that there was sufficient particularized suspicion to stop the defendant. The defendant's failure to use a turn signal constituted a statutory violation sufficient to establish particularized suspicion for the initial investigative stop. Brunette v. St., 2016 MT 128, 383 Mont. 458, 372 P.3d 476, following Kummerfeldt v. St., 2015 MT 109, 378 Mont. 522, 347 P.3d 1233.

Proper Consideration by District Court of Necessary Factors in Driver's License Reinstatement Proceeding — Doctrine of Implied Findings: On appeal, the defendant argued that the District Court failed to adequately make the findings required under 61-8-403(4)(a) (now repealed and content reorganized in Title 61, chapter 8, part 10) before denying the defendant's petition to reinstate his driver's license. The Supreme Court considered the District Court's oral and written findings that the defendant failed to use a turn signal and that the officer making the stop observed the defendant had watery eyes and registered a blood alcohol concentration of 0.143 on a portable breath test. The Supreme Court concluded that the District Court's findings were sufficiently comprehensive and pertinent to determine the officer had reasonable grounds to believe the defendant had been driving while under the influence of alcohol. Because the officer had probable cause to believe the defendant was driving under the influence, the defendant's subsequent arrest was valid. Though the District Court's written order did not address whether the officer had probable cause to make the arrest, the Supreme Court determined under the doctrine of implied findings that the District Court's general and specific findings that the stop was objectively reasonable and that the officer observed signs of intoxication necessarily included implied findings sufficient to conclude the officer had probable cause to arrest the defendant. Brunette v. St., 2016 MT 128, 383 Mont. 458, 372 P.3d 476, following Hulse v. Dept. of Justice, Motor Vehicles Div., 1998 MT 108, 289 Mont. 1, 961 P.2d 75.

Statutory Requirement Satisfied by Offsite Supervision — DUI Blood Alcohol Test: The defendant refused a blood alcohol test after being pulled over in Lincoln, Montana. The arresting officer acquired a warrant for a blood alcohol test, and a trained phlebotomist took the defendant's blood sample at approximately 11:30 p.m. in the Lincoln medical facility. The phlebotomist was not supervised onsite at night; however, he was supervised by a on-call medical doctor in Kalispell. After a jury trial, the defendant was convicted of driving under the influence. On appeal, the defendant argued that the blood alcohol test should have been suppressed because the phlebotomist was not directly supervised as required under 61-8-405 (now repealed and content reorganized in Title 61, chapter 8, part 10). The Supreme Court disagreed with the defendant and affirmed, holding that either offsite or on-call supervision satisfies the requirement. St. v. Allport, 2015 MT 349, 382 Mont. 29, 363 P.3d 441.

Failure to Object at Trial — District Court's Failure to Rule on Motion In Limine — Prosecutor's Comments Shifting Burden Harmless Error: The defendant was arrested, charged, and convicted of driving under the influence after refusing to give a breath test. Prior to the trial, she moved in limine to prohibit the state from shifting the burden of proof by arguing that she could have proven her innocence by taking a breath test. The District Court failed to rule on the motion. At trial, the prosecution argued that the defendant could have proved her innocence by submitting to a breath test; however, the defendant failed to object. On appeal, the defendant argued that the motion to prohibit the state's comments preserved her objection and that the comments prejudiced the jury. The Supreme Court disagreed with the defendant, holding that the District Court failed to provide a definitive ruling and the motion did not preserve the objection, that she failed to object at trial, and that while the state's comments were improper, the evidence indicated that it did not rise to the level of plain error. St. v. Favel, 2015 MT 336, 381 Mont. 472, 362 P.3d 1126. See also St. v. Wellknown, 2022 MT 95, 408 Mont. 411, 510 P.3d 84.

Consideration of Idaho Offenses Proper When Third Offense Amended to Second Offense Through Plea Bargain — No Violation of Full Faith and Credit Clause: The defendant moved to dismiss his felony DUI offense, arguing that his previous DUI offenses in Idaho that served as the underlying offenses for the felony charge in Montana were counted incorrectly since he reached a plea agreement in Idaho that amended his third offense to a second offense. The District Court denied the defendant's motion to dismiss and the Supreme Court affirmed, holding that the District Court was required to count all three of his prior convictions in Idaho when sentencing him for his Montana DUI since the Idaho convictions had not been expunged, dismissed, or vacated. The Supreme Court also held that the full faith and credit clause of the U.S. Constitution did not prohibit Montana from enforcing Idaho's judgment according to Montana's statutory scheme for DUI penalties. St. v. Barrett, 2015 MT 303, 381 Mont. 299, 358 P.3d 921, following St. v. Blue, 2009 MT 304, 352 Mont. 382, 217 P.3d 82, and distinguishing St. v. Cleary, 2012 MT 113, 365 Mont. 142, 278 P.3d 1020.

Initiation of Blood Alcohol Test Several Hours After Accident Reasonable Under Circumstances: The defendant was involved in a single-car accident and was discovered several hours later by passing hunters. Two blood tests administered after the defendant was transported to the hospital indicated a blood alcohol content (BAC) over the per se limit. The second BAC test, which was requested by a highway patrol officer at the hospital, was drawn over 8 hours after the defendant drove his vehicle. The defendant moved to suppress the results of the BAC tests, but the District Court denied the motion. The Supreme Court affirmed on appeal, concluding that the highway patrol officer did not unreasonably delay the initiation of the second BAC test under the circumstances. St. v. Hala, 2015 MT 300, 381 Mont. 278, 358 P.3d 917, following St. v. McGowan, 2006 MT 163, 332 Mont. 490, 139 P.3d 841.

No Abuse of Discretion in Admitting Breath Test: When defendant failed to present contrary evidence regarding the certification of Intoxilyzer 8000 senior operators, unchallenged certification credentials may provide foundation. St. v. Poitras, 2015 MT 287, 381 Mont. 211, 358 P.3d 200.

Criminal Defendant's Submission of Affidavit at Evidentiary Hearing — Waiver of Right to Remain Silent: After the defendant was found guilty of DUI per se, fourth offense, which is a felony, the defendant moved to dismiss the felony or, alternatively, to amend the charge to a misdemeanor DUI, arguing that a previous DUI conviction was constitutionally infirm because she was not informed of her right to counsel if she could not afford one. The District Court held an evidentiary hearing on the motion at which the only evidence the defendant presented was her affidavit. The state then called the defendant to testify, which the defendant objected to on the basis that she had a right to remain silent. The District Court overruled the objection, concluding the state had a right to cross-examine the defendant because she had submitted the affidavit in support of her motion, which was effectively testimony. On appeal, the Supreme Court affirmed, concluding that the defendant's submission of the affidavit waived her right to remain silent. The defendant could not submit an affidavit without being subject to cross-examination as to the contents of the affidavit. St. v. Johnson, 2015 MT 221, 380 Mont. 198, 356 P.3d 438.

24/7 Sobriety and Drug Monitoring Program Fees Not Violation of Due Process — Individualized Assessment Required Prior to Participation in Program: After the defendant was charged with DUI, a second offense, he was ordered by the Justice's Court to participate in the 24/7 Sobriety and Drug Monitoring Program as a condition of his release on bond. While enrolled in the program, the defendant missed three tests and was charged with three counts of contempt for the missed tests. The District Court dismissed the contempt charges, concluding that the program fees constituted pretrial punishment in violation of the defendant's right to due process. On appeal, the Supreme Court concluded that fees required under the program do not have a punitive effect on pretrial criminal defendants and that the imposition of the program can be an appropriate condition of release. However, enrollment in the program is discretionary and prior to imposing the testing requirement, a court must conduct an individualized assessment of the defendant, including considering prior alcohol-related arrests, whether the defendant's history and circumstances suggest an increased risk to the community, and whether the defendant is financially able to pay the fees associated with testing. Because the Justice's Court did not conduct an individualized assessment of the defendant before imposing the testing requirement, it was proper to dismiss the defendant's contempt charges. St. v. Spady, 2015 MT 218, 380 Mont. 179, 354 P.3d 590.

24/7 Sobriety and Drug Monitoring Program Testing Fee — Permissible Delegation of Legislative Authority: The District Court held that 44-4-1204 of the Montana 24/7 Sobriety and Drug Monitoring Program Act unconstitutionally delegated legislative power to the executive branch because it lacked any objective criteria to guide the Attorney General in imposing fees, other than requiring that the fees be reasonable. On appeal, the Supreme Court reversed, concluding that 44-4-1204 is a permissible delegation of legislative authority because the section limits fees to reasonable amounts necessary to pay for the administration of the program and does not give the Attorney General unfettered discretion when implementing fees. St. v. Spady, 2015 MT 218, 380 Mont. 179, 354 P.3d 590.

24/7 Sobriety and Drug Monitoring Program Testing Requirements — Not Unreasonable Search or Violation of Privacy: Requiring a defendant who is a repeat DUI arrestee to provide twice daily breath samples as a condition of release under the Montana 24/7 Sobriety and Drug Monitoring Program Act does not constitute an unreasonable search and does not infringe upon a significant privacy interest. The state's compelling interest in keeping the public safe by preventing repeat DUI arrestees from driving while drunk outweighs any privacy concerns. St. v. Spady, 2015 MT 218, 380 Mont. 179, 354 P.3d 590.

Applying Pharmaceutical Definition of "Drug" in DUI Case — Counter to Legislative Intent: The defendant was charged with felony DUI and reckless driving after inhaling aerosol dust-remover that contained 1,1-Difluoroethane (DFE). The defendant argued that the charge should be dismissed because the definition of "drug" in 37-3-101 for pharmaceutical drugs did not include DFE. The District Court denied the motion to dismiss, reasoning that it was illogical to apply the pharmaceutical definition of "drug" in a DUI statute under 1-2-107 because it would run counter to the legislative intent of protecting public safety. On appeal, the Supreme Court affirmed, ruling that the locations of the two uses of the term "drug" in the Montana Code Annotated demonstrated legislative intent that the pharmaceutical definition not apply to DUI statutes. St. v. Pinder, 2015 MT 157, 379 Mont. 357, 350 P.3d 377.

Driving Under Influence of Inhalant — Charge Proper Where Substance Used Diminishes Ability to Drive: The defendant was charged with felony DUI and reckless driving after inhaling aerosol dust-remover that contained 1,1-Difluoroethane (DFE). The defendant argued that the charge should be dismissed because the definition of "drug" in 37-3-101 did not include DFE. After his conviction, the defendant appealed the District Court's denial of his motion to dismiss. The Supreme Court affirmed, concluding that the language of the DUI statute plainly shows the Legislature intended to punish an individual who drove after ingesting "any" substance that diminished that person's ability to drive. St. v. Pinder, 2015 MT 157, 379 Mont. 357, 350 P.3d 377.

Crossing of Yellow Center Line — Sufficient Particularized Suspicion to Justify Stop: An officer stopped a driver after his vehicle crossed over the yellow center line of a road. The driver was arrested for refusal to take a breath alcohol test, and his driver's license was suspended pursuant to 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10). On a petition by the driver to reinstate his license, the District Court held that the officer had particularized suspicion sufficient to justify the stop when the driver slightly crossed the center line. On appeal, the Supreme Court affirmed, reasoning that the plain language of 61-8-328 prohibits crossing of the center line to the extent that it is feasible for a vehicle to be operated within the lane of traffic. Mitchell v. St., 2015 MT 120, 379 Mont. 127, 347 P.3d 1278, distinguishing St. v. Lafferty, 1998 MT 247, 291 Mont. 157, 967 P.2d 363.

Officer Did Not Misrepresent Consequences of Test Refusal — DUI Stop: The defendant was arrested during a traffic stop. The officer said to the defendant that if he took the breath test he would not lose his license, but if he refused to provide a sample, he would lose his license. The defendant took the breath alcohol test. Later, the defendant refused to take the blood test because he was afraid of needles. The officer then seized the defendant's license. On appeal, the defendant argued that the state was estopped from taking his license based on lack of reasonable grounds for the stop, the alleged misstatements by the officer, and his fear of needles. The Supreme Court disagreed, holding that there were reasonable grounds for the traffic stop, that the officer's statements did not misrepresent the consequences of refusing a test, and that the defendant's fear of needles was not credible. Kummerfeldt v. St., 2015 MT 109, 378 Mont. 522, 347 P.3d 1233.

Lab Report Properly Admitted in Evidence — Toxicology Report Author Present at Trial — Confrontation Clause Rights Not Violated: The defendant crashed his motorcycle, was transported to the hospital by an investigating officer, and then consented to a blood draw. He was eventually convicted of driving under the influence. On appeal, the defendant argued that the District Court should have excluded the crime lab report because the state did not provide written notice of its intention to offer the report into evidence, as required by Rule 803(6), M.R.Ev. (Title 26, ch. 10). The Supreme Court affirmed, holding that because the state disclosed the report in discovery, the state provided notice of the toxicologist as a witness, and the toxicologist signed the disclosed report, any confrontation clause concern was not present and the defendant was afforded the opportunity to cross-examine the report's author. St. v. Schwarzmeier, 2015 MT 98, 378 Mont. 456, 346 P.3d 358.

Tobacco Removed Pursuant to Intoxilyzer Guidelines — Evidence Properly Admitted: The defendant was arrested on suspicion of driving under the influence. After placing the defendant in the police car and driving for 5 minutes, the arresting officer found tobacco in the defendant's mouth. The defendant was given an Intoxilyzer test approximately 20 minutes after removal of the tobacco, pursuant to the Intoxilyzer checklist. The defendant pleaded guilty, reserving his right to challenge the Intoxilyzer results. The Supreme Court affirmed the conviction, holding that the evidence showed that the governing administrative rule did not require compliance with the checklist, that the defendant was under observation during the 20-minute period, and that hypothetical situations regarding tobacco regurgitation were properly rejected. St. v. Levanger, 2015 MT 83, 378 Mont. 397, 344 P.3d 984.

Actual Physical Control — Factors for Jury Consideration: The defendant was found passed out in his running vehicle and was charged with a DUI. The defendant claimed that his truck had broken down and that he was only waiting for a ride at the time of his arrest. At trial, the District Court instructed the jury that one could have "actual physical control" of a vehicle even if the vehicle is incapable of moving. On appeal, the Supreme Court reversed, finding that the instruction, as well as the District Court's denial of the defendant's motion for acquittal, relied on an incorrect legal standard. The Supreme Court also outlined a variety of factors appropriate for a jury to consider in determining whether a defendant had actual physical control of a vehicle. St. v. Sommers, 2014 MT 315, 377 Mont. 203, 339 P.3d 65.

Jury Instruction on Actual Physical Control — Incorrect Legal Standard — Reversal and Remand for Reconsideration of Acquittal or New Trial: The defendant was passed out in his running vehicle and was charged with a DUI. The defendant claimed that his truck had broken down and that he was only waiting for a ride at the time of his arrest. At trial, the District Court instructed the jury that one could have "actual physical control" of a vehicle even if the vehicle is incapable of moving. On appeal, the Supreme Court ruled that the instruction relied on an incorrect legal standard and reversed and remanded the matter to the District Court to reconsider the defendant's previously denied motion for acquittal and, if necessary, for a new trial. St. v. Sommers, 2014 MT 315, 377 Mont. 203, 339 P.3d 65.

Effect of Defendant's Refusal on Ability of Law Enforcement to Administer Test Superseded by Subsequent Valid Warrant: The defendant argued that after he refused a blood or breath test, under the 2009 version of 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10) law enforcement officers were prohibited from taking any action to obtain a blood sample for testing. The Supreme Court held that the District Court properly denied the defendant's motion to suppress the results of the blood alcohol test. After the defendant refused the tests, the officer obtained a valid warrant, and the statute did not prevent the officer from obtaining either the warrant or the subsequent blood test pursuant to that warrant. St. v. Minett, 2014 MT 225, 376 Mont. 260, 332 P.3d 235.

Search Warrant for Blood in DUI Investigation — Application Versus Issuance: The defendant appealed the District Court's denial of his motion to suppress evidence obtained from a blood draw after he was arrested for DUI, arguing that the 2011 revision to 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10), which authorizes law enforcement to apply for a search warrant for a blood draw when an arrested person has previously refused to submit to a BAC test, did not constitute probable cause to issue a search warrant for his blood. The Supreme Court affirmed, concluding that the defendant's argument conflated the statutory authority granted to law enforcement officers to apply for a search warrant with the statutory requirements of a judge to issue a search warrant. An arrested person's refusal to submit to a BAC test does not by itself establish the necessary probable cause for a warrant, but merely permits law enforcement to apply for a warrant, which must be supported by probable cause. Here, the officer's observations of the defendant's intoxication established probable cause to authorize a draw of the defendant's blood. St. v. Giacomini, 2014 MT 93, 374 Mont. 412, 327 P.3d 1054.

Acquittal of DUI Not Determinative for Reinstatement Proceedings: After being acquitted of a DUI charge, the petitioner sought reinstatement of his driver's license. The District Court granted the petition before the state filed a response. The District Court later granted the state's motion to vacate the reinstatement and agreed with the state that an acquittal from a Municipal

Court does not establish res judicata or collateral estoppel in a reinstatement proceeding because the factors to be considered in a criminal proceeding for DUI are not the same as those to be considered for reinstatement. On appeal, the Supreme Court agreed that the District Court had not abused its discretion by vacating its earlier order. Ditton v. Dept. of Justice, 2014 MT 54, 374 Mont. 122, 319 P.3d 1268.

State Not Required to File Response to Petition for Reinstatement — Default Judgment Properly Denied: The petitioner filed a petition for reinstatement of his driver's license. After the state failed to file an answer brief, the petitioner argued that he was entitled to a default judgment. The District Court concluded that the specific provisions of 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) that set forth the procedure for reinstatement do not require the state to file an answer. On appeal, the Supreme Court agreed that the general responsive pleading requirements did not apply to reinstatement proceedings. Ditton v. Dept. of Justice, 2014 MT 54, 374 Mont. 122, 319 P.3d 1268.

Proper Consideration of Nevada DUI Conviction: The defendant claimed that his felony fourth DUI conviction in Montana was improper because two underlying Nevada DUI convictions were based on Nevada statutes that were not sufficiently similar to Montana DUI statutes. The defendant argued that the Nevada statutes criminalized behavior up to 2 hours after driving while 61-8-406 (now repealed) required a blood alcohol content of 0.10 or higher while driving. The Supreme Court found that the statutes were sufficiently similar to support the felony conviction, noting that the function of both state statutes was to criminalize high alcohol levels while driving and that the level of impairment prohibited was equivalent. St. v. Calvert, 2013 MT 374, 373 Mont. 152, 316 P.3d 173.

Community Caretaker Doctrine Inapplicable — Denial of Motion to Suppress Affirmed Based On Particularized Suspicion: An officer saw the defendant execute a hard left turn in an area where the officer knew there were no cross streets and then drive on the sidewalk and onto the grass before coming to an abrupt stop and possibly hitting a fire hydrant. While speaking to the defendant, the officer noticed the smell of alcohol and other indicators of intoxication. The defendant failed a field sobriety test and subsequently pleaded guilty to driving under the influence after the Municipal Court denied his motion to suppress. The District Court affirmed on the basis of the community caretaker doctrine. The Supreme Court upheld the denial of the motion to suppress because the officer had particularized suspicion that the defendant had been involved in a property damage accident, but it clarified that the community caretaker doctrine applies to situations in which a citizen is in need of help or is in peril. St. v. Marcial, 2013 MT 242, 371 Mont. 348, 308 P.3d 69, distinguishing St. v. Lovegren, 2002 MT 153, 310 Mont. 358, 51 P.3d 471.

Remainder of Sentence Not to Include Absconsion Time — Defendant Subject to Unpaid Fines: While the defendant was on probation, he absconded from supervision and left the state. Eight years later, he was returned to Montana after serving time in Kansas. He argued that under 61-8-731 (now repealed and content reorganized in Title 61, chapter 8, part 10), he could not properly be sentenced to any more prison time because more time had elapsed between his release from prison and the revocation hearing than the period of probation he was originally sentenced to serve. The Supreme Court rejected this argument, finding that the phrase "remainder of the probation sentence" does not include any time during which the probationer absconds from supervision. In addition, although the District Court did not mention the reimposition of unpaid fines and fees from the underlying sentence in the oral judgment but did impose them in the written judgment, all original conditions not specifically altered by the judgment would remain in effect. Therefore, the written judgment did not increase the punishment imposed on the defendant. St. v. Sullivant, 2013 MT 200, 371 Mont. 91, 305 P.3d 838.

Miranda Warning Not Required Before Gathering of Nontestimonial Evidence: The District Court concluded that the officer's failure to give the defendant a Miranda warning immediately after her arrest required the suppression of all evidence subsequently obtained, including results of the HGN test, field sobriety tests, and the Intoxilyzer test and other nontestimonial evidence gathered at the jail. The Supreme Court reversed, concluding that a Miranda warning is required only prior to a custodial interrogation and that the nontestimonial evidence should not have been suppressed because that evidence is real and objective and is not protected by the right against self-incrimination. St. v. Kelm, 2013 MT 115, 370 Mont. 61, 300 P.3d 687.

Maximum Sentence Imposed Based on Defendant's Indigency — Due Process Violated: After initially proposing to impose a sentence of $935 in fines and 6 months in the Gallatin County Detention Center with all but 3 days suspended, a Municipal Court imposed $935 in fines plus the maximum sentence of 6 months suspended for 1 year with all but 3 days suspended to allow the defendant time to pay off his fine. Because the Municipal Court imposed the maximum sentence due to the defendant's financial situation, the Supreme Court vacated the DUI sentence as a violation of due process. St. v. Haldane, 2013 MT 32, 368 Mont. 396, 300 P.3d 657, following St. v. Lenihan, 184 Mont. 338, 602 P.2d 997 (1979).

Felony DUI — Designation as Persistent Felony Offender Valid: The defendant was convicted in May 2009 of felony DUI and was charged with another felony DUI in August 2011. Prosecutors subsequently sought a persistent felony offender designation for the defendant, which was imposed by the District Court and upheld by the Supreme Court. According to the Supreme Court, the defendant was lawfully sentenced to 10 years in prison with no time suspended as a persistent felony offender. St. v. Kime, 2013 MT 14, 368 Mont. 261, 295 P.3d 580, distinguishing St. v. Damon, 2005 MT 218, 328 Mont. 276, 119 P.3d 1194.

Video of Defendant Taking Preliminary Alcohol Screening Test Inadmissible — Expert Testimony Required: After being convicted of driving under the influence of alcohol, the defendant claimed on appeal that the District Court abused its discretion by admitting a police video that showed the defendant participating in a preliminary alcohol screening test (PAST) and then being placed under arrest. The sound from the video was muted and the results of the PAST were not presented to the jury. The Supreme Court reversed the conviction, reasoning that the video showing administration of the PAST, followed by an arrest, raised a compelling inference that the defendant was over the legal blood alcohol limit. Consequently, the Supreme Court determined that the video was impermissibly used as substantive evidence of intoxication without the state satisfying the requirement of St. v. Damon, 2005 MT 218, 328 Mont. 276, 119 P.3d 1194, and Rule 702, M.R.Ev. (Title 26, ch. 10), to call an expert witness to testify regarding the reliability and accuracy of the PAST. St. v. Lozon, 2012 MT 303, 367 Mont. 424, 291 P.3d 1135.

Improper Exclusion of Evidence That Defendant Ingested "Date Rape" Pill Prior to DUI — Automatism Defense Available as Affirmative Defense Upon Written Notice — Burden on Defendant: The defendant was charged with a misdemeanor DUI. She alleged that she had unknowingly ingested a "date rape" drug prior to the incident and therefore she did not commit a voluntary act by driving the car. The District Court disallowed her from asserting the "automatism" defense, ruling that because DUI is an absolute liability offense, the defendant's mental state is irrelevant. The defendant appealed. The Supreme Court reversed and remanded, holding that under 45-2-202, a voluntary act is a material element of every offense, and thus the plaintiff was entitled to raise the defense. Missoula v. Paffhausen, 2012 MT 265, 367 Mont. 80, 289 P.3d 141.

Idaho DUI Statute Similar to Montana DUI Statute — Enhancement of Charge Affirmed: The defendant was charged with felony DUI. He had three prior DUI convictions, two of which were from Idaho. The defendant argued that the Idaho convictions could not be applied to enhance the DUI charge because the Idaho DUI statute required a lesser degree of impairment and therefore was not sufficiently similar to the Montana statute. The District Court disagreed and the defendant appealed. In comparing the language of the two statutes, the Supreme Court found them not only similar, but nearly identical, and affirmed the District Court. St. v. Young, 2012 MT 251, 366 Mont. 527, 289 P.3d 110.

Challenge to Intoxilyzer Certification Reports: Rule 803(6), Montana Rules of Evidence, is a foundational rule that allows the state to admit into evidence Intoxilyzer certification reports that would normally be excluded as hearsay, and a defendant's failure to challenge Intoxilyzer certification reports prior to trial does not result in forfeiture of the right to do so at trial. St. v. Gai, 2012 MT 235, 366 Mont. 408, 288 P.3d 164.

Court to Advise Defendant of Rights in Statute — No Duty to Inform of Additional Rights: Charged with his fourth DUI, the defendant claimed that under the Supreme Court's decisions in St. v. Knox, 2001 MT 232, 307 Mont. 1, 36 P.3d 383, and St. v. Yother, 253 Mont. 128, 831 P.2d 1347 (1997), a criminal defendant must be advised of certain rights in addition to those listed in 46-12-210 before a court may accept a plea of guilty or nolo contendere. Accordingly, he argued that his three prior guilty pleas were constitutionally deficient because he was advised of only the rights listed in 46-12-210. The District Court disagreed and concluded his prior pleas were informed. On appeal, the Supreme Court affirmed and clarified that the only rights of which a criminal defendant must be made aware prior to entering a plea are those found in 46-12-210. The court also clarified that neither Knox nor Yother expanded the list of rights. St. v. Otto, 2012 MT 199, 366 Mont. 209, 285 P.3d 583.

Out-of-State DUI — No Conviction for Felony DUI Purposes: The suspended imposition of sentence that the defendant received following his plea of guilty to a DUI per se offense in South Dakota did not constitute a conviction for the purpose of enhancing the defendant's charges to a felony DUI because, pursuant to another South Dakota law to which Montana has no similar counterpart, the South Dakota suspended imposition of sentence was vacated and completely expunged from the defendant's record, thereby precluding it from counting as a previous conviction. St. v. Cleary, 2012 MT 113, 365 Mont. 142, 278 P.3d 1020.

Clarification of Authority of Out-of-Jurisdiction Peace Officer in Making Arrest: The defendant appealed his conviction of DUI, arguing the District Court should have dismissed the charge since his arrest was illegal because the out-of-jurisdiction peace officer who arrested him exceeded her authority under the private person arrest statute by investigating the defendant for DUI. In affirming the defendant's conviction, the Supreme Court revisited its analyses in Maney v. St., 255 Mont. 270, 842 P.2d 704 (1992), St. v. Hendrickson, 283 Mont. 105, 939 P.2d 985 (1997), and St. v. Williamson, 1998 MT 199, 290 Mont. 321, 965 P.2d 231, and concluded that the assumption underlying these cases — that if a peace officer lacks authority to act in the capacity of a peace officer, then the only alternative is that the peace officer acts in the capacity of a private person — is incorrect. The Supreme Court concluded that an out-of-jurisdiction peace officer must meet the arrest standard that applies to a private person in the same circumstances: if probable cause exists to believe that a person is committing or has committed an offense and the existing circumstances require the person's immediate arrest. If this standard is met, the officer may then follow the procedures applicable to peace officers when processing an arrest. St. v. Updegraff, 2011 MT 321, 363 Mont. 123, 267 P.3d 28.

No Notice of Withdrawal of Counsel — Trial and Conviction in Absentia — Denial of Due Process — Invalidity of Prior DUI Conviction — Reversed and Remanded for Sentencing as Misdemeanor: Charged with his fourth DUI, the defendant claimed that one of his previous DUI convictions was invalid because the District Court had allowed his counsel to withdraw immediately prior to his trial, and he was tried and convicted in absentia. The District Court concluded that the defendant's conviction was valid because he had willfully been absent from his trial. The Supreme Court, however, reversed, concluding that under 46-16-120, a defendant who is charged with a misdemeanor has a right to appear by counsel only. Therefore, when the court allowed the defendant's previous counsel to withdraw immediately before a trial in absentia, it deprived the defendant of his right to legal representation and due process. On that basis, the Supreme Court found that the previous conviction was invalid and remanded the matter, with the instruction to the District Court to sentence the defendant for a misdemeanor. St. v. Hass, 2011 MT 296, 363 Mont. 8, 265 P.3d 1221.

Admissibility of Intoxilyzer Certification Documents — District Court to Determine Adequate Foundation Regardless of Hearsay Rules — White Overruled: The defendant was charged with felony DUI after a breath test revealed his blood alcohol content exceeded the legal limit. At trial, in the course of the charging police officer's testimony, the state offered into evidence two field certification documents for the Intoxilyzer 8000. The defendant objected to the documents, claiming that because the officer was not the author or custodian of the documents, they were inadmissible hearsay under Rule 803(6), M.R.Ev. (Title 26, ch. 10). The District Court admitted the documents and the defendant appealed his subsequent conviction. The Supreme Court affirmed, ruling that the admissibility of certification documents is also subject to Rule 104(a), M.R.Ev., (Title 26, ch. 10). This rule allows a court to determine whether there is an adequate foundation for a document without regard to whether it is hearsay. In so ruling, the Supreme Court overruled St. v. White, 2009 MT 26, 349 Mont. 109, 201 P.3d 808, to the extent it is inconsistent with St. v. Delaney, 1999 MT 317, 297 Mont. 263, 991 P.2d 461. St. v. Jenkins, 2011 MT 287, 362 Mont. 481, 265 P.3d 643.

Abrupt Stop on Desolate Back Road on Cold Winter's Night — Adequate Basis for Initial Welfare Check — Stop Valid Under Community Caretaker Doctrine: A police officer was driving down a desolate back road in the middle of a cold January night when a vehicle ahead of him abruptly pulled over. The officer pulled up behind it to see if the occupants were lost or needed assistance. The police officer testified at trial that as he approached the vehicle, he considered prior burglaries that had occurred in the area. Upon contact with the driver, the officer smelled alcohol, and he cited the driver for a misdemeanor DUI. The defendant moved to suppress evidence from the stop, claiming that the stop was not permitted under the community caretaker doctrine because the officer did not stop her with the sole intention of performing a welfare check. The District Court denied the motion to suppress, finding that the state had presented objective facts that the officer suspected the occupants might be in need of assistance because they were driving down a desolate back road in the middle of the night and had abruptly pulled over. On appeal, the Supreme Court affirmed and further noted that the community caretaker doctrine does not require an officer to have the sole subjective purpose of conducting a welfare check as long as the officer has adequate grounds for conducting the welfare check initially. St. v. Spaulding, 2011 MT 204, 361 Mont. 445, 259 P.3d 793. See also St. v. Graham, 2007 MT 358, 340 Mont. 366, 175 P.3d 885, St. v. Lovegren, 2002 MT 153, 310 Mont. 358, 51 P.3d 471, and St. v. Zeimer, 2022 MT 96, 408 Mont. 433, 510 P.3d 100.

Affirmative Evidence Showing Violation of Rights Required to Prove Invalidity of Prior DUI Convictions — Felony DUI Conviction Upheld: The defendant, charged with his fourth DUI, claimed that two of his previous DUI convictions were invalid because he had not been advised of his right to counsel. Under St. v. Okland, 283 Mont. 10, 941 P.2d 431 (1997), and St. v. Jenni, 283 Mont. 21, 938 P.2d 1318 (1997), a defendant who challenges a prior conviction as unconstitutionally invalid must present direct evidence of irregularity in the prior proceeding. Here, the defendant provided documents related to the two prior convictions that did not clearly designate that he had been advised of his right to counsel. However, none of the documents affirmatively demonstrated that he had not been advised of his right to counsel. Because the documents were inconclusive, the District Court determined that the defendant had failed to meet his burden of proof to rebut the presumption that the prior convictions were valid. On appeal, the Supreme Court affirmed, noting that a defendant who challenges prior convictions must present evidence affirmatively showing a conviction was invalid and that a silent or ambiguous record is insufficient. St. v. Chaussee, 2011 MT 203, 361 Mont. 433, 259 P.3d 783. See also St. v. Snell, 2004 MT 334, 324 Mont. 173, 103 P.3d 503, St. v. Smerker, 2006 MT 117, 332 Mont. 221, 136 P.3d 543, St. v. Maine, 2011 MT 90, 360 Mont. 182, 255 P.3d 64, and St. v. Hancock, 2016 MT 21, 382 Mont. 141, 364 P.3d 1258.

Motion to Suppress Breath Test Results Improperly Granted — 31-Day Field Inspection and Calibration Applies — District Court Reversed: A defendant charged with his fourth DUI filed a motion to suppress the results of his breath test on the grounds that the machine had not been inspected and calibrated within the week prior to its use as, he alleged, is required by St. v. Gieser, 2011 MT 2, 359 Mont. 95, 248 P.3d 300. The District Court granted the motion, ignoring an Administrative Rule providing that breath analysis instruments must be inspected and calibrated at least every 31 days instead of every 7 days. The state appealed and the Supreme Court reversed and remanded, ruling that the language relied upon by both the defendant and the District Court was dicta and that the Administrative Rule applied. Therefore, the District Court erred in granting the motion to suppress the results of the breath test. St. v. Johnston, 2011 MT 184, 361 Mont. 301, 258 P.3d 417.

Failure of Defendant to Present Evidence of Constitutionally Infirm Prior DUI Conviction — Motion to Invalidate Prior Conviction Properly Denied: The burden of proof is on the defendant to prove by a preponderance of the evidence that the prior conviction is constitutionally infirm. The defendant may not meet this burden by pointing to doubt or uncertainty in the record but must present affirmative evidence confirming that the prior conviction was obtained in violation of the constitution. St. v. Maine, 2011 MT 90, 360 Mont. 182, 255 P.3d 64, followed in St. v. Chesterfield, 2011 MT 256, 362 Mont. 243, 262 P.3d 1109, in which the Supreme Court, relying upon Maine and St. v. Chaussee, 2011 MT 203, 361 Mont. 433, 259 P.3d 783, held that the defendant failed to meet his burden of proof in demonstrating that his three prior DUI convictions were constitutionally infirm. The defendant's evidence, court records (which were silent as to whether the defendant knowingly, voluntarily, and intelligently waived his right to counsel) and an affidavit (in which the defendant could not recall whether he had waived his constitutional rights), did not constitute affirmative evidence that actually demonstrated his prior DUI convictions were constitutionally infirm.

Driving a Privilege, Not Right — Suspension of License Not Illegal Search or Seizure: The defendant refused to give a breath sample at the police station and the defendant's license was suspended by the Department of Justice. The defendant argued that the suspension was an illegal seizure that violated constitutional protections. The Supreme Court held that driving on Montana highways is a privilege and that the suspension of a license is a civil penalty and did not constitute a violation of the defendant's constitutional rights. Nichols v. Dept. of Justice, 2011 MT 33, 359 Mont. 251, 248 P.3d 813.

No Custody or Interrogation — Miranda Warning Not Required for Public Roadside DUI Investigation: A Miranda warning is not required during a roadside DUI investigation if brief public investigative encounters, even if somewhat coercive, do not constitute a custody and if the request for a field sobriety test is done without interrogation. St. v. Larson, 2010 MT 236, 358 Mont. 156, 243 P.3d 1130.

Officer's Assessment of Objective Facts Sufficient Probable Cause to Arrest: The District Court did not err in denying a motion to suppress based on an allegation of insufficient probable cause given the arresting officer's assessment of the objective facts, including a vehicle in a ditch, repeated futile efforts to back out of the ditch, strong smell of alcohol, glassy and bloodshot eyes, slurred speech, failure to understand simple instructions, and the failure to maintain balance and bodily functions. Probable cause must be based on an assessment of all relevant circumstances, evaluated in light of the knowledge of a trained law enforcement officer, and the absence of field sobriety tests does not fatally flaw the probable cause determination. St. v. Hafner, 2010 MT 233, 358 Mont. 137, 243 P.3d 435.

Jury Instruction Not Clearly Reflecting State Law — Reversible Error: The jury instruction regarding "actual physical control" did not clearly state the law and resulted in confusion on the part of the jury regarding what it means to be in "actual physical control" of a vehicle. As a result, the defendant's right to a fair trial was prejudicially affected. St. v. Christiansen, 2010 MT 197, 357 Mont. 379, 239 P.3d 949.

Proper Instruction That Jury Could Infer Defendant's Intoxication Based on Refusal to Perform Field Sobriety Tests Without Consulting Attorney: The District Court did not err in instructing the jury that it could infer that Stanczak was under the influence because Stanczak refused to perform field sobriety tests before consulting with an attorney. St. v. Stanczak, 2010 MT 106, 356 Mont. 263, 232 P.3d 896. See also St. v. Hudson, 2005 MT 142, 327 Mont. 286, 114 P.3d 210, and St. v. Miller, 2008 MT 106, 342 Mont. 355, 181 P.3d 625.

Proper Jury Instruction Regarding Defendant's Lack of Right to Attorney During Field Sobriety Tests: During a traffic stop, Stanczak was asked to perform field sobriety tests. The District Court instructed the jury in Stanczak's DUI trial that because there was no custodial interrogation, Stanczak had no right to counsel before completing the tests. On appeal, the Supreme Court affirmed the instruction as a full and fair instruction on the applicable law. St. v. Stanczak, 2010 MT 106, 356 Mont. 263, 232 P.3d 896.

No Prejudice in Instruction on Burden of Proof and Consideration of Circumstantial Evidence: The District Court gave a jury instruction in Sirles' DUI trial that differentiated between direct and circumstantial evidence. The instruction directed that in the case of circumstantial evidence susceptible of two reasonable interpretations, one pointing to guilt and the other toward innocence, the jury was to consider which interpretation was most reasonable. Sirles contended that the instruction improperly lessened the state's burden by allowing the jury to disregard the "beyond a reasonable doubt" standard in favor of a "most reasonable" standard. However, the instruction neither required Sirles to prove or disprove any elements of DUI nor lessened the state's burden of proving its case beyond a reasonable doubt; the instruction merely clarified for the jury how it should resolve an evidentiary question. Sirles was not prejudiced by the instruction, and the District Court did not err in giving it. St. v. Sirles, 2010 MT 88, 356 Mont. 133, 231 P.3d 1089.

Proper Consideration of Prior Wyoming DUI Conviction: Sirles contended that the District Court improperly considered a prior Wyoming DUI conviction for purposes of felony enhancement of his Montana DUI. The Supreme Court disagreed. Sirles failed to overcome the presumption of regularity attached to the Wyoming conviction that might have precluded its consideration for felony enhancement purposes. St. v. Sirles, 2010 MT 88, 356 Mont. 133, 231 P.3d 1089. See also St. v. Faber, 2008 MT 368, 346 Mont. 449, 197 P.3d 941.

Elements of Affirmative Compulsion Defense — Compulsion Possible Acceptable Defense to DUI Charge: The affirmative defense of compulsion is a well-recognized basis for finding a person not guilty of a charged offense even though the person's conduct appears to fall within the definition of the offense. As set out in St. v. Owens, 182 M 338, 597 P2d 72 (1979), the elements of a compulsion defense require a defendant to show that the defendant was compelled to perform the offensive conduct by the threat or menace of the imminent infliction of death or serious bodily harm, that the defendant believed that death or serious bodily harm would be inflicted on the defendant if the conduct was not performed, and that this belief was reasonable. A defendant need not show that there were no options other than the allegedly compelled action, only that the elements of the defense were satisfied. In this case, the District Court held that the compulsion defense did not apply to a DUI charge, so Leprowse was precluded from presenting evidence in support of the defense. The Supreme Court reversed. Leprowse alleged that the required elements of the defense were present because she was compelled to drive away from a bar due to an imminent threat of serious bodily injury, and that the belief was reasonable. Whether Leprowse was compelled to drive 14 miles and ostensibly commit a DUI was a question of fact based on the circumstances, but Leprowse should have been allowed to present the evidence, so the case was remanded for a new trial. St. v. Leprowse, 2009 MT 387, 353 M 312, 221 P3d 648 (2009). See also Missoula v. Paffhausen, 2012 MT 265, 367 Mont. 80, 289 P.3d 141, allowing the defendant to introduce evidence of automatism as a defense to DUI.

DUI Chargeable as Fourth Offense Despite Previous Third DUI Charged as Second Offense Under Plea Agreement: Blue was arrested for DUI twice in 1995 and again in 2000. The charging documents in the 2000 case listed the offense as DUI third offense, but as part of a plea agreement, the prosecutor amended the charge to DUI second offense, and Blue pleaded guilty and was sentenced in 2001. Blue was arrested for DUI again in 2007 and charged with fourth offense felony DUI. Blue asserted that because the 2001 charge was amended to DUI second offense, he could not be charged with a fourth offense in 2007. The Supreme Court disagreed. Under 61-8-734 (now repealed and content reorganized in Title 61, chapter 8, part 10), all previous convictions must be used in determining whether a fourth offense was committed. However, the title placed on the charge was not considered material to counting the number of offenses under the statutory scheme for DUI sentencing. Despite the characterization of the 2001 offense as DUI second offense for plea bargain purposes, Blue was in fact convicted of three prior DUIs when charged in 2007, so the felony fourth offense was properly charged. St. v. Blue, 2009 MT 304, 352 M 382, 217 P3d 82 (2009).

DUI Punishment Statutes Not Violative of Equal Protection: Blue contended that the statutory scheme for DUI sentencing, allowing different punishments for the first through third offenses and felony sentencing for a fourth DUI, violated equal protection under the Montana Constitution. The Supreme Court disagreed. The Montana Constitution does not include a right to be sentenced without regard to prior convictions. The assumption that a prior offender is a greater danger to the public is reasonable. Under Montana law, even if the highest degree of equal protection analysis was applied requiring the state to show a compelling interest in the DUI punishment statutes, that interest exists as a matter of law. Therefore, the DUI statutes withstood analysis and do not violate the constitutional guarantee of equal protection. St. v. Blue, 2009 MT 304, 352 M 382, 217 P3d 82 (2009).

DUI Sentencing Scheme Reasonably Related to Rehabilitation and Protection of Society — Felony DUI Considered Constitutionally Appropriate: Blue asserted that the DUI sentencing scheme violated the constitutional provision that punishment for crime must be based on principles of prevention, reformation, public safety, and restitution for victims. The Supreme Court noted that rather than escalating punishment for the same offense, the DUI statutes provide discrete punishments for discrete convictions, and that it is within the power of the Legislature to distinguish among criminal offenses and to establish punishments. The DUI sentencing limitations and conditions are reasonably related to the objectives of rehabilitation and protection of the victim and society, and the enhanced penalty for felony DUI is a constitutionally appropriate sentence. St. v. Blue, 2009 MT 304, 352 M 382, 217 P3d 82 (2009), distinguishing Missoula v. Shea, 202 M 286, 661 P2d 410 (1983). See also St. v. Bruns, 213 M 372, 691 P2d 817 (1984).

Admissibility of Video of Defendant Immediately After Accident: Schauf asserted that a video taken by the arresting officer's patrol car camera depicting Schauf's behavior at the scene of a vehicle accident should not have been admitted because the prejudicial effect of the evidence outweighed its probative value. The Supreme Court disagreed. The video was clearly relevant and probative of Schauf's condition and level of intoxication. The jury was informed that the video was taken just after a horrific high-speed crash and that Schauf had suffered a head injury. The jury was in a position to weigh the factors and to give the evidence as a whole the weight it deserved. As the District Court found, the only prejudice to Schauf was that the video was highly probative of the state's contention that Schauf was intoxicated at the time of the crash. The evidence was not unfairly prejudicial, and the District Court properly exercised its discretion in allowing admission of the video into evidence. St. v. Schauf, 2009 MT 281, 352 M 186, 216 P3d 740 (2009).

Independently Obtained Blood Alcohol Test Result Admissible in Prosecution of Negligent Vehicular Assault, Negligent Homicide, and Criminal Endangerment: Following a vehicle accident in which a person was killed, Schauf was charged with and convicted of negligent homicide, negligent vehicular assault, and criminal endangerment, but Schauf was not charged with DUI. At the hospital, a blood alcohol sample was taken at the direction of the investigating officer under the implied consent law and without advising Schauf of the right to an independent blood test. A second blood sample was drawn at the request of Schauf's treating physician in the emergency room. Schauf moved for suppression of the sample results, which showed that Schauf was intoxicated at the time of the accident. The District Court dismissed the results of the first test but admitted the results of the second test, and Schauf appealed, but the Supreme Court affirmed. The Supreme Court noted that the implied consent law applies when a person is charged with negligent vehicular assault, because that offense specifically relates to statutes governing

DUI. However, proof of DUI is not an element of negligent homicide or criminal endangerment, so failure to advise Schauf of the right to an independent blood test provided no basis for dismissal of those charges. Additionally, to the extent that the negligent vehicular assault conviction rested upon the results of the second blood test, those results were obtained independently of state action and of the implied consent law. Thus, suppression of the law enforcement test was proper, but dismissal of all charges would have been an extreme measure given additional substantial evidence of Schauf's intoxication before and after the accident. St. v. Schauf, 2009 MT 281, 352 M 186, 216 P3d 740 (2009).

No Error in Jury Instructions on Criminal Negligence at Trial for Vehicular Homicide While Under the Influence: At Coluccio's trial for vehicular homicide while under the influence, the trial court gave the jury an instruction on the definition of negligence. In another instruction the court told the jury that in order to convict Coluccio the jury had to find that the state proved that Coluccio was in physical control of a vehicle on state public roadways while under the influence and negligently caused a death, but the court omitted the requirement that the jury conclude that Collucio was criminally negligent, which Coluccio contended took away his defense that he was not criminally negligent while driving after drinking. The Supreme Court disagreed. Considering the instructions as a whole, the second instruction was not misleading. The court also noted that after jury instructions were given, the prosecutor argued that Coluccio was both under the influence and criminally negligent, and that Coluccio's counsel pointed out that the state had to prove not only that Coluccio was at fault, but also that his conduct was a gross deviation from the standard of care. Thus, the jury was fairly instructed and Coluccio was not deprived of his defense. St. v. Coluccio, 2009 MT 273, 352 M 122, 214 P3d 1282 (2009).

Sufficient Evidence of Vehicular Homicide While Under the Influence: After the state presented its case in chief at Coluccio's trial for vehicular homicide while under the influence, Coluccio moved to dismiss for lack of sufficient evidence on grounds that a reasonable juror could not conclude that his actions rose to the level of criminal negligence simply because he committed a minor traffic violation by failing to yield to another vehicle when making a left turn. The motion was denied, and on appeal the Supreme Court affirmed. The traffic offense was only part of the evidence. Other evidence showed that Coluccio drank at least three beers just before driving and then turned in front of a visible oncoming motorcycle, killing the rider. Coluccio's alcohol consumption and driving were sufficient evidence for a reasonable juror to conclude that turning in front of the motorcycle was a gross deviation from ordinary care. St. v. Coluccio, 2009 MT 273, 352 M 122, 214 P3d 1282 (2009).

No Reason to View With Distrust Failure of Officer to Record Events Creating Particularized Suspicion for Traffic Stop: An officer observed Deines drive through two red lights without stopping, but the officer failed to record either act. Deines was subsequently stopped for a traffic violation and was then arrested for DUI as a result of the traffic stop. Following conviction, Deines appealed on grounds that because the officer failed to record the events that created a particularized suspicion for the traffic stop, the officer's testimony should be viewed with distrust in the judicial assessment of particularized suspicion. The Supreme Court noted a line of cases that "view with distrust" the failure of law enforcement officers to preserve a record of particular evidentiary matters, but the court declined to extend those cases to the circumstances of this case. The prior cases were related primarily to officers gathering evidence in the controlled environment of a police station, and the court recognized that circumstances in the field may preclude the creation of a tangible record. Additionally, the court noted the passage of HB 534 (Ch. 214, L. 2009), which requires the electronic recording of custodial interrogations in most felony cases and essentially renders the "view with distrust" line of cases moot, so future application of the view with distrust precedent is doubtful. Therefore, there is no reason to view with distrust the failure of a police officer to record events creating particularized suspicion for a traffic stop. St. v. Deines, 2009 MT 179, 351 M 1, 208 P3d 857 (2009), followed in St. v. Wagner, 2013 MT 159, 370 Mont. 381, 303 P.3d 285.

No Notice to Defendant of Testimony of Officer Who Ordered DUI Blood Test — Denial of Motion to Suppress DUI Blood Test Affirmed: Grela was taken to the hospital following a vehicle accident. The officer at the scene noticed several empty and full beer cans and a half-full bottle of whiskey in and around the vehicle. Grela was unconscious, but the officer requested a DUI blood test, and Grela was subsequently charged in Municipal Court with DUI. Grela asserted that the test results should be suppressed because he did not consent to withdrawal of the blood and because the state should have provided notice that the officer would be called as an expert witness. The suppression motion was denied and Grela appealed, but the Supreme Court affirmed. Based on the best evidence available to the officers at the accident scene and at the hospital, the officer's belief that Grela was incapable of refusing the blood test was reasonable, so the blood was legally drawn and the test results were admissible. Additionally, Grela was given a copy of the officer's accident report as requested, so Grela had notice that the officer would testify as to the reasons underlying the officer's belief that Grela was incapable of refusing the blood test, and it was not necessary that the officer be disclosed as an expert. Billings v. Grela, 2009 MT 172, 350 M 511, 209 P3d 222 (2009).

Failure of Defendant to Present Evidence of Constitutionally Infirm Prior DUI Conviction — Motion to Withdraw Guilty Plea Properly Denied: Robinson pleaded guilty to a fourth DUI and later moved to withdraw the plea, but the motion was denied. On appeal, Robinson contended that the plea was not voluntary and that the District Court improperly accepted the plea because one of the prior convictions was unconstitutionally infirm. However, when the plea was offered, Robinson voluntarily admitted to three prior DUIs and that he was pleading guilty to a felony. The District Court was not required to extract an admission regarding every element of the crime. It was sufficient that the court ensured that Robinson admitted the acts that constituted the offense. It was Robinson's obligation to present the District Court with any evidence regarding irregularities in prior convictions. Since he did not do so, there was nothing in the record to support that argument, and the District Court was affirmed. St. v. Robinson, 2009 MT 170, 350 M 493, 208 P3d 851 (2009). See also St. v. Frazier, 2007 MT 40, 336 M 81, 153 P3d 18 (2007).

Plea Colloquy Sufficient — Motion to Withdraw Plea Properly Denied: Robinson pleaded guilty to DUI fourth offense in 2006. Pursuant to a plea agreement, sentencing was deferred for 1 year, provided Robinson paid child support during that year. Just prior to sentencing, Robinson moved to withdraw the guilty plea on grounds that the plea colloquy was inadequate, but the motion was denied. On appeal, the Supreme Court affirmed. When accepting a plea, it is sufficient that the District Court ensure that defendant admits committing the acts that constitute the crime charged. In this case, the plea colloquy was sufficient. The District Court was affirmed. St. v. Robinson, 2009 MT 170, 350 M 493, 208 P3d 851 (2009).

DUI Absolute Liability Offense — Proof of Mental State and Consideration of Involuntary Intoxication Not Required: During Weller's DUI trial, Weller proffered a jury instruction concerning a defense of involuntary intoxication, but the instruction was refused. Weller appealed, but the Supreme Court affirmed. The statute on involuntary intoxication, 45-2-203, provides that even though involuntary intoxication is not a defense to any offense, it may be taken into consideration in determining the existence of a mental state in cases where a mental state is an element of an offense. However, DUI is an absolute liability offense that does not require proof of a mental state, so consideration of involuntary intoxication was not necessary. Thus, the District Court did not abuse its discretion in refusing an involuntary intoxication instruction. St. v. Weller, 2009 MT 168, 350 M 485, 208 P3d 834 (2009).

Minor's Prior DUI in City Court Properly Applied to Felony DUI Charge — No Violation of Constitutional Rights in City Court: Allen was arrested for a felony fourth DUI in 2004. Calculation of the number of DUIs included Allen's first arrest in 1997 as a minor, to which Allen pleaded guilty in City Court. Allen contended that it was improper to include the 1997 conviction in the total because that conviction was constitutionally infirm in that the City Court failed to advise him of his rights, including the right to counsel, and accepted his guilty plea without consent of a parent. Allen further contended that as a minor he was incapable of knowingly, voluntarily, and intelligently waiving the right to counsel. The Supreme Court disagreed. City Court records provided direct evidence that Allen's 1997 conviction was not obtained in violation of Allen's constitutional rights, and Allen failed to rebut the presumption of regularity that attached to the 1997 conviction. With specific regard to the right to counsel argument, the court noted that because the Youth Court does not have concurrent jurisdiction with the City Court over traffic violations, including DUIs, Allen was incorrect in claiming that the right to counsel could only have been waived by Allen and a parent at the 1997 proceedings. Therefore, application of Allen's 1997 conviction in calculating a felony DUI was not error. St. v. Allen, 2009 MT 124, 350 M 204, 206 P3d 951 (2009).

Officer's Voluntary Exchange With Person in Parked Vehicle in Public Place Not Considered Seizure: Wilkins was parked in a public industrial area late on a cold night in a running vehicle with the lights on. An officer noticed the car and, being concerned that the vehicle was in an area where recent burglaries had occurred and concerned for the welfare of the driver, stopped to investigate. While speaking with Wilkins, the officer smelled the odor of an alcoholic beverage and noticed that Wilkins' speech was slurred, and after further investigation Wilkins was arrested for DUI. Wilkins contended that the arrest was unlawful because the officer had no particularized suspicion and because the community caretaker doctrine was inapplicable. Without reaching either of Wilkins' arguments, the Supreme Court affirmed because the officer's contact with Wilkins did not amount to a seizure. The officer was alone and did not activate emergency lights or a spotlight, display a weapon, or use threatening tones during the conversation, but rather simply approached Wilkins to see why she was parked on a dark, remote street late at night in cold weather. A reasonable person in Wilkins' place would not have concluded that she was not free to leave following the voluntary contact. Wilkins was parked in a public place, and the officer did not need a particularized suspicion to justify the contact. St. v. Wilkins, 2009 MT 99, 350 M 96, 205 P3d 795 (2009).

No Youth Court Authority to Expunge DUI Offenses — Elements of Judicial Estoppel Not Met: Following Darrah's completion of a Youth Drug Court program in 2004, the Youth Court ordered that Darrah's prior criminal record be expunged, including a previous minor in possession offense and a 2002 DUI. Darrah was subsequently charged in 2005 with second offense DUI, based on the prior 2002 DUI, and in 2006 Darrah was charged with third offense DUI. Citing the principle of judicial estoppel, Darrah asserted that because the Youth Court record had been expunged, the 2002 DUI should not count against him. The District Court disagreed and Darrah appealed. The Supreme Court applied the elements of judicial estoppel set out in Vogel v. Intercontinental Truck Body, Inc., 2006 MT 131, 332 M 322, 137 P3d 573 (2006), and determined that Darrah had failed to demonstrate that each element was met, so judicial estoppel did not apply. Further, there is no authority under which the Youth Court could order expungement of Darrah's DUI offenses. The District Court was affirmed. St. v. Darrah, 2009 MT 96, 350 M 70, 205 P3d 792 (2009), following St. v. Chesley, 2004 MT 165, 322 M 26, 92 P3d 1212 (2004).

Failure to Demonstrate Exigent Circumstances Justifying Warrantless Entry Into Residence for DUI Evidence — Reversed: Saale was involved in a one-car rollover after leaving a bar. Witnesses who helped Saale from the vehicle observed that Saale appeared to be highly intoxicated but not seriously injured. Saale's husband then arrived and took Saale home. Officers went to the home, but the husband refused to allow anyone into the home and refused to bring Saale outside. Officers had been advised by the County Attorney's office that they could enter the home without a warrant because of exigent circumstances of Saale's possible intoxication and trying to elude officers and because Saale might be severely injured from the accident. Therefore, officers handcuffed the husband and removed him from the area, entered the home, and removed Saale back to the scene of the accident, where Saale sat in the patrol car for 45 minutes. Saale subsequently failed a portable breath test and was arrested for DUI second offense. Saale moved to suppress evidence from the warrantless search. The District Court held that the exigent circumstances warrant exception gave officers the right to enter the home and to take Saale back to the accident scene, to question Saale about the accident and potential injuries, and to protect against the destruction of Saale's blood alcohol level as evidence of DUI, so the dismissal motion was denied. Saale appealed, and the Supreme Court reversed. Entry into the home without consent was reasonable only if the exigent circumstances were legitimate, but in this case officers had neither a lawful nor practical exigency justifying warrantless invasion of the home to obtain evidence. The argument for preservation of DUI evidence was negated by the fact that no physical evidence had been taken from Saale at the time of entry, so there was no evidence to destroy, and by the fact that Saale sat in the patrol car for 45 minutes before a breath test was even taken. The argument that possible injury constituted an exigent circumstance was belied by the fact that witnesses informed the officers that Saale did not appear to be injured and by the fact that if injuries had been obvious to officers when Saale was removed from the home, Saale would have been taken to the hospital rather than to the accident scene to sit idly and unattended in the patrol car while officers investigated the accident. Absent proof of exigent circumstances, warrantless entry into Saale's home was unreasonable and constituted reversible error. St. v. Saale, 2009 MT 95, 350 M 64, 204 P3d 1220 (2009), following St. v. Peplow, 2001 MT 253, 307 M 172, 36 P3d 922 (2001), and distinguishing St. v. Deshner, 158 M 188, 489 P2d 1290 (1971), and St. v. Wakeford, 1998 MT 16, 287 M 220, 953 P2d 1065 (1998).

Criteria of Particularized Suspicion or Reasonable Grounds for Peace Officer to Make Investigative Stop — Officer's Experience and Training as Factor in Totality of Circumstances: For a peace officer to have particularized suspicion or reasonable grounds for an investigatory stop, the officer must be possessed of (1) objective data and articulable facts from which to make certain reasonable inferences; and (2) a resulting suspicion that the person to be stopped is committing or is about to commit an offense. Although the peace officer's experience and training may be a factor in determining what sort of reasonable inferences the officer is entitled to make based on the officer's observations, experience, and training, they are not necessarily the defining element of the test. Rather, courts should look at the facts and the totality of the circumstances of each case. Here, the officer was possessed of objective data and articulable facts that Brown's vehicle was barely moving along a public highway at 2:51 a.m. with its lights on and that it suddenly pulled over, came to a stop, and shut off its lights. Given that this sort of conduct can be indicative of intoxicated driving, the officer could reasonably suspect that the driver was DUI. On approaching the vehicle, the officer detected the odor of alcohol coming from Brown's vehicle, and observed Brown's slurred and slow speech, slow and staggered exit from the vehicle, and explanation of a recently absent passenger when no other person was in the vicinity, and these objective observations allowed the officer's particularized suspicion to escalate into probable cause for a DUI arrest. Brown v. St., 2009 MT 64, 349 M 408, 203 P3d 842 (2009), clarifying St. v. Gopher, 193 M 189, 631 P2d 293 (1981), St. v. Schatz, 194 M 59, 634 P2d 1193 (1981), and St. v. Morsette, 201 M 233, 654 P2d 503 (1982), and followed in St. v. Cybulski, 2009 MT 70, 349 M 429, 204 P3d 7 (2009), and St. v. Larson, 2010 MT 236, 358 Mont. 156, 243 P.3d 1130. See also U.S. v. Cortez, 449 US 411 (1981), and St. v. Hilgendorf, 2009 MT 158, 350 M 412, 208 P3d 401 (2009).

Authority and Probable Cause to Make DUI Arrest: Ditton contended that the city police officer who arrested Ditton for DUI lacked authority to make the arrest because the arrest occurred outside city limits. Ditton also asserted that the officer lacked probable cause to make the arrest. Nevertheless, Ditton was convicted of DUI. Ditton appealed, but the Supreme Court affirmed on both issues. Although the arrest was outside city limits, pursuant to 7-32-4301 and relevant city ordinances, police officers had authority to conduct traffic stops within 5 miles of city limits. The arrest was within that area, so the officer had authority to make the stop. In addition, probable cause was present based on Ditton's overall driving, including striking a stop sign after the officer activated emergency lights, and an audio and video recording of the interactions between Ditton and the officer. The interactions, which included Ditton's performance in field sobriety tests, Ditton's overall appearance and level of functionality, and Ditton's driving, were sufficient to allow the officer to make a probable cause determination. St. v. Ditton, 2009 MT 57, 349 M 306, 203 P3d 806 (2009).

Authority of Deputy Sheriff to Make Arrest Without Completing Training Within One Year of Appointment: Jess asserted that the Deputy Sheriff who arrested her for DUI lacked the authority to make the unsupervised arrest because the deputy had not completed basic law enforcement training as required in 7-32-303 and that because the deputy was unauthorized, Jess's suspended driver's license should be reinstated. The Supreme Court disagreed. Under 7-32-303, a deputy must complete basic training within 1 year of appointment. However, the deputy was appointed only 8 months prior to the arrest and was therefore within the 1-year pretraining period. The deputy had completed 280 hours of reserve training and 24 hours of DUI training and had made numerous arrests both with and without supervision and thus was sufficiently experienced to form a particularized suspicion of DUI. The District Court's denial of Jess's motion for license reinstatement was affirmed. Jess v. St. ex rel. Records & Driver Control, 2008 MT 422, 347 M 381, 198 P3d 306 (2008).

Statutory Right to Plead Guilty to DUI and Related Misdemeanor Citations Not Violated by City Court's Refusal to Accept Pleas: There was no prejudice and any error was harmless when the state dismissed DUI charges prior to the District Court trial on one felony count and two misdemeanor charges of negligent vehicular assault. St. v. Milligan, 2008 MT 375, 346 M 491, 197 P3d 956 (2008).

Sufficient Particularized Suspicion for Investigative Stop: Defendant was swerving within her lane so as to touch dividing and fog lines, cross the dividing line, and strike the curb when executing a right-hand turn. Thus the court's conclusions of law in denial of the motion to suppress evidence in a DUI case were correct. St. v. Ross, 2008 MT 369, 346 M 460, 197 P3d 937 (2008).

Driving Without Properly Functioning Brake Lights Constitutes Sufficient Particularized Suspicion for Investigative Stop: Operating a motor vehicle that is not equipped with functional brake lights is a misdemeanor offense, and thus deputy's decision to pull over defendant's vehicle was supported by a particularized suspicion. St. v. Faber, 2008 MT 368, 346 M 449, 197 P3d 941 (2008).

Combined Sentence and Judgment Equals Error: The District Court imposed an illegal sentence when sentencing defendant on a petition to revoke a sentence for burglary and on a new felony DUI charge because the court imposed a total fine in excess of the statutory limit for the latter charge. St. v. Dennison, 2008 MT 344, 346 M 295, 194 P3d 704, (2008).

No Unconstitutional Burden Shifting in Court's Instructing Jury on Rebuttable Presumption When Arrested Driver Refuses Breath Test: Well-settled case law, plus the trial court's admonition to the jury that the statutory inference that a driver is under the influence of alcohol if the driver refuses a blood alcohol concentration test can be countered by evidence presented by the driver, showed no abuse of discretion by the judge. St. v. Slade, 2008 MT 341, 346 M 271, 194 P3d 677, (2008).

Waiver of Right to Raise Issue of Unreasonable Delay — Failure to Move Court for Ruling at or Before Omnibus Hearing: Approximately 4 hours after Kummerfeldt was involved in a single-vehicle accident, his blood was drawn for a BAC test, which produced a 0.14% result. At trial, he moved for a judgment of acquittal on the DUI per se charge, based on the state's failure to prove his BAC result was 0.08 or greater at the time he was driving and because under St. v. McGowan, 2006 MT 163, 332 M 490, 139 P3d 841 (2006), 4 hours was an unreasonable delay between the driving and the drawing of blood. However, not only did Kummerfeldt fail to raise this objection at the omnibus hearing, he also entered into a pretrial stipulation as to the admissibility of the BAC report. Therefore, Kummerfeldt waived his arguments. St. v. Kummerfeldt, 2008 MT 333, 346 M 187, 194 P3d 662 (2008).

Offsite or On-Call Supervision Sufficient to Satisfy Requirement for Supervision and Direction of Person Who Draws Blood for DUI Test: After Merry was picked up for suspected DUI in the early morning hours, he was taken to a rural health center for a blood draw. There was no physician or registered nurse present to take blood, so a licensed practical nurse took the blood sample, which indicated Merry's intoxication. At trial, Merry asserted that results of the blood test should be suppressed on grounds that the nurse was not acting under the supervision and direction of a physician or registered nurse as required by 61-8-405 (now repealed and content reorganized in Title 61, chapter 8, part 10), because there was no physician or registered nurse physically present. The District Court denied the motion to suppress, and on appeal the Supreme Court affirmed. Section 61-8-405 does not require the physical presence of a physician or registered nurse when a qualified person such as a licensed practical nurse takes a blood sample for DUI testing purposes. Offsite or on-call supervision can satisfy the statutory requirement that the qualified person be acting under the supervision and direction of a physician or registered nurse. St. v. Merry, 2008 MT 288, 345 M 390, 191 P3d 428 (2008), followed in St. v. Allport, 2015 MT 349, 382 Mont. 29, 363 P.3d 441.

Defendant's Right to Counsel and Right to Trial Not Violated During Four Prior DUI Prosecutions — Enhancement of New DUI Charge to Felony Proper: Walker's 2005 DUI arrest was enhanced to a felony charge when driving records indicated that Walker had six prior DUI convictions. Walker alleged that four of the prior convictions were constitutionally infirm because Walker had not been advised of the right to counsel, the right to compel attendance of witnesses, the right to a trial by a jury, and penalty enhancement provisions. The District Court concluded that the four convictions did not violate Walker's constitutional rights and held that the prior convictions could be used to enhance the 2005 DUI to a felony. Walker appealed, and the Supreme Court considered each assertion in turn to determine whether Walker's waiver of the right to counsel and right to trial during the prior prosecutions was made knowingly, intelligently, and voluntarily. The initial appearance/arraignment documents that Walker signed after being charged with the prior DUI offenses adequately informed Walker of the right to counsel, and Walker indicated an understanding of that right and that an attorney was not desired. A waiver of rights form and a waiver of counsel form that Walker signed evidenced that understanding. It was also sufficient that Walker was informed of the right to call witnesses to attend the proceedings, even though the Constitution does not confer a right to compel witnesses to testify. Walker was also adequately informed of the right to a trial by jury and to a unanimous verdict, but it was unnecessary for the District Court to explain all the nuances or effects of waiving the right to a trial by jury. Lastly, the documents informed Walker that there might be indirect consequences of a guilty plea, including the possible loss of driving privileges and the use of the conviction in the event Walker was convicted of a crime in the future, but the District Court was not required to specifically inform Walker of the indirect consequence that a fourth or subsequent DUI might result in a felony charge, because whether Walker committed a fourth or subsequent DUI was clearly within Walker's sole control and was an indirect consequence of guilty pleas to the prior DUI offenses. Thus, Walker's prior guilty pleas were entered knowingly, intelligently, and voluntarily, and the District Court did not err in allowing the use of the prior convictions to elevate Walker's 2005 DUI to a felony. St. v. Walker, 2008 MT 244, 344 M 477, 188 P3d 1069 (2008).

Error for District Court to Impose Parole Conditions for Felony DUI — Error Harmless Given That No Parole Available: The District Court sentenced Kampf to 13 months with the Department of Corrections for felony DUI, followed by a suspended term of 2 years with the Department. The court then attached 25 conditions on the sentence during any term of parole or probation. Kampf contended that the court was without authority to impose conditions on any time period when

Kampf might be released on parole. Citing St. v. Burch, 2008 MT 118, 342 M 499, 182 P3d 66 (2008), the Supreme Court agreed. Other than in limited and expressly authorized instances, such as for sexual and violent offenders, sentencing courts do not have a residual or inherent authority to generally impose parole conditions. Felony DUI is not a sexual or violent offense, so the District Court had no authority to impose parole conditions. However, pursuant to 61-8-731 (now repealed and content reorganized in Title 61, chapter 8, part 10), the imposition or execution of the 13-month sentence for felony DUI may not be deferred or suspended and the offender is not eligible for parole, so even though Kampf's sentence containing parole conditions was illegal, the error was harmless because parole was unavailable. St. v. Kampf, 2008 MT 198, 344 M 69, 186 P3d 223 (2008).

Failure to Establish Constitutional Invalidity of Prior DUI Conviction — Use of Conviction to Enhance DUI to Felony Affirmed: Kampf was charged with felony DUI based on three prior convictions, but Kampf asserted that one of the prior convictions was invalid because he was not informed of the right to counsel. The District Court considered the issue, but concluded that the state presented evidence establishing that the prior conviction was not obtained in violation of Kampf's constitutional rights. In support of his argument on appeal, Kampf offered a conclusory statement that he had presented sufficient evidence to rebut the presumption of regularity attached to the prior conviction, but he did not specifically challenge any of the District Court's findings or conclusions, nor did he provide any legal authority supporting a challenge. The Supreme Court declined to guess at Kampf's precise argument or to develop any legal analysis to support Kampf's position and instead affirmed the District Court's conclusion that the prior conviction was constitutionally valid for purposes of enhancing the DUI to a felony. St. v. Kampf, 2008 MT 198, 344 M 69, 186 P3d 223 (2008).

Off-Campus Stop Following On-Campus Traffic Violation — Extension of Campus Security Officer's Jurisdiction: Howard ran a red light at 2:30 a.m. on the University of Montana campus. However, despite pursuit by a campus security officer, Howard did not stop his vehicle until he was about 1 mile off campus. Following arrest and conviction for a traffic violation and felony DUI, Howard asserted that the officer did not have jurisdiction to make a traffic stop off campus and that because the violation occurred at a time when there was little traffic on the road, the offense did not pose an imminent threat to public safety. The Supreme Court disagreed with both arguments and affirmed. The offense occurred within the officer's jurisdiction, and campus police had authority under a joint university-city agreement to enforce, within city limits, traffic and criminal offenses that occurred on campus in the officer's presence and that posed an imminent threat to public safety. Despite light traffic, Howard's conduct did pose a threat to public safety, and the officer did not lose jurisdiction simply because Howard failed to stop until he was beyond campus parameters. St. v. Howard, 2008 MT 173, 343 M 378, 184 P3d 344 (2008).

Probable Cause and Particularized Suspicion of DUI Based on Flagrant Traffic Violations — Suspension of License Proper: Cybulski drove west in the eastbound lane of an interstate highway for at least 30 minutes, obviously oblivious to the surrounding environment. Cybulski initially refused to stop for a pursuing officer, and when she did stop, she failed to respond to the officer's instructions, and the officer had to forcibly remove her from the car before placing her under arrest. Cybulski failed field sobriety tests and refused to take a breath test, so her license was suspended. Cybulski later petitioned for reinstatement of her license, and the District Court granted the petition on grounds that although the officer had a particularized suspicion to stop Cybulski for driving on the wrong side of the highway, the officer lacked the requisite particularized suspicion to conduct sobriety tests and the probable cause to make a DUI arrest. On appeal, the Supreme Court reversed. An experienced officer could infer that Cybulski was DUI based on the sheer length of time that Cybulski traveled on the wrong side of the interstate and her apparent obliviousness to oncoming traffic traveling in the same lane. When paired with Cybulski's unusually delayed response to pursuing officers, the officer was entitled to infer that Cybulski was DUI even before she stopped her car. Probable cause existed because there were sufficient facts and circumstances within the officer's personal knowledge to warrant a reasonable belief that Cybulski had committed an offense. Because the officer had both a particularized suspicion to believe that Cybulski was DUI and probable cause for an arrest, Cybulski was lawfully under arrest at the time that she was removed from her car and handcuffed on the interstate and when asked to submit to a breath test, so her license was properly suspended. In re License Suspension of Cybulski, 2008 MT 128, 343 M 56, 183 P3d 39 (2008).

Evidence of Refusal to Take Sobriety Test Not Shift of Proof of Innocence of DUI to Defendant — Jury Instructions as a Whole Adequate Statement of Applicable Law: Miller contended that jury instructions failed to instruct the jury that his refusal to take a DUI sobriety test did not in itself prove that he was under the influence and that the jury was not instructed that the state had to produce other corroborating evidence of DUI, which had the effect of transforming the permissive inference allowed by 61-8-404 (now repealed and content reorganized in Title 61, chapter 8, part 10) into a mandatory presumption that Miller was under the influence. The Supreme Court examined the jury instructions as a whole and disagreed. As stated in St. v. Michaud, 2008 MT 88, 342 M 244, 180 P3d 636 (2008), the inference in 61-8-404 is permissive and does not violate due process because there is a rational connection between driving while intoxicated and refusing to take a sobriety test. Thus, the jury instructions did not unconstitutionally shift the burden to Miller to prove his innocence, and the instructions fully and fairly instructed the jury regarding the applicable law. Miller's DUI conviction was affirmed. St. v. Miller, 2008 MT 106, 342 M 355, 181 P3d 625 (2008), followed in St. v. Larson, 2010 MT 236, 358 Mont. 156, 243 P.3d 1130. See also Great Falls v. Morris, 2006 MT 93, 332 M 85, 134 P3d 692 (2006).

Improper Admission of Horizontal Gaze Nystagmus Test Results: Michaud appealed his DUI conviction on grounds that the trial court improperly admitted evidence regarding how a horizontal gaze nystagmus (HGN) test was administered by the arresting officer and the officer's results or inferences from the test because the state did not establish a proper foundation upon which the nonexpert officer could offer the evidence. The state conceded that a proper foundation was not laid, but contended that the evidence was admissible as cumulative evidence of Michaud's guilt. The Supreme Court, citing Hulse v. St., 1998 MT 108, 289 M 1, 961 P2d 75 (1998), agreed that there was an insufficient foundation for the admission of the HGN evidence and that the trial court abused its discretion by allowing the officer to testify regarding the test results. To determine whether the error prejudiced Michaud's rights to a fair trial, warranting reversal, the court applied the test in St. v. Van Kirk, 2001 MT 184, 306 M 215, 32 P3d 735 (2001). The error here was trial error and thus not automatically reversible, but contrary to the state's argument that the evidence was cumulative and the state's offer of proof of Michaud's failing several other sobriety tests, the state failed to meet its burden of proving that admission of the HGN evidence was harmless because the HGN test was scientific and likely to be accorded more weight by the jury than more subjective evidence, such as the officer's testimony and less scientific field sobriety tests. The jury verdict was reversed and remanded for retrial. St. v. Michaud, 2008 MT 88, 342 M 244, 180 P3d 636 (2008). However, see St. v. Chavez-Villa, 2012 MT 250, 366 Mont. 519, 289 P.3d 113, ruling that although implication of HGN results was improperly admitted, the cumulative evidence of the defendant's intoxication rendered the introduction of the implied results harmless.

Presumption That Person Who Refuses to Take Blood Test May Be Intoxicated Considered Permissive Inference: Michaud asserted that the presumption in 61-8-404 (now repealed and content reorganized in Title 61, chapter 8, part 10), that a person who refuses to take a blood test may be considered to be intoxicated, was an impermissible presumption and that because only permissive presumptions are allowed in criminal cases, his DUI conviction should be reversed. The Supreme Court disagreed. The presumption is in fact a permissive presumption inasmuch as a trier of fact is free to accept or reject the presumption from a given set of facts. In addition, as a permissive presumption, it does not violate due process because there is a rational connection between driving while intoxicated and refusing to take a sobriety test. St. v. Michaud, 2008 MT 88, 342 M 244, 180 P3d 636 (2008), applying Leary v. U.S., 395 US 6 (1969).

Conviction Not Entered in Violation of Defendant's Right to Be Present at Trial — Use of Prior DUI Conviction to Support Felony DUI Charge Not Error: The state sought to use three prior DUI convictions to enhance Weaver's 2005 DUI charge to felony DUI, fourth offense. Weaver contended that use of the prior 1996 conviction was constitutionally infirm because he had been tried in absentia in violation of his right to be present at the proceedings and that any waiver of that right had to be proved to be knowing, voluntary, and specific as required by 46-16-122. Because Weaver swore on direct examination that he did not have notice of the 1996 trial date, the burden shifted to the state to provide direct evidence that the 1996 conviction was not entered in violation of Weaver's rights. The Supreme Court concluded that the state met its burden. Oral and documentary evidence showed that either Weaver knew of the 1996 trial date and was willfully absent or he kept himself deliberately ignorant of the trial date, thus waiving the right to be present. When a defendant's failure to know of a continued trial date is directly attributable to the defendant's efforts to keep himself ignorant of that date, the defendant may not later complain about a lack of knowledge. Thus, the 1996 conviction was not entered in violation of Weaver's right to be present, and the District Court correctly ruled that the 1996 conviction could be used to support a charge of felony DUI. St. v. Weaver, 2008 MT 86, 342 M 196, 179 P3d 534 (2008), following U.S. v. Houtchens, 926 F2d 824 (9th Cir. 1991).

No Triple Jeopardy in Prosecution of Misdemeanor Absent Prosecutorial Intent to Provoke Mistrial: At Mouat's misdemeanor DUI trial, the city prosecutor presented a videotape of Mouat's arrest, which showed the arresting officer asking Mouat about previous DUI arrests. Mouat moved for and was granted a mistrial. The trial court found that admission of the offending statement was an inadvertent oversight by both parties and ordered the city to redact the statement from the tape. Nevertheless, despite the city's efforts, at the next trial, the statement was still slightly audible, and Mouat again moved for and was granted a mistrial. Mouat then asserted that, based on double jeopardy and fundamental fairness grounds, the prosecution should not be granted a third trial in a misdemeanor case when the cause was negligence on the part of the government. The Supreme Court disagreed, citing St. v. Mallak, 2005 MT 49, 326 M 165, 109 P3d 209 (2005), for the proposition that when a mistrial is declared on a defendant's motion, double jeopardy does not bar a subsequent trial unless the governmental conduct in question was intended to goad defendant into moving for a mistrial. Billings v. Mouat, 2008 MT 66, 342 M 79, 180 P3d 1121 (2008).

No Particularized Suspicion for Stop to Investigate Couple Engaged in Romantic but Not Criminal Behavior — Community Caretaker Doctrine Inapplicable Absent Indication of Citizen in Peril: While on routine patrol, an officer observed a vehicle parked on a pullout adjacent to a public road. The officer thought perhaps the driver was experiencing vehicle problems and drove by to investigate. However, the occupants were not having vehicle problems but were kissing, and the female passenger was observed attempting to "mount" the male driver. Concerned that the occupants were engaged in inappropriate sexual behavior, the officer circled back, parked behind the vehicle and activated the emergency lights, and approached the vehicle with the intent to discourage the couple from engaging in their behavior and to move them along. The officer discovered a cold, sweaty beer can outside the driver's door and also discovered the couple in various states of undress. Upon questioning the couple about what they were doing, the officer noticed that they both appeared intoxicated. The driver, Graham, was tested and subsequently arrested for DUI. Graham moved to suppress the evidence of the DUI on grounds that the officer did not have authority to make an investigative stop or, if that authority did exist, that the officer exceeded the scope of an investigative stop. The District Court agreed that the officer did not have a sufficient particularized suspicion to make an investigative stop, but nevertheless allowed the DUI evidence on grounds that the community caretaker doctrine provided a legal justification for the stop. On appeal, the Supreme Court first noted that if particularized suspicion was absent and no other exception to the warrant requirement applied, the search and seizure were unconstitutional. In this case, once the officer activated the emergency lights, Graham would not have felt free to walk away, so a seizure occurred. The Supreme Court agreed that the totality of the circumstances did not give rise to a particularized suspicion that a crime was occurring or was about to occur. Graham committed no traffic offense, and the couple's conduct was not criminal and did not indicate that a crime was about to occur. Any particularized suspicion occurred only after Graham was seized. The officer did not approach the vehicle because of a belief that a crime was being committed, but rather to discourage the couple from engaging in their behavior and to move them along, so the requisite particularized suspicion of a crime was absent. The Supreme Court also held that the community caretaker doctrine did not apply because under the criteria developed in St. v. Lovegren, 2002 MT 153, 310 M 358, 51 P3d 471 (2002), the first step in determining whether the doctrine applies is whether there are objective, specific, and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril. No such facts existed in this case, and the court declined to extend the doctrine to allow law enforcement officers equipped with nothing more than personal dissatisfaction of a person's otherwise lawful conduct to detain that person without any intention of providing community care or assistance. Dismissal of Graham's motion to suppress the evidence was reversed, and the case was remanded. St. v. Graham, 2007 MT 358, 340 M 366, 175 P3d 885 (2007), distinguishing St. v. Nelson, 2004 MT 13, 319 M 250, 84 P3d 25 (2004), St. v. Seaman, 2005 MT 307, 329 M 429, 124 P3d 1137 (2005), and St. v. Litschauer, 2005 MT 331, 330 M 22, 126 P3d 456 (2005).

Revocation of Suspended Felony DUI Sentence — Erroneous Order to Serve Time at State Prison: After pleading guilty to a felony DUI committed in 2000, Oie was sentenced to the Department of Corrections for 13 months, followed by 4 years of supervised release with conditions. Oie was subsequently apprehended on several occasions for violating probation conditions, and the state moved to revoke Oie's suspended sentence. The District Court gave Oie credit for time served and sentenced Oie to 4 years at the state prison. Oie appealed the sentence, arguing that under the 1999 version of 61-8-731 (now repealed and content reorganized in Title 61, chapter 8, part 10) in effect at the time of the original offense, the District Court could not impose a sentence that was greater than the remainder of the probationary term. The Supreme Court agreed and reversed. The specific provisions of 61-8-731(5) (1999) governed the imposition of a sentence upon the revocation of Oie's suspended sentence and limited the District Court to either continuing the period of probation or requiring Oie to serve the remainder of the probation sentence. A 4-year prison sentence was outside statutory parameters, and the case was remanded for resentencing consistent with the applicable statute. St. v. Oie, 2007 MT 328, 340 M 205, 174 P3d 937 (2007), following St. v. Webb, 2005 MT 5, 325 M 317, 106 P3d 521 (2005).

Absence of Findings of Fact, Conclusions of Law, and Judgment Precluding Review of DUI Case — Remand: Goldsmith was stopped on the University of Montana-Missoula campus and charged with DUI. His license was taken for failure to submit to breath tests, and Goldsmith petitioned the District Court to have the license returned, but the court deferred to the officer's experience and simply denied the petition. On appeal, the Supreme Court noted that the District Court made no findings of fact or conclusions of law and did not enter judgment on the petition. Because the Supreme Court did not have sufficient information upon which to base a review, the appeal was dismissed without prejudice and the case was remanded for entry of findings of fact, conclusions of law, and a judgment as required by the Montana Rules of Civil Procedure. Goldsmith v. Dept. of Justice, 2007 MT 221, 339 M 65, 168 P3d 1041 (2007).

Consideration of Sentencing Factors in Sentencing Persistent Felony Offender Not Violative of Right to Trial by Jury: Following conviction for an eighth DUI, Vaughn was sentenced as a persistent felony offender to a 50-year term in the state prison. Relying on the proposition in Blakely v. Wash., 542 US 296 (2004), that factual findings that serve to enhance a sentence beyond the statutory maximum must be determined by a jury beyond a reasonable doubt, Vaughn appealed the felony sentence, asserting that the 50-year sentence imposed under 46-18-502 served to enhance the sentence beyond the maximum 13-month commitment to the Department of Corrections followed by a suspended sentence of up to 5 years authorized for felony DUI in 61-8-731 (now repealed and content reorganized in Title 61, chapter 8, part 10) and that therefore the persistent felony offender sentence should have been determined by a jury on the facts. The Supreme Court first noted that the Blakely proposition applies to a fact other than the fact of a prior conviction and that it is the fact of a defendant's prior felony conviction that authorizes an enhanced sentence under 46-18-501 (now repealed) and 46-18-502. Here, Vaughn's enhanced felony DUI sentence was based on the sentencing court's finding that Vaughn had a prior felony DUI conviction. That factual determination may properly be made by the sentencing court rather than by a jury. The prior DUI was a sentencing factor that was an aggravating or mitigating circumstance supporting the imposition of a sentence within the range authorized for a persistent felony offender. Thus, Vaughn's right to a trial by jury was not violated by the sentencing court's findings of fact in support of a sentence as a persistent felony offender. The sentence was affirmed. St. v. Vaughn, 2007 MT 164, 338 M 97, 164 P3d 873 (2007). See also Apprendi v. N.J., 530 US 466 (2000).

Officer's Observations Sufficient to Establish Particularized Suspicion of DUI Following Caretaker Stop: Vaughn pulled part way off the road, and an officer stopped to see if assistance was needed. The District Court concluded that under the community caretaker doctrine, the officer was justified in stopping to make sure Vaughn was all right. However, Vaughn asserted that once he assured the officer that no assistance was needed, the scope of the doctrine ended and that because the officer had no other justification for the stop, the officer's further questioning and request for field sobriety tests constituted an unlawful seizure, requiring suppression of all evidence gathered. The Supreme Court disagreed. When the officer approached the vehicle, he noticed an open can of beer between the front seats, and when asking about Vaughn's situation, he observed that Vaughn's speech was slurred and that his eyes were bloodshot and watery. Thus, the officer's observations were sufficient to establish a particularized suspicion that Vaughn may have been DUI, justifying further investigation once the purpose of the initial stop was accomplished. It was not error for the trial court to dismiss Vaughn's motion to suppress the evidence. St. v. Vaughn, 2007 MT 164, 338 M 97, 164 P3d 873 (2007).

Sufficient Particularized Suspicion for Investigative DUI Stop Under Totality of Circumstances: Luckett asserted that the officer who arrested him for DUI did not have sufficient particularized suspicion to make an investigative stop. The Supreme Court disagreed. Luckett contended that the various circumstances surrounding the stop, when considered separately, did not provide adequate suspicion, but the court considers the totality of the circumstances. The officer, who had over 4 years' experience and had completed numerous training courses, including DUI detection, observed Luckett and several other persons drinking beer at a truck stop, watched Luckett enter a vehicle, and followed the vehicle onto the interstate. The driver, who turned out to be Luckett, drove abnormally slow for the conditions, and the vehicle weaved along the highway and crossed the fog line twice. Under the totality of these circumstances, the officer had a reasonable suspicion that Luckett was engaged in wrongdoing, and the District Court's finding that the officer had a particularized suspicion for conducting an investigative stop was not erroneous. St. v. Luckett, 2007 MT 47, 336 M 140, 152 P3d 1279 (2007). See also Muller v. St., 2012 MT 66, 364 Mont. 328, 274 P.3d 737.

No Absolute Right to Counsel in Tribal Court — Tribal DUI Conviction Properly Considered for Purposes of Charging Felony DUI in State Court: Walker was charged with felony DUI based on four prior convictions. Walker challenged two of the prior convictions—one in Justice's Court in Garfield County and one in tribal court on the Fort Belknap Indian Reservation—and asserted that in both cases, no confirmation had been made regarding Walker's right to counsel. The Supreme Court did not address the Garfield County conviction because the tribal court was dispositive. The standards of tribal law rather than federal or state constitutional law applied to the Fort Belknap case. Congress extended many of the protections in the federal Bill of Rights to Native Americans in the Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C. 1301, et seq., but ICRA does not contain a provision extending the right to counsel to tribal court proceedings. Thus, no absolute right to counsel exists in tribal court unless a tribe provides for that right. Walker could cite no tribal code provision extending him the right to counsel in 1992 when the case was heard and therefore could not argue the irregularity of the tribal court case on right to counsel grounds. The District Court did not err in applying the tribal court conviction to Walker's accumulated prior convictions for purposes of charging felony DUI under 61-8-731 (now repealed and content reorganized in Title 61, chapter 8, part 10). St. v. Walker, 2007 MT 34, 336 M 56, 153 P3d 614 (2007), following St. v. Spotted Eagle, 2003 MT 172, 316 M 370, 71 P3d 1239 (2003).

Slow Operation of Vehicle and Buildup of Traffic Behind Vehicle Establishing Particularized Suspicion That Driver Impeding Traffic — Stop Warranted: Benders was driving between 25 and 40 miles an hour in a 50-mile-an-hour zone and continued to drive at the reduced speed when the speed limit increased to 70 miles an hour. No vehicles were in front of Benders, but at least four vehicles were following, and additional vehicles were quickly approaching. An officer was concerned that Benders' slow driving was creating a dangerous situation even though there was nothing to indicate a need to drive at a reduced speed. The officer stopped Benders for impeding traffic pursuant to 61-8-311, and Benders was subsequently arrested for DUI. Benders moved to suppress all evidence relating to the initial stop, but the motion was denied. On appeal, Benders asserted that the motion should have been granted because the officer did not have a particularized suspicion to justify the stop. The Supreme Court affirmed. The combination of slow speed and the buildup of vehicles provided the officer with sufficient information that Bender was impeding traffic, justifying the stop. Benders also argued that the state failed to establish the minimum speed required under 61-8-311 and thus failed to show that his speed was slow enough to violate the law. However, the relevant determination under 61-8-311 is not the speed of the vehicle, but the effect of the slow speed on the flow of traffic. Benders also claimed that a violation of 61-8-311 requires a showing that a defendant has created unsafe driving conditions and an increased risk of an accident. However, such a showing is not required under the statute, and it would be inappropriate to conclude that an officer must wait for an unsafe driving condition to arise before concluding that traffic was being impeded. St. v. Benders, 2006 MT 275, 334 M 231, 146 P3d 751 (2006).

Observation of Traffic Violation Constituting Objective Data of Wrongdoing — Investigative Stop Justified: Thompson contended that because an officer did not observe Thompson speeding, driving erratically, or causing an accident or near accident and because the officer did not charge Thompson with any driving offense other than DUI, the officer did not have reasonable cause to justify an investigative stop. The Supreme Court disagreed. The officer testified that Thompson's vehicle made a wide turn and crossed over the centerline into the oncoming lane of traffic and that after Thompson overcorrected, Thompson continued to swerve in his own driving lane, rode the centerline, and swerved off the right side of the road, which led the officer to believe that Thompson might be intoxicated. The officer's observations constituted objective data from which an experienced officer could infer that the occupant of the vehicle was engaged in wrongdoing that was sufficient to justify the investigative stop. St. v. Thompson, 2006 MT 274, 334 M 226, 146 P3d 756 (2006), following St. v. Steen, 2004 MT 343, 324 M 272, 102 P3d 1251 (2004), and distinguishing St. v. Lafferty, 1998 MT 247, 291 M 157, 967 P2d 363 (1998), and Morris v. St., 2001 MT 13, 304 M 114, 18 P3d 1003 (2001).

No Clear Discussion Regarding Separate Blood Alcohol Test or Impediment of Request for Independent Test — Due Process Not Violated: As the arresting officer was reading the implied consent law, Wrzesinski stated, "I want a blood test though". The officer then finished reading the implied consent law, explaining that after the requested breath test was complete, Wrzesinski could request an independent test. Wrzesinski refused the breath test and did not request an independent test or raise the topic of other alternatives to the breath test. Wrzesinski subsequently moved to dismiss on grounds that he was not given the blood test that he requested and that his request to receive one was unreasonably impeded. The motion was denied, and on appeal, the Supreme Court affirmed. An accused has a due process right to be informed of the right to obtain an independent blood alcohol test, but when a due process violation is alleged, the defendant must establish that the test was timely requested and that the arresting officer unreasonably impeded the right to the test. Here, Wrzesinski's statement could reasonably be construed as an expression of a desire to request a blood test as an alternative to the breath test that the officer selected, but could not be construed as a request for an independent blood test, and even if Wrzesinski had done so, the officer did not unreasonably impede Wrzesinski from obtaining one. St. v. Wrzesinski, 2006 MT 263, 334 M 157, 145 P3d 985 (2006).

State Not Required to Prove Alcohol Consumption Rather Than Diabetic Condition Caused Failed Sobriety Tests — Sufficient Probable Cause for DUI Arrest: Ditton, arrested for DUI following an accident, claimed that his diabetes, rather than alcohol, caused his poor performance on field sobriety tests and argued that the state had a burden to prove that alcohol, rather than diabetes, diminished his capacity to drive. Distinguishing Bush v. Dept. of Justice, 1998 MT 270, 291 M 359, 968 P2d 716 (1998), in which the court reversed the implied consent suspension of a defendant's driver's license because the state lacked probable cause for arrest, the Supreme Court ruled that Ditton's allegations regarding his diabetic condition were a matter of defense that were presented to and rejected by the jury. The state needed to prove only the elements of the criminal offense and presented sufficient evidence to sustain the DUI charge. St. v. Ditton, 2006 MT 235, 333 M 483, 144 P3d 783 (2006).

Admissibility of Liquor Bottle in Plain View During Officer's Attempt to Secure Vehicle When Suspect in Custody for DUI: After receiving a report of a suspected drunk driver, the investigating officer stopped Delao and placed him in custody in the patrol car. Upon securing the vehicle, the officer saw a clear bottle partially covered beneath the center armrest, which the officer recognized as a liquor bottle. The bottle contained vodka, which the officer confiscated and which was entered as evidence in Delao's DUI case. Delao moved to suppress the evidence as the fruit of an unlawful search, but the motion was denied. Following conviction, Delao appealed, but the Supreme Court affirmed. The officer's attempt to secure the vehicle fell within the ambit of the slight duty of care owed to Delao under St. v. Sawyer, 174 M 512, 571 P2d 1131 (1977), and neither the observation nor seizure of the bottle involved any privacy violation because the bottle was in plain view. The officer was lawfully present in the vehicle, and the incriminating nature of the bottle was immediately apparent. St. v. Delao, 2006 MT 179, 333 M 68, 140 P3d 1065 (2006), followed in St. v. Kelm, 2013 MT 115, 370 Mont. 61, 300 P.3d 687.

Retrograde Extrapolation of Blood Alcohol Content Not Necessary to Prove Person's Blood Alcohol at Time Person Was Driving: Retrograde extrapolation, a technique through which experts estimate alcohol concentration at some earlier time based on test results at some later time, is not necessary evidence to prove what a person's blood alcohol was at the time that the person was driving. Here, the results of an Intoxilyzer breath test, coupled with defendant's bloodshot and glassy eyes, the smell of alcohol when defendant was stopped, defendant's admission that he had consumed alcohol, and defendant's failure of field sobriety tests, were sufficient to sustain a conviction of DUI per se. St. v. Weitzel, 2006 MT 167, 332 M 523, 140 P3d 1062 (2006), following St. v. McGowan, 2006 MT 163, 332 M 490, 139 P3d 841 (2006), and followed in St. v. Gai, 2012 MT 235, 366 Mont. 408, 288 P.3d 164.

Breath Test Administered Within Reasonable Time After Alleged DUI Consistent With Per Se Intoxication Statute: McGowan contended that the DUI per se statute required proof that a driver's alcohol concentration was above 0.08 while driving. The Supreme Court disagreed. A preliminary alcohol screening test administered in the field does not satisfy a person's obligation to submit to a breath test pursuant to 61-8-409(2) (now repealed and content reorganized in Title 61, chapter 8, part 10). Reading 61-8-406 (now repealed and content reorganized in Title 61, chapter 8, part 10) to require law enforcement officers to determine a person's alcohol content while driving would lead to an absurd result because it is impossible to administer a test while a person is driving. Therefore, interpreting the DUI per se statute to allow for the admissibility of breath tests administered within a reasonable time after an alleged act of driving under the influence represents a reasonable interpretation of statutory language, comports with legislative intent, and avoids an absurd result. In the present case, when viewed in a light most favorable to the prosecution, the state presented the jury with sufficient evidence to determine that McGowan committed the offense of driving with an alcohol concentration above 0.08 in violation of 61-8-406, and McGowan's conviction was affirmed. St. v. McGowan, 2006 MT 163, 332 M 490, 139 P3d 841 (2006), followed in St. v. Weitzel, 2006 MT 167, 332 M 523, 140 P3d 1062 (2006).

Annual Intoxilyzer Calibration Requirement: Under ARM 23.4.214, all breath analysis instruments must be laboratory-certified on an annual basis. The plain meaning of "annual" means once every 365 days. The Supreme Court reversed a DUOS conviction based on a breath test conducted on an Intoxilyzer 5000 that had not been certified during the previous 13 months. St. v. Frac, 2006 MT 122, 332 M 255, 136 P3d 558 (2006).

Sufficient Evidence That Defendant Owned Vehicle and Drove on Public Way: At a DUI trial, Mooney contended that the state failed to prove that the vehicle that crashed into Ruff's fence belonged to Mooney and that the vehicle was ever driven on ways of the state open to the public. Mooney's arguments failed. It was Mooney who repeatedly appeared at Ruff's door and communicated that his vehicle had crashed into Ruff's fence, claiming that it was his car and apologizing for damaging the fence. Neither Ruff nor the investigating officer observed anyone else in the vicinity when Mooney came to the door. Based on this circumstantial evidence, a rational trier of fact could have concluded that Mooney was the driver of the vehicle. Additionally, a rational trier of fact could have concluded that the lane upon which Ruff's property sat qualified as a public or private place adapted for public travel in common use by the public, which constituted proof beyond a reasonable doubt that Mooney's car was driven on ways of the state open to the public. Mooney's DUI conviction was affirmed. St. v. Mooney, 2006 MT 121, 332 M 249, 137 P3d 532 (2006), overruled in part in St. v. Betterman, 2015 MT 39, 378 Mont. 182, 342 P.3d 971.

Sufficient Documentary Evidence of Validity of Prior DUI Per Se Convictions — Enhancement to Felony Affirmed: Smerker contended that two prior DUI convictions in Justice's Court were constitutionally invalid because he never pleaded guilty to the offenses and that it was therefore improper to use evidence of the prior convictions to enhance the present DUI charge to a felony. Under St. v. Snell, 2004 MT 334, 324 M 173, 103 P3d 503 (2004), a defendant who challenges a prior conviction as unconstitutionally invalid must present direct evidence of irregularity in the prior proceeding. Smerker's affidavit unequivocally stated that, notwithstanding the Justice's Court's judgments, Smerker at no time pleaded guilty to the charges, which constituted direct evidence of irregularity in the Justice's Court proceedings and shifted the burden to the state to prove that the prior convictions were not obtained in violation of Smerker's rights. The state then introduced documentation from the Justice's Court proceedings, including a signed plea bargain agreement, that provided that the state would amend the two DUI charges to DUI per se and recommend a specified sentence in exchange for Smerker's guilty pleas to the amended charges. Thus, the state met its burden of establishing by a preponderance of the evidence that Smerker pleaded guilty to two DUI per se charges and that the convictions were not obtained in violation of Smerker's rights. The prior misdemeanor convictions were properly used to enhance the present DUI to a felony, and Smerker's felony DUI conviction was affirmed. St. v. Smerker, 2006 MT 117, 332 M 221, 136 P3d 543 (2006).

Inference of Intoxication From Refusal to Take Sobriety Test — Burden of Proof Not Unfairly Shifted to Defendant: Morris contended that the provision in 61-8-404(2) (now repealed and content reorganized in Title 61, chapter 8, part 10) that allows a jury to infer a defendant's intoxication based on the refusal to take a sobriety test unconstitutionally shifted the burden of proof to a defendant by providing that the state produce no other evidence of guilt. Analyzing 61-8-404 as a whole, the Supreme Court concluded that subsection (2) requires corroborating evidence of DUI and that admissibility of a defendant's refusal to take a sobriety test presupposes other competent evidence in the form of probable cause to make an arrest in the first place. The trial court properly instructed the jury on the statutory requirements regarding the state's burden of proving that Morris was intoxicated and, given the jury instructions and the statutory requirements as a whole, the burden of proof did not impermissibly shift to Morris. Great Falls v. Morris, 2006 MT 93, 332 M 85, 134 P3d 692 (2006), followed in St. v. Michaud, 2008 MT 88, 342 M 244, 180 P3d 636 (2008), and St. v. Anderson, 2008 MT 116, 342 M 485, 182 P3d 80 (2008).

Jury Instruction That Evidence of DUI Be Viewed With Distrust Properly Denied When Video Evidence of Driving Not Extant: The officer who stopped Morris for careless driving and subsequent DUI did not videotape Morris's driving prior to the actual stop. Morris sought to offer a jury instruction that the evidence that was offered at trial should be viewed with distrust because the state failed to offer stronger, videotape evidence that Morris was DUI. The proposed instruction was denied, and on appeal, the Supreme Court affirmed. Section 26-1-602(6) presumes the existence of actual and identifiable stronger evidence, which did not exist in this case. Morris failed to provide any legal authority for the argument, and the proposed instruction on distrusting weaker evidence was properly refused. Great Falls v. Morris, 2006 MT 93, 332 M 85, 134 P3d 692 (2006).

Motion to Suppress DUI Blood Test Evidence Obtained by Investigative Subpoena Properly Denied: Following a motorcycle accident, Fregien admitted to a responding firefighter that he had consumed some beer, and the firefighter and a highway patrol officer noticed the odor of alcohol on Fregien's breath. The firefighter's affidavit supported an investigative subpoena for Fregien's blood test results obtained at the hospital. Fregien contended that the evidence did not rise to the level of probable cause and that the blood test results should have been suppressed, but the suppression motion was denied. On appeal, the Supreme Court affirmed. Under St. v. Nelson, 283 M 231, 941 P2d 441 (1997), the facts warranted an honest belief in the mind of a reasonable and prudent person that Fregien had committed the offense of DUI, thereby establishing probable cause for the investigative subpoena for Fregien's blood test results, and the motion to suppress was properly denied. St. v. Fregien, 2006 MT 18, 331 M 18, 127 P3d 1048 (2006).

Evidence of Malfunctioning Speedometer Not Admissible in DUI Case: Spencer was stopped for speeding and subsequently cited for DUI. Spencer sought to call an expert to testify that the speedometer in Spencer's vehicle had not been functioning properly, but the trial court excluded the expert testimony as irrelevant. On appeal, Spencer asserted that the speed of a vehicle is relevant in determining whether a driver's ability to safely operate a vehicle has been diminished. However, the state did not attempt to prove that Spencer was intoxicated because he was speeding, and whether Spencer justifiably thought that he was going slower than he was was not relevant to whether he was driving under the influence. The Supreme Court affirmed. St. v. Spencer, 2005 MT 338, 330 M 80, 125 P3d 1151 (2005), distinguishing St. v. Palmer, 247 M 210, 805 P2d 580 (1991), and Bauer v. St., 275 M 119, 910 P2d 886 (1996).

District Court Retention of Criminal Jurisdiction — State's Appeal of Order Granting Driving Privileges Not Timely: A condition of Jivelekas's sentence for felony DUI and misdemeanor driving with a revoked or suspended license provided that Jivelekas could not drive unless approval was granted by the sentencing court or Jivelekas's supervising officer. Nearly 2 years after Jivelekas completed all terms of his sentence, he asked the District Court for approval to operate a motor vehicle in order to maintain full-time employment. The state contended that because 61-8-731 (now repealed and content reorganized in Title 61, chapter 8, part 10) required that Jivelekas's probation officer authorize motor vehicle operation, the District Court did not have jurisdiction to consider Jivelekas's motion. The Supreme Court disagreed. Even if the District Court exceeded its statutory authority in imposing the sentence condition, the court still retained jurisdiction to entertain Jivelekas's motion. Additionally, the Supreme Court was precluded from addressing the merits of the state's argument because the state failed to file a timely appeal pursuant to former Rule 5(b), M.R.App.P. (now superseded), so the appeal was time-barred. St. v. Jivelekas, 2005 MT 277, 329 M 204, 122 P3d 1248 (2005), following Pena v. St., 2004 MT 293, 323 M 347, 100 P3d 154 (2004).

Failure to Raise Legality of Sentence on Direct Appeal — Postconviction Consideration Barred: Osborne was convicted of a fourth DUI in 1999, and when charged with felony DUI in 2003, the state sought to have Osborne declared a persistent felony offender. The District Court obliged, and Osborne was declared a persistent felony offender and sentenced to 10 years in prison with 5 years suspended. Osborne did not appeal the sentence directly, but filed a petition for postconviction relief, asserting that the sentence was not legal. The petition was denied, and Osborne appealed. The state argued that the Supreme Court was procedurally barred under 46-21-105 from considering the petition because the legal challenge to the sentence could have been raised on direct appeal. Osborne asserted that because the state did not raise the procedural bar issue in District Court, that argument was waived. Although the Supreme Court as a rule does not consider issues raised for the first time on appeal, this general rule does not preclude consideration of jurisdictional questions raised for the first time on appeal. The procedural bar is jurisdictional, so the court considered the state's argument, concluding that lack of subject matter jurisdiction may not be waived and that 46-21-105 represents a jurisdictional limit on courts' ability to entertain and decide petitions for postconviction relief and effectively prohibits courts from exercising jurisdiction over grounds for relief that could have been raised on direct appeal. Thus, Osborne's failure to challenge the legality of the sentence on direct appeal precluded consideration in a postconviction petition. St. v. Osborne, 2005 MT 264, 329 M 95, 124 P3d 1085 (2005).

Accuracy and Reliability of Preliminary Blood Test Established — Test Results Properly Admitted in Evidence: An officer measured Damon's blood alcohol content at 0.274, using an Alco-Sensor III preliminary breath test (PBT). The state and Damon both presented expert testimony as to whether the PBT was reliable and accurate as an evidentiary tool. Both experts testified that when administered according to protocols, the Alco-Sensor III had a margin of error in the range of 10%. The trial court held that the PBT was sufficiently reliable and accurate and admitted the PBT results. Damon appealed, but the Supreme Court affirmed. Although holding that PBT evidence is not necessarily admissible or inadmissible as a matter of law, the court reaffirmed the holding in Barmeyer v. Mont. Power Co., 202 M 185, 657 P2d 594 (1983), that it is better to admit relevant scientific evidence in the same manner as other expert testimony and allow the weight of the evidence to be attacked by cross-examination and refutation. Applying the 10% margin of error to Damon's test results, Damon's blood alcohol content was in the range of 0.247 to 0.301, more than twice the legal limit of intoxication. Thus, the state met its burden in establishing that Damon's intoxication exceeded the legal limit, and the trial court did not abuse its discretion in admitting the results of Damon's PBT. St. v. Damon, 2005 MT 218, 328 M 276, 119 P3d 1194 (2005), followed, with regard to the requirement that a party must establish that a defendant's preliminary alcohol screening test result is accurate and reliable before the test result may be admitted as evidence of a defendant's blood alcohol content, in St. v. Reavely, 2007 MT 168, 338 M 151, 164 P3d 890 (2007).

Admissibility of DUI Suspect's Spontaneous Statements: An officer stopped Damon for investigatory purposes, but the officer failed to recite the advisories for investigative stops. Damon answered several questions and then spontaneously said "Just give me a DUI" and "I'm already drunk." Damon contended that all of his statements should be disallowed because the officer failed to give the advisories. The District Court disallowed all of Damon's statements that were given in response to the officer's questions, but allowed Damon's spontaneous statements. The Supreme Court noted that under St. v. Nelson, 2004 MT 310, 323 M 510, 101 P3d 261 (2004), it is an officer's questioning that triggers the advisories. Damon's spontaneous utterances were not in response to specific questioning and were therefore admissible. St. v. Damon, 2005 MT 218, 328 M 276, 119 P3d 1194 (2005).

Erratic U-Turn Sufficient Particularized Suspicion for Investigative Stop: After an officer observed Trombley make an erratic U-turn, drift over the fog line, fail to signal when switching lanes, and straddle the center line, Trombley was stopped and cited for DUI. Trombley contended, and the District Court agreed, that state law did not prohibit the U-turn, but under the totality of the circumstances, Trombley's actions rose to the level of particularized suspicion sufficient to warrant the investigative stop. On appeal, the Supreme Court agreed. Trombley's erratic driving was enough for the officer to suspect that Trombley was engaged in wrongdoing and gave the officer a particularized suspicion to justify the investigative stop under the totality of the circumstances. Trombley's motion to dismiss was properly denied. St. v. Trombley, 2005 MT 174, 327 M 507, 116 P3d 771 (2005), following St. v. Steen, 2004 MT 343, 324 M 272, 102 P3d 1251 (2004).

DUI Arrest in Restaurant Parking Area — Parking Lot Considered Way of State Open to Public: Hayes was arrested for DUI in the parking area of a restaurant. Following conviction, Hayes appealed on grounds that because the parking lot was privately owned, the implied consent law did not apply and the officer had no right to request a breath sample because Hayes' vehicle was not located on a way of the state open to the public pursuant to 61-8-101. The Supreme Court disagreed. The fact that the lot was unpaved and had potholes was inconsequential. Despite its poor condition, the lot was adapted and fitted for public travel and was in common use by the public. The public was encouraged to use the lot, including parking by restaurant patrons and selling by vendors in the lot. Therefore, the trial court did not err in concluding that the parking lot was within the definition of ways of this state open to the public, and Hayes' conviction was affirmed. Hayes v. St., 2005 MT 148, 327 M 346, 114 P3d 261 (2005).

Jury Instructions Concerning Actual Physical Control and Implied Consent Proper: The trial court instructed the jury that a person has actual physical control of a vehicle when the person is in a position and has the ability to operate a vehicle. The court also instructed the jury regarding the admissibility of Hudson's refusal to submit to field sobriety tests. Hudson appealed on grounds that the definition should be modified to address whether the trier of fact believed that the person under the influence drove the vehicle to the location and intended to operate the vehicle and on grounds that the evidence of a refusal to submit to field sobriety tests was an improper comment on the evidence. The Supreme Court affirmed the jury instructions. The definition of actual physical control was identical to the Model Criminal Jury Instruction and accurately reflected the law as developed by judicial interpretation. Additionally, under the implied consent provisions of 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10), evidence of a refusal to submit to field sobriety tests, including the Breathalyzer, remains admissible in any criminal proceeding. The trial court fully and adequately instructed the jury, Hudson had ample opportunity to argue the merits of his defense, and Hudson's DUI conviction was affirmed. St. v. Hudson, 2005 MT 142, 327 M 286, 114 P3d 210 (2005).

Smell of Alcohol and Driver's Admission of Minority Age — Sufficient Probable Cause for Search of Vehicle: When Shaw was stopped for speeding, she told the officer that she was 18 years old, could not produce proof of insurance, and had a suspended driver's license. During the conversation, the officer smelled alcohol on Shaw and in the vehicle. Shaw consented to a search of the car, and the officer discovered an open container of alcohol and drug paraphernalia. Following conviction, Shaw appealed on grounds that the officer threatened to impound the car and illegally obtained the evidence underlying the charges. The Supreme Court affirmed. The smell of alcohol, coupled with Shaw's admission that she was a minor, provided sufficient probable cause for a search of the vehicle, and Shaw knowingly and voluntarily consented to the search. Despite conflicting evidence, the trial court assessed the credibility and demeanor of the witnesses, and the Supreme Court declined to impose its own resolution of the conflicts on appeal. St. v. Shaw, 2005 MT 141, 327 M 281, 114 P3d 198 (2005), overruled, to the extent that a finding of probable cause is required in conjunction with the consent exception to the search warrant requirement, in St. v. Copelton, 2006 MT 182, 333 M 91, 140 P3d 1074 (2006).

Motion to Suppress Intoxilyzer Results Based on Alleged Failure to Observe Defendant for Proper Period Prior to Test Properly Denied: Flaherty contended that the results of an Intoxilyzer test should have been disallowed because he was not under observation for the 15-minute period prior to testing as required by the operational checklist referenced in ARM 23.4.212 and by St. v. Fenton, 1998 MT 99, 288 M 415, 958 P2d 68 (1998). The District Court concluded that the entire time from the stop until Flaherty took the breath test was well in excess of 15 minutes and that Flaherty was under direct observation either by an officer or by video surveillance the entire time, so Flaherty's motion to suppress was denied. The Supreme Court noted that the operational checklist was changed since Fenton and that the checklist currently requires no oral ingestion of any material rather than a 15-minute observation period. It was undisputed that Flaherty did not ingest anything during the 15 minutes prior to testing. Thus, although the District Court based its conclusion on the premise that a 15-minute observation was required, the court's conclusion was nevertheless correct in light of the current requirement that a suspect not ingest any material, so denial of the motion to suppress was properly denied. St. v. Flaherty, 2005 MT 122, 327 M 168, 112 P3d 1033 (2005). See also Missoula v. Lyons, 2004 MT 255, 323 M 67, 97 P3d 1120 (2004).

Violation of City Ordinances Constituting Particularized Suspicion for Investigative Stop: An officer saw Todd drive into a closed city park and exit his vehicle with an open beer. When the officer approached Todd's vehicle to inform him that the park was closed and that the city had an open container ordinance, the officer observed that Todd appeared to be intoxicated, and Todd was arrested for DUI. Todd moved to dismiss on grounds that the officer lacked a particularized suspicion to investigate because Todd had not broken any driving laws. The Supreme Court disagreed. A particularized suspicion exists if an officer believes that a person or occupant of a vehicle has committed, is committing, or is about to commit an offense, including a violation of a city ordinance. Thus, Todd's violation of the city ordinances was sufficient to provide the officer with a particularized suspicion of an offense to obtain or verify an account of Todd's presence or conduct, and based on the officer's subsequent observations of objective data indicating Todd's intoxication, the investigative stop was justified. Todd's motion to dismiss was properly denied, and Todd's DUI conviction was affirmed. St. v. Todd, 2005 MT 108, 327 M 65, 111 P3d 677 (2005).

Admission of HGN Test Results Despite Deviation From Four-Second Interval Requirements: Zakovi contended that the officer who administered a horizontal gaze nystagmus (HGN) test deviated from the standard 4-second interval requirements established in the national field sobriety training manual, rendering the test results unreliable and subject to exclusion pursuant to Zakovi's motion in limine. The trial court considered the manual provisions and examined a video demonstrating the officer's deviation from the 4-second interval requirement, but the court also considered the testimony of the officer and the officer's extensive DUI test administration and field sobriety teaching experience. The court found the officer credible and accepted the officer's statement that valid HGN test results are obtainable despite deviation from the interval requirements, particularly because nystagmus is more apparent in a more inebriated suspect. On appeal, the Supreme Court concluded that the trial court did not abuse its discretion in denying the motion in limine and affirmed. St. v. Zakovi, 2005 MT 91, 326 M 475, 110 P3d 469 (2005).

Blood Sample Taken by Phlebotomist Under Supervision of Registered Nurse — No Error: Zakovi asserted that evidence from a blood alcohol sample withdrawn at a hospital by a phlebotomist should be suppressed because the sample was not withdrawn by a physician or registered nurse. However, the phlebotomist was continuously under the supervision of a registered nurse on duty in the emergency room, so the requirement that a blood sample be withdrawn by a physician, registered nurse, or other qualified person acting under the supervision of a physician or registered nurse was met, and Zakovi's motion to suppress the blood sample evidence was properly denied. St. v. Zakovi, 2005 MT 91, 326 M 475, 110 P3d 469 (2005).

Failure to Give Investigative Stop Advisory Following DUI-Related Accident — No Error: Zakovi was involved in a motorcycle accident, and when the investigating officer arrived, Zakovi was being loaded into an ambulance. Prior to transport to the hospital, the officer noticed that Zakovi's breath smelled of alcohol. Following further investigation at the hospital, Zakovi was arrested for DUI. At trial, Zakovi moved to suppress the DUI evidence because the officer failed to give the investigative stop advisory required under former 46-5-402 and St. v. Krause, 2002 MT 63, 309 M 174, 44 P3d 493 (2002). The motion was denied, and on appeal, the Supreme Court affirmed. Under the former statute, an officer was required to give an investigative stop advisory only when making an investigative stop upon observing circumstances that created a particularized suspicion. Here, the officer did not observe circumstances creating a particularized suspicion because Zakovi was already stopped. Absent initiation of an investigative stop, no advisory was required. St. v. Zakovi, 2005 MT 91, 326 M 475, 110 P3d 469 (2005).

Sufficient Evidence of Voluntary Consent to Draw and Analyze Blood Sample: Following an accident in which DUI was suspected, Zakovi was taken to a hospital where an officer requested a blood sample for DUI analysis. Zakovi questioned the need for a blood test after admitting that he had been drinking prior to the accident. The officer explained that a test was still necessary, and Zakovi was advised of the right to refuse consent. The phlebotomist who took the blood sample testified that her compliance with the officer's request to take the sample was contingent on Zakovi's understanding of the consent form, that she informed Zakovi that his signature on the form authorized the hospital to take a blood sample and deliver it to the officer, that the officer's signature on the form was a request that a sample be drawn for blood alcohol analysis, that she read the form to Zakovi, and that he understood and signed the form. This was ample evidence to support the trial court's conclusion that the state established that Zakovi's consent was voluntary. St. v. Zakovi, 2005 MT 91, 326 M 475, 110 P3d 469 (2005).

Use of Nontestimonial Intoxilyzer Certification Reports in DUI Trial Not Violative of Defendant's Right to Confront Witnesses — Crawford Rule: At Carter's DUI trial, the state introduced three certification reports in order to demonstrate that an Intoxilyzer 5000 was working properly when Carter was tested. The officers who prepared the reports did not testify at trial. Carter initially contended that the reports were hearsay, but on appeal, Carter asserted that admission of the reports violated his right to confront witnesses. Although the Supreme Court will generally not address new arguments raised on appeal, the court applied the exception in Cottrill v. Cottrill Sodding Serv., 229 M 40, 744 P2d 895 (1987), in this case because of the new confrontation clause jurisprudence set out in Crawford v. Wash., 541 US 36 (2004), which was decided while Carter's case was pending. In Crawford, the U.S. Supreme Court for the first time distinguished testimonial and nontestimonial out-of-court statements, delineating testimonial statements, at a minimum, as applying to prior testimony at a preliminary hearing, before a grand jury, or at a former trial as well as to police interrogations. States are allowed flexibility in the development of hearsay law when nontestimonial hearsay is at issue. In Carter's case, the state asserted that the certification reports used at Carter's trial were nontestimonial evidence because they did not fall within the core group of statements that the confrontation clause was meant to address. The Supreme Court held that the certification reports were nontestimonial in that they were not substantive evidence of a particular offense, but rather constituted foundational evidence necessary for the admission of substantive evidence. Thus, Carter's confrontation right was not implicated despite the fact that the authors were not present to testify or be confronted. The court noted that a defendant is always free to subpoena authors of such reports if the defendant's pretrial investigation reveals that the reports are erroneous or are otherwise subject to attack. Therefore, in conformance with the Crawford rule, the Supreme Court exempted the certification reports from confrontation clause scrutiny and affirmed Carter's conviction. St. v. Carter, 2005 MT 87, 326 M 427, 114 P3d 1001 (2005).

Officer's Testimony and Videotape Sufficient Evidence of Reasonable Grounds for DUI Stop: Clark's driver's license was suspended after he refused to take a breath test when arrested for DUI. In petitioning for reinstatement of the license, Clark contended that the arresting officer lacked a particularized suspicion to make a stop and failed to articulate a reason for the stop at the hearing on the license suspension. The Supreme Court applied the reasonable grounds test in St. v. Brander, 2004 MT 150, 321 M 484, 92 P3d 1173 (2004), and held that the trial court properly concluded, on the basis of the officer's testimony that Clark hit a curb and swerved across lanes, coupled with a videotape of the stop, that the officer had reasonable grounds to investigate Clark for DUI. The trial court properly analyzed the factors in 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10), and the analysis was not clearly erroneous. Denial of the petition to reinstate Clark's license was affirmed. Clark v. State ex rel. Driver Improvement Bureau, 2005 MT 65, 326 M 278, 109 P3d 244 (2005), followed in St. v. Rodriguez, 2011 MT 36, 359 Mont. 281, 248 P.3d 850.

No Reasonable Grounds to Believe Defendant DUI — Sole Testimony of Defendant Sufficient to Prove No DUI Occurred: Eustance drove to the airport to pick up his daughter and grandson who were arriving on a flight. Because of hip pain, it was more comfortable to wait in his car. Eustance parked in the lot of a nearby car rental agency and fell asleep. Eustance was later awakened by a Deputy Sheriff who requested that Eustance perform field sobriety tests and a breath test, but Eustance refused to perform both tests, so his license was seized and suspended. At a hearing on a petition for reinstatement of his license, Eustance was the only witness. He testified that he had been operating his vehicle in a safe and legal manner prior to arrest, that his ability to drive was not impaired, and that he did not believe there was reasonable suspicion or probable cause to justify his arrest. The District Court agreed and granted the petition reinstating the license. On appeal, the state cited Hunter v. St., 264 M 84, 869 P2d 787 (1994), contending that Eustance had not met the burden of establishing that suspension of the license was improper because without the deputy's testimony, Eustance's own testimony was self-serving and insufficient to meet the burden. The Supreme Court disagreed. The testimony of one witness is sufficient to prove any fact. Nowhere in Hunter was it held that a petitioner in a license reinstatement hearing cannot meet the burden of proof without testimony from the arresting officer or that a petitioner's testimony, without more, is insufficient to meet the burden of proof. Thus, the District Court was entitled to accept Eustance's uncontradicted testimony as true. Absent evidence supporting the state's position, Eustance met the burden of proof and his license was properly reinstated. Eustance v. St., 2005 MT 34, 326 M 77, 107 P3d 478 (2005).

Similarity of Montana and California DUI Convictions Warranting Felony DUI Conviction in Montana: Polaski claimed that his felony fifth offense DUI charge in Montana was erroneous because it was based on four prior convictions in California. However, under 61-8-734 (now repealed and content reorganized in Title 61, chapter 8, part 10), the grounds for a felony DUI charge are based on final convictions in Montana or violations of a similar statute or regulation in another state, and if the offense is the offender's fourth or subsequent offense, all previous convictions must be used. The Supreme Court compared Montana and California DUI statutes and determined that both states' laws similarly prohibited driving under the influence and that Polaski could have been convicted under the laws of either state. All of Polaski's prior convictions remained on his record regardless of the years that they were acquired and were therefore properly used for enhanced sentencing purposes. The felony DUI conviction was affirmed. St. v. Polaski, 2005 MT 13, 325 M 351, 106 P3d 538 (2005). See also St. v. McNally, 2002 MT 160, 310 M 396, 50 P3d 1080 (2002), and St. v. Young, 2012 MT 251, 366 Mont. 527, 289 P.3d 110.

Breath Test Administered Before Reading of Implied Consent Advisory — Motion to Suppress Properly Denied: Kintli was stopped for suspicion of DUI. She was administered field sobriety tests and was read the preliminary alcohol screen test advisory. At the detention center, she refused to repeat the field sobriety tests and indicated that she wanted to take the breath test. The test was administered and resulted in a BAC of 0.262. Following the test, the officer read Kintli the consent advisory and offered to void the test and administer a new one. Kintli indicated that she did not want to retake the test. Kintli was found guilty of DUI per se in City Court and appealed to District Court for a trial de novo. She moved to suppress the results of the breath test, which was denied. Kintli then pleaded guilty, reserving the right to appeal the suppression denial. The Supreme Court upheld the District Court. Because the right to independent blood testing remains constant regardless of whether the suspect refuses or submits to testing, Kintli's argument that the officer's failure to advise her of this right before she consented invalidates her consent is nonsensical. She was timely advised of her right to obtain independent blood testing, and this was sufficient to safeguard her due process rights. Section 61-8-409 (now repealed and content reorganized in Title 61, chapter 8, part 10) requires an officer to advise a person submitting to a preliminary breath test ("PBT") of the right of refusal and the consequences of refusal. The Supreme Court has held that in order for that statutory section to have meaning, the notice of the right of refusal and the consequences of refusal necessarily must precede the testing. No similar statutory requirement is found as to other BAC tests conducted after arrest. St. v. Kintli, 2004 MT 373, 325 M 53, 103 P3d 1056 (2004).

Defendant Advised Not to Drive — No Entrapment Upon Subsequent Arrest for DUI: The bartender at a Carter bar called officers to report that Reynolds was drunk and causing a disturbance. When they arrived, the officers inquired about Reynolds' health and concluded that he was not ill but intoxicated. A background check revealed that Reynolds driver's license had been revoked, so the officers advised Reynolds not to drive. Reynolds gave his car keys to the bartender and indicated that he had arranged for a ride. The bartender told Reynolds that he could stay until he was sober or his ride arrived, providing that he did not bother the other customers. About 2 hours later, officers received another call indicating that Reynolds was again belligerent and demanding return of the keys and that the bartender feared for her safety if she refused to return them. The officers told the bartender to return the keys and proceeded back to the bar, waiting outside to see if Reynolds drove away. When Reynolds drove off, he was arrested for felony DUI, fourth or subsequent offense, driving while his license was suspended or revoked, ninth offense, and driving without liability insurance. Reynolds contended that the officers' conduct constituted entrapment and moved to dismiss the charges, but the motion was denied. On appeal, the Supreme Court affirmed. In St. v. Canon, 212 M 157, 687 P2d 705 (1984), the court set out elements of the defense of entrapment: (1) criminal intent or design originating in the mind of the police officer or informer; (2) absence of criminal intent or design originating in the mind of the accused; and (3) luring or inducing the accused into committing a crime that the accused had no intention of committing, noting that there is a difference between inducing a person to commit a crime and setting a trap to catch a person in the execution of a criminal design of the person's own conception. Reynolds failed to prove any of the elements of entrapment. The officers warned Reynolds about driving, and yet he did so anyway. Merely affording Reynolds the opportunity or facility to commit the offenses was not entrapment. St. v. Reynolds, 2004 MT 364, 324 M 495, 104 P3d 1056 (2004). See also St. v. Kim, 239 M 189, 779 P2d 512 (1989), and St. v. Sweet, 1998 MT 30, 287 M 336, 954 P2d 1133 (1998).

Admissibility of Expert Testimony on Blood Alcohol Content — Elimination Phase Versus Retrograde Extrapolation: Larson contended that the trial court improperly allowed expert testimony concerning Larson's blood alcohol content (BAC) because the expert estimated the BAC using the retrograde extrapolation method in violation of state crime lab policy. The Supreme Court disagreed. Retrograde extrapolation is a method of estimating BAC at a specified time using a person's known BAC at a later time. However, the expert in this case opined that Larson would have reached the peak alcohol phase earlier in the evening and would have been in the elimination phase when the blood was drawn, so the expert did not engage in retrograde extrapolation. Crime lab policy was not violated, and the testimony was properly admitted. St. v. Larson, 2004 MT 345, 324 M 310, 103 P3d 524 (2004).

Evidence of Blood Alcohol Content of Other Vehicle Occupant Properly Excluded: The trial court excluded evidence regarding the blood alcohol content (BAC) of a passenger in Larson's car on grounds that it was irrelevant and not probative of Larson's BAC or level of impairment at the time of an accident. Larson maintained that admission of the evidence would have supported prospective testimony regarding the parties' drinking activities and countered the state's expert regarding Larson's level of impairment. The Supreme Court affirmed. The passenger's actions were not on trial, nor was there evidence suggesting that both parties consumed alcohol in the same amounts at the same times. Any probative value of the evidence was outweighed by its prejudicial effect, and it was properly excluded. St. v. Larson, 2004 MT 345, 324 M 310, 103 P3d 524 (2004). See also St. v. Krause, 2002 MT 63, 309 M 174, 44 P3d 493 (2002).

Sufficient Evidence of Impairment to Support Negligent Homicide and DUI Conviction: Larson contended that evidence was insufficient to support a jury's determination of impairment by alcohol at the time of a fatal accident and that the inference of impairment resulting from Larson's blood alcohol concentration was rebutted by other evidence indicating that the accident was caused by a momentary lapse of attention while driving on a dangerous road. The state presented evidence that Larson drank a substantial amount of alcohol during the evening and morning hours prior to the accident; admitted that he had consumed a considerable amount of alcohol; drove his pickup at a high rate of speed off the shoulder of the highway, causing the vehicle to roll and eject the passengers; and tested for a blood alcohol concentration of 0.12 2 hours after the accident and 4 hours after he had stopped drinking. Although the Supreme Court could not discern precisely why the jury reached its decision to convict Larson, Larson fully presented his defense theory, and the jury rejected it. The evidence was sufficient to support the conviction, and the Supreme Court affirmed. St. v. Larson, 2004 MT 345, 324 M 310, 103 P3d 524 (2004).

Improper Left Turn Sufficient Particularized Suspicion for Investigative Stop: At about 1:10 a.m., an officer observed Steen make a wide left-hand turn at an intersection and swerve to straddle the center of two eastbound lanes. The officer stopped Steen for violating 61-8-333 and subsequently arrested Steen for DUI. Steen contended that the officer lacked a particularized suspicion to make an investigative stop and moved to suppress the evidence. The motion was denied, and Steen was convicted. On appeal, the Supreme Court affirmed. Steen's erratic driving was enough for the officer to suspect that Steen was engaged in wrongdoing and gave the officer a particularized suspicion to justify the investigative stop under the totality of the circumstances. Steen's motion to suppress was properly denied. St. v. Steen, 2004 MT 343, 324 M 272, 102 P3d 1251 (2004). See also Moore v. St., 2002 MT 315, 313 M 126, 61 P3d 746 (2002).

Failure to Argue Prejudicial Effect of Malfunctioning Breathalyzer Printer — No Error in Denial of Motion to Suppress: When Otto was tested with a Breathalyzer, the machine registered a 0.159 blood alcohol content but failed to print a card with the test results. Otto moved for dismissal of the Breathalyzer results because a complete test, including the printed results, was not accomplished. The dismissal motion was denied, and on appeal, the Supreme Court affirmed. Otto failed to argue prejudice based on the admission of the test results. Given ample additional evidence of Otto's intoxicated condition, failure to suppress the Breathalyzer results did not constitute reversible error. St. v. Otto, 2004 MT 338, 324 M 217, 102 P3d 522 (2004).

Prior DUI Convictions Affirmed in Absence of Direct Evidence of Irregularity — Presumption of Regularity of Prior Convictions: Snell contended that it was improper for the state to use two prior DUI convictions to elevate a new DUI charge to a felony based on the fact that the prior convictions were invalid because Snell was not informed of the right to counsel. Although the state may not use a constitutionally infirm conviction to support an enhanced punishment, a defendant must overcome the presumption of the regularity of the prior convictions with direct evidence of irregularity. However, Snell was unable to recall facts about the judges involved in both prior DUI cases, casting considerable doubt on his ability to recall other critical details in those cases. The District Court correctly held that Snell's testimony was not sufficient to overcome the presumption of regularity through direct evidence and that the prior convictions were therefore constitutionally firm. Denial of the dismissal motion was affirmed. St. v. Snell, 2004 MT 334, 324 M 173, 103 P3d 503 (2004). See also St. v. Moga, 1999 MT 283, 297 M 1, 989 P2d 856 (1999), St. v. Weldele, 2003 MT 117, 315 M 452, 69 P3d 1162 (2003), and St. v. Chaussee, 2011 MT 203, 361 Mont. 433, 259 P.3d 783.

DUI Arrest on Street Contiguous to University Campus Proper Under Jurisdiction Agreement Between University, City, and County: O'Neill was arrested for DUI by a University of Montana security officer on a street contiguous to but outside the boundaries of the university campus. O'Neill moved for dismissal on grounds that the arrest was unlawful because the offense occurred outside the geographic boundaries of the officer's jurisdiction. However, in 1993, the university entered an agreement with the city and county of Missoula under 20-25-322 that expanded the jurisdiction of campus security officers to make arrests for parking and moving violations on streets and alleys contiguous to the campus. The officer was patrolling the campus when he observed O'Neill's vehicle, and as a result, the streets contiguous to the campus were within the officer's jurisdiction. Thus, denial of O'Neill's motion to dismiss on jurisdictional grounds was proper. Missoula v. O'Neill, 2004 MT 328, 324 M 124, 102 P3d 21 (2004).

Fifteen-Minute Period of Direct Observation No Longer Part of Checklist for Administration of Intoxilyzer 5000 Blood Alcohol Test: In St. v. Fenton, 1998 MT 99, 288 M 415, 958 P2d 68 (1998), it was noted that ARM 23.4.212 requires a 15-minute observation period prior to administration of an Intoxilyzer 5000 blood alcohol test. Lyons contended that that test was not properly administered in this case because Lyons used the bathroom during the 15 minutes prior to the test and was not under the officer's observation during the entire time. However, the administrative rule was revised after Fenton and now requires that the test administrator ensure that: (1) there was no oral ingestion of any material in the 15 minutes prior to testing; (2) the subject was instructed to deliver a proper sample; (3) the subject was observed during the sample delivery; and (4) nothing occurred that could affect the results. Direct line-of-sight observation of the subject for 15 minutes prior to testing is not required. The officer did follow the applicable checklist in this case, so Lyons' motion to suppress the test results was properly dismissed. Missoula v. Lyons, 2004 MT 255, 323 M 67, 97 P3d 1120 (2004).

Failure of Counsel to File Motion to Dismiss Not Considered Ineffective Assistance When Element of Offense Before Jury: Maki was arrested for DUI after being discovered slumped into the passenger seat of a running vehicle that was parked off the highway near a missile silo access site. Maki claimed ineffective assistance of counsel because his attorney did not file a motion to dismiss based on the fact that Maki was not on a way of the state open to the public. However, Maki's location on a way open to the public was an element of a DUI offense, so the issue was before the jury and Maki had an opportunity to contest the point. Counsel did not need to offer a motion to dismiss in order to raise the issue, and failure to do so neither prejudiced nor deprived Maki of a fair trial, so the ineffective assistance claim failed, and the DUI conviction was affirmed. St. v. Maki, 2004 MT 226, 322 M 420, 97 P3d 556 (2004).

Crossing Centerline Sufficient Particularized Suspicion for Investigative Stop: An officer observed Loney crossing the centerline several times, and Loney was stopped for a traffic violation and subsequently charged with DUI. The District Court granted Loney's motion to dismiss for lack of particularized suspicion, citing Morris v. St., 2001 MT 13, 304 M 114, 18 P3d 1003 (2001). The state appealed, and the Supreme Court reversed. Morris was distinguishable because in that case, defendant was stopped only for DUI and not for driving in a manner justifying a traffic stop, while Loney violated 61-8-321. Crossing the centerline constituted a sufficient particularized suspicion to justify the stop, and the case was remanded for further proceedings. St. v. Loney, 2004 MT 204, 322 M 305, 95 P3d 691 (2004), following Widdicombe v. State ex rel. LaFond, 2004 MT 49, 320 M 133, 85 P3d 1271 (2004), and followed in St. v. Otto, 2004 MT 338, 324 M 217, 102 P3d 522 (2004), and St. v. Murray, 2011 MT 10, 359 Mont. 123, 247 P.3d 721.

Failure to Show That Justice's Court Exceeded Its Jurisdiction in Holding Defendant in Contempt in DUI Case — Writ of Review Properly Denied: Schaefer was charged in Justice's Court with repeat misdemeanor DUI per se and sentenced to a chemical dependency course, but he did not complete all conditions of the course, so the court held him in contempt. Schaefer then filed a writ of review in District Court, but the writ was dismissed because the court concluded that a petition for postconviction relief provided Schaefer with a plain, speedy, and adequate remedy, so the court lacked jurisdiction. On appeal, the Supreme Court affirmed denial of the writ, but not because a petition for postconviction relief was more appropriate, but rather because the Justice's Court properly exercised its jurisdiction and because the conflicting evidence issue of aftercare remained in the exclusive jurisdiction of the Justice's Court. Although the District Court incorrectly found that a writ of review was not appropriate, denial of the petition was nevertheless affirmed because Schaefer failed to satisfy the first prong of the test in 27-25-102 by showing that the Justice's Court exceeded its jurisdiction by holding him in contempt. Schaefer v. Egeland, 2004 MT 199, 322 M 274, 95 P3d 724 (2004).

Sufficient Reasonable Cause to Suspect DUI Following Justified Traffic Stop — Refusal to Reinstate License Proper: Muri was initially stopped for expired license plates and then failed DUI field tests. Upon refusal to submit to a blood alcohol test, Muri's driver's license was seized and suspended. Muri petitioned for reinstatement of the license on grounds that the totality of circumstances occurring after the stop did not support a finding of reasonable cause for the officer to believe that Muri was DUI because the only indication of intoxication was the odor of alcohol emanating from the vehicle and the officer could not state with certainty whether the odor came from Muri or from a passenger. The petition was denied, and on appeal, the Supreme Court affirmed. Contrary to Muri's assertions, the odor was not the only indication of possible intoxication. Muri swerved in the driving lane at least once; the officer smelled a strong odor of alcohol when speaking with Muri; Muri could not produce a driver's license upon request, and when asked to recite her Social Security number, Muri could not do so at first and then recited it with slurred speech; the stop occurred at the approximate time when bars were closing; and Muri admitted consuming some alcohol. Given the officer's numerous observations, the officer had reasonable grounds to believe, prior to requesting field sobriety tests, that Muri was DUI, and the petition to reinstate Muri's license was properly denied. Muri v. St., 2004 MT 192, 322 M 219, 95 P3d 149 (2004), following Anderson v. St., 275 M 259, 912 P2d 212 (1996), and distinguishing Bramble v. St., 1999 MT 132, 294 M 501, 982 P2d 464 (1999). See also Brewer v. St., 2004 MT 193, 322 M 225, 95 P3d 163 (2004), and Indreland v. Dept. of Justice, 2019 MT 141, 396 Mont. 163, 451 P.3d 51.

Sufficient Particularized Suspicion for DUI Stop Based on Anonymous Tip and Officer's Observations: An officer received an anonymous tip that Brander was driving while intoxicated. The tipster named Brander, described the vehicle, including a license number and model, and gave Brander's direction of travel and suspected destination. The officer encountered a vehicle that mostly matched the description and followed, observing that the vehicle was moving slowly, meandering in its lane, crossing the fog line, partially crossing into the left lane without signaling, and then moving back into the right lane. The officer initiated a stop and noticed a number of cases of beer in the back of the truck that were both opened and unopened. Brander failed field sobriety tests and was arrested. Brander contended that the officer did not have reasonable grounds for making the stop based on the anonymous tip and moved to suppress the DUI evidence. The suppression motion was denied, and on appeal, the Supreme Court affirmed. Brander's argument failed because the stop was not based solely on the tip with no independent observation of suspicious activity. In fact, the officer was not even initially sure if the vehicle that he was stopping was the one described in the tip, but based on the officer's training and experience, the erratic driving supported a particularized suspicion that the driver was under the influence sufficient to warrant the stop and the administration of field sobriety tests. St. v. Brander, 2004 MT 150, 321 M 484, 92 P3d 1173 (2004), followed in St. v. Schulke, 2005 MT 77, 326 M 390, 109 P3d 744 (2005). See also Hulse v. St., 1998 MT 108, 289 M 1, 961 P2d 75 (1998).

Reliability of Citizen's Tip — Totality of Circumstances Justifying Investigative Stop: A citizen called in a suspected DUI, giving a detailed description of Hall and his vehicle. The report by the named informant was bolstered by a store clerk who personally observed Hall's behavior. An officer spotted Hall's vehicle minutes after receiving the report, matched it to the detailed description, and corroborated the report after observing Hall's actions. Hall contended that the officer nevertheless had insufficient information to support a particularized suspicion of DUI and that the subsequent investigative stop was illegal. The Supreme Court applied the factors in St. v. Pratt, 286 M 156, 951 P2d 37 (1997), to evaluate the totality of the circumstances. The court noted that an officer in the field must be able to rely on reports and dispatches from other officers without having to conduct a cross-examination as to the basis of the report, but when an officer has acted on dispatched information, it is appropriate to include information known to the dispatching or reporting officer. Here, the initial tip and the corroboration gave a high indicia of reliability that, when coupled with the officer's observations, satisfied the Pratt factors for a justified investigative stop made pursuant to a tip. St. v. Hall, 2004 MT 106, 321 M 78, 88 P3d 1273 (2004). See also Missoula v. Tye, 2016 MT 153, 384 Mont. 24, 372 P.3d 1286.

Use of Prior DUI Convictions in Washington to Enhance Montana DUI to Felony: The District Court used Hall's three prior DUI convictions in Washington to enhance Hall's Montana conviction to a felony. Hall appealed on grounds that Montana and Washington laws were too dissimilar to allow enhancement of Hall's Montana DUI. The Supreme Court examined both states' statutes and concluded that a person convicted of violating the Washington law committed an offense for which each subsection of the Washington statute had an analogous statute in Montana. The laws were held to be sufficiently similar to allow felony enhancement in this case, and Hall's fourth offense Montana conviction was affirmed. St. v. Hall, 2004 MT 106, 321 M 78, 88 P3d 1273 (2004).

Issues for Consideration in Petition for Review of Seizure of Driver's License: As established in Bush v. Dept. of Justice, 1998 MT 270, 291 M 359, 968 P2d 716 (1998), the three issues to be determined by a District Court in a petition for review of a seizure of a driver's license are whether: (1) the arresting officer had a particularized suspicion that a person was driving or in actual control of a vehicle on the ways of this state while under the influence of alcohol or drugs; (2) the petitioner was lawfully under arrest, including the existence of probable cause; and (3) the petitioner in fact declined to submit to a breath test. In this case, Widdicombe contested the first two determinations, but the Supreme Court affirmed. While leaving town on a two-lane highway, the arresting officer and another officer in the patrol car observed Widdicombe crossing the center lane three times, in violation of 61-8-321, and this fact was corroborated by videotape evidence. Thus, Widdicombe failed to meet the burden of proving a lack of particularized suspicion for the initial stop. Further, it was not necessary for the arresting officer to testify to probable cause when another officer witnessed the event and testified. Thus, Widdicombe failed to prove that the officers did not have probable cause for the arrest. Widdicombe v. State ex rel. LaFond, 2004 MT 49, 320 M 133, 85 P3d 1271 (2004), distinguishing St. v. Lafferty, 1998 MT 247, 291 M 157, 967 P2d 363 (1998).

Insufficient Probable Cause for Citizen Arrest — Suppression of Evidence Proper: At the visitor center at Malmstrom Air Force Base, security officers smelled alcohol on May's breath when May sought to enter the base. Because May was a civilian, the officers believed that May could be detained but not arrested, so they held May's driver's license, registration, and proof of insurance, and May was told to wait until a highway patrol officer arrived. May was subsequently arrested for DUI and at trial asked the District Court to suppress evidence from the arrest on grounds that the arrest was not based on probable cause and was thus illegal. Following denial of the suppression motions and conviction, May appealed, and the Supreme Court reversed. Applying the test in St. v. Widenhofer, 286 M 341, 950 P2d 1383 (1997), the court determined that May's detention constituted a citizen arrest. The test for probable cause for a citizen arrest is whether a reasonable person, under personally known facts and circumstances, is warranted in believing that someone is committing or has committed an offense. Here, the security officers' sole basis for detaining May was the smell of alcohol, but the odor of alcohol emanating from May's person, standing alone, was insufficient to establish probable cause for a citizen arrest. Thus, the arrest was illegal, and evidence related to the arrest should have been suppressed. St. v. May, 2004 MT 45, 320 M 116, 86 P3d 42 (2004).

Error in Failure to Consider Defendant's Ability to Pay Costs of Aftercare Program — Remand: In its oral sentence, the sentencing court ordered Mingus to pay the costs of the required aftercare program, but the court did not mention Mingus's ability to pay, although the subsequent written sentencing order did require consideration of Mingus's financial ability to pay. The oral sentence controlled, and because the sentencing court did not make the requisite findings regarding Mingus's ability to pay aftercare costs, the case was remanded for resentencing. St. v. Mingus, 2004 MT 24, 319 M 349, 84 P3d 658 (2004).

Imposition of Mandatory Statutory Fine Without Specifying Payment Schedule or Consideration of Ability to Pay Not Erroneous: Mingus was convicted of DUI and fined the statutory minimum $1,000, as required in 61-8-731 (now repealed and content reorganized in Title 61, chapter 8, part 10). The fine was statutorily mandated and clearly within statutory parameters. Mingus asserted error because the sentencing court did not inquire into his ability to pay, as required in 46-18-231, or establish a payment schedule, as allowed in 46-18-234. The Supreme Court disagreed. Ability to pay and consideration of a payment schedule apply only to discretionary fines, not statutorily mandated fines. When a fine is mandated, the sentencing court has no discretion whether to impose the fine, irrespective of defendant's ability to pay, nor is a sentencing court required to establish a payment schedule or specify when a mandatory fine must be paid under 61-8-731. St. v. Mingus, 2004 MT 24, 319 M 349, 84 P3d 658 (2004).

No Due Process Violation Based on Lack of Requirement Under Implied Consent Statutes to Provide Information Concerning Ramifications of Refusal to Take Breath Test: Turbiville, a North Dakota resident, was stopped in Montana for suspected DUI and was read a preliminary alcohol screening test advisory that outlined the right to refuse a breath test and the license suspension accompanying a refusal. He was provided no additional information concerning other rights regarding the preliminary breath test (PBT), particularly that Turbiville could refuse the test and challenge the license seizure in court. Turbiville took the PBT and an Intoxilyzer test, both of which indicated intoxication, and later moved to suppress the test results on grounds that the Montana implied consent statutes were misleading and inaccurate as applied to nonresidents. The motion was denied, and Turbiville appealed, asserting that if he had been advised of the right to a hearing to challenge the license seizure, he would have refused the PBT and that failure to provide an adequate advisory violated due process. The Supreme Court disagreed. The option to refuse a breath or blood test is not a matter of due process, but rather a matter of grace bestowed by the Legislature, and the Legislature may contour the favor in any manner considered appropriate. The implied consent statutes do not require an officer to provide information to an arrested motorist as to ramifications of the refusal to take a test, nor is a driver even entitled to be informed of the option to refuse the test. Further, by clear definition in 61-1-136 (now repealed — see 61-1-101 for definitions), a driver's license includes a nonresident's driving privilege, so Turbiville's contention that the advisory was misleading on grounds that Montana had no authority to suspend a North Dakota driver's license also failed because the advisory was technically correct and accomplished the purpose of informing Turbiville of the potentially serious consequences of losing Montana driving privileges upon refusal to take a breath test. St. v. Turbiville, 2003 MT 340, 318 M 451, 81 P3d 475 (2003).

Carport Not Considered Part of Home — Privacy Standard Inapplicable to DUI Search of Condominium Carport: Large was arrested for misdemeanor DUI while seated in her running car that was parked in the carport outside her condominium. Large moved to suppress the evidence because she was arrested at night at her home for a misdemeanor committed elsewhere, in violation of 46-6-105. She also contended that the arrest was in violation of her right to privacy. The motion was denied, and on appeal, the Supreme Court affirmed. Although a carport may be structurally contiguous with the rest of a private house or dwelling, presence in a carport does not equate to presence in the home, and although lot lines do convey certain concrete ownership rights, the right to be free from misdemeanor arrest at night is reserved for the home, not coterminous property appurtenant to the home. Further, under 61-8-101, ways of the state open to the public include parking areas and other public or private places adapted for public travel that are in common use by the public. Large could not be considered to be in her home while sitting in a car parked in the common-area parking lot in her condominium complex where officers could see what was readily visible to any visitor without being overly intrusive. Thus, Large had no reasonable expectation of privacy that prohibited her arrest in her own carport, nor did a violation of 46-6-105 occur. Whitefish v. Large, 2003 MT 322, 318 M 310, 80 P3d 427 (2003). See also St. v. Hubbel, 286 M 200, 951 P2d 971 (1997).

Limitation on Use of State Pamphlet Concerning Blood Alcohol Content Not Erroneous: In a pretrial order, the District Court ruled that a pamphlet called BAC and You, published by the Department of Transportation and describing the effect of alcohol on blood levels, was admissible in a DUI case as a public document, but not for the truth or accuracy of the information in the pamphlet. Defense counsel further stipulated that the pamphlet would not provide a basis for substantive evidence regarding intoxication. Nevertheless, defense counsel attempted several times to use the pamphlet as proof that defendant was not intoxicated, based on the amount of alcohol that defendant admitted consuming prior to arrest. The court then limited further use of the pamphlet, and defendant contended on appeal that it was error for the court to limit use of a document that had been allowed into evidence. The Supreme Court disagreed. The trial court's limit on use of the pamphlet was not considered a reversal of its previous ruling admitting the pamphlet, but rather an underscoring of the pretrial ruling. Defense counsel's attempt to argue the substantive text of the pamphlet clearly exceeded the original intent and parameters of the pretrial order, so the trial court did not err in limiting its use. Helena v. Kortum, 2003 MT 290, 318 M 77, 78 P3d 882 (2003).

No Requirement of Quantifiable Blood Alcohol Content to Prove DUI — Other Competent Evidence Allowed: Kortum was stopped for DUI after an officer observed him driving poorly. Kortum admitted drinking earlier in the day, but refused to take a breath test and failed standard field sobriety tests (SFST). Following presentation of the state's case, Kortum moved for a directed verdict, asserting that the SFST were improperly administered, which, coupled with the lack of blood alcohol test results, constituted insufficient evidence of DUI. The motion was denied, and Kortum was convicted and appealed. The Supreme Court affirmed. Evidence bearing on the issue of DUI is not limited to blood and breath samples or SFST. Rather, a full range of competent evidence is sufficient, including the manner in which a vehicle is driven and the fact that a driver refused to submit to a breath test. Here, the jury heard evidence of Kortum's refusal to take the test, heard the officer's testimony and saw a videotape showing Kortum's erratic driving, and heard Kortum's own admission that he had been drinking. Even assuming that the SFST were flawed, there was sufficient competent evidence for the jury to find Kortum guilty of DUI. Helena v. Kortum, 2003 MT 290, 318 M 77, 78 P3d 882 (2003).

Particularized Suspicion, Not Probable Cause, Required to Request Breath Sample for Preliminary Analysis: Toth was arrested for DUI but contended that evidence obtained following a request for a preliminary breath test should be suppressed because the officer needed probable cause to request the sample. The Supreme Court held that the probable cause standard refers to the prerequisite for an arrest and does not require that officers establish probable cause prior to initiating preliminary breath test analysis. Rather, an officer needs only a particularized suspicion to request a breath sample for preliminary breath test analysis. St. v. Toth, 2003 MT 208, 317 M 55, 75 P3d 323 (2003), distinguishing Bush v. Dept. of Justice, 1998 MT 270, 291 M 359, 968 P2d 716 (1998).

Failure to Rebut Presumption of Regularity Attached to Prior DUI Conviction — Felony DUI Conviction Affirmed: Keenan was charged in 1999 with fourth lifetime offense felony DUI based on prior convictions in 1986, 1990, and 1995. Keenan moved to dismiss or amend the charge, asserting that the 1990 conviction was constitutionally infirm because Keenan could not recall, and the record did not show, that Keenan asserted or waived the right to counsel. However, Keenan's inability to recall whether the right to counsel was waived did not constitute direct evidence sufficient to rebut the presumption of regularity, even in the face of a silent record. Because Keenan was unable to rebut the presumption of regularity, the 1990 conviction was considered constitutionally sound, and the 1999 conviction was affirmed. St. v. Keenan, 2003 MT 190, 316 M 493, 74 P3d 1037 (2003).

Use of Prior Uncounseled Tribal Court DUI Convictions to Enhance State DUI to Felony: Defendant was charged with felony DUI, but contended that his prior convictions could not be used to enhance the charge because the previous convictions were uncounseled convictions in tribal court. The Supreme Court disagreed. Whether a prior uncounseled conviction may be used to enhance a subsequent misdemeanor turns on whether the prior conviction was valid at its inception. Prior convictions are presumed valid, and once a prior conviction is established, the burden falls on defendant to prove that the prior conviction was invalid. Here, defendant's prior convictions were valid under Blackfeet law and federal law. Thus, pursuant to federal law and the comity afforded tribal judgments and with deference to tribal sovereignty, defendant's prior convictions were available to enhance the state charge to felony DUI. St. v. Spotted Eagle, 2003 MT 172, 316 M 370, 71 P3d 1239 (2003), followed in St. v. Walker, 2007 MT 34, 336 M 56, 153 P3d 614 (2007). See also Scott v. Ill., 440 US 367 (1979).

Misleading Testimony of Arresting Officer Not Material to DUI Verdict — No Due Process Violation: At Gratzer's DUI trial, he argued that he could not have been in actual control of a vehicle because he had no ignition key for it. The arresting officer testified that he once owned a similar vehicle and needed no key to operate it. Gratzer filed for postconviction relief after discovering that the officer never actually owned a similar vehicle, but relief was denied. Gratzer appealed, contending that the officer's false testimony violated his due process rights. The Supreme Court noted that under Gollehon v. St., 1999 MT 210, 296 M 6, 986 P2d 395 (1999), it must be shown that false testimony was material to the verdict to prevail on a due process claim. Gratzer argued that Gollehon applied because the officer's testimony was material to the conviction inasmuch as it supported one of the elements of the crime. The Supreme Court disagreed. Although the officer may have been misleading in saying that he had owned a similar vehicle when in fact the vehicle was a county-owned car that was issued to him, ownership of the vehicle was irrelevant to the question of whether the vehicle would start without a key and was not material to the verdict. Further, testimony that the officer saw Gratzer drive and exit the vehicle was sufficient in itself for the trier of fact to determine that Gratzer was driving or in actual physical control of the vehicle. The District Court was affirmed. Gratzer v. St., 2003 MT 169, 316 M 335, 71 P3d 1221 (2003).

Voluntary Encounter Versus Investigative Stop: Officers received a report from a citizen that a vehicle had been observed being driven erratically on the interstate and that the driver had pulled over at a convenience store and staggered into the building. When officers arrived, they found an unoccupied vehicle that matched the informant's description and observed Wagner inside on the telephone. The officers initiated contact with Wagner, noticing immediately that he appeared intoxicated, and requested that Wagner speak with them outside. Wagner acceded, voluntarily admitted that he had been drinking, failed field sobriety tests, and was arrested for DUI. Wagner subsequently asserted that the officers lacked a particularized suspicion to make the investigative stop because the informant's report was not sufficiently corroborated and moved to dismiss. The motion was denied, and Wagner appealed. The Supreme Court noted that if the telephone encounter constituted an investigative stop, it would be necessary to determine whether the officers obtained the requisite particularized suspicion, but if the encounter did not constitute a stop, it must be determined whether officers obtained the requisite particularized suspicion after initiating contact but prior to conducting a stop. Here, the court cited U.S. v. Mendenhall, 446 US 544 (1980), and held that Wagner was not "seized" because in view of all the circumstances surrounding the incident, Wagner would not have believed that he was not free to leave. Following the initial approach, the officers then obtained the evidence of Wagner's intoxication through consensual means, providing the requisite particularized suspicion to conduct the ensuing investigative stop. St. v. Wagner, 2003 MT 120, 315 M 498, 68 P3d 840 (2003). See also St. v. Jenkins, 192 M 539, 629 P2d 761 (1981), St. v. Roberts, 1999 MT 59, 293 M 476, 977 P2d 974 (1999), St. v. Clayton, 2002 MT 67, 309 M 215, 45 P3d 30 (2002), and St. v. Questo, 2019 MT 112, 395 Mont. 446, 443 P.3d 401.

Failure to Apply Apprendi Rationale to Felony DUI Not Erroneous: Under Apprendi v. N.J., 530 US 466 (2000), any fact that increases the penalty for a crime beyond the prescribed statutory maximum, other than the fact of a prior conviction, must be submitted to a jury and proved beyond a reasonable doubt. Weldele contended that the District Court erred in failing to apply Apprendi and that his fourth DUI conviction could not be enhanced to a felony because the state failed to charge and prove beyond a reasonable doubt the three prior DUI convictions. The Supreme Court found no error. It was the prior convictions alone that led to Weldele's enhanced penalty, so it was unnecessary to submit the fact of the prior convictions to a jury. Further, Weldele was not found guilty of another offense for which he had not been charged, nor did the sentence exceed the statutory maximum, so Apprendi did not apply. St. v. Weldele, 2003 MT 117, 315 M 452, 69 P3d 1162 (2003).

Sufficient Discovery Allowed Regarding Results of DUI Breath Test: Weldele moved in limine to exclude the results of a DUI breath test on grounds that the state failed to provide full discovery regarding the tests. The District Court denied the motion on grounds that the state had provided sufficient information upon which Weldele could prepare a defense. The Supreme Court affirmed. Although the state's production was not as extensive as requested, documents provided confirmed that: (1) the officers were certified to operate the Intoxilyzer and preliminary breath test equipment; (2) the Intoxilyzer received an annual certification less than 5 months before Weldele used it; (3) the Intoxilyzer solution was approved and used in compliance with applicable regulations; (4) the Intoxilyzer was properly calibrated before and after Weldele's test; and (5) the preliminary breath test instrument was properly field-certified. This information was adequate for both Weldele's and the state's purposes, and the Supreme Court declined to disturb the District Court's findings in that regard. St. v. Weldele, 2003 MT 117, 315 M 452, 69 P3d 1162 (2003). See also St. v. Peters, 2011 MT 274, 362 Mont. 389, 264 P.3d 1124.

Use of 1984, 1987, and 1991 DUI Convictions to Enhance 2000 DUI Offense to Felony: Weldele was convicted of DUI in 1984, 1987, 1991, and 2000. Weldele argued that because more than 5 years had elapsed between any of the prior convictions and the present offense, under the version of 61-8-714 (now repealed and content reorganized in Title 61, chapter 8, part 10) in effect during the 1984 and 1987 convictions, evidence of the 1984 and 1987 convictions could not be used to enhance the 2000 charge to a felony. However, because the 1987 conviction followed the 1984 conviction by only 3 years, the 1984 conviction did not qualify for expungement and remained on Weldele's record. The 1989 version of 61-8-714 informed Weldele that if he remained DUI-free for 5 years after the 1991 conviction, the 1991 conviction would not be expunged, but rather would become confidential criminal justice information subject to review by a court. In 1995, 61-8-714 was again amended to create the felony sanction for fourth and subsequent DUIs, so Weldele was on notice as of 1995 that all of the prior convictions would be counted for sentencing purposes. A 1997 revision created separate felony DUI sanctions, again putting Weldele on notice that a fourth offense would constitute a felony. Thus, there was no due process or ex post facto issue here, and the accurate and lawful application of the statutes in effect at the time of Weldele's convictions allowed for the enhancement of his sentence based on the complete record of four DUIs. St. v. Weldele, 2003 MT 117, 315 M 452, 69 P3d 1162 (2003).

Challenge to Driver's License Suspension Considered Special Proceeding — Successful Defendant Entitled to Costs: Neal's driver's license was suspended for failure to take a breath test. Neal challenged the suspension, claiming that he did not refuse to take a breath test, and the District Court agreed. Neal's license was reinstated and Neal was granted costs. The state objected to the award of costs, and the District Court amended the original order and denied costs, so Neal appealed. Neal contended that as the prevailing party, an award of costs was proper under 25-10-101(2) because the license was valued at more than $50 or under 25-10-101(4) because the petition to reinstate the license was a special proceeding. The state contended that the particular provisions of 25-10-711 prevailed over the general provisions of 25-10-101, so 25-10-101 did not apply. The Supreme Court disagreed, finding no inconsistency between the statutes. Section 25-10-711 applies to actions in which a party prevails against a government entity and can establish that the government's claim or defense was frivolous or pursued in bad faith, but no such finding is required for recovery of costs under 25-10-101. The court went on to find that Neal's claim that costs were proper based on the license value was unfounded, because no finding of valuation was ever determined. However, the court concluded that a challenge to a driver's license suspension or revocation was a special proceeding pursuant to 27-1-102, and that as the prevailing party in the action, Neal was entitled to costs pursuant to 25-10-101. Neal v. St., 2003 MT 53, 314 M 357, 66 P3d 280 (2003).

Direct Evidence Rebutting Presumption of Regularity of Prior DUI Convictions — Remand for Evidentiary Hearing for Determination of Validity of Prior Conviction: Kvislen was charged with felony DUI based on three prior convictions. Kvislen moved to dismiss on grounds that one of the prior convictions was entered in derogation of his constitutional rights and thus could not be used to elevate the present charge to a felony. Kvislen filed an affidavit prior to trial averring that he never received notice of the prior trial and was convicted without being informed of the right to counsel. After providing the District Court with arguments to the contrary, the state moved to dismiss. The District Court, without conducting an evidentiary hearing to weigh Kvislen's affidavit against the assertions made by the state, concluded that Kvislen had not sufficiently rebutted the presumption of regularity that attaches to prior convictions and dismissed the motion, and Kvislen appealed. Citing St. v. Okland, 283 M 10, 941 P2d 431 (1997), and St. v. Jenni, 283 M 21, 938 P2d 1318 (1997), the Supreme Court noted that although a rebuttable presumption of regularity attaches to prior convictions, that presumption may be overcome by direct evidence of irregularity, and once defendant offers direct evidence, the burden shifts to the state to prove that the prior conviction was not obtained in violation of defendant's rights. Here, the state conceded that Kvislen's averments met the technical definition of direct evidence and that the state relied on insufficient evidence and failed to meet its burden of proof. Instead of denying the motion to dismiss, the District Court should have shifted the burden to the state and allowed the state to submit evidence showing that Kvislen's rights were not violated. The proper forum for consideration of the issue was through an evidentiary hearing, and the Supreme Court remanded the case for that purpose. St. v. Kvislen, 2003 MT 27, 314 M 176, 64 P3d 1006 (2003).

Administration of Breath Test Not Mandatory: Beanblossom was arrested for felony DUI and was read an implied consent advisory. When asked if he would consent to a breath test, Beanblossom consented, but the test was never administered. Beanblossom moved to dismiss the charge based on the officer's failure to administer the test, contending that the language of 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10) mandatorily required administration of the test, and that failure to do so violated his due process rights. The motion was denied, and Beanblossom appealed. The Supreme Court noted that a driver in Montana is presumed to have consented to taking a breath test if an officer has reasonable grounds to believe that the driver is intoxicated. However, the language in 61-8-402(2) merely mandates who must administer a breath test, but does not mandate administration of the test. Thus, denial of Beanblossom's motion to dismiss was not erroneous. St. v. Beanblossom, 2002 MT 351, 313 M 394, 61 P3d 165 (2002). See also St. v. Entzel, 805 P2d 228 (Wash. 1991).

No Violation of Due Process Rights Upon Failure to Request Independent Blood Test: When an alleged crime involves intoxication, the accused has the right under 61-8-405 (now repealed and content reorganized in Title 61, chapter 8, part 10) to obtain, upon request, a sobriety test independent of that offered by the arresting officer. Beanblossom contended that failure to administer an independent blood test was violative of his due process rights. However, a due process violation arises only when an accused requests but is then denied an independent sobriety test. Beanblossom did not request an independent test, so no due process violation occurred. St. v. Beanblossom, 2002 MT 351, 313 M 394, 61 P3d 165 (2002).

One-on-One Showup Identification Impermissibly Suggestive — Witness Testimony Permissible Under Totality of Circumstances: Bingman sought to exclude the testimony of witnesses in a felony DUI trial on grounds that the witnesses' observation of Bingman through a two-way window at the police department was impermissibly suggestive, resulting in an unreliable identification. The suggestive nature of one-on-one showup identifications has been previously recognized. In St. v. Clark, 2000 MT 40, 298 M 300, 997 P2d 107 (2000), the Supreme Court set out a two-part test for determining whether evidence gained from such an identification is permissible. The state conceded that the identification procedure was impermissibly suggestive, satisfying the first part of the Clark test. The second part of the test requires a determination of whether, under the totality of the circumstances, the identification gave rise to a substantial likelihood of irreparable misidentification. In this case, despite the impermissibly suggestive nature of the showup identification procedure, the certainty with which the witnesses identified Bingman outweighed the likelihood of misidentification, so the District Court did not err in allowing the witnesses' testimony. St. v. Bingman, 2002 MT 350, 313 M 376, 61 P3d 153 (2002).

Sufficient Evidence of DUI Despite Lack of Proof of Specific Level of Intoxication: Bingman contended that there was insufficient evidence presented to support a conviction for DUI, but the Supreme Court disagreed. Bingman admitted the possibility that his vehicle struck another vehicle, admitted encountering the witnesses to the accident, and admitted that his vehicle had swerved around a group of pheasants while Bingman was driving after the accident. Investigating officers testified that Bingman appeared to be intoxicated at the police stop, smelled strongly of alcohol, had bloodshot eyes and slurred speech, and had trouble walking. Bingman himself admitted to consuming six beers the morning of the accident, and according to Bingman's own timeline, he consumed three more beers and two shots of alcohol in a 15-minute period following the accident. The testimony of the officers and the witnesses served to corroborate the state's assertion that Bingman was driving under the influence. Although the state may not have proved Bingman's level of intoxication with specificity, it was possible for the jury to conclude that Bingman was guilty of DUI, and all the evidence was sufficient to support the conviction. St. v. Bingman, 2002 MT 350, 313 M 376, 61 P3d 153 (2002).

Sufficient Evidence to Support Particularized Suspicion to Justify Investigatory Stop — Petition for Reinstatement of Driver's License Properly Denied: A highway patrol officer observed a vehicle swerve and hit the guardrail. The vehicle did not stop, so the officer followed the vehicle as it exited the freeway. The officer believed, in part, that the driver violated 61-7-108, failing to report an accident causing damage of $500 or more, so the officer stopped the vehicle and subsequently arrested Moore for DUI. When Moore refused a breath test, the officer seized Moore's driver's license. Moore petitioned for reinstatement of the license, arguing that the officer could formulate no suspicion that Moore was involved in wrongdoing that would warrant an investigative stop because the officer could not have known whether Moore was going to report the accident by the quickest means, which was for Moore to drive home and call. The District Court denied the petition, and the Supreme Court affirmed. The officer testified that the damage to the guardrail alone exceeded $500 and that Moore passed up at least two opportunities to stop and use a pay telephone to report the accident before the investigatory stop. Although the evidence conflicted, it was within the province of the District Court to determine the weight of the evidence and credibility of the witnesses. The officer testified credibly, and there was sufficient evidence in the record to indicate that the officer had the requisite particularized suspicion to justify the investigatory stop. Therefore, Moore's petition to reinstate the driver's license was properly denied. Moore v. St., 2002 MT 315, 313 M 126, 61 P3d 746 (2002), followed in St. v. Schulke, 2005 MT 77, 326 M 390, 109 P3d 744 (2005). See also Weer v. St., 2010 MT 232, 358 Mont. 130, 244 P.3d 311.

Test Taken Three Hours After Accident Reasonable Under Circumstances and Evidentiary Use of Results: Under the circumstances, a 3-hour lapse between the time of the accident and the time that blood was drawn was reasonable under 61-8-401's (now repealed and content reorganized in Title 61, chapter 8, part 10) requirement that blood be drawn within a reasonable time after the alleged act. In its first interpretation of what constitutes a reasonable time, the court stated that it depends on the totality of the circumstances. In this case, the peace officers did not unreasonably delay the test. The driver was injured on a rural road, the "jaws of life" were needed to get him out of the vehicle, and he needed to be taken to the hospital for treatment, which took priority over testing. The lower court found that because of many unknown variables, the test results could not be used to extrapolate backwards to determine the alcohol level at the time of the accident, but could be used to show that he would have had to consume a large amount of alcohol prior to the accident to reach the 0.26 level shown by the test. Moreover, a forensic crime scientist testified that the alcohol level usually peaks within a half hour to an hour and a half after consumption. Therefore, the test results were relevant and admissible. St. v. Hamilton, 2002 MT 263, 312 M 249, 59 P3d 387 (2002).

Witness and Forensic Testimony and Driver's Admission Supporting Conviction: Testimony of four witnesses that after the accident the driver smelled strongly of alcohol, the driver's admission to an officer at the scene that he'd been drinking, an officer's testimony that the driver appeared to be intoxicated, the driver's unusual behavior in the ambulance, a forensic scientist's testimony that the driver would have had to consume a large amount of alcohol prior to the accident to register a 0.26 blood alcohol content on a test taken 3 hours later, and the driver's inability to negotiate a car parked on the side of the road supported conviction for driving under the influence. St. v. Hamilton, 2002 MT 263, 312 M 249, 59 P3d 387 (2002).

New Trial — General Rule Prohibiting Admission of Juror Testimony — Exception for Extraneous Prejudicial Information: Following Lawlor's conviction for felony DUI, Lawlor moved for a new trial, alleging that during deliberations a juror improperly offered to other jurors an opinion relating to Lawlor's prior DUI convictions, references to which had been precluded by a motion in limine. The District Court denied the new trial motion, and Lawlor appealed. Rule 606, M.R.Ev. (Title 26, ch. 10), generally forbids the admission of juror testimony for purposes of ordering a new trial, but one exception hinges on whether extraneous prejudicial information was improperly brought to the jury's attention. Examples of impermissible extraneous information and external influence include: (1) telephoning a relative with regard to previous litigation by the plaintiff; (2) visiting the scene of an accident; (3) conducting experiments and informing the jury of the findings; (4) receiving evidence outside of court; (5) bringing a newspaper article into the jury room and showing it to the jury; (6) the jury's use of demonstrative evidence and experimentation with evidence; (7) pressure from other jurors; and (8) knowledge and information shared from one juror to another. In this case, comments by the juror in question derived from that juror's general knowledge of the criminal justice system when the juror mentioned that felony DUI cases are tried in District Court. The comment was internal and not an external influence subject to the exception in Rule 606, M.R.Ev., so the District Court properly denied Lawlor's motion for a new trial based on the juror affidavit. St. v. Lawlor, 2002 MT 235, 311 M 493, 56 P3d 863 (2002). See also St. v. Kelman, 276 M 253, 915 P2d 854 (1996).

Prior DUI Convictions Properly Used to Enhance Sentence: The District Court used three prior DUI convictions to sentence Jackson for felony DUI. Jackson contended that use of two of the prior convictions was improper because he waived his right to counsel in one case and because he did not have an attorney in another case. However, when a defendant collaterally attacks a prior conviction, a presumption of regularity attaches to the conviction and failure to sign a waiver of rights does not constitute reversible error but is merely a factor to be considered in the totality of the circumstances. Here, the state provided sufficient proof for the court to rely on the prior convictions in sentencing, and the court did not err in doing so. St. v. Jackson, 2002 MT 212, 311 M 281, 54 P3d 990 (2002).

Witness Without Adequate Knowledge of Intoxilyzer Test Properly Precluded From Testifying as to Validity of Test Results: Russette was arrested for DUI and attempted at trial to introduce as an expert witness a chemistry professor who would testify that an Intoxilyzer analysis constituted a scientific test that was not valid or reliable unless at least two scientific tests had been performed pursuant to the scientific method. The District Court did not allow the professor to testify because he had no specific knowledge regarding the Intoxilyzer, so the testimony would not help the jury to understand the evidence or determine a fact in issue. Russette appealed, but the Supreme Court affirmed. The party presenting a witness as an expert must establish to the satisfaction of the trial court that the witness possesses the requisite knowledge, skill, experience, training, and education to testify to the issue in question. Russette failed to lay any foundation that the professor had adequate knowledge upon which to challenge the validity of the Intoxilyzer, and the District Court did not abuse its discretion in precluding the witness from testifying. St. v. Russette, 2002 MT 200, 311 M 188, 53 P3d 1256 (2002).

Driving While Ability Impaired in Colorado Not Similar to Driving Under the Influence in Montana — Felony DUI Sentence Reversed — Montanye Reversed: The District Court found that Colorado law was substantially similar to Montana's DUI statute, and based on McNally's four prior DWAI convictions in Colorado, the court sentenced McNally for felony DUI. McNally appealed on grounds that the Colorado convictions did not constitute previous convictions under a similar statute for purposes of determining the number of prior DUI convictions under Montana law. The Supreme Court examined Colorado law and agreed with McNally. Colorado law allows a person to be convicted for DUI if the person's ability is impaired to the slightest degree, which is a lower standard than Montana law. Therefore, McNally's prior Colorado convictions did not qualify as convictions for purposes of enhancing McNally's conviction to a felony, and McNally's felony conviction was reversed. St. v. McNally, 2002 MT 160, 310 M 396, 50 P3d 1080 (2002), following Helena v. Davis, 222 M 492, 723 P2d 224 (1986), and overruling Montanye v. St., 262 M 258, 864 P2d 1234 (1993). However, see St. v. Young, 2012 MT 251, 366 Mont. 527, 289 P.3d 110, ruling that Montana and Idaho DUI statutes were sufficiently similar to uphold felony sentence.

Defendant Informed of Right to Independent Blood Test After Administration of Portable Breath Test — No Violation of Due Process Rights: After Feldbrugge was stopped for speeding, the investigating officer noticed that Feldbrugge seemed confused, had difficulty removing his driver's license from his wallet and producing proof of registration and insurance, had bloodshot and glassy eyes and slurred speech, and was unsteady on his feet. The officer did not perform field sobriety tests, but did ask Feldbrugge to take a portable breath test (PBT). The officer read a short advisory that did not contain information regarding Feldbrugge's right to obtain an independent blood test to challenge the PBT results. Feldbrugge consented to the PBT, which he failed, and was arrested and taken to the county jail. Before being administered an Intoxilyzer breath test at the jail, Feldbrugge was read the informed consent advisory form, which included a statement regarding Feldbrugge's right to obtain an independent blood test. At trial, Feldbrugge moved to suppress the evidence on grounds that his due process rights were violated because he was not informed of the right to an independent blood test until after the PBT was administered. However, the notion that Feldbrugge had a choice between taking a PBT or obtaining an independent blood test, without penalty, was misguided. Here, it was unnecessary for the officer to inform Feldbrugge of the right to an independent blood test prior to requesting the PBT because even if Feldbrugge had been so informed, his options remained the same: consent to the PBT or refuse and have his driver's license seized. The officer was required to timely inform Feldbrugge that he could obtain an independent blood test in addition to the PBT and Intoxilyzer breath test so that Feldbrugge could gather exculpatory evidence. Informing Feldbrugge after the PBT was timely, so Feldbrugge's due process rights were not violated. Because the PBT results were admissible, Feldbrugge's arrest was supported by probable cause, and the DUI conviction was affirmed. St. v. Feldbrugge, 2002 MT 154, 310 M 368, 50 P3d 1067 (2002).

Elements of Community Caretaker Doctrine — Particularized Suspicion Not Required in Case of Safety Stop: About 3:05 a.m., an officer on routine patrol stopped to investigate a vehicle parked beside a highway with its lights out but with its motor running. Lovegren was in the driver's seat and appeared to be asleep, but he did not respond when the officer knocked on the window. When the officer opened the door, Lovegren awoke and stated, "I was drinking." The officer noticed that Lovegren's eyes were bloodshot and smelled alcohol. The officer had Lovegren perform field sobriety tests, which Lovegren failed, and arrested Lovegren for DUI. Lovegren moved to suppress all evidence, claiming that the search was illegal because the officer had no particularized suspicion of any wrongdoing. The District Court denied the motion on grounds that a particularized suspicion was not necessary because the officer had a duty to investigate for Lovegren's own safety. Lovegren appealed, but the Supreme Court affirmed pursuant to the community caretaker doctrine. The court applied the following test to determine whether an officer's actions fall under the doctrine: (1) as long as there are objective, specific, and articulable facts from which an experienced officer would suspect that a citizen is in need of help or is in peril, the officer has a right to stop and investigate; (2) if the citizen is in need of aid, the officer may take appropriate action to render assistance or mitigate the peril; and (3) once the officer is assured that the citizen is not in peril and is not in need of assistance or that the peril has been mitigated, any actions beyond that constitute a seizure implicating constitutional protections afforded by the right of privacy and the right against illegal search and seizure. In this case, when the officer opened the door to check on Lovegren's well-being and Lovegren awoke and voluntarily stated that he had been drinking, the officer then noticed other signs of intoxication that constituted a particularized suspicion to make a further investigative stop that eventually developed into probable cause for an arrest. It would have been a dereliction of the officer's duty if, after knocking on the window and receiving no response, the officer had walked away and continued on patrol. Thus, the escalation of events leading to Lovegren's arrest was proper, and denial of the motion to suppress the evidence of the investigation was not erroneous. St. v. Lovegren, 2002 MT 153, 310 M 358, 51 P3d 471 (2002), following Grinde v. St., 249 M 77, 813 P2d 473 (1991), and Hulse v. St., 1998 MT 108, 289 M 1, 961 P2d 75 (1998), and followed in St. v. Reiner, 2003 MT 243, 317 M 304, 77 P3d 210 (2003), St. v. Nelson, 2004 MT 13, 319 M 250, 84 P3d 25 (2004), St. v. Litschauer, 2005 MT 331, 330 M 22, 126 P3d 456 (2005), St. v. Wheeler, 2006 MT 38, 331 M 179, 134 P3d 38 (2006), and St. v. Vaughn, 2007 MT 164, 338 M 97, 164 P3d 873 (2007). The Lovegren community caretaker doctrine was also applied in St. v. Seaman, 2005 MT 307, 329 M 429, 124 P3d 1137 (2005). See also Henry v. U.S., 361 US 98 (1959), Terry v. Ohio, 392 US 1 (1968), and Cady v. Dombrowski, 413 US 433 (1973).

Manner of Driving Sufficient to Demonstrate DUI — State Not Required to Produce Evidence of Quantifiable Blood Alcohol Content to Prove DUI: Price was charged with fourth offense DUI and with four misdemeanors in connection with a motor vehicle accident. Despite the lack of positive Breathalyzer or blood alcohol test results, testing for which Price declined, Price was convicted of DUI. On appeal, Price asserted that there was insufficient evidence to uphold the conviction. The Supreme Court disagreed and affirmed. The manner in which a vehicle is driven can be evidence of DUI, and the state is not required to produce evidence of a quantifiable blood alcohol content to demonstrate DUI. Here, evidence was sufficient for the jury to conclude that Price was driving under the influence based on Price's admission that he had been drinking prior to the accident, on the arresting officer's testimony that Price recklessly entered an intersection from a stop sign without regard to oncoming traffic, exhibited slurred and incoherent speech, and smelled of alcohol, and on the testimony of the emergency room physician that Price smelled of alcohol and appeared intoxicated. St. v. Price, 2002 MT 150, 310 M 320, 50 P3d 530 (2002). See also St. v. Lias, 218 M 124, 706 P2d 500 (1985), St. v. Peterson, 236 M 247, 769 P2d 1221 (1989), and St. v. Brady, 2000 MT 282, 302 M 174, 13 P3d 941 (2000).

Failure of State to Respond to Discovery Requests During Driver's License Reinstatement Proceedings — Sanctions Proper: Responding to a 9-1-1 emergency dispatch, an officer found Patterson slumped over the steering wheel of a running vehicle, fast asleep. Patterson refused to take a Breathalyzer test, so he was arrested for DUI, and his license was seized. Patterson challenged the suspension of his driver's license pursuant to 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) and through discovery requests sought a copy of the 9-1-1 report, but no copy was provided. The hearing was continued twice because of the absence of the report, and the District Court warned the state that if it failed to produce the report, Patterson's license would be reinstated and the suspension would be dismissed. On the day of the hearing, the state informed the court that it was unable to obtain the 9-1-1 report, so Patterson's motion for reinstatement of his driver's license was granted. The state appealed on grounds that the District Court erred by reinstating the license based on the state's failure to comply with an order compelling production of the report. The Supreme Court affirmed. To determine whether the sanction for the discovery abuse constituted an abuse of the District Court's discretion, the Supreme Court applied the factors in Maloney v. Home & Inv. Center, Inc., 2000 MT 34, 298 M

213, 994 P2d 1124 (2000). The 9-1-1 report was treated as relevant information absent a timely objection by the state to Patterson's request for production, and the state's failure to produce the report compromised Patterson's ability to prepare and present a defense, suspended the progress of the case, and prejudiced Patterson. The state was warned that reinstatement would result from failure to produce the report, and reinstatement was an appropriate sanction for the state's repeated failure to comply with discovery. Patterson v. Dept. of Justice, 2002 MT 97, 309 M 381, 46 P3d 642 (2002).

Improper Admission of Testimony by Highway Patrol Officer Regarding Effect of Prescription Medication on Driving Ability — Harmless Error: During Nobach's DUI trial, the District Court allowed testimony from a highway patrol officer regarding the effect of prescription medications on Nobach's driving ability, without specifically determining whether the testimony would be considered expert or lay opinion. The officer opined that Nobach's ability to drive safely was diminished as a result of the consumption of drugs. Following conviction, Nobach appealed on grounds that the testimony was an expert opinion that was improperly allowed without the requisite foundation. The state contended that the testimony was a lay opinion, and cited St. v. Bradley, 262 M 194, 864 P2d 787 (1993), and St. v. Carter, 285 M 449, 948 P2d 1173 (1997), for the proposition that a lay witness may give an opinion regarding intoxication based on the witness's personal observations. The Supreme Court first distinguished Bradley and Carter because the type of intoxication in those cases involved alcohol, while in Nobach's case, the officer concluded that drugs were involved only when alcohol use was ruled out by the administration of a Breathalyzer test. The court was not convinced that lay people are sufficiently knowledgeable about common symptoms of drug consumption and its effect on driving ability to offer lay testimony on the subject based on personal observation. The officer's opinion testimony was thus considered expert testimony rather than lay testimony, requiring an adequate foundation under Rule 702, M.R.Ev. (Title 26, ch. 10). The officer's training and experience did not provide a sufficient foundation for admitting the expert testimony, so the District Court abused its discretion in allowing it. However, because the abuse was trial error rather than structural error, the error did not warrant automatic reversal. Rather, the question was whether the finder of fact was presented with admissible evidence that proved the same facts as the tainted evidence and, if so, whether the tainted evidence would have contributed to the conviction qualitatively by comparison. In this case, the state provided other expert testimony from a pharmacist that tended to prove the same facts as the officer's testimony, and because the officer's testimony would not have contributed to Nobach's conviction, the error was harmless and the conviction was affirmed. St. v. Nobach, 2002 MT 91, 309 M 342, 46 P3d 618 (2002).

District Court Jurisdiction to Apply Persistent Felony Offender Designation to Felony DUI: Yorek pleaded guilty to and was sentenced on a felony DUI charge. The District Court determined that it had jurisdiction and imposed a persistent felony offender designation. Yorek sought postconviction relief on grounds that the District Court lacked subject matter jurisdiction to impose a persistent felony offender designation for felony DUI. The District Court denied the petition for postconviction relief, concluding that sentencing for felony DUI is not solely governed by 61-8-731 and 61-8-734 (both now repealed and content reorganized in Title 61, chapter 8, part 10), that nothing in the persistent felony offender statute excludes felony DUI offenders from its application, and that Yorek waived any jurisdiction claim by pleading guilty. The Supreme Court affirmed. Nothing in 46-18-502 distinguishes between or among the types of felonies to which it applies, or excludes DUI offenders. Rather, if the underlying charge meets the definition of a felony and if the state has provided proper notice of its intent to seek persistent felony offender status under 46-13-108, a District Court has the statutory authority to designate and sentence an offender as a persistent felony offender. Yorek's crime met the definition of a felony, and Yorek fell squarely within the persistent felony offender statute. The state met the notice provisions, and the District Court possessed subject matter jurisdiction to designate Yorek as a persistent felony offender. Because the jurisdiction question was dispositive, the Supreme Court did not reach the question of whether Yorek's guilty plea was a procedural bar against bringing the claim. St. v. Yorek, 2002 MT 74, 309 M 238, 45 P3d 872 (2002), followed in St. v. Pettijohn, 2002 MT 75, 309 M 244, 45 P3d 870 (2002), and St. v. Damon, 2005 MT 218, 328 M 276, 119 P3d 1194 (2005).

Shining of Police Spotlight Into Vehicle Not Considered Seizure: After Clayton left a Bozeman bar, he noticed that he was being followed by a police car, so he pulled to the right side of the road and stopped. As the police car pulled in behind Clayton's vehicle, the officer shined a spotlight into Clayton's vehicle to see how many people were in it. Before the police car came to a stop, Clayton got out of his vehicle, looked at the police car, and began to run. The officer immediately recognized Clayton from a prior involvement and knew that Clayton's driver's license had been revoked, so the officer gave chase, eventually catching Clayton and placing him under arrest for obstructing an officer. Clayton was subsequently also charged with fourth offense felony DUI and driving with a suspended license. Clayton argued that he was seized when the officer pulled in behind his vehicle and shined the spotlight into it, because the officer did not have a particularized suspicion to effect a stop, and contended that he felt restrained and reasonably believed that he was not free to leave. The District Court concluded that the police acted reasonably and that when Clayton turned and faced the officer and gave away his identity, the police had particularized suspicion. The question for the Supreme Court was whether the police had effected a stop prior to that time and whether a seizure occurred. The state relied on Calif. v. Hodari D., 499 US 621 (1991), for the proposition that a seizure requires either a physical restraint or a submission to an assertion of authority, arguing that even if a stop did occur, the police had particularized suspicion to effect the stop and that the police action was reasonable in nature and scope. The Supreme Court rejected Hodari D., holding that it does not comport with Montana constitutional requirements, and instead affirmed the test in St. v. Roberts, 1999 MT 59, 293 M 476, 977 P2d 974 (1999), that no seizure occurs unless, in view of all the circumstances surrounding the incident, a reasonable person would have felt that the person was not free to leave. In this case, the fact of the police slowing down and coming to a stop behind Clayton's vehicle, and shining a spotlight into the vehicle, did not amount to such a show of authority to meet the Roberts test. The police did not use a siren or emergency lights, the encounter took place on a public street, and the police did not exit the police car and approach Clayton. Thus, no stop occurred prior to Clayton exiting his vehicle, and the District Court was affirmed. St. v. Clayton, 2002 MT 67, 309 M 215, 45 P3d 30 (2002).

Showing of Irregularity in Prior DUI Conviction Based on Failure to Inform Defendant of Right to Counsel — Remand for Further Findings Whether Prior Conviction Applicable to Felony DUI Charge: Peterson was charged with fourth offense felony DUI. Peterson collaterally challenged the felony status of the charge, asserting that two previous misdemeanor convictions were constitutionally insufficient because he was not properly informed of the right to counsel, and moved to dismiss. The motion was denied after the District Court found that Peterson was properly informed in both prior instances. Peterson appealed. It was conceded that Peterson met his burden to show direct evidence of irregularity because he testified that he was not informed of the right to counsel or appointed counsel at either conviction, so the Supreme Court had to determine whether the District Court erroneously found that the state met its burden by a preponderance of the evidence to show that Peterson was properly informed of his rights in each of the prior pleas. The court found that Peterson was properly informed of his rights in one case, but because the District Court did not address the inconsistency in the testimony of the judge involved in the other conviction and resolve whether Peterson was actually represented by counsel, the case was remanded for further proceedings regarding the conviction in question. St. v. Peterson, 2002 MT 65, 309 M 199, 44 P3d 499 (2002). See also St. v. Okland, 283 M 10, 941 P2d 431 (1997), and St. v. Jenni, 283 M 21, 938 P2d 1318 (1997).

Ample Evidence That DUI Suspect Had Been Driving on Public Road Even Though Parked in Private Driveway: Krause was discovered parked in the driveway of a private residence, asleep on the seat of his truck with his feet resting on the floor under the steering wheel. Krause was arrested for DUI but declined to take a Breathalyzer test, so his license was suspended. Krause petitioned for reinstatement of the license, arguing that revocation of the license under the implied consent statute was improper because Krause was not on a way of this state open to the public at the time of his arrest. The District Court denied the petition, finding that the lane or access road providing access to the residence was a way of this state open to the public. Krause appealed, but without reaching the issue of whether the driveway was considered a public way, the Supreme Court affirmed. Krause's truck did not suddenly materialize out of thin air in the driveway; Krause had to have driven it there by way of the highway that was only 20 or 30 feet from the driveway. Because Krause had been parked only a few minutes before the officer arrived, Krause's intoxicated condition had to have occurred prior to Krause's arrival at the residence. Thus, the officer had reasonable grounds to believe that Krause had been driving on the highway while under the influence. St. v. Krause, 2002 MT 63, 309 M 174, 44 P3d 493 (2002), distinguishing St. v. Haws, 869 P2d 849 (Okla. Crim. App. 1994), and followed in St. v. Sirles, 2010 MT 88, 356 Mont. 133, 231 P.3d 1089.

Error in Not Excluding Results of Independent Blood Alcohol Test Taken After DUI Arrestee Released From Custody: When Krause was picked up for DUI, he refused to take a Breathalyzer test and his license was revoked. After booking, Krause was released from custody, went to the hospital, and requested a blood alcohol test. The state subsequently obtained the results of the blood test by investigative subpoena, and the District Court allowed admission of the test results at Krause's trial over his objection. Krause appealed on grounds that the test results should not have been admitted because they were not relevant to any issue in the case. Krause pointed out that the decision as to the validity of an arrest must be based on information that the officer had at the time and cannot be justified bolstered by information obtained after the fact. The state argued that the evidence of the blood test was introduced to substantiate the credibility of the arresting officer's observations and opinion, not to retrospectively validate the officer's belief that Krause had been driving under the influence. The Supreme Court agreed with Krause. The officer's character for truthfulness was not attacked, nor did evidence of Krause's blood test refer to the officer's character for truthfulness. Thus, there was no legitimate purpose for the introduction of the blood test evidence, and the District Court should have excluded it. St. v. Krause, 2002 MT 63, 309 M 174, 44 P3d 493 (2002).

Requirement That Officer Provide Certain Information to Person Lawfully Stopped for Investigation or Stop and Frisk: Prior to a hearing on his petition for reinstatement of his driver's license, which was revoked after his refusal to take a Breathalyzer test, Krause moved to suppress various statements made to the arresting officer. Krause argued that under Montana's stop and frisk statute, before asking where Krause had been and whether he had been drinking, the officer was required pursuant to 46-5-402(4) (now repealed) to inform Krause that he was a peace officer, that the stop was not an arrest but rather a temporary detention for investigative purposes, and that, unless arrested, Krause would be released upon completion of the investigation. The motion to suppress was denied, and Krause appealed. The state argued that 46-5-402(4) (now repealed) applied only if the officer had reason to suspect that Krause was armed and dangerous, as provided by 46-5-402(1) (now repealed), asserting that this was an investigative stop governed by 46-5-401 rather than a stop and frisk governed by 46-5-402 (now repealed), and that because 46-5-401 does not contain the same information requirement as 46-5-402 (now repealed), it was not necessary that the officer inform Krause as required in 46-5-402(4) (now repealed). The Supreme Court agreed with Krause. By it terms, the stop and frisk statute clearly and unambiguously applies to the investigative stop statute as well. Therefore, a peace officer is also required to give the warning contemplated in 46-5-402(4) (now repealed) when a person is stopped for a DUI investigation, even when there is no intention to frisk, and the District Court erred when it did not suppress statements made by Krause prior to the officer giving the warning St. v. Krause, 2002 MT 63, 309 M 174, 44 P3d 493 (2002).

Insufficient Particularized Suspicion of Crime to Justify Investigative Stop — To Pee or Not to Pee: On the night of November 16, 1999, officers came up behind a vehicle parallel parked legally beside a frontage road. As they passed the vehicle, they noticed a man standing by the passenger door on the side farthest from the road, apparently urinating. The man had taken steps so as not to expose himself to passers-by. The officers proceeded on, but decided to return and warn the man about the impropriety of his conduct. Upon reaching the vehicle, there was no longer anyone standing by it, but Kleinsasser was in the driver's seat making a call on a cell phone, another person was in the passenger seat, and another was lying down on the back seat. All three denied standing by the vehicle and denied knowing who had been doing so. The officers also smelled alcohol emanating from the vehicle, and asked Kleinsasser to perform field sobriety tests, which he failed. Kleinsasser was arrested for DUI, but refused to take a breath test, so his driver's license was seized and suspended. The District Court denied Kleinsasser's petition challenging the license suspension, and Kleinsasser appealed. The only relevant issue for the District Court to consider was whether the officer had reasonable grounds to believe that Kleinsasser was driving under the influence. The reasonable grounds requirement in 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) is equivalent to the requirement for particularized suspicion to make an investigative stop in 46-5-401, which requires the state to show objective data from which an experienced officer could make certain inferences, and a resulting suspicion that the occupant of a certain vehicle is or has been engaged in wrongdoing or was a witness to criminal activity. When the totality of the circumstances does not support a particularized suspicion, an investigative stop is not justified. The state argued that the observed activity constituted disorderly conduct. The Supreme Court disagreed. Kleinsasser's act did not create a hazardous condition, and the court found it hard to imagine any act that serves a more legitimate purpose than answering nature's call. Further, the behavior was not considered physically offensive in this case because it occurred at night, in a rural location where there were no overhead lights or other traffic at the time. There was no evidence that the act disturbed anyone other than the officers, and neither officer was so disturbed that he considered giving the individual a citation; therefore, an allegation of disorderly conduct was unfounded. Absent a particularized suspicion to justify an investigative stop, the subsequent seizure of Kleinsasser's driver's license was invalid. The Supreme Court reversed the District Court's error in denying Kleinsasser's petition for reinstatement of his license. Kleinsasser v. St., 2002 MT 36, 308 M 325, 42 P3d 801 (2002).

Arresting Officer's Advice Considered Frustration of Due Process Right to Independent Blood Test — Strand Remedy for Violation of Due Process Rights Overruled: Minkoff was arrested for DUI and informed of his right to an independent blood test. Minkoff asked the arresting officer whether he should get a blood test, and the officer initially replied that he could not advise Minkoff, but that the test would only be given at Minkoff's expense. Minkoff then asked whether there was any difference between the blood test and the breath test, and the officer repeatedly stated that the blood test would be more exact and higher than the breath test. Minkoff then took a breath test, which he failed, but did not request a blood test. After being convicted, Minkoff appealed on grounds that his right to an independent blood test was frustrated by the arresting officer's response to the inquiry about whether to get a blood test. The District Court had relied on St. v. Sidmore, 286 M 218, 951 P2d 558 (1997), in denying Minkoff's motion to dismiss. Sidmore provides that two criteria must be met to support an allegation of denial of due process rights regarding the right to an independent test: (1) the accused must timely claim the right to an independent blood test; and (2) a law enforcement officer must unreasonably impede the defendant's right to obtain an independent blood test. Here, given the immediacy of the officer's advice, the period within which Minkoff could timely request the test under the first Sidmore criteria had not passed, and to conclude otherwise would permit frustration of a person's due process right to an independent test in advance of the person's reasonable opportunity to request the test. Then, to determine whether the officer unreasonably frustrated Minkoff's right to obtain the blood test, the Supreme Court applied Lau v. St., 896 P2d 825 (Alaska 1995). Under Lau, a government officer having custody of an arrested driver cannot attempt to dissuade the driver from exercising the right to an independent blood test. Here, the officer's repeated statements, albeit well-intentioned, that a blood test would show a higher blood alcohol level, were affirmative acts that would frustrate, if not obliterate, the intention of any rational arrestee to obtain an independent blood test. Regarding the proper remedy for such a due process violation, the Supreme Court previously held in St. v. Strand, 286 M 122, 951 P2d 552 (1997), that suppression of the breath test was an appropriate remedy on the basis that if the state frustrated the right to an independent test, it could not then be allowed to use its own scientific evidence of intoxication against the defendant. On further consideration, the Supreme Court held that the Strand remedy was manifestly incorrect and overruled Strand in that regard, holding that dismissal rather than suppression of the breath test is the appropriate remedy when the right to an independent blood test is frustrated. St. v. Minkoff, 2002 MT 29, 308 M 248, 42 P3d 223 (2002), followed in St. v. Smerker, 2006 MT 117, 332 M 221, 136 P3d 543 (2006), and St. v. Wrzesinski, 2006 MT 263, 334 M 157, 145 P3d 985 (2006).

Blood Test Results From Emergency Medical Treatment Admissible as DUI Evidence Notwithstanding Lack of Consent to Blood Test: Llewellyn was involved in an automobile accident, sustaining significant injuries. Llewellyn was asked to submit to a blood test at the accident scene, but refused. While undergoing medical treatment in the emergency room, Llewellyn's blood was drawn on the order of a physician for purposes of diagnosis and treatment. Lab results revealed a blood alcohol level above the legal limit. The state obtained the results pursuant to an investigative subpoena and sought to have the results entered in evidence during Llewellyn's DUI trial, citing St. v. Newill, 285 M 84, 946 P2d 134 (1997), for the holding that blood tests taken for medical diagnosis and treatment are admissible as other competent evidence. Llewellyn moved to suppress the evidence, claiming that the state could not show compliance with the required administrative procedures in the collection of the blood test for evidentiary purposes, and noting that consent had been refused under 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10). The District Court granted Llewellyn's motion, distinguishing Newill, because unlike the defendant in that case, Llewellyn had exercised the statutory right to refuse to submit to a blood test for determining blood alcohol content, and concluding that admitting the evidence would allow an end run around the implied consent statutes that the Legislature could not have intended. The state sought and the Supreme Court accepted supervisory control of the evidentiary issue. Notwithstanding subsequent amendments to the implied consent statutes since Newill, the resolution of the issue was still controlled by Newill. The criteria for admissibility under 61-8-402 relating to blood tests administered under the implied consent statute are inapplicable to diagnostic blood tests taken by a hospital or treating physician. There were additional competency requirements arising from the 1997 amendment to 61-8-404 (now repealed and content reorganized in Title 61, chapter 8, part 10) that were not at issue in Newill. The court applied the foundational requirements of the 1999 versions of 61-8-404 and 61-8-405 (now repealed and content reorganized in Title 61, chapter 8, part 10), concluding that the administration of a blood test for medical treatment purposes need not be conducted at the request of a peace officer as required by 61-8-405, because that requirement applies only to blood tests conducted pursuant to 61-8-402. Further, the court found that the administrative rule regarding the collection of blood samples for drug or alcohol analysis should be applied in Llewellyn's case to determine whether the blood test was competent evidence, but the administrative requirement that a blood sample be collected upon written request of a peace officer or officer of the court did not apply to Llewellyn's blood sample collected for medical purposes, because that requirement applies only to blood tests conducted pursuant to the implied consent statute. However, the District Court in Llewellyn's case never determined whether the medical blood test was competent evidence for purposes of admissibility under 61-8-404, so the Supreme Court remanded for a finding as to whether the medical blood test evidence was competent and admissible. State ex rel. McGrath v. District Court, 2001 MT 305, 307 M 491, 38 P3d 820 (2001), followed in St. v. Schauf, 2009 MT 281, 352 M 186, 216 P3d 740 (2009).

District Court Proceeding Under Mistake of Law in Determining Whether Implied Consent Statute Applicable to Blood Drawn for Medical Reasons — Supervisory Control Accepted: The District Court suppressed the results of a blood test taken for medical reasons after a DUI suspect declined to give consent for a blood test following a car accident in which the use of alcohol was suspected. The Supreme Court concluded that the District Court was proceeding under a mistake of law, and that if the mistake was left uncorrected, the state would be without an adequate remedy on appeal. Given the state's limited ability to appeal an evidentiary ruling, the Supreme Court accepted original jurisdiction in the matter to prevent the introduction of evidence when correction of the ruling by a later court decision would be ineffective. State ex rel. McGrath v. District Court, 2001 MT 305, 307 M 491, 38 P3d 820 (2001), following State ex rel. Mazurek v. District Court, 277 M 349, 922 P2d 474 (1996), and Park v. District Court, 1998 MT 164, 289 M 367, 961 P2d 1267 (1998).

Admissibility of Preliminary Alcohol Screening Test Results — Administrative Rule Limiting Test Results to Probable Cause Evidence Superseded — Proper Foundation for Use of Training Manual as Model for Screening Test: Harrington raised several objections concerning the use of results from a preliminary alcohol screening test (PAST) at trial, contending first that the PAST results should have been excluded because ARM 23.4.201(7)(b) allows PAST results to be considered as probable cause evidence only. The Supreme Court noted that the 1997 Legislature amended 61-8-404 (now repealed and content reorganized in Title 61, chapter 8, part 10) to allow admission of a report of a blood or breath test if a breath test or PAST was performed by a person certified by the Forensic Sciences Division of the Department of Justice. The administrative rule was inconsistent with the statute, and the statute prevailed, so the PAST results could not be disallowed pursuant to the rule. Harrington also argued that a proper foundation was not laid for admission of the PAST results. The Supreme Court disagreed. The arresting officer testified that the specific make and model of equipment used for Harrington's PAST was on the approved list in the training manual distributed by the Department and that the equipment was field tested prior to use. It was within the trial court's discretion to consider the training manual pursuant to Rule 104, M.R.Ev. (Title 26, ch. 10), in determining whether an adequate foundation existed for introduction of the PAST results. Columbus v. Harrington, 2001 MT 258, 307 M 215, 36 P3d 937 (2001).

Jury Instructions Regarding Expertise of Arresting Officers and Admissibility of Preliminary Alcohol Screening Test Results Considered Fair Presentation of the Law: The officers who testified at Harrington's DUI trial described their educational background, specialized training, and experience with field sobriety and breath tests, and the jury instruction informed the jury that the officers' expert opinions could be accepted or rejected and that the jury could give the opinions the weight deserved. The jury instruction was relevant to the evidence and issues in the case and was not given in error. Harrington asserted that jury instructions regarding the inferences in 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) should not apply because preliminary alcohol screening test results did not establish a particular blood alcohol concentration in the body, but rather provided only an estimate. The jury was separately instructed that the test results were only estimates and that the inference was permissive and rebuttable. The jury instructions thus fully and fairly informed the jury on the applicable law, and Harrington's DUI conviction was affirmed. Columbus v. Harrington, 2001 MT 258, 307 M 215, 36 P3d 937 (2001).

Prosecutor's Comment Alleging Uncontradicted Evidence Erroneous When Defendant Who Asserted Right to Remain Silent Was Only Person Who Could Offer Contradictory Evidence — Error Harmless: Harrington was arrested for DUI, was read his Miranda rights, and chose to remain silent. Harrington contended that his due process rights and privilege against self-incrimination were violated by testimony elicited and statements made by the prosecution during trial. Although Harrington failed to preserve the issues in the District Court, the Supreme Court applied the plain error doctrine pursuant to its discretionary power enunciated in St. v. Finley, 276 M 126, 915 P2d 208 (1996), considering the totality of the circumstances and evaluating the nature of the constitutional rights implicated, rather than the sufficiency of the evidence. The court decided that because no comment was made that Harrington at any time refused to give a statement or refused to testify and because the prosecutor did not insinuate that an innocent person would have given a statement or testified, no Doyle error occurred (see Doyle v. Ohio, 426 US 610 (1976)). However, the prosecutor did comment during rebuttal that there was no evidence to contradict the state's case, which was error as an improper reference to Harrington's decision not to testify because Harrington was the only person who could have offered contradictory testimony (see St. v. Hart, 154 M 310, 462 P2d 885 (1969)). To determine whether the error was prejudicial, the court applied the test in St. v. Van Kirk, 2001 MT 184, 306 M 215, 32 P3d 735 (2001). The error was considered a trial error rather than a structural error, and because the error concerned comment rather than evidence, the court went on to determine whether it was harmless and contributed to the conviction. In this case, the single comment that the evidence was uncontradicted was an isolated one, and there was no reasonable possibility that it contributed to Harrington's conviction given the fact that during closing, the prosecutor focused on the driving errors Harrington made before being stopped, the videotape of Harrington's field sobriety tests, the arresting officer's expertise, and the results of the preliminary breath test. Harrington's constitutional rights were not prejudiced by the improper reference to his decision not to testify. Columbus v. Harrington, 2001 MT 258, 307 M 215, 36 P3d 937 (2001).

Consumption of Alcohol Following Accident Not Considered Tampering With Evidence: Peplow drove his truck off of a country road, then got a ride home, where he consumed three double shots of whiskey, allegedly for pain from the accident. After walking his dog, he went to a nearby bar and ordered a beer. He was found at the bar by the highway patrol officer who was investigating the accident. Peplow failed all sobriety tests and was charged with and convicted of DUI, driving with a suspended or revoked license, driving without insurance, failing to report an accident, and tampering with evidence. Following the state's case at trial, Peplow moved for a directed verdict on the tampering charge, arguing that a person's blood alcohol content does not fit the definition of a record, document, or thing, as required in 45-7-207, and also that the state failed to present evidence that Peplow knew or had reason to believe that an official proceeding or an investigation was pending or about to be instituted, as required by the statute. The motion was denied, and Peplow appealed. The Supreme Court noted that under 61-8-404 (now repealed and content reorganized in Title 61, chapter 8, part 10), evidence of a person's blood alcohol content must be shown by an analysis of blood or breath for it to be admissible, but the section does not contemplate that potentially measurable amounts of alcohol, still within the body, constitute evidence. Until one's breath or blood has been collected for analysis, it cannot be considered physical evidence. Thus, the court held that a person's blood alcohol content, as it exists within the person's body and control, does not constitute physical evidence, as required in 45-7-207, or a thing presented to the senses, as explained in 26-1-101, so a person who consumes alcohol following a motor vehicle accident cannot be convicted of tampering with physical evidence under 45-7-207, with respect to that person's blood, breath, or urine still within the person's body. Peplow's tampering conviction was reversed. St. v. Peplow, 2001 MT 253, 307 M 172, 36 P3d 922 (2001).

Prejudicial Error in Failure to Accept Guilty Pleas: Peplow was charged with and convicted of DUI, driving with a suspended or revoked license, driving without insurance, failing to report an accident, and tampering with evidence. Prior to trial, Peplow tried to enter guilty pleas to the driving with a suspended or revoked license and driving without insurance counts, but the trial court ruled that it was not required to accept the pleas. Peplow appealed. The Supreme Court held that the tampering with evidence charge was not applicable and that Peplow had a right to plead guilty and thus the trial court erred in refusing the pleas. The Supreme Court then applied St. v. Van Kirk, 2001 MT 184, 306 M 215, 32 P3d 735 (2001), to determine whether denial of the pleas prejudiced Peplow's right to a fair trial. The court first determined that the error did not undermine the fairness of the entire trial proceeding, nor was it of constitutional dimensions, so it was considered a trial error rather than a structural error. Once a convicted person establishes that the evidence in question was erroneously admitted and has alleged prejudice, the state must then demonstrate that the error was not prejudicial, i.e., that the quality of the tainted evidence was such that there was no reasonable possibility that it might have contributed to the conviction. Therefore, pursuant to Van Kirk, the Supreme Court was required to determine whether the evidence proving that Peplow drove with a suspended license and without insurance went to prove an element of either of the substantive charges of DUI or failing to report an accident. The court noted that if Peplow's guilty pleas had been properly accepted, the evidence in question would not have been admissible. Further, the jury was presented with ample admissible evidence that Peplow was under the influence, so it was not necessary that the state object to the guilty pleas in order to buttress the record at trial. However, the qualitative effect of the inadmissible evidence was such that there was a reasonable possibility that the tainted evidence might have contributed to the DUI conviction, so that conviction was reversed and the case was remanded for a new trial. St. v. Peplow, 2001 MT 253, 307 M 172, 36 P3d 922 (2001).

Driver Stopped at Flashing Red Light Over Twenty-Five Seconds Sufficient to Warrant Investigative Stop: About 1 a.m. on a Sunday morning, an officer observed a vehicle stopped at a flashing red light. The officer performed a U-turn and pulled in behind the vehicle. Although there was no other traffic, the vehicle remained stopped for at least 10 more seconds, then the officer honked his horn in an effort to get the vehicle to proceed. The vehicle remained stopped for an additional 10 to 15 seconds and then proceeded through the intersection. By that point, the officer was concerned that the driver was impaired by alcohol, so an investigative stop was made. Cook was tested and arrested for DUI and convicted. Cook moved for suppression of the evidence on grounds that the only information that the officer had upon which to base the stop was that Cook stopped at the light for what the officer believed to be an unusual length of time and that, pursuant to St. v. Reynolds, 272 M 46, 899 P2d 540 (1995), the information was not sufficient to create a particularized suspicion that a criminal offense was being committed to justify an investigative stop. On the other hand, the officer testified that an officer is more likely to encounter an impaired driver during weekend time, such as when Cook was observed, and that a driver's observably slow response to traffic signals is one of a number of visual indicators that a driver may be impaired. The Supreme Court applied the test for particularized suspicion in St. v. Anderson, 275 M 344, 912 P2d 801 (1996), and affirmed. The court distinguished Reynolds, noting that Cook was stopped more than twice as long as Reynolds and that nothing in Reynolds indicated that the officer in that case relied on training and experience to interpret the pause at the intersection as indicative of impaired driving. Based on the totality of the circumstances, the officer had sufficient objective data from which to make inferences regarding Cook's possible impairment that created a particularized suspicion that Cook was committing an offense and to conduct the investigative stop. Missoula v. Cook, 2001 MT 237, 307 M 39, 36 P3d 414 (2001).

DUI Charged Against Defendant Sitting in Running Truck While Intoxicated — No Emergency Creating Defense of Necessity: Nelson was arrested for DUI after being found sitting in a running truck in a bar parking lot while intoxicated. Nelson requested that the trial court give a jury instruction that actual physical control of a vehicle does not include use of the vehicle solely for a place or shelter or habitation. The court declined to give the instruction, and Nelson was convicted. On appeal, Nelson cited St. v. Shotton, 458 A2d 1105 (Vt. 1983), for the common-law defense of necessity. Shotton set out the elements of the necessity defense as follows: (1) there must be a situation of emergency arising without fault on the part of the actor concerned; (2) the emergency must be so imminent and compelling as to raise a reasonable expectation of harm, either to the actor or to those whom the actor was protecting; (3) the emergency must present no reasonable opportunity to avoid the emergency without doing the criminal act; and (4) the injury impending from the emergency must be of sufficient seriousness to outmeasure the criminal wrong. Nelson presented evidence that the low temperature that evening was 31 degrees and that the wind was blowing and contended that it was necessary to wait in the truck for his brother and wife to pick him up. The Supreme Court declined to follow Shotton, noting that Nelson's situation did not present a similar medical emergency or present a situation in which Nelson was blameless in creating the emergency. Rather, Nelson's was a self-created predicament that had multiple solutions and options other than turning on the truck. Nelson drove to the bar by himself on a cold night without a jacket and clad only in a sleeveless T-shirt. He could have walked to a nearby hotel for shelter while waiting, and he also had a blanket in the truck that he could have used to keep warm instead of starting the truck. The court declined to adopt the defense of necessity in this case, and Nelson's DUI conviction was affirmed. St. v. Nelson, 2001 MT 236, 307 M 34, 36 P3d 405 (2001).

Failure to Use Turn Signal Not Grounds for Traffic Stop: An officer responded to an anonymous complaint reporting a careless driver and observed a vehicle matching the description in a restaurant parking lot, but observed no activity that would justify a stop. The officer followed the vehicle when it departed and stopped it after the driver failed to signal a right-hand turn at an intersection, in violation of 61-8-336. Grindeland was subsequently arrested for DUI, but petitioned for reinstatement of his driving privileges on grounds that his failure to use turn signals did not violate the law and that the stop was thus not supported by a particularized suspicion of a criminal offense. The District Court agreed and reinstated Grindeland's driving privileges. The state appealed. The Supreme Court noted that under 61-8-336(1), a driver is required to use a turn signal only when there is other traffic that might be affected by the turn. Although there were other vehicles in the area, there was insufficient objective data by which the officer could infer that the other vehicles may have been affected by Grindeland's turn, so the turn could not be considered illegal. Absent that objective data, the officer lacked a particularized suspicion upon which to make the stop, so the stop was illegal, and reinstatement of Grindeland's driving privileges was affirmed. Grindeland v. St., 2001 MT 196, 306 M 262, 32 P3d 767 (2001).

Introduction of Results of Horizontal Gaze Nystagmus Test — Explanation of Underlying Scientific Basis of Correlation Between Alcohol Consumption and Nystagmus Required: At Van Kirk's DUI trial, the District Court allowed the arresting officer to testify regarding Van Kirk's performance on a horizontal gaze nystagmus (HGN) test. Van Kirk contended that the state failed to lay the proper foundation for admitting the test results. The Supreme Court agreed. Pursuant to Hulse v. St., 1998 MT 108, 289 M 1, 961 P2d 75 (1998), in order to lay the proper foundation, the state must establish a scientific basis for the reliability of the test results and in addition show that the test was properly administered. This requires that a qualified expert explain the underlying scientific basis of the correlation between alcohol consumption and nystagmus. In this case, the arresting officer had a bachelor's degree in medical technology, had worked as a lab supervisor and technician at the state hospital, was certified to administer the HGN test, and testified that the test was properly administered to Van Kirk. However, nothing in the evidence established that the officer was specially trained or educated or had adequate knowledge to qualify as an expert able to explain the underlying scientific basis of the HGN test. Thus, the District Court erred in permitting the officer to offer the test results into evidence without the state first establishing the requisite foundation. However, the error was not prejudicial to Van Kirk, so the DUI conviction was affirmed. St. v. Van Kirk, 2001 MT 184, 306 M 215, 32 P3d 735 (2001). See also St. v. Chavez-Villa, 2012 MT 250, 366 Mont. 519, 289 P.3d 113, ruling that although implication of HGN results was improperly admitted, the cumulative evidence of the defendant's intoxication rendered the introduction of the implied results nonprejudicial.

No Right to Counsel Prior to Taking Breath Test — Implied Consent: A person does not have a right to consult with counsel prior to deciding whether to take an alcohol breath test because consent is considered given as a matter of law pursuant to 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10). St. v. Van Kirk, 2001 MT 184, 306 M 215, 32 P3d 735 (2001).

Failure to Show Prejudice in Delayed DUI Trial Based on Pretrial Anxiety: Stuart was arrested for DUI, and after a delay of more than 200 days, moved for dismissal on grounds of denial of a speedy trial. The motion was denied, and Stuart ultimately was convicted, but timely asserted the right to a speedy trial on appeal. The Supreme Court applied the analysis set out in Billings v. Bruce, 1998 MT 186, 290 M 148, 965 P2d 866 (1998), to determine if prejudice occurred. No single factor is determinative, and each must be weighed in light of the facts of the case. The only disputed factor was the possible anxiety caused by the pretrial delay that might have placed Stuart's employment as a commercial driver in limbo; however, Stuart conceded that he had received full-time employment as a commercial truck driver about 6 months after the DUI charge. Affidavits from Stuart and his wife addressed the anxiety factor, but did not transcend the generic anxiety inherent in being accused of a crime. Stuart failed to establish prejudice once the state met its burden of showing a lack of prejudice, and the District Court did not err in denying the motion to dismiss for lack of a speedy trial. St. v. Stuart, 2001 MT 178, 306 M 189, 31 P3d 353 (2001).

Erratic Driving at Night in Proximity to Bars — Totality of Circumstances Justifying Traffic Stop: Shortly after midnight, an officer observed Loiselle's vehicle drifting across the right traffic lane, crossing the white fog line, making several turns without signaling, and weaving. The officer pulled Loiselle over for an investigative stop, which resulted in a DUI charge. At trial, Loiselle moved to suppress evidence obtained during the stop, but the motion was denied, and Loiselle appealed. To make an investigatory stop, an officer must have a particularized and objective basis for suspecting criminal activity, and whether particularized suspicion exists is a question of fact determined by considering the totality of the circumstances. In this case, the totality of the circumstances justified the stop. Loiselle did not merely touch the fog line, but actually drove over it and proceeded on the shoulder of the road for at least 3 seconds. The behavior was preceded by erratic driving that caught the officer's attention and that occurred late at night in the proximity of several nearby bars. Irrespective of Loiselle's failure to use turn signals, to a 5-year veteran of the Sheriff's office, there was sufficient objective data from which the officer could suspect that the occupant of the vehicle had engaged in wrongdoing and commence an investigatory stop. St. v. Loiselle, 2001 MT 174, 306 M 166, 30 P3d 1097 (2001).

Imprisonment for Probation Violation Not Considered Double Jeopardy: Walker was convicted of felony DUI, sentenced to 6 months in prison followed by 2 years of supervised probation, and fined $1,000. Following 6 months' confinement, Walker was released and began serving the probationary sentence but violated the terms of probation about 1 year later. During revocation hearings, Walker contended that additional incarceration pursuant to 61-8-731 (now repealed and content reorganized in Title 61, chapter 8, part 10) for probation violations would constitute double jeopardy because the entirety of the 6 months' prison term had already been served. The District Court disagreed, revoked probation, and committed Walker to the Department of Corrections for the time remaining on the original 2-year probation. Walker appealed, but the Supreme Court affirmed. The court found no distinction between the revocation of a suspended sentence and the revocation of a probationary sentence. In either case, the subsequent conduct, not the original offense, forms the basis for revocation, and the sentencing court retains jurisdiction over the defendant during the period of probation. Walker conceded that 61-8-731 provides by its terms for revocation of probation and for incarceration upon violation of probation. The revocation is not new punishment for the criminal offense of felony DUI, but rather constitutes the consequence of violating probationary conditions. Walker failed to bear the burden of proving 61-8-731 unconstitutional beyond a reasonable doubt on double jeopardy grounds. St. v. Walker, 2001 MT 170, 306 M 159, 30 P3d 1099 (2001), distinguishing St. v. Guillaume, 1999 MT 29, 293 M 224, 975 P2d 312 (1999).

Payment of Child Support Improper Condition of Sentence for Felony DUI — Victim and Correlation to Underlying Offense Necessary for Imposition of Restitution: Horton was arrested for DUI, and a search of his driving record revealed nine prior DUI convictions. A further search showed that Horton also owed more than $47,000 in back child support. Horton was charged with felony DUI, with driving with a suspended or revoked license, as a habitual traffic offender operating a motor vehicle, and with felony nonsupport. By plea agreement, Horton agreed to plead guilty to the traffic offenses in exchange for dismissal of the nonsupport charge. The plea agreement stated that the state would recommend a 13-month sentence to be served in prerelease, followed by 4 years of probation, and, as a condition of the probationary sentence, provided that Horton would also make regular child support payments plus an additional sum monthly toward the support arrearage. As set out in the agreement, Horton pleaded guilty to the traffic offenses, and the nonsupport charge was dismissed. At sentencing, the habitual traffic offender charge was subsequently dismissed for failure of the state to prove that a valid habitual offender designation was in place at the time of the offense, and in addition, Horton's counsel objected to the court ordering payment of any child support arrearage, arguing that because the nonsupport charge had been dismissed, Horton would be paying restitution on a count for which he had not been convicted. Nevertheless, the court ordered Horton to pay support and promised to revoke his probation and sentence him to 4 years in prison with no parole if support was not paid. On appeal, Horton argued that the District Court abused its discretion and exceeded statutory mandates when it required him to pay restitution for an offense that was dismissed, citing St. v. Brown, 263 M 223, 867 P2d 1098 (1994), for the position that restitution is statutorily limited to the victim of the crime and that because there was no victim who sustained pecuniary or economic loss as a result of the felony DUI or driving with a suspended or revoked license, restitution was inappropriate. The state argued that Horton was attempting to receive the benefit of the plea agreement—having the felony nonsupport charge dismissed—without holding up his end of the bargain by paying child support. The Supreme Court noted that a plea agreement is subject to contract law and that the court will not assist a defendant in escaping the obligations of a plea agreement once its benefits are received. However, the court also pointed out that a District Court's authority to impose sentences in criminal cases is defined and constrained by statute. The statutory authority for payment of restitution is in 46-18-201, which limits payment of restitution to the victim of a crime for which a defendant is convicted, and because Horton was not convicted of nonsupport, there was no victim to whom Horton could be ordered to pay restitution. The state also contended that ordering Horton to pay child support was proper because under 46-18-202(1), a sentencing court may impose any condition reasonably related to the objectives of rehabilitation and the protection of the victim and society. The Supreme Court noted that under St. v. Ommundson, 1999 MT 16, 293 M 133, 974 P2d 620 (1999), a sentencing condition must have some correlation or connection to the underlying offense, but there was no correlation or connection between Horton's conviction for DUI and ordering him to pay child support. Thus, the Supreme Court ordered that the portion of Horton's sentence requiring payment of child support be stricken. St. v. Horton, 2001 MT 100, 305 M 242, 25 P3d 886 (2001), followed in St. v. Setters, 2001 MT 101, 305 M 253, 25 P3d 893 (2001).

Allegation of Misinformation in Implied Consent Advisory Form as Applied to Nonresident — Motion to Suppress Results of Breath Test Properly Denied: Fergunson pleaded guilty to driving under the influence of alcohol and driving the wrong way on a one-way street, but reserved his right to appeal the denial of his motion to suppress the evidence of his breath test. On appeal, Fergunson argued that the test results should have been suppressed because the implied consent advisory form misstated the law as it applied to him as a resident of Iowa and that he was thus unlawfully coerced into taking the breath test without having all the correct and relevant information upon which to make an informed decision. The Supreme Court affirmed the denial of the motion to suppress. The purposes of implied consent advisory forms are to put an apparently intoxicated driver on notice of the potentially serious consequences of refusing a blood alcohol test and to alert the driver of the due process protections germane to independent testing and posttesting hearings. Those purposes were accomplished here. Given that Fergunson's right to operate a motor vehicle faced suspension in both states because he refused to take the breath test and in light of the fact that he was told that his license would be returned to Iowa if he refused to take the test, his argument that he was misled or unlawfully coerced was unpersuasive. Missoula v. Fergunson, 2001 MT 69, 305 M 36, 22 P3d 198 (2001), following St. v. Simmons, 2000 MT 329, 303 M 60, 15 P3d 408 (2000). Fergunson and Simmons were followed in Anderson v. St., 2007 MT 225, 339 M 113, 168 P3d 1042 (2007), as applied to a resident driver who was not specifically informed that failure to submit to a breath test would result in suspension of a Montana driver's license, but was nevertheless informed of the serious consequences of failure to take the test by reference to the consequences to a nonresident driver.

Officer's Informing Suspect of Consequences of Refusing Breath Test When Asking Suspect a Second Time to Submit to Test Cures Failure to Inform Suspect of Consequences of Refusing to Take Test When Suspect First Asked to Submit: Officer McLean failed to inform McKenzie of the consequences of refusing a breath test when he asked McKenzie to submit to the test. The defendant admitted that when the officer asked him a second time to submit to the test, he was informed of the consequences of refusing to submit. Subsequently, at the police station, Officer McLean erroneously informed the defendant that if he also refused to submit to a blood test, his license would be suspended for an additional 6 months along with the 6-month suspension for refusing the breath test. McKenzie's license was suspended for 6 months, and he appealed the denial of his petition for reinstatement. The Supreme Court held that the first refusal was insufficient to support the license suspension because the defendant was not informed of the consequences of refusal but that the second refusal would support the suspension because the defendant was informed of the consequences of refusing the test. The Supreme Court stated that it would not address the merits of McKenzie's claim that Officer McLean stated a greater penalty for refusing both tests than the law allowed in an attempt to coerce the defendant into submitting to a blood test because the refusal to submit to the breath test was sufficient in itself to support the 6-month license suspension. In re Driver's License Suspension of McKenzie, 2001 MT 25, 304 M 153, 19 P3d 221 (2001).

Petitioner's Driver's License Reinstated on Basis That No Grounds Existed to Justify Officer's Particularized Suspicion for Stopping Petitioner's Vehicle: Officer Van Every observed Morris's vehicle drift and touch the fog line. Believing that Morris might be driving under the influence, the officer stopped Morris and ultimately arrested him when he refused to provide a sample of his breath. The lower court reinstated Morris's license on the basis that there was no particularized suspicion for the traffic stop. The Supreme Court affirmed the lower court's decision, ruling that merely touching or crossing the fog line while driving is not a traffic infraction and in itself is insufficient to create a particularized suspicion of wrongdoing that would justify a traffic stop. The Supreme Court in dicta clarified that the present case and St. v. Lafferty, 1998 MT 247, 291 M 157, 967 P2d 363 (1998), were not to be construed as requiring a traffic violation as necessary to create a particularized suspicion prior to a traffic stop. Morris v. St., 2001 MT 13, 304 M 114, 18 P3d 1003 (2001), distinguished in Weer v. St., 2010 MT 232, 358 Mont. 130, 244 P.3d 311. See also St. v. LeMay, 2011 MT 323, 363 Mont. 172, 266 P.3d 1278, which, following Weer, held that the defendant's illegal U-turn constituted an unusual turn or movement sufficient to establish particularized suspicion.

Felony DUI — Failure to Object and Statements by Defense Counsel Held Waiver of Evidence of Other Crimes — Motion for Mistrial Based Upon Evidence of Other Crimes Properly Denied: Schwein moved for a mistrial because the District Court Judge gave a jury instruction indicating that Schwein was charged with felony DUI, implying that Schwein had previous DUI convictions and that that resulted in the automatic upgrading of the most recent DUI charge from a misdemeanor to felony DUI. Schwein argued that the judge's instruction constituted evidence of other crimes introduced contrary to Rule 404(B), M.R.Ev. (Title 26, ch. 10). The Supreme Court pointed out that the instructions were settled prior to trial, that Schwein did not object to the instruction before it was given, and that Schwein's own counsel raised the issue of felony DUI during voir dire. The Supreme Court held that Schwein's objection was untimely and that any error was harmless in light of the statements made by Schwein's counsel during voir dire. St. v. Schwein, 2000 MT 371, 303 M 450, 16 P3d 373, 57 St. Rep. 1587 (2000), followed in St. v. Dewitz, 2009 MT 202, 351 M 182, 212 P3d 1040 (2009).

Officer's Suspension of License Advice to Nonresident Driver Refusing Alcohol Testing Not Misleading — Motion to Suppress Test Results Denied: Following an arrest for DUI, Simmons, a Nevada resident, was informed by the arresting officer that failure to comply with a request for a breath sample would result in possible seizure or suspension of his Nevada driver's license. In a motion to suppress the evidence, Simmons argued that the District Court had erred in denying his motion to suppress the breath test results because, since Montana had no authority to seize or suspend a Nevada license, his consent to the test was invalid because the officer provided erroneous and misleading information about the consequences of refusing testing. Simmons cited a Georgia decision, St. v. Coleman, 455 SE 2d 604 (Ga. App. 1995), in which the Georgia court ruled that informing holders of out-of-state driver's licenses that they will lose driving privileges if they refuse blood alcohol testing constituted misinformation that justifies excluding from evidence any subsequent breath test results. Under Georgia law, drivers must be informed that the penalty for refusing a blood alcohol test is the loss of driving privileges "at least on the highways of this state". In affirming the District Court decision, the Supreme Court adopted the reasoning of the three-judge minority in Coleman, ruling that the advisory read to Simmons was technically correct in informing him that failure to submit to a blood alcohol test would result in the seizure and suspension of his driver's license. If a person refuses a testing request, Montana law specifically authorizes the Department of Justice to suspend or revoke nonresident driving privileges and to forward the seized license, along with a report of the testing refusal, to the licensing authority of the nonresident's home state. Since by definition a driver's license includes "any nonresident's driving privilege", the advisory read to Simmons informing him that his driver's license would be seized and suspended was technically correct. St. v. Simmons, 2000 MT 329, 303 M 60, 15 P3d 408, 57 St. Rep. 1393 (2000).

No Abuse of Discretion in Failure to Dismiss Case on Court's Own Motion for Insufficient Evidence: Brady was charged with DUI, fourth or subsequent offense, arising from circumstances surrounding a single-vehicle accident in which Brady swerved off the highway, hit a rock wall, and rolled the vehicle. After the state's case in chief, Brady moved for a directed verdict of acquittal, but the motion was denied. Brady was subsequently convicted and contended on appeal that the trial court erred when it did not dismiss the case on its own motion because the evidence was far from overwhelming, arguing that taken as a whole, the evidence was insufficient to submit to the jury because there was no direct or even circumstantial evidence that he had anything to drink, much less was intoxicated, at the time of the accident. However, there was circumstantial evidence of conduct before and after the accident that could have led the jury to believe Brady had been drinking. When circumstantial evidence is susceptible to differing interpretations, it is within the province of the jury to decide which will prevail. The jury apparently did not believe that the wreck happened because Brady's car malfunctioned, that his injuries accounted for his drunken behavior, or that his apparent intoxication when officers tracked him down at home after the accident was the consequence of a single beer that he drank after the accident. Taken in a light most favorable to the state, a reasonable juror could have found Brady guilty beyond a reasonable doubt, and it was not error for the trial court to allow the evidence to go to the jury. St. v. Brady, 2000 MT 282, 302 M 174, 13 P3d 941, 57 St. Rep. 1178 (2000).

Stipulation to Not Mention Suspended Driver's License at DUI Trial — Mention of Expired Driver's License Cured by Jury Admonition: Brady was charged with DUI, fourth or subsequent offense, arising from circumstances surrounding a single-vehicle accident in which Brady swerved off the highway, hit a rock wall, and rolled the vehicle. The information also charged Brady with three misdemeanors: driving while his license was suspended or revoked, failure to provide proof of insurance, and failure to give notice of an accident by the quickest means. Shortly before voir dire, Brady stated that he would plead guilty to the misdemeanors and moved that the state's witnesses not mention any of the offenses to which Brady would plead guilty. The state did not object to the motion. The third witness for the state, a deputy who was at the wreck scene, testified that he found a wallet near the vehicle that contained an expired driver's license. Brady moved for mistrial on grounds that the state violated the judge's order not to mention an expired license. The state countered that the stipulation was that the state would not mention that the license was suspended, but that mention of an expired license was not covered. The District Court found that there was a difference between the jury knowing that Brady's license was suspended, which suggested criminal activity, and knowing that the license was expired, which is not in itself criminal. The court then admonished the jury to disregard the testimony regarding the expired license as irrelevant to the case. Brady was convicted of DUI and appealed on grounds that denial of his motion for a mistrial was reversible error because the state's witness deliberately violated an order in limine to which the state previously stipulated. Granting a mistrial is appropriate when a reasonable possibility exists that inadmissible evidence might have contributed to the conviction. The strength of the evidence against the defendant, together with the prejudicial influence of the inadmissible evidence and whether a cautionary jury instruction could cure any prejudice, must be considered in determining whether a prohibited statement contributed to the conviction. A mistrial should be denied for technical errors of defects that do not affect the defendant's substantial rights and when the record is sufficient to establish guilt. The Supreme Court agreed that there is a difference between an expired license and a suspended license with regard to implications of guilt. Here, any potential prejudice that might have resulted from testimony about the expired license was sufficiently cured by the admonition to the jury, and the District Court did not abuse its discretion in denying the motion for mistrial. St. v. Brady, 2000 MT 282, 302 M 174, 13 P3d 941, 57 St. Rep. 1178 (2000), distinguishing St. v. Partin, 287 M 12, 951 P2d 1002 (1997). Brady was followed in St. v. White, 2008 MT 129, 343 M 66, 184 P3d 1008 (2008), with regard to denial of a mistrial when technical errors or defects do not affect a defendant's substantial rights and when the record is sufficient to establish guilt.

Admissibility of Proof of Refusal to Take Sobriety Test Not Violative of Separation of Powers Doctrine: Robertson claimed that by enacting 61-8-404 (now repealed and content reorganized in Title 61, chapter 8, part 10), regarding admission of evidence of a person's refusal to take a sobriety test, the Legislature unconstitutionally infringed on the function of courts to determine the admissibility of evidence, in violation of the separation of powers doctrine. The Supreme Court disagreed, noting that ultimately, the admissibility of evidence lies with the court pursuant to Rule 104, M.R.Ev. (Title 26, ch. 10). The Legislature routinely passes laws that determine whether certain kinds of evidence are admissible, without violating the separation of powers doctrine in the process. Further, "admissible" means that evidence may, but is not required, to be admitted. Missoula v. Robertson, 2000 MT 52, 298 M 419, 998 P2d 144, 57 St. Rep. 250 (2000). See also St. v. Long, 778 P2d 1027 (Wash. 1989).

District Court Exceeding Scope of Appellate Review — Abuse of Discretion in Applying Particularized Suspicion of DUI to Traffic Stop Triggered by Report of Vandalism: Robertson was stopped after a vehicle of the description that he was driving was reported leaving the scene of a vandalism. He was subsequently convicted of DUI in City Court and appealed to District Court on grounds that his right to confront witnesses was denied and that the city had not sustained the necessary burden of proof to support the conviction. The District Court remanded to the City Court for dismissal on grounds that the arresting officer did not have a sufficient particularized suspicion to justify the investigative stop for DUI. However, the issue of a sufficient particularized suspicion was never raised or ruled on in City Court by either Robertson or the city. When a District Court exercises its power of appellate review, it must refrain from deciding issues not properly raised or objected to in the court below; thus, the District Court abused its discretion by exceeding the scope of its appellate review in addressing the issue of particularized suspicion, so the Supreme Court reversed the order of the District Court dismissing the City Court judgment against Robertson. Missoula v. Robertson, 2000 MT 52, 298 M 419, 998 P2d 144, 57 St. Rep. 250 (2000). See also Missoula v. Asbury, 265 M 14, 873 P2d 936, 51 St. Rep. 383 (1994), and St. v. Herrera, 1998 MT 173, 289 M 499, 962 P2d 1180 (1998).

DUI Test Result Improperly Admitted Without Establishing Requisite Basis for Reliability — Harmless Error: The City Court abused its discretion when it allowed horizontal gaze nystagmus (HGN) field test results into evidence without first establishing the requisite scientific basis for the test's reliability, as required by Hulse v. St., 1998 MT 108, 289 M 1, 961 P2d 75 (1998). However, in this case, Robertson failed two other field sobriety tests, refused to perform the tests again after having already failed them, refused to submit to a Breathalyzer test, smelled of alcohol, had slurred speech, and exhibited an obvious lack of balance after getting out of his vehicle—all of which constituted other overwhelming evidence of guilt of DUI, rendering the error in allowing HGN test results harmless. Missoula v. Robertson, 2000 MT 52, 298 M 419, 998 P2d 144, 57 St. Rep. 250 (2000). See also St. v. Chavez-Villa, 2012 MT 250, 366 Mont. 519, 289 P.3d 113.

Evidence of Reliability of Breathalyzer Irrelevant When Test Refused: Because Robertson refused to take a DUI Breathalyzer test, he lacked grounds to later challenge whether the machine in question produced reliable results; nevertheless, his refusal to take the test was admissible under 61-8-404 (now repealed and content reorganized in Title 61, chapter 8, part 10). Missoula v. Robertson, 2000 MT 52, 298 M 419, 998 P2d 144, 57 St. Rep. 250 (2000), following St. v. Jackson, 206 M 338, 672 P2d 255, 40 St. Rep. 1698 (1983).

No Burden-Shifting in Statute Allowing Evidence of Refusal to Take DUI Test: Relying on St. v. Long, 778 P2d 1027 (Wash. 1989), Robertson argued that 61-8-404(2) (now repealed and content reorganized in Title 61, chapter 8, part 10) allows the prosecution to argue that an inference of guilt could be drawn from the evidence of his refusal to take a Breathalyzer test, impermissibly shifting the burden of proof to him to establish that the refusal was not a reflection of guilt, in violation of 46-16-204. Although the Washington and Montana versions of 61-8-404(2) are virtually identical, the Montana Supreme Court distinguished Long, finding nothing in the statute that inferred a consciousness of guilt arising from the introduction of evidence of the proof of refusal to take the test. The state still must prove the offense of DUI beyond a reasonable doubt. Missoula v. Robertson, 2000 MT 52, 298 M 419, 998 P2d 144, 57 St. Rep. 250 (2000).

Sentencing Conditions for Fourth Offense DUI — No Suspension of Imprisonment, Double Credit for Time Served, Prerelease Program, or Intensive Supervision: Phelps was sentenced for a fourth offense DUI and driving with a suspended or revoked license, but when the court realized that the offense was committed on the day that the 1997 version of 61-8-731 (now repealed and content reorganized in Title 61, chapter 8, part 10) became effective, Phelps was resentenced. The state contended that the new sentence did not comport with the new statutory language. Under the unambiguous language of the 1997 version of 61-8-731, a District Court may not: (1) suspend any time of imprisonment; (2) mandate that a defendant receive inpatient treatment unless the treatment is a condition of probation; (3) award double credit for time served in completing a treatment program; or (4) require that a defendant be committed to a prerelease program or to an intensive supervision program. St. v. Phelps, 2000 MT 18, 298 M 135, 995 P2d 963, 57 St. Rep. 105 (2000), distinguishing St. v. Whiteshield, 185 M 208, 605 P2d 189 (1980), St. v. Savaria, 245 M 224, 800 P2d 696, 47 St. Rep. 2028 (1990), and St. v. Nelson, 275 M 86, 910 P2d 247, 53 St. Rep. 50 (1996).

Statute Prohibiting Operation of Vehicle by Person Under Twenty-One Years of Age With Alcohol Concentration of 0.02 or More Not Violative of Right to Equal Protection — Sandstrom Not Contravened: Twenty-year-old Luchau was convicted in Justice's Court of a violation of 61-8-410 (now repealed and content reorganized in Title 61, chapter 8, part 10). On appeal to the District Court, Luchau contended that 61-8-410 was an unconstitutional violation of his right to equal protection, creating a conclusive presumption of guilt. Unlike 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10), which requires the state to prove diminished ability as an element of the crime, 61-8-410 imposes a strict liability for operation of a vehicle by a person under 21 years of age with an alcohol concentration of 0.02 or more, regardless of whether the accused's ability to drive safely is diminished. Although an alcohol concentration of 0.02 is an element of the crime, nothing in 61-8-410 creates a factual presumption with respect to when such a concentration is present. Rather, the defendant's alcohol concentration is an element that the state must prove beyond a reasonable doubt, so 61-8-410 contains no presumption relating to an element of the offense. The Supreme Court found that 61-8-410 does not run afoul of Sandstrom v. Mont., 442 US 510, 61 L Ed 2d 39, 99 S Ct 2450 (1979), because the burden-shifting that gives rise to the concern in Sandstrom becomes relevant only when the state requires the accused to prove that which, by virtue of the statutory definition of the crime, the prosecution is required to prove beyond a reasonable doubt. Further, there is no equal protection violation because persons targeted by the statute are legally forbidden to consume alcohol, which, coupled with the fact that there is a high correlation of injury and death between underage drinking and driving, forms more than an adequate rational basis for treating underage drivers differently from adult drivers. St. v. Luchau, 1999 MT 336, 297 M 415, 992 P2d 840, 56 St. Rep. 1340 (1999).

What Form of Compliance of Instrument Used in Breath Test Required as Foundation for Breath Test Results: ARM 23.4.214 requires that all breath analysis equipment be sent to the state Forensic Sciences Division annually for laboratory certification. A person charged with an alcohol-related offense is entitled to the procedural safeguards contained in the administrative rule, so in order for the results of a defendant's breath test to be admissible, the state must lay a proper foundation by establishing that the instrument complied with ARM 23.4.214. During pretrial discovery, Delaney requested documentation that the instrument used to test his breath had been certified, and the state provided a copy of the laboratory certification form. At trial, Delaney moved to dismiss the results of the breath test, contending that the form was inadmissible hearsay that could not be used to lay the requisite foundation, and also maintained that failure to call the custodian of the annual certification records violated Delaney's right to confront witnesses. The state contended that it was not required to have the form admitted in order to lay a foundation for admissibility and that, consequently, it did not matter that the document was hearsay, but rather that all that was necessary was to establish to the satisfaction of the court that the certification had been performed. The District Court sided with the state and admitted the breath test results. On appeal, the Supreme Court affirmed, noting that the determination of whether adequate foundation exists is within the discretion of the District Court and that that determination is made pursuant to Rule 104(a), M.R.Ev. (Title 26, ch. 10), which authorizes the examination of any proffered evidence, regardless of its admissibility, in determining the admissibility of challenged evidence. Under the identical federal Rule of Evidence, federal courts have found that the plain language of the rule extends to consideration of hearsay and other evidence normally inadmissible at trial. (See Bourjaily v. U.S., 483 US 171, 97 L Ed 2d 144, 107 S Ct 1775 (1987), and its progeny.) Thus, the District Court was allowed to consider the certification form in determining whether an adequate foundation existed without regard to whether the form itself was hearsay, and consequently, the state was not required to call the records custodian to testify. St. v. Delaney, 1999 MT 317, 297 M 263, 991 P2d 461, 56 St. Rep. 1267 (1999), distinguishing St. v. Woods, 272 M 220, 900 P2d 320, 52 St. Rep. 762 (1995), and St. v. Clark, 1998 MT 221, 290 M 479, 964 P2d 766, 55 St. Rep. 919 (1998), and followed in St. v. White, 2009 MT 26, 349 M 109, 201 P3d 808 (2009), with regard to necessity of proper foundation for admission of results of alcohol concentration breath analysis. White was overruled, to the extent it is inconsistent with Delaney, in St. v. Jenkins, 2011 MT 287, 362 Mont. 481, 265 P.3d 643. See also St. v. Johnston, 2011 MT 184, 361 Mont. 301, 258 P.3d 417 (holding that a breath analysis instrument must be inspected and calibrated at least every 31 days pursuant to ARM 23.4.213, not every 7 days, or its results may be suppressed).

Results of Prior Horizontal Gaze Nystagmus Test Improperly Admitted — Harmless Error: At Berosik's DUI trial, he argued that because his eyes had been injured in his youth, the horizontal gaze nystagmus test (HGN) was not valid. The District Court concluded that Berosik opened the door to evidence of a prior DUI incident in testifying on direct examination about the eye condition and admitted evidence of the results of the prior HGN, which Berosik had also failed. The Supreme Court decided on appeal that the court abused its discretion in admitting the evidence because it did not rebut Berosik's suggestion that he scored high on the test due to the injuries and because the prior test results had, at most, a negligible probative value that was substantially outweighed by the risk of confusion of the issues. However, the error was harmless because Berosik failed to show that any of his substantive rights were prejudiced or that his right to a fair trial was impaired. Even without the prior test results, there was overwhelming evidence that Berosik was guilty of DUI, so the conviction was affirmed. St. v. Berosik, 1999 MT 238, 296 M 165, 988 P2d 775, 56 St. Rep. 938 (1999), applying St. v. Partin, 287 M 12, 951 P2d 1002, 54 St. Rep. 1474 (1997).

Public Duty Doctrine as Applied to Law Enforcement Personnel — Exception in Cases of Special Relationship: Trina admitted that she had been drinking when stopped in her vehicle by Officer Driscoll, who nevertheless believed that sufficient probable cause did not exist to arrest the woman. Instead, thinking Trina might be impaired, the officer suggested a ride home or that Trina walk the 2-mile distance and warned Trina about returning to the vehicle. Trina decided instead to walk to a phone and call for a ride and was killed in traffic. Trina's husband brought suit for civil damages under 42 U.S.C. 1983, claiming that the officer breached the duty to protect, in violation of Trina's due process rights. The District Court summarily dismissed the claim, holding that because no probable cause existed for Trina's arrest, the officer had no duty to protect Trina from harm and that without a duty, the action failed. The public duty doctrine provides that a police officer's duty to protect and preserve the peace is owed to the public at large rather than to a particular person, unless a special relationship exists, thus giving rise to a special duty that is more particular than that owed to the public. A special relationship is established: (1) by a statute intended to protect a specific class of persons, of which the plaintiff is a member, from a particular type of harm; (2) when a government agent undertakes specific action to protect a person or property; (3) by governmental actions that reasonably induce detrimental reliance by a member of the public; and (4) under certain circumstances when the agency has actual custody of the plaintiff or of a third person who harms the plaintiff. Relying on Stewart v. Standard Publishing Co., 102 M 43, 55 P2d 694 (1936), the Supreme Court agreed that although the officer may not have initially owed Trina a duty to protect, that duty was assumed as a matter of law when the officer prevented the woman from driving her car and ensured that she did not attempt to drive. The question of whether the duty to protect was breached is a question of fact for the jury, so summary dismissal was improper. Nelson v. Driscoll, 1999 MT 193, 295 M 363, 983 P2d 972, 56 St. Rep. 744 (1999), clarifying and distinguishing Phillips v. Billings, 233 M 249, 758 P2d 772 (1988), and followed in Massee v. Thompson, 2004 MT 121, 321 M 210, 90 P3d 394 (2004). Nelson was followed, as to elements of exception to the public duty doctrine (nonlaw enforcement case), in Orr v. St., 2004 MT 354, 324 M 391, 106 P3d 100 (2004), and Prosser v. Kennedy Enterprises, Inc., 2008 MT 87, 342 M 209, 179 P3d 1178 (2008). See also Krieg v. Massey, 239 M 469, 781 P2d 277, 46 St. Rep. 1839 (1989), and Busta v. Columbus Hosp. Corp., 276 M 342, 916 P2d 122 (1996).

Finding That Three of Four Prior DUI Convictions Constitutionally Valid Affirmed — Use Proper to Support Felony Fifth Offense: In defending against felony DUI fifth offense, Brown raised various issues regarding the constitutionality of the prior four convictions. Allocating the respective burdens of proof as set forth in St. v. Okland, 283 M 10, 941 P2d 431, 54 St. Rep. 467 (1997), the District Court correctly found that the state met its burden of proving the constitutional validity of three of four of Brown's prior convictions. The court balanced Brown's contentions that he did not recall being informed of his right to counsel and did not sign a waiver of his right to counsel when he pleaded guilty to the prior charges with the state's evidence in the form of the Justice's Court Judge who read Brown his rights in three of the four original trials. Declining to narrowly prescribe the type of direct, affirmative evidence necessary for the state to prove the constitutionality of prior convictions, the Supreme Court found that Brown's signature on an advisement of rights form and a waiver of rights form were but factors to be considered in the totality of the circumstances. The District Court is in the best position to weigh each party's evidence and determine which will prevail and did so here. The evidence was properly used to support enhanced felony charges. St. v. Brown, 1999 MT 143, 295 M 5, 982 P2d 1030, 56 St. Rep. 560 (1999).

Character of Independent Evidence Tending to Establish Commission of Crime — Confession of DUI Admissible: Over Martinosky's objection, the District Court admitted a tape recording of his confession as evidence of DUI. On appeal, Martinosky contended that there was insufficient independent evidence to establish the offense, so the confession should not have been allowed as evidence, pursuant to 46-16-215. However, independent evidence tending to establish commission of a crime before a defendant's confession may be admitted need not be evidence establishing the crime beyond a reasonable doubt or even evidence establishing a prima facie case that the offense was committed. Citing St. v. Palmer, 247 M 210, 805 P2d 580, 48 St. Rep. 166 (1991), the Supreme Court held that the manner in which a vehicle is operated, including excessive speed and failing to stop when signaled to stop by a law enforcement officer, can be evidence that the driver was under the influence of alcohol. The fact that Martinosky spent several hours drinking in a bar, smelled of alcohol, left the scene of an accident, failed to stop for pursuing police, failed to stop at two stop signs and a stoplight, and was traveling at a high rate of speed in a residential area before crashing into a house was sufficient to establish DUI, so the confession was properly allowed. St. v. Martinosky, 1999 MT 122, 294 M 427, 982 P2d 440, 56 St. Rep. 495 (1999).

Nontestimonial Nature of Reciting Alphabet and Counting in DUI Field Test — Constitutional Self-Incrimination Protection Inapplicable: Devlin was arrested for DUI and taken to the Sheriff's office for additional field sobriety tests, which were videotaped. Prior to being advised of his Miranda rights, an officer asked Devlin to recite the alphabet starting at "K" and to count aloud from 46 to 72. Upon prosecution in Justice's Court, Devlin moved for suppression of all statements made prior to the Miranda warning and of testimonial answers in the field sobriety tests, but the motion was denied. Devlin renewed the motion in District Court, which suppressed the results of the alphabet and counting tests. The state appealed. The Supreme Court noted that the constitutional right against self-incrimination was designed to protect against the cruel trilemma of having to choose among answering truthfully, answering falsely, or remaining silent. However, the court declined to expand the holding in Pa. v. Muniz, 496 US 582, 110 L Ed 2d 528, 110 S Ct 2638 (1990), to cover relatively content-free oral declarations, holding that neither reciting the alphabet nor counting involves an express or implied assertion of fact or belief. Therefore, a defendant who is asked to do so conveys no facts specific to the person being questioned, assuming that the defendant is familiar with the alphabet and counting. Neither reciting the alphabet nor counting is testimonial in nature, so the constitutional protection against self-incrimination does not attach when a driver is asked to perform either as part of a DUI field sobriety test. St. v. Devlin, 1999 MT 90, 294 M 215, 980 P2d 1037, 56 St. Rep. 383 (1999), affirming St. v. Thompson, 237 M 384, 773 P2d 722, 46 St. Rep. 887 (1989).

Sentencing Condition Required to Have Correlation or Connection to Underlying Offense: Ommundson pleaded guilty to felony DUI. In imposing sentence, the District Court considered a presentence investigation that documented Ommundson's criminal history, which included more than 10 convictions for indecent exposure. The court also considered a sex offender evaluation, which determined that Ommundson qualified for community-based treatment. The court committed Ommundson to the Department of Corrections for 54 months, with all but 6 months suspended on condition that Ommundson participate in a sex offender treatment program and not have any contact with children without adult supervision. Ommundson did not object to the condition prohibiting contact with children, so that issue was not cognizable on appeal. However, on the issue of whether the District Court had authority to impose a condition of participation in a sex offender program as a penalty for DUI, the Supreme Court held that 46-18-202 allows only the imposition of sentencing limitations reasonably related to the objectives of rehabilitation and the protection of the victim and society. That authority is broad, but not without limit. In order to be reasonably related, a sentencing limitation or condition must have some correlation or connection to the underlying offense for which the defendant is being sentenced. In the present case, the requirement that Ommundson participate in a sex offender program was not reasonably related to the rehabilitation of a DUI offender or to the protection of society from drunk drivers. The Supreme Court reversed the part of Ommundson's sentence requiring that he participate in a sex offender program. St. v. Ommundson, 1999 MT 16, 293 M 133, 974 P2d 620, 56 St. Rep. 70 (1999), following St. v. Sullivan, 197 M 395, 642 P2d 1008, 39 St. Rep. 412 (1982), and St. v. Black, 245 M 39, 798 P2d 530, 47 St. Rep. 1677 (1990), distinguishing Dahlman v. District Court, 215 M 470, 698 P2d 423, 42 St. Rep. 550 (1985), St. v. Shaver, 233 M 438, 760 P2d 1230, 45 St. Rep. 1617 (1988), and St. v. Blanchard, 270 M 11, 889 P2d 1180, 52 St. Rep. 54 (1995), and followed in St. v. Horton, 2001 MT 100, 305 M 242, 25 P3d 886 (2001), St. v. Setters, 2001 MT 101, 305 M 253, 25 P3d 893 (2001), St. v. Watson, 2001 MT 143, 306 M 33, 29 P3d 1026 (2001), and St. v. Armstrong, 2006 MT 334, 335 M 131, 151 P3d 46 (2006). In St. v. Ashby, 2008 MT 83, 342 M 187, 179 P3d 1164 (2008), the Ommundson nexus rule was expanded to allow a sentencing judge to impose a particular condition of probation as long as the condition has a nexus either to the offense for which the offender is being sentenced or to the offender. However, offender-related conditions may be imposed only in cases in which the history or pattern of conduct to be restricted is recent and significant or chronic. A passing, isolated, or stale instance of behavior or conduct is insufficient to support a restrictive probation condition imposed in the name of offender rehabilitation. Ashby was followed in St. v. Park, 2008 MT 429, 347 M 462, 198 P3d 321 (2008), St. v. Sadowsky, 2008 MT 405, 347 M 192, 197 P3d 1018 (2008), and St. v. Stiles, 2008 MT 390, 347 M 95, 197 P3d 966 (2008). Stiles was followed in St. v. Russette, 2008 MT 413, 347 M 285, 198 P3d 791 (2008). See also St. v. Mehan, 2019 MT 100, 395 Mont. 383, 440 P.3d 25.

Confusion About Need for BAC Test Once PAST Taken — Refusal to Extend Confusion Doctrine: Williams was stopped by a Deputy Sheriff for driving erratically and consented to a preliminary alcohol screening test (PAST), which she failed. The Deputy Sheriff then arrested her and took her to the Eureka police station. There, Williams was read the implied consent advisory form informing her that if she did not submit to a blood alcohol concentration (BAC) test, her driver's license would be confiscated. Williams refused to submit to a BAC test, and the confiscation of her license was upheld by the District Court. Before the Supreme Court, Williams claimed that an extension of the "confusion doctrine" should be held to apply to her case. The Supreme Court held that the confusion doctrine, discussed by the Supreme Court in Blomeyer v. St., 264 M 414, 871 P2d 1338 (1994), and Gentry v. Dept. of Justice, 282 M 491, 938 P2d 693 (1997), and under which refusal to submit to the BAC may be excused if a driver is given a Miranda warning first and is therefore confused as to whether the driver has a right to an attorney before submitting to the BAC, would not be extended to a situation such as Williams's, in which it was claimed that confusion existed as to the necessity for the BAC if the PAST has already been administered. Williams v. St., 1999 MT 5, 293 M 36, 973 P2d 218, 56 St. Rep. 20 (1999).

DUI and Negligent Homicide Arising From Same Accident Not Part of Same Transaction — No Double Jeopardy: Booth pleaded guilty in Justice's Court to a DUI charge and claimed double jeopardy when he was subsequently charged in District Court with two counts of negligent homicide arising out of the accident that led to the DUI charge and conviction. Neither 46-11-503 nor 46-11-504 barred the District Court charges. Under each section, double jeopardy requires that the offenses arise out of the same transaction. Because Booth's conduct in allegedly causing the two deaths was not motivated by a purpose to accomplish the criminal objective of DUI, the DUI and negligent homicide offenses did not arise out of the same transaction within the meaning of the statutory definition of "same transaction" as conduct consisting of a series of acts that are motivated by a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective. State ex rel. Booth v. District Court, 1998 MT 344, 292 M 371, 972 P2d 325, 55 St. Rep. 1395 (1998), followed in St. v. Condo, 2008 MT 114, 342 M 468, 182 P3d 57 (2008).

Appeal Not Allowing for Reinstatement of License Because of Officer's Failure to Issue Temporary License: An appeal under 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) does not allow for reinstatement of a driver's license because of an officer's failure to issue a temporary license under 61-8-402(5) (now repealed and content reorganized in Title 61, chapter 8, part 10). Hawman v. State ex rel. Beckstrom, 1998 MT 218, 290 M 467, 963 P2d 1288, 55 St. Rep. 913 (1998).

Conditions of DUI Expungement Under Former Provision: A DUI conviction between 1981 and 1989 was not eligible for expungement under former subsection (6) (expungement provision deleted in 1989) of 61-8-714 (now repealed and content reorganized in Title 61, chapter 8, part 10), unless the conviction was followed directly by a 5-year period in which no DUI conviction was received. A defendant's convictions in February 1985, July 1985, July 1987, and May 1988 were not eligible for expungement because less than 5 years elapsed between convictions. The District Court erred in expunging all of the prior convictions and reducing the felony fifth offense DUI to a misdemeanor first offense. St. v. Thibert, 1998 MT 207, 290 M 408, 965 P2d 251, 55 St. Rep. 883 (1998), following St. v Beckman, 284 M 459, 944 P2d 756 (1997), and St. v. Cooney, 284 M 500, 945 P2d 891 (1997) (Beckman and Cooney were applied retroactively to Thibert).

City Police Officer Making Arrest Outside Territorial Jurisdiction — Probable Cause Required: A city police officer, investigating a phone call reporting a suspected drunk driver, pursued Williamson outside city limits and arrested him, although the officer observed no erratic driving or other indicators of alcohol impairment prior to stopping Williamson's truck. Williamson moved to suppress all the evidence on the basis that the officer did not have probable cause to make the stop, contending that probable cause was necessary because the officer was acting outside his territorial jurisdiction as a city police officer and that the information within the officer's knowledge at the time of the stop did not rise to the level of probable cause. Williamson's motion was denied. Clarifying the difference between the probable cause necessary to effectuate a valid arrest and the particularized suspicion necessary to justify an investigative stop, the Supreme Court noted that although an officer ordinarily needs only a particularized suspicion for a traffic stop, under these circumstances, the officer was outside his jurisdiction when the stop was made and was thus not acting within the scope of his authority as a peace officer. The criminal procedures in 46-5-401 and 46-6-311 were not available to the officer. Rather, as a peace officer acting outside his territorial jurisdiction, his authority was limited to that provided to private citizens under 46-6-502, so probable cause was required. The citizen informant's telephone report was not sufficient to establish probable cause because the relayed report was devoid of information as to why the informant believed that Williamson was intoxicated and the officer did not inquire into the basis of the report before stopping Williamson's truck. The report created, at most, a suspicion that an offense was being committed, but that suspicion alone was insufficient to establish probable cause. Even if the informant had sufficient information to establish probable cause for a citizen's arrest of Williamson, that information was not relayed to the officer, who thus did not possess sufficient information to make the stop. The judgment was reversed because the District Court erred in refusing to suppress the evidence. St. v. Williamson, 1998 MT 199, 290 M 321, 965 P2d 231, 55 St. Rep. 843 (1998), distinguishing St. v. Schoffner, 248 M 260, 811 P2d 548 (1991), and followed in St. v. Reiner, 2003 MT 243, 317 M 304, 77 P3d 210 (2003).

In St. v. Updegraff, 2011 MT 321, 363 Mont. 123, 267 P.3d 28, the Supreme Court clarified the authority of out-of-jurisdiction peace officers to make arrests, concluding that an out-of-jurisdiction peace officer must meet the arrest standard that applies to a private person in the same circumstances, and if this standard is met, the officer may then follow the procedures applicable to peace officers when processing an arrest.

Laying Proper Foundation for Breath Test Information: Incashola was granted a motion in limine, effectively suppressing breath test information, on grounds that the state had not laid a proper foundation for admission of the test result by performing a proper field certification on the Intoxilyzer following the test, implied as required under ARM 23.4.213(1)(i). The state had opposed the motion, arguing that the field certification performed 4 days before Incashola's arrest fell within the 7-day test validity provided for in ARM 23.4.213(1)(j), thus establishing the proper foundation for admission of the test results. The Supreme Court noted that a defendant charged with driving under the influence is entitled to the procedural safeguards contained in the administrative rule and that if a proper foundation is not laid through state compliance with the safeguards, the results of the breath test analysis are inadmissible. ARM 23.4.213(1)(i) is not a foundational requirement for the admissibility of breath test results. Rather, the trier of fact uses the inference created by ARM 23.4.213(1)(i) to determine whether the testing instrument was in proper working order. In other words, if evidence establishes that proper field certifications were performed both before and after the breath test at issue, the trier of fact must infer that the test instrument was in working order. ARM 23.4.213(1)(j) is a foundational requirement for admissibility of breath test results because a proper field certification performed within 7 days of the test at issue constitutes an adequate foundation for admissibility. The proper field certification having been timely made and an adequate foundation laid, the trial court abused its discretion in granting Incashola's motion in limine. The case was reversed and remanded, with a reminder that both parties were still free to offer other evidence at trial with regard to whether the instrument was in proper working order on the day of Incashola's breath test. St. v. Incashola, 1998 MT 184, 289 M 399, 961 P2d 745, 55 St. Rep. 742 (1998), followed in St. v. Frickey, 2006 MT 122, 332 M 255, 136 P3d 558 (2006), and distinguished in St. v. Pol, 2008 MT 352, 346 M 322, 195 P3d 807 (2008), in which broad general objections did not preserve the issue for appeal.

Misdemeanor Traffic Offenses in Tribal Court and Felony DUI in State District Court Not Arising From Same Transaction — No Double Jeopardy: Couture was cited for two misdemeanor traffic offenses in tribal court. A few days later he was moved to state District Court and charged with felony DUI, sixth offense. He pleaded guilty to the tribal court misdemeanors and then sought dismissal of the District Court felony on grounds of double jeopardy. He contended that because the offenses all arose from the same transaction and he had been convicted in tribal court, prosecution in District Court was barred under 46-11-504. The District Court properly held that the misdemeanors—driving without a license and without proof of insurance—were unrelated to the criminal objective of DUI. Because by definition the offenses did not arise out of the same transaction, the District Court felony prosecution did not constitute double jeopardy. St. v. Couture, 1998 MT 137, 289 M 215, 959 P2d 948, 55 St. Rep. 548 (1998), following St. v. Sword, 229 M 370, 747 P2d 206 (1987).

Basis for DUI Arrest and Suspension of License for Breath Test Refusal: The officer who testified that he saw defendant drive from a bar at night with no headlights on, that she failed to immediately pull over when he put on his overhead lights and siren, that her eyes were bloodshot, and that she smelled of alcohol, fumbled for her driver's license, and failed two nonscientific field sobriety tests had probable cause to arrest her for DUI. Therefore, improper allowance of his testimony as to the scientific basis for a field sobriety eye test was harmless error. The lower court correctly concluded that her driver's license was lawfully suspended for failure to submit to a breath test and correctly refused to reinstate the license. Hulse v. St., 1998 MT 108, 289 M 1, 961 P2d 75, 55 St. Rep. 415 (1998), followed in Bramble v. St., 1999 MT 132, 294 M 501, 982 P2d 464, 56 St. Rep. 532 (1999).

DUI Field Sobriety Eye Tests and Admission of General and Novel Scientific Testimony: Not all scientific evidence is subject to the Daubert standard. The Daubert test should be used only to determine the admissibility of novel scientific evidence. In addition, and whether or not the scientific evidence is novel, a court presented with scientific evidence is encouraged to follow the Barmeyer decision and liberally construe the rules of evidence so as to admit all relevant expert testimony, the weight of which may be attacked by cross-examination and refutation. Nystagmus is the involuntary jerking of the eyeball resulting from the body's attempt to maintain balance and orientation. It may be aggravated by alcohol. The inability of the eyes to maintain visual fixation (a jerking movement of the eyes) as they are turned to the side is known as horizontal gaze nystagmus (HGN). The HGN test is a common field sobriety test. It measures various aspects of these involuntary, jerking eye movements. This is a scientific test in that science, not common knowledge, provides the legitimacy for the test. The HGN evidence could have a disproportionate impact on the jury's decision because of the test's scientific nature and because the jury may not understand the nature of the test or the methodology of its procedure. The test has been used for decades, and it is not novel scientific evidence. Therefore, the Daubert standard does not apply to its admissibility. However, the court must conduct a conventional Rule 702, M.R.Ev. (Title 26, ch. 10), analysis and adhere to Barmeyer to determine admissibility. An officer testifying as to the results of a test that the officer administered must be shown to have proper training in the test and to have administered the test in accordance with that training (though a proper foundation for testifying as to test results does not constitute an adequate foundation to testify as to the scientific basis for the test). In the present case, the officer testified that he had 40 hours of field sobriety tests (including HGN) training, stated how he administered the test to defendant, and stated that defendant failed. However, there was no evidence establishing that the officer had special training or education or adequate knowledge to qualify him to testify that everyone's eyes exhibit nystagmus at maximum deviation and that with the introduction of alcohol, the nystagmus becomes more prevalent and does not cease. Thus, there was insufficient foundation for that statement, and the lower court abused its discretion by allowing the officer to testify as to the test results. Hulse v. St., 1998 MT 108, 289 M 1, 961 P2d 75, 55 St. Rep. 415 (1998), followed in Bramble v. St., 1999 MT 132, 294 M 501, 982 P2d 464, 56 St. Rep. 532 (1999), and Missoula v. Robertson, 2000 MT 52, 298 M 419, 998 P2d 144, 57 St. Rep. 250 (2000).

DUI Reasonable Grounds Test Equivalent to Search and Seizure Law Investigative Stop Particularized Suspicion Test: The reasonable grounds test for the issue of whether a peace officer had reasonable grounds to believe that a person was driving or in actual physical control of a vehicle while under the influence of alcohol or drugs is the equivalent of particularized suspicion, as defined in 46-5-401, which provides that in order to verify an account of a person's presence or conduct or to determine whether to arrest the person, a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or an occupant of a vehicle has committed, is committing, or is about to commit an offense. Hulse v. St., 1998 MT 108, 289 M 1, 961 P2d 75, 55 St. Rep. 415 (1998), followed in Bramble v. St., 1999 MT 132, 294 M 501, 982 P2d 464, 56 St. Rep. 532 (1999), and Kleinsasser v. St., 2002 MT 36, 308 M 325, 42 P3d 801 (2002).

Field Sobriety Tests Constitute Search — Particularized Suspicion Needed: Field sobriety tests are not merely observations of a person's physical behavior but constitute a search under the fourth amendment to the United States Constitution and Art. II, sec. 11, Mont. Const., because an individual's constitutionally protected privacy interests are implicated in both the process of conducting the tests and in the information disclosed by the tests. An officer observes certain aspects of an individual's physical and psychological condition that would not otherwise be observable. A compelling state interest is needed to invade privacy interest. Montana has a compelling state interest in removing drunk drivers from the road. The officer's observation of such traits as the manner of walking to and from the squad car, height and weight, speech, appearance, and smell is distinguished and does not constitute a search because an individual has no reasonable expectation of privacy as to the traits. An investigatory stop and field sobriety tests are constitutional if based upon particularized suspicion. The particularized suspicion for the investigatory stop may also serve as the particularized suspicion for the field sobriety tests if the basis for the stop leads the officer to believe that the driver is intoxicated. Part or all of the grounds for the particularized suspicion for the field sobriety tests may arise after the investigatory stop when the officer, in the present case, observed defendant drive from a bar at night with her headlights off, he activated his overhead lights, she did not respond, he activated his siren, she stopped in half a block, he smelled alcohol on her breath and saw bloodshot eyes, she had difficulty in producing her license, and he asked her to perform three field sobriety tests. Administration of the tests was a constitutionally permissible search arising from a particularized suspicion that was based on the officer's observations after the investigatory stop. The lower court properly found that the officer had reasonable grounds to believe that defendant was driving under the influence. Hulse v. St., 1998 MT 108, 289 M 1, 961 P2d 75, 55 St. Rep. 415 (1998), followed in St. v. Steinmetz, 1998 MT 114, 288 M 527, 961 P2d 95, 55 St. Rep. 450 (1998), and Bramble v. St., 1999 MT 132, 294 M 501, 982 P2d 464, 56 St. Rep. 532 (1999).

Discrepancy Between Time of Report and Time Recorded on Intoxilyzer: The arresting officer adjusted the time recorded on an Intoxilyzer 5000 printout to correspond to the highway patrol time that was used when documenting defendant's arrest and processing. The corrected time, indicating a 17-minute observation period prior to administration of the test, was sufficiently explained and properly accepted as competent evidence of compliance with ARM 23.4.212, which requires a 15-minute observation period. St. v. Fenton, 1998 MT 99, 288 M 415, 958 P2d 68, 55 St. Rep. 389 (1998).

Constitutionality of Implied Consent Statutes — General Versus Specific Construction: Section 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) is a general statute concerning appeals of suspensions and revocations of driver's licenses under the implied consent laws, while 61-8-409 (now repealed and content reorganized in Title 61, chapter 8, part 10) is the specific statute on preliminary alcohol screening tests (PAST), including issues that may be discussed at hearings on license suspension or revocation based upon refusal to submit to a PAST. A specific statute prevails over a general statute. Appellant's contention of conflict among Montana's implied consent statutes was not established because the various provisions are clear and specific and give a person of ordinary intelligence fair notice that the contemplated conduct is forbidden. Smith v. St., 1998 MT 94, 288 M 383, 958 P2d 677, 55 St. Rep. 375 (1998).

DUI Suspension or Revocation Clarified — Law of Case Doctrine and Collateral Estoppel Inapplicable — Contempt Order Refused: Sanders was arrested for a second DUI in a 5-year period and filed an action in District Court seeking review of the facts of the arrest. The District Court and the Supreme Court upheld the arrest and noted that a 6-month suspension of Sanders' license would take place. Later, after the Department of Justice refused to reinstate the license after the 6-month period expired because 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10) applied and required a revocation of Sanders' license for 1 year, Sanders brought a contempt action in the District Court asking that the Department be held in contempt for failure to reinstate his license after expiration of the 6-month period. Sanders argued that the 6-month period had become the law of the case and that the failure of the Department to follow that law was a contempt of the District Court. After reviewing the records of the District Court and its own record in the previous DUI action, the Supreme Court held that the law of the case doctrine was inapplicable. Citing Haines Pipeline Constr., Inc. v. Mont. Power Co., 265 M 282, 876 P2d 632 (1994), and Scott v. Scott, 283 M 169, 939 P2d 998 (1997), the Supreme Court explained that the law of the case doctrine applies only to the rulings of a court that are necessary to the decision and, in the case of the District Court's and Supreme Court's prior ruling in Sanders' DUI conviction, a determination that only a 6-month suspension was required under 61-8-402 was not necessary to either the District Court's or the Supreme Court's prior ruling. Those rulings, the Supreme Court said, concerned only whether the arresting officer had probable cause for the arrest. Thus, the Supreme Court held, the reference to a 6-month suspension in the previous opinions was dicta, there was no law of the case determined concerning the law governing license suspension or revocation, and therefore there could be no contempt for failure to reinstate Sanders' license. The Supreme Court also held that collateral estoppel was likewise inapplicable to require the Department to reinstate the license because collateral estoppel applies only to previously litigated issues and the period of license suspension or revocation of Sanders' license had not been previously litigated. Sanders v. St., 1998 MT 62, 288 M 143, 955 P2d 1356, 55 St. Rep. 272 (1998).

Inability to Recall Advice of Right to Counsel Insufficient to Rebut Presumption of Regularity: Big Hair was arrested for a fourth DUI and at trial moved to quash references to his previous convictions. The basis for his motion was that he could not recall having been advised in those previous proceedings of his right to counsel. Citing St. v. Okland, 238 M 10, 941 P2d 431 (1997), the Supreme Court noted that in Montana, there is a rebuttable presumption of regularity in previous DUI convictions and that the presumption can only be overcome by direct evidence of irregularity in those proceedings presented by the defendant. In the case of Big Hair's trial, the Supreme Court pointed out that there was no such direct evidence, only Big Hair's statement that he could not recall having been advised of his right to counsel. The Supreme Court concluded that like the defendants in St. v. Perry, 283 M 34, 938 P2d 1325 (1997), and St. v. Stubblefield, 283 M 292, 940 P2d 444 (1997), Big Hair failed to rebut the presumption, and therefore the court affirmed his conviction. St. v. Big Hair, 1998 MT 61, 288 M 135, 955 P2d 1352, 55 St. Rep. 257 (1998). See also St. v. Ailport, 1998 MT 315, 292 M 172, 970 P2d 1044, 55 St. Rep. 1292 (1998).

Admissibility of Ambulance Attendant's Testimony That Driver in Accident Acted Like Belligerent Drunk: Since defendant was charged with DUI, not with driving with an illegal blood alcohol content, the ambulance attendant's testimony that defendant's actions after the accident occurred were those of a belligerent drunk did not constitute an opinion of guilt, and it was not an abuse of discretion to allow admission of the testimony. St. v. Gregoroff, 287 M 1, 951 P2d 578, 54 St. Rep. 1469 (1997). However, see St. v. Smith, 1998 MT 257, 291 M 236, 967 P2d 424, 55 St. Rep. 1058 (1998), in which the District Court's refusal to allow nonexperts to give an opinion that defendant, because of good character, was not capable of committing the charged offense was affirmed because the proposed testimony did not constitute a pertinent trait of character but an opinion on the question of defendant's ultimate guilt.

Highway Patrol Officer's Expert Opinion, in DUI Prosecution, That Driver Being Under the Influence Caused Accident: In a DUI prosecution, admission of a highway patrol officer's testimony that in her opinion, based on her investigation at the scene of defendant's accident and her discussion with defendant soon after the accident, defendant was under the influence of alcohol to an extent that diminished his ability to drive safely was not an abuse of discretion. Her training and experience in accident investigation and reconstruction qualified her as an expert for purposes of giving the opinion. She had been an officer for 8 years, was trained at the Montana Highway Patrol Academy for 12 weeks, had 4 weeks of training in traffic investigation, had attended an accident reconstruction school, had taught accident investigation, had special DUI investigation training and had taken a course on being a DUI detection instructor, was a recognized expert in accident reconstruction, had investigated more than 200 accidents, of which 15% to 20% had involved alcohol, and had participated in more than 100 DUI arrests. Her opinion did not invade the province of the jury by calling for a legal conclusion on the issue of guilt or innocence; she was giving an expert opinion as to the cause of the accident. St. v. Gregoroff, 287 M 1, 951 P2d 578, 54 St. Rep. 1469 (1997).

Highway Patrol Officer's Expert Opinion, in DUI Prosecution, That Driver Passed Out While Driving: In a DUI prosecution, admission of a highway patrol officer's testimony that in her opinion, based on her investigation at the scene of defendant's accident and her discussion with defendant soon after the accident, defendant had passed out while driving was not an abuse of discretion. Her training and experience in accident investigation and reconstruction qualified her as an expert for purposes of giving the opinion. She had been an officer for 8 years, was trained at the Montana Highway Patrol Academy for 12 weeks, had 4 weeks of training in traffic investigation, had attended an accident reconstruction school, had taught accident investigation, had special DUI investigation training and had taken a course on being a DUI detection instructor, was a recognized expert in accident reconstruction, had investigated more than 200 accidents, of which 15% to 20% had involved alcohol, and had participated in more than 100 DUI arrests. St. v. Gregoroff, 287 M 1, 951 P2d 578, 54 St. Rep. 1469 (1997).

Hearsay Statement by Witness Not Adopted by Defendant — Requirements for Finding Subpoenaed Witness "Unavailable": After having consumed drinks in Marysville, Widenhofer and Rothschiller were involved in a one-car accident on the Marysville Road. A car picked them up and took them to the closest business, the Silver City Bar. Because Widenhofer was injured, a highway patrol officer was called, who, upon arriving at the Silver City Bar, asked Rothschiller some questions about the accident. When he was in the patrol car with only the officer present, Rothschiller answered one of those questions by stating that Widenhofer was driving the vehicle. The officer then took both Widenhofer and Rothschiller to the hospital in Helena. After Widenhofer's injuries were cared for, the highway patrol officer continued to question Widenhofer; advised him that in the officer's opinion, alcohol was a factor in the accident; asked Widenhofer to submit to a blood-alcohol test; and read Widenhofer the implied consent form. Although Rothschiller was served with a subpoena by the Sheriff the night before a jury trial on Widenhofer's charge of DUI, Rothschiller failed to appear at trial. During the trial, the District Court allowed the highway patrol officer to repeat Rothschiller's answer, that Widenhofer was the driver of the vehicle. The Supreme Court reversed the decision of the District Court allowing the hearsay testimony. The Supreme Court held that the state's reliance on Rule 801(d)(2)(B), M.R.Ev. (Title 26, ch. 10), was misplaced because the District Court did not make an express finding that Rothschiller's statement was adopted by Widenhofer, as the District Court should have under the rationale of U.S. v. Schaff, 948 F2d 501 (9th Cir. 1991), and because the state did not present sufficient evidence that Widenhofer acquiesced in Rothschiller's statement. The Supreme Court noted that Widenhofer could not hear the conversation between the officer and Rothschiller and had no reason to know what Rothschiller was telling the officer. For these reasons, the Supreme Court held that Rothschiller's statement as to who was driving the vehicle was not adopted by Widenhofer and that Rothschiller's statement could therefore not be allowed under this exception to the hearsay rule. Widenhofer also objected to the hearsay testimony of the highway patrol officer because it violated Widenhofer's right under the sixth amendment to the United States Constitution and under Art. II, sec. 24, Mont. Const., to confront and cross-examine a witness. The Supreme Court held that the "unavailability" exception under Rule 804(a)(5), M.R.Ev. (Title 26, ch. 10), could not be invoked because under the analysis of Ohio v. Roberts, 448 US 56 (1980), that rule requires the prosecution to demonstrate the "unavailability" of a witness before hearsay evidence of the witness's statements may be introduced. The Supreme Court held that the state's "minimal" attempt to procure Rothschiller's testimony by serving a subpoena on him the night before trial did not constitute "reasonable means" of procuring his testimony. St. v. Widenhofer, 286 M 341, 950 P2d 1383, 54 St. Rep. 1438 (1997), followed, with regard to the standard of reasonable means of procuring witness's testimony, in St. v. Diaz, 2006 MT 303, 334 M 479, 148 P3d 628 (2006), and followed in St. v. McCollom, 2009 MT 257, 352 M 10, 214 P3d 1230 (2009).

Expungement of Two of Three Prior DUI and BAC Convictions — Lack of District Court Jurisdiction — Felony Charge Dismissed: Sidmore was arrested for DUI in March 1996. His driving record revealed that he had a 1988 Idaho DUI conviction, a 1994 Montana DUI conviction, and a 1990 Montana BAC conviction. Pursuant to 61-8-714 (now repealed and content reorganized in Title 61, chapter 8, part 10), Sidmore was charged with felony DUI, fourth offense. Sidmore agreed that under 61-8-714, both BAC and DUI convictions can be counted to determine the total number of convictions that a defendant has received. However, under the 1989 version of 61-8-722 (now repealed and content reorganized in Title 61, chapter 8, part 10), Sidmore did not receive a subsequent BAC conviction within the 5-year period following the 1990 BAC conviction nor did the 1994 DUI conviction prevent expungement of the 1990 BAC conviction, so the 1990 BAC conviction was expunged from the record. Further, under the 1987 version of 61-8-714, Sidmore did not receive a subsequent DUI conviction within the 5-year period following the 1988 Idaho DUI conviction nor did the 1990 BAC conviction prevent expungement of the 1988 Idaho DUI conviction, so the 1988 Idaho DUI conviction was also expunged from the record, making the 1994 DUI conviction the only prior conviction that could be counted to support the felony DUI charge. Thus, under 3-10-303, the Justice's Court retained jurisdiction of the misdemeanor 1996 offense and the District Court erred in denying Sidmore's motion to dismiss the felony DUI charge for lack of jurisdiction. St. v. Sidmore, 286 M 218, 951 P2d 558, 54 St. Rep. 1381 (1997).

When Right to Obtain Independent Blood Test Unreasonably Impeded — No Due Process Violation — Swanson Rule Clarified: One accused of a crime involving intoxication is entitled to obtain an independent blood test only when: (1) the defendant has timely claimed the right to an independent blood test; and (2) a law enforcement officer has unreasonably impeded the defendant's right to obtain an independent blood test. Both criteria must be satisfied in order to support an allegation of violation of a defendant's due process rights. The rule does not apply either if the defendant fails to timely request the independent blood test or if the independent blood test is unavailable through no unreasonable acts of law enforcement. In the present case, Sidmore's due process rights were not violated because the unavailability of an independent blood test was not caused by an unreasonable act of law enforcement but rather by Sidmore's own failure to act after requesting and being given the opportunity to arrange an independent blood test. St. v. Sidmore, 286 M 218, 951 P2d 558, 54 St. Rep. 1381 (1997), clarifying St. v. Swanson, 222 M 357, 722 P2d 1155 (1986), and distinguishing St. v. Strand, 286 M 122, 951 P2d 552, 54 St. Rep. 1333 (1997). See also St. v. Minkoff, 2002 MT 29, 308 M 248, 42 P3d 223 (2002), St. v. Smerker, 2006 MT 117, 332 M 221, 136 P3d 543 (2006), and St. v. Wrzesinski, 2006 MT 263, 334 M 157, 145 P3d 985 (2006).

Due Process Requires Individuals to Be Informed of Right to Independent Blood or Breath Test — Remedy for Failure to Inform Is Suppression of State's BAC Evidence: Strand argued that his due process right to obtain exculpatory evidence had been denied by the Kalispell Police Department's policy to not inform an individual of the right to an independent blood or breath test when the individual consents to the test designated by the arresting officer. The Supreme Court held that due process requires the arresting officer to inform the individual of the right to an independent test regardless of whether the accused consents to the test designated by the officer. The Supreme Court further held that the appropriate remedy for the state's failure to inform Strand of his rights was to suppress the state's BAC evidence because the failure to inform negated the informed consent provisions of state law. St. v. Strand, 286 M 122, 951 P2d 552, 54 St. Rep. 1333 (1997), overruled in St. v. Minkoff, 2002 MT 29, 308 M 248, 42 P3d 223 (2002).

Admissibility of Preliminary Alcohol Screening Test Results for Probable Cause Purposes Only — Clarification and Effect of Orders Suppressing Evidence — Grant of Motion to Exclude Inadmissible Evidence Not Considered Order Suppressing Evidence: The state sought to have the results of a preliminary alcohol screening test admitted into evidence in a DUI case. The City Court denied the motion, and the state immediately appealed to District Court, contending that in denying the motion, the City Court had suppressed evidence and that the statutory 6-month limit on trial of misdemeanors in 46-13-401 was thus exhausted. The Supreme Court noted that the results of a preliminary alcohol screening test pursuant to 61-8-409 (now repealed and content reorganized in Title 61, chapter 8, part 10) are not substantive evidence of the amount of alcohol present in a person's body but instead are an estimate of alcohol concentration only for the purpose of establishing probable cause to believe that a person is under the influence of alcohol prior to making an arrest. An order that suppresses evidence is an order that excludes evidence on the grounds that the evidence was illegally obtained and does not include a pretrial order that excludes evidence based on rules of evidence, such as relevancy, probative value, or statutory inadmissibility. Thus, the City Court order excluding preliminary alcohol screening test results was not an order suppressing evidence but rather an order determining that the results were not substantive evidence at all; therefore, there was no statutory basis under 46-20-103(2)(e) for appeal to District Court. Because City Court jurisdiction was not exhausted by some action authorizing appeal to the District Court, 46-13-401(2) was not satisfied and defendant, who made no move to postpone, was entitled to dismissal of the DUI charge with prejudice pursuant to 46-13-401(2) on grounds that he had not received a timely trial. St. v. Strizich, 286 M 1, 952 P2d 1365, 54 St. Rep. 1241 (1997), following St. v. Carney, 219 M 412, 714 P2d 532 (1986), and St. v. Bullock, 272 M 361, 901 P2d 61 (1995), overruling inconsistent holdings in St. v. T.W., 220 M 280, 715 P2d 428 (1986), and St. v. Yarns, 252 M 45, 826 P2d 543 (1992), and followed, with regard to limited admissibility of preliminary breath test evidence, in St. v. Weldele, 2003 MT 117, 315 M 452, 69 P3d 1162 (2003). See also St. v. Crawford, 2003 MT 118, 315 M 480, 68 P3d 848 (2003), and St. v. Snell, 2004 MT 334, 324 M 173, 103 P3d 503 (2004).

Out-of-State Convictions in Home State — Driver License Compact Not Applicable — Nonjurisdictional Claims Waived by Guilty Plea: Wheeler was charged with DUI, fifth offense. The affidavit in support of the information alleged that Wheeler had four previous DUI convictions. Three of the convictions occurred in Colorado. Wheeler moved to expunge those convictions, arguing that those convictions would have been expunged if they had occurred in Montana. The state argued that Colorado was Wheeler's home state when he received the DUI convictions, that the Driver License Compact did not apply, and that Wheeler had no reasonable expectation that the Colorado convictions would be expunged. The District Court denied the motion to expunge. The Supreme Court held that the expungement claim is a nonjurisdictional claim that was waived by Wheeler's guilty plea and affirmed the District Court decision. (Expungement provision deleted in 1989.) St. v. Wheeler, 285 M 400, 948 P2d 698, 54 St. Rep. 1213 (1997).

Expired Manufacturer's Warranty on Breath Test Solution Used to Test Defendant: That the manufacturer's warranty on a solution used for a breath test had expired 10 months before the solution was used in testing defendant did not make the test results inadmissible. The administrative rules regulating testing clearly provide that the approval of the solution is by the Department of Justice's Division of Forensic Sciences, not by the manufacturer, and the solution had been approved by the Division as required by the rules. St. v. Woods, 285 M 124, 947 P2d 62, 54 St. Rep. 1074 (1997).

Failure to Use Different Test Solution Than That Used in Prior Test in Testing Breathalyzer That Failed Prior Certification Test: Administrative rules require the state to use a fresh ethyl alcohol testing solution in retesting and certifying a Breathalyzer when the results of a prior test of the Breathalyzer are outside the range specified by the rules. The state did not do so and used the same solution as that used in the prior test. However, DUI defendant was not prejudiced thereby because the evidence showed that the problem was clearly with the Breathalyzer, not the solution. St. v. Woods, 285 M 124, 947 P2d 62, 54 St. Rep. 1074 (1997).

Test Results of Blood Drawn for Medical Reasons Admissible — Implied Consent Requirements Inapplicable: When Newill was admitted to the hospital for injuries resulting from an automobile accident, a sample of her blood was drawn for medical diagnostic and treatment purposes. Tests indicated more than twice the allowable level of alcohol. During subsequent questioning, Newill admitted that she had been drinking and authorized the taking of a blood sample to determine her BAC, but a blood sample could not be obtained. Newill sought to suppress the records containing the results of the earlier blood test because the records did not comport with the foundational requirements of 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10), the implied consent statute. The District Court denied the motion to suppress. On appeal, the Supreme Court held that the blood test taken at the direction of the attending physician was admissible as other competent evidence bearing upon whether Newill was intoxicated. Therefore, the District Court properly held that the blood test conducted by the hospital fell within the "other competent evidence" exclusion of 61-8-404(3) (now repealed and content reorganized in Title 61, chapter 8, part 10). St. v. Newill, 285 M 84, 946 P2d 134, 54 St. Rep. 1055 (1997), followed in State ex rel. McGrath v. District Court, 2001 MT 305, 307 M 491, 38 P3d 820 (2001).

Privately Owned and Maintained Road as Way of This State Open to Public: As defined in 61-8-101, "ways of this state open to the public" does not include only those ways or places for travel that are legally dedicated to the public use. The term includes a privately owned and maintained unposted roadway adapted for public travel and commonly used by members of the public who are lost, curious, or use the road to access residences served by the road. St. v. Weis, 285 M 41, 945 P2d 900, 54 St. Rep. 1034 (1997), followed in St. v. Schwein, 2000 MT 371, 303 M 450, 16 P3d 373, 57 St. Rep. 1587 (2000).

One of Three Previous DUI Convictions Subject to Expungement: Cooney argued that his DUI convictions in October 1984, September 1986, and July 1989 should have been expunged from his record under the language of the statute that existed prior to October 1989 and that therefore his conviction for DUI in December 1995 could not make him liable for fourth offense felony DUI. The Supreme Court held that any DUI conviction prior to the October 1989 repeal of the statute was automatically eligible for expungement if the elements of the expungement provision were satisfied. The Supreme Court ruled that the July 1989 conviction should have been expunged, removing any liability for Cooney for fourth offense felony DUI, but not the October 1984 and September 1986 convictions because at no time had more than 5 years expired between those convictions and a subsequent conviction. (Expungement provision deleted in 1989.) St. v. Cooney, 284 M 500, 945 P2d 891, 54 St. Rep. 967 (1997). See also St. v. Beckman, 284 M 459, 944 P2d 756, 54 St. Rep. 977 (1997), regarding expungement of a previous DUI conviction.

Previous DUI Conviction Not to Be Considered for Purposes of Felony DUI — Former Requirement for Expungement of Record Held Self-Executing — Lorash Distinguished — Expungement Applicable to Local Records: Bowles was convicted of DUI in 1977 and did not receive another DUI for 5 years but was convicted of two other DUI offenses after 1982. When Bowles was arrested for DUI in Park County in 1996, Park County charged Bowles with felony DUI, fourth offense, counting the 1977 conviction as one of three prior convictions. Bowles moved for dismissal of the felony charge, contending that the 1977 record should have been expunged pursuant to the 1981 version of 61-8-714(5) (now repealed and content reorganized in Title 61, chapter 8, part 10), and the District Court granted the motion. The Supreme Court held that the District Court properly dismissed the felony charge because the expungement provision in effect at the time, unlike the expungement provision in 46-18-204 that was litigated in St. v. Lorash, 238 M 345, 777 P2d 884 (1989), was self-executing and did not require the defendant to move the court to have the record of conviction expunged. The requirement for expungement applied to the 1977 conviction, despite the change in the law in 1989 requiring that the record be held as confidential criminal justice information, because the requirement for expungement was self-executing. The Supreme Court also noted that the expungement requirement applied to records of conviction notwithstanding the requirement in 61-11-102 that the Department of Justice maintain records of convictions of licensees. Further, the Supreme Court also held, relying upon St. v. Brander, 280 M 148, 930 P2d 31 (1996), that because "expungement" means to destroy and was without limitation, all traces of the conviction record should have been destroyed, that the record of the 1977 conviction was maintained by the Park County Sheriff in violation of the law, and that the 1977 county conviction record should not have been used as the basis for the felony charge. In response to the state's argument that the expungement requirement, enacted in 1981, applied prospectively only to convictions occurring after the requirement's effective date, the Supreme Court noted that it had rejected that argument in St. v. Reams, 284 M 448, 945 P2d 52, 54 St. Rep. 972 (1997). (Expungement provision deleted in 1989.) St. v. Bowles, 284 M 490, 947 P2d 52, 54 St. Rep. 962 (1997).

DUI Conviction Incurred Prior to 1981 Expungement Provision Eligible for Expungement: Reams was charged with fourth offense felony DUI based on convictions in July 1975, March and May 1990, and May 1996. Reams argued that his 1975 conviction should have been expunged from his record under the expungement provisions of the 1981 law when it was adopted because it had been more than 5 years between the 1975 conviction and any subsequent conviction and that therefore he could not be charged with fourth offense felony DUI. The state countered that the expungement provision did not apply retroactively because there was no evidence that the Legislature intended it to so apply. The Supreme Court held that a defendant is entitled to the benefit of the law in effect when the offense is committed, except to the extent that a later amendment mitigates a sentence or punishment, in which case the defendant is entitled to the benefit of the later law unless there is clear legislative intent through a saving clause that the former law is intended to control. The Supreme Court ruled that Reams's 1975 conviction was expunged with the adoption of the 1981 law and that therefore he could not be tried for fourth offense felony DUI. St. v. Reams, 284 M 448, 945 P2d 52, 54 St. Rep. 972 (1997), followed in St. v. Beckman, 284 M 459, 944 P2d 756, 54 St. Rep. 977 (1997).

Reasonable Time for Preliminary Examination or Leave to File Information — Time for Commencement of "Reasonable Time" — Higley Clarified: McElderry was arrested on October 14 for DUI, fifth offense; reckless driving; and driving while her license was revoked. On October 16, she made her initial appearance in Lake County Justice's Court and was charged by complaint with the offenses for which she was arrested. On October 25, the state filed a motion in District Court for leave to file an information. The motion was granted on October 28, and an information was filed the same day. On October 29, McElderry filed a motion in District Court to dismiss the charges, arguing that 46-10-105, as interpreted by the Supreme Court in St. v. Higley, 190 M 412, 621 P2d 1043 (1980), required that a determination of probable cause be made within 10 days after a defendant's initial appearance. The District Court dismissed the information, reasoning that the state failed to hold a preliminary examination in Justice's Court or to obtain leave from the District Court to file the information within the reasonable time required by 46-10-105. The Supreme Court held that the District Court erred in calculating the reasonable time as beginning with the time of McElderry's arrest because the plain language of 46-10-105 requires that the period be calculated from the date of initial appearance of the defendant. The Supreme Court therefore recalculated the total delay at 12 days, rather than 14 days. The Supreme Court further explained that its use of the 10-day time period in Higley was intended to mean that the 10-day period at issue in that case was not unreasonable but was not intended to limit the period of reasonable time to 10 days in all cases. Therefore, the Supreme Court held that the District Court erred in interpreting Higley to apply a 10-day limitation in every case. Because the District Court erred in determining the start of the reasonable time and in applying Higley, the Supreme Court held that a new time must be calculated. However, the Supreme Court was unable to tell how the District Court would properly apply its discretion in redetermining a reasonable time and therefore vacated the judgment of the District Court and remanded the case for further proceedings consistent with the Supreme Court's opinion. St. v. McElderry, 284 M 365, 944 P2d 230, 54 St. Rep. 922 (1997), followed in St. v. Robison, 2003 MT 198, 317 M 19, 75 P3d 301 (2003).

Breathalyzer Tested Twelve Minutes After Mandated Seven-Day Period Between Tests — Breath Test Admissible: ARM 23.4.213 requires Breathalyzers to be tested and certified for accuracy every 7 days. The Breathalyzer used on the defendant on August 23 had been tested that day at 8:59 a.m. and on August 16 at 8:47 a.m., a time difference of 7 days and 12 minutes. Section 1-1-305 provides that fractions of a day are disregarded in computations that include more than a day and involve no questions of priority. For most purposes, the law regards a day as an indivisible unit. Neither the administrative rule nor other law supported defendant's argument that the test results were inadmissible because more than 7 days had passed between the two tests. St. v. Fitzgerald, 283 M 162, 940 P2d 108, 54 St. Rep. 545 (1997).

Driver Asleep at Wheel of Pickup Not Running — Sufficiency of Evidence: Testimony of a peace officer that when he shook awake a driver slumped over the wheel of a parked pickup that was not running, the driver started the engine and of the driver's wife that when she left the truck after an argument, she threw him keys belonging to her son and that they contained a worn key that could fit defendant's pickup (she had parked the pickup and took the keys with her when she started to leave) was sufficient for the jury to find that defendant was in actual physical control of the pickup and to convict him of DUI. St. v. Hagen, 283 M 156, 939 P2d 994, 54 St. Rep. 542 (1997).

Issue of Untested Breath Test Solution Raised for First Time on Appeal: Appellant, convicted of DUI, raised for the first time on appeal a claim that a newspaper reported that untested ethyl alcohol, used to calibrate Intoxilyzers, was distributed to the Sheriff's office that tested him and that his conviction should be reversed because the solution used to calibrate the Intoxilyzer used on him was not approved as required by rule. He did not show that the untested solution was actually in use at the time that his breath sample was taken. He assumed that the solution was in use based on the news article. The statute providing for review of material and controlling facts that were not known to a defendant and that could not have been ascertained by the exercise of reasonable diligence was not applicable. Review of the issue would require the appellate court to conduct a hearing and act as a finder of fact, and the District Court had not decided the question of whether the untested solution was used for appellant's breath test. St. v. Hagen, 283 M 156, 939 P2d 994, 54 St. Rep. 542 (1997).

Failure of Felony DUI Punishment Provision to Include Mental State or Impose Absolute Liability: Failure of the statutory provision stating the punishment for a fourth or subsequent DUI offense to either include a mental state as an element of the offense or to clearly indicate a legislative purpose to impose absolute liability for the conduct was not a flaw because that statute was merely the statute under which defendant was sentenced. A separate statute defining the offense clearly stated that absolute liability is imposed. The court rejected the argument that the absolute liability provision of the statute defining the offense applied only to the offenses that existed at the time that the absolute liability provision was inserted in the law and did not apply to the felony offense that defendant was charged with and that was inserted in the law at a later date. St. v. Ellenburg, 283 M 136, 938 P2d 1376, 54 St. Rep. 532 (1997).

Authority for Arresting Out-of-Jurisdiction Peace Officer to Act Following Arrival of Officer With Jurisdiction:

When a Belgrade police officer stopped a motorcyclist in Bozeman after observing erratic driving and after the stop observed behavior indicative of intoxication, he was acting within his authority as a private citizen under 46-6-502. However, when the Bozeman police, whom he had contacted, arrived, the Belgrade officer's authority to act as a private citizen under 46-6-502 ceased and his performance of tests on the driver, placing him under arrest, transporting him to the jail, requests for a breath test, and writing of a citation, all in the absence of exigent circumstances, exceeded his citizen arrest authority under 46-6-502. Thus, the evidence obtained after the Bozeman police arrived was illegally obtained and must be suppressed in the DUI prosecution. To the extent that Maney v. St., 255 M 270, 842 P2d 704 (1992), suggests a contrary result, it is overruled. St. v. Hendrickson, 283 M 105, 939 P2d 985, 54 St. Rep. 516 (1997).

In St. v. Updegraff, 2011 MT 321, 363 Mont. 123, 267 P.3d 28, the Supreme Court clarified the authority of out-of-jurisdiction peace officers to make arrests, concluding that an out-of-jurisdiction peace officer must meet the arrest standard that applies to a private person in the same circumstances, and if this standard is met, the officer may then follow the procedures applicable to peace officers when processing an arrest.

Allegation of Uncounseled Waiver of Right to Attorney — Burden of Proof — Testimony of Routine of City Judge Held to Create Triable Issue of Fact: Olson moved to dismiss a felony DUI charge based upon his affidavit that in his previous DUI convictions, he was not represented by counsel and was not told that he could have a court-appointed attorney. In response to Olson's affidavit, the state presented the testimony of the City Judge who convicted Olson on one of the previous DUI charges. The judge testified that although he had no specific recollection of Olson's case, he always asks defendants whether they understand their rights and always reads their rights from a prepared text that includes an advisement of the right to counsel. The Supreme Court held that pursuant to Rule 406, M.R.Ev. (Title 26, ch. 10), this testimony is substantive evidence that creates a triable issue of fact. Therefore, the Supreme Court held that the District Court erred when it held that this testimony was insufficient as a matter of law to create a triable issue of fact. St. v. Olson, 283 M 27, 938 P2d 1321, 54 St. Rep. 475 (1997), followed in St. v. Couture, 1998 MT 137, 289 M 215, 959 P2d 948, 55 St. Rep. 548 (1998), and St. v. Moga, 1999 MT 283, 297 M 1, 989 P2d 856, 56 St. Rep. 1143 (1999). Olson was followed, with a different result, in St. v. Ailport, 1998 MT 315, 292 M 172, 970 P2d 1044, 55 St. Rep. 1292 (1998).

Record Failing to Show Specific Advisement of Right to Counsel Held Insufficient Basis for Penalty Enhancement: After three previous DUI convictions, Jenni was charged with felony DUI but moved to dismiss on the grounds that he had not been represented by an attorney and had not been advised of his right to counsel. Jenni submitted an affidavit signed by himself. The Supreme Court held that pursuant to its holding in St. v. Okland, 283 M 10, 941 P2d 431, 54 St. Rep. 467 (1997), the burden shifted to the state to prove Jenni had been advised of his right to counsel and held that a court record showing that Jenni was generally advised of his rights, without specifically showing that he was advised of his right to counsel, fails to meet the state's burden. The Supreme Court therefore affirmed the District Court's dismissal of the felony DUI charge. St. v. Jenni, 283 M 21, 938 P2d 1318, 54 St. Rep. 472 (1997). Okland was followed, with a different result, in St. v. Ailport, 1998 MT 315, 292 M 172, 970 P2d 1044, 55 St. Rep. 1292 (1998).

Uncounseled Waiver of Rights Held No Basis for Enhanced DUI Penalty — Presumption of Regularity of Conviction — Burden of Proof: Okland was charged with his fourth DUI violation and, by virtue of 61-8-714 and 61-8-722 (both now repealed and content reorganized in Title 61, chapter 8, part 10), was charged with a felony. Okland filed a motion to dismiss the felony charges, asserting that because he was not represented by counsel at the three previous convictions and had not adequately been advised of his right to counsel, those convictions could not be used to enhance the penalty. With his motion, Okland submitted an affidavit and a record of his 1985 conviction in Lake County. The District Court dismissed the felony charge. The Supreme Court, relying upon United States Supreme Court cases, held that a presumption of regularity attaches to prior convictions during collateral attack and that therefore, even in the absence of a transcript or record, a rebuttable presumption attaches that the prior conviction is valid and a defendant who challenges the validity of the conviction has the burden of producing direct evidence of the conviction's invalidity. In this case, the Supreme Court noted that Okland did produce sufficient evidence to shift the burden to the state and that the copy of the letter produced by the state notifying Okland that he had to complete a financial statement before a court-appointed attorney would be appointed was insufficient to meet the state's burden of proof. For this reason, the Supreme Court held that the District Court did not err in granting the motion to dismiss the felony charges against Okland. St. v. Okland, 283 M 10, 941 P2d 431, 54 St. Rep. 467 (1997), followed in St. v. Jenni, 283 M 21, 938 P2d 1318, 54 St. Rep. 472 (1997), St. v. Perry, 283 M 34, 938 P2d 1325, 54 St. Rep. 478 (1997), St. v. Stubblefield, 283 M 292, 940 P2d 444, 54 St. Rep. 605 (1997), St. v. Brown, 1999 MT 143, 295 M 5, 982 P2d 1030, 56 St. Rep. 560 (1999), St. v. Moga, 1999 MT 283, 297 M 1, 989 P2d 856, 56 St. Rep. 1143 (1999), St. v. Anderson, 2001 MT 188, 306 M 243, 32 P3d 750 (2001), St. v. Kvislen, 2003 MT 27, 314 M 176, 64 P3d 1006 (2003), and St. v. Rasmussen, 2017 MT 259, 389 Mont. 139, 404 P.3d 719. Okland was also followed, with a different result, in St. v. Ailport, 1998 MT 315, 292 M 172, 970 P2d 1044, 55 St. Rep. 1292 (1998).

"Confusion Doctrine" Properly Considered — Specific Pleading Not Required — Burden of Proof: Gentry was arrested for DUI and raised the "confusion doctrine"—that he was confused over his right to counsel at the time that he was required to submit to a Breathalyzer test (see Blomeyer v. St., 264 M 414, 871 P2d 1338 (1994)). The Supreme Court held that the District Court was limited by 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) to consideration of only three issues and that because one of those issues was whether the person refused to take the test, the confusion doctrine was properly considered by the District Court because it relates to whether a true "refusal to submit" to the test was made. The Supreme Court also held that the doctrine need not be specifically pleaded but that the burden remains on the petitioner to prove that the license suspension was invalid. Gentry v. St., 282 M 491, 938 P2d 693, 54 St. Rep. 450 (1997), distinguished in Williams v. St., 1999 MT 5, 293 M 36, 973 P2d 218, 56 St. Rep. 20 (1999).

Citizen Information Lacking Objective Data — No Particularized Suspicion of Wrongdoing to Warrant Investigative Traffic Stop: An anonymous citizen informant telephoned to notify police that a purple Chevrolet Camaro with a tan convertible top, driven by David Lee, was heading north toward Glasgow on the Fort Peck highway. The informant stated the belief that Lee was speeding and driving under the influence of alcohol. Officer Collins located the described vehicle on the indicated route and checked the vehicle's speed with radar. Lee was driving 52 miles an hour in a 55-mile-an-hour zone. Collins made a U-turn and speeded up behind the Camaro, at which point Lee slowed down to 35 miles an hour. Collins stopped the Camaro, determined that the driver was the person described in the dispatch report, and arrested Lee for driving under the influence. Relying on St. v. Gopher, 193 M 189, 631 P2d 293 (1981), the Supreme Court noted that while an anonymous citizen tip can establish a basis for a particularized suspicion of wrongdoing when corroborated by independent observation of wrongdoing or illegality by an officer, in the absence of other objective data, an anonymous tip alone does not support a particularized suspicion. Lee was not speeding and did not show obvious signs of driving under the influence. Merely slowing down after observing a police car make a U-turn and speed up to come within a few car lengths behind one's vehicle is not illegal and provides no evidence of wrongdoing. Because the investigative stop was not justified, the Supreme Court reversed Lee's conviction and dismissed the case. St. v. Lee, 282 M 391, 938 P2d 637, 54 St. Rep. 401 (1997).

Jury Instruction on Physical Control Overbroad: Robison and Rutledge testified that although the police found Robison passed out in the front of a locked and running vehicle, it was Rutledge who had been driving and had temporarily left the car. The lower court submitted the standard jury instruction of physical control to the jury but added an additional sentence that read: "One may be in actual physical control of a motor vehicle if he is physically inside an operational motor vehicle with the potential to operate or drive that motor vehicle while under the influence of alcohol on the ways of this State open to the public." The Supreme Court held that the instruction impermissibly broadened the definition of actual physical control because it would include, as a practical matter, every intoxicated occupant of a vehicle whether or not the occupant was or ever had been operating the vehicle. St. v. Robison, 281 M 64, 931 P2d 706, 54 St. Rep. 61 (1997).

Blood Tests Not Self-Incrimination — Taking of Blood Sample From Unconscious Defendant Not Denial of Due Process — DUI Penalty Not Cruel and Unusual Punishment or Double Jeopardy Violation: Defendant was convicted in a state court of driving under the influence and petitioned for a writ of habeas corpus. The U.S. District Court for the District of Montana denied relief, and defendant appealed. The court of appeals held that blood test results were not testimonial or communicative evidence that was inadmissible under the fifth amendment privilege against self-incrimination; removal of blood samples from defendant while he was unconscious did not violate due process; the sentence of 6 months in jail, a $500 fine, and attendance at an alcohol treatment program was not cruel and unusual punishment; and the sentence was not multiple punishment for double jeopardy purposes. Belgarde v. Mont., 123 F3d 1210 (9th Cir. 1997).

Refusal to Take Breathalyzer Test — Driver Properly Informed of Options and Consequences: Ellenburg contended that his driver's license was improperly suspended because he had been misinformed of the consequences of not taking the breath test and was led to believe that a blood test would satisfy the implied consent statute despite his refusal to take a breath test. However, a review of the videotape of the DUI booking showed that the arresting officer clearly explained that the breath test was being offered as the designated test under the implied consent statute. The officer was not required to request a blood test from Ellenburg because the offered breath test had already been refused. Ellenburg's petition for reinstatement of his driver's license was properly denied. Ellenburg v. Dept. of Justice, 280 M 268, 929 P2d 861, 53 St. Rep. 1398 (1996), distinguishing In re Orman, 224 M 332, 731 P2d 893 (1986).

Consideration of Expunged DUI Conviction Grounds for Reversal: Defendant, charged with a fourth offense DUI, moved for dismissal. Defendant claimed that the District Court's use of an earlier DUI conviction, which had been expunged as a result of a legislative change, to charge the defendant with felony DUI violated his constitutional guarantee against the application of ex post facto laws. On appeal, the Supreme Court ruled that although the District Court did not err when it denied the defendant's motion to dismiss on ex post facto grounds, the court did err when it considered an expunged DUI conviction in sentencing the defendant. (Expungement provision deleted in 1989.) St. v. Brander, 280 M 148, 930 P2d 31, 53 St. Rep. 1340 (1996), followed, as to an ex post facto application of law, in St. v. Cooney, 284 M 500, 945 P2d 891, 54 St. Rep. 967 (1997), St. v. Beckman, 284 M 459, 944 P2d 756, 54 St. Rep. 977 (1997), St. v. Pratt, 286 M 156, 951 P2d 37, 54 St. Rep. 1349 (1997), and St. v. Anderson, 2008 MT 116, 342 M 485, 182 P3d 80 (2008). Brander was followed in St. v. Bowles, 284 M 490, 947 P2d 52, 54 St. Rep. 962 (1997), as to the application of the expungement requirement to local records of conviction. See also St. v. Peralta, 2022 MT 201, 410 Mont. 316, 519 P.3d 5.

Negligent Vehicular Assault — Blood Sample Evidence Drawn in Violation of Statute Not Admissible: Defendant was arrested for negligent vehicular assault and refused to give a blood sample for determination of blood alcohol content. The sample was forcibly taken. The District Court suppressed the blood alcohol evidence, and the Supreme Court affirmed. Because the DUI offense set forth in 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) is a specific element of and is subsumed in the negligent vehicular assault offense, defendant was "arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol". Therefore, 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10) prohibited the state from forcibly giving the blood test after refusal to submit to it, and the blood sample evidence was drawn in violation of the statute and was inadmissible. St. v. Stueck, 280 M 38, 929 P2d 829, 53 St. Rep. 1288 (1996), followed in St. v. Schauf, 2009 MT 281, 352 M 186, 216 P3d 740 (2009).

Jury Trial Not Statutorily Mandated in Driver's License Suspension Case — Not Violative of Right to Trial by Jury: Section 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) dictates that the court examine the facts and determine the merits of a petition challenging the suspension or revocation of a license but does not contemplate the role of a jury in the hearing, presuming instead that a jury will not be present, through assignment of tasks to the court. The inviolate right to a trial by jury is not a prospective right that is automatically granted in every new proceeding that may arise. Rather, the right that is constitutionally preserved is that right to a jury trial that existed at the time that the constitution was enacted. There is not and has never been a right to a jury trial in purely equitable actions in Montana. Suspension or revocation of a driver's license pursuant to the implied consent law is a civil administrative sanction, not a criminal penalty, and is intended to protect the public rather than punish the driver. The hearing to determine the propriety of a driver's license suspension is an action in equity because compensatory or punitive damages are not allowed. Further, the reinstatement fee does not constitute a punishment that converts the equitable action into a criminal action because the fee is dedicated to the public purpose of funding county drinking and driving prevention programs. Therefore, a driver is not entitled to a trial by jury in a proceeding to determine the propriety of a driver's license suspension. Supola v. Dept. of Justice, 278 M 421, 925 P2d 480, 53 St. Rep. 984 (1996).

Punishment for Refusal to Take Breathalyzer Test and for Driving Under the Influence Not Double Jeopardy: Danichek argued that he could not be convicted of driving under the influence because he had already been punished when his driver's license was suspended because he refused to take the Breathalyzer test and that to punish him for driving under the influence would constitute multiple punishments for the same offense. The Supreme Court held that Danichek's license was suspended for refusing the test and that it was the refusal that was a violation. That conviction had nothing to do with whether or not the person actually was driving under the influence, and therefore, he was being punished for two separate infractions and was not being placed in double jeopardy. Helena v. Danichek, 277 M 461, 922 P2d 1170, 53 St. Rep. 767 (1996).

Pre-1995 Alcohol Information and Treatment Requirements — Evaluation Required Prior to Sentencing if Court Considers Treatment Option: Prior to 1995 amendment of 61-8-714(4) (renumbered 61-8-732, statute repealed in 2021), a defendant was required to complete an alcohol information course and, in the court's discretion, to receive alcohol treatment in the alcohol information course if recommended by a certified chemical dependency counselor. (Court discretion in requiring alcohol treatment was deleted by the 1995 Legislature.) The evaluation of whether alcohol treatment is necessary must be obtained prior to sentencing if the court is inclined to consider treatment as part of the sentence. At the point defendant was ordered to complete the alcohol information course, judgment was considered rendered and the Justice Court lacked jurisdiction to later modify the sentence to include alcohol treatment. St. v. Mora, 277 M 411, 922 P2d 516, 53 St. Rep. 736 (1996), following Rivera v. Eschler, 235 M 350, 767 P2d 336 (1989).

Petition for Reinstatement of Driver's License — No Due Process Right to Further Notice and Hearing After Recess of Original Hearing on Petition for Reinstatement: Following his arrest for DUI and refusal to take a blood-alcohol test, Seyferth received a letter from the Motor Vehicle Division informing him that his driving privileges were revoked for 1 year. Seyferth petitioned the District Court for reinstatement of his driving privileges and testified at the hearing. The District Court recessed the hearing for 2 weeks, giving Seyferth and the state explicit instructions to inform the court in 2 weeks on the availability of other evidence. Neither Seyferth nor the state had further contact with the court, and 1 year later the District Court denied the petition for reinstatement. The Supreme Court held that Seyferth was not entitled to additional notice and hearing before the District Court denied the petition. Seyferth v. St., 277 M 377, 922 P2d 494, 53 St. Rep. 698 (1996).

Court Discretion to Consider Alcohol Test Participant's Cooperativeness: Section 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) provides for a hearing only to determine whether a motorist refused a test. It does not have a specific provision for inquiry as to why the refusal occurred or for excusing the refusal if there was sufficient cause to refuse. However, the District Court may take testimony and examine the facts to determine whether an officer was wrong in concluding whether a refusal occurred. Therefore, the court has the latitude to consider whether an individual was willing but unable to participate in a test as a result of a disability or whether the individual was simply unwilling to cooperate and refused the test. Wessell v. St., 277 M 234, 921 P2d 264, 53 St. Rep. 610 (1996).

Willing but Unable Participant in Alcohol Test — Meaning of "Test or Tests" as Single Test for Alcohol — Psychological Inability to Perform: Wessell consented to a breath test, but two attempts failed because of the failure of the internal standards check for the test instrument. He was asked to submit to a blood test but immediately refused based on his great fear of needles. He volunteered to take a urine test, but the offer was refused because the police department had no way to preserve the integrity of a test sample. Wessell declined to have an independent test completed because he believed that his driving privileges would be suspended regardless as a result of his failure to submit to a blood test. The officer completed the refusal affidavit and seized Wessell's license. On appeal, Wessell claimed that 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10) does not expressly authorize more than one test for alcohol to which he gave consent. However, the state claimed that the language "test or tests" in subsection (3) allows consecutive tests for alcohol and that Wessell refused to submit to the alternate blood test. The Supreme Court concluded that the plural language added to the statute refers to the sequential testing for alcohol and then drugs, not for consecutive tests for alcohol alone. However, the alcohol test must be a full and complete analysis. Because the breath test was not completed, it was not valid, so the officer was within the statutory constraints when designating a second method of testing to achieve a valid alcohol test. Although certain uncooperative actions by a motorist may comprise a refusal, Wessell was fully cooperative but was unable to submit to the blood test because of a valid, disabling fear of needles. This psychological inability to perform the test was the equivalent of a physical disability precluding Wessell from completing a valid test regardless of his willingness. The District Court erred in concluding that Wessell's inability to participate in the test regardless of his willingness constituted a refusal warranting license suspension, and thus the case was reversed and remanded. Wessell v. St., 277 M 234, 921 P2d 264, 53 St. Rep. 610 (1996).

Criminal Endangerment Properly Charged in Arrest for Driving Under Influence — Constitutionality: Smaage had a history of seven DUI arrests when he was arrested again while driving with a blood alcohol level of 0.250. After review of his record of drinking and driving, Smaage was charged with criminal endangerment under 45-5-207, which Smaage contended was improper, rather than DUI under 61-8-401 or 61-8-722 (both now repealed and content reorganized in Title 61, chapter 8, part 10). Smaage also asserted that the criminal endangerment statute was unconstitutionally vague as applied to him because he was not given fair notice that driving after drinking was a felony crime. The Supreme Court found that the statutes were not conflicting, but rather were alternative charging statutes. The legislative history of the criminal endangerment statute indicated legislative intent in allowing use of that statute in prosecutions for DUI. Because the elements of criminal endangerment were present in this case due to Smaage's mental state of acting "knowingly", the conviction was affirmed. Further, with a history of DUI and negligent vehicular homicide, Smaage should have understood that his drunk driving created a substantial risk of bodily injury to others and was therefore proscribed. In light of Smaage's conduct, 45-5-207 is not unconstitutionally vague as applied to this case. St. v. Smaage, 276 M 94, 915 P2d 192, 53 St. Rep. 294 (1996), following U.S. v. Mazurie, 419 US 544, 42 L Ed 2d 706, 95 S Ct 710 (1975).

Intent to Arrest Formed After Person Physically Restrained After Failing to Stop as Requested — Investigative Stop, Not Arrest: An officer had authority to arrest Anderson, whose walking and driving led her to believe that he was DUI. The officer restrained him with a "gooseneck hold" when he failed to stop as requested. She testified without contradiction that it was not until after he resisted her hold and she could clearly identify the odor of intoxicants that she decided to arrest him for DUI. The request to stop and use of the gooseneck hold constituted an investigative stop, not an arrest. Anderson v. St., 275 M 259, 912 P2d 212, 53 St. Rep. 125 (1996).

Staggering Walk, Evasive Driving Without Turn Signals, and Failure to Stop When Requested While Later Walking as Grounds for Belief DUI Occurred: An officer observed Anderson shuffling and staggering toward his car in Billings just before the bars closed. She did not see him get into the car. A few minutes later, she saw him driving in what she interpreted as an evasive manner and he failed to use turn signals. She lost track of him but later saw him walking in the same manner as before. He failed to stop when she told him to do so, and he had a strong odor of intoxicants. These circumstances created a particularized suspicion and reasonable grounds to believe that he may have been driving under the influence of alcohol. Anderson v. St., 275 M 259, 912 P2d 212, 53 St. Rep. 125 (1996), followed in Seyferth v. St., 277 M 377, 922 P2d 494, 53 St. Rep. 698 (1996).

Test for Sufficient Cause for Investigative Stop: Because an investigative stop of a person must be justified by some objective manifestation that the person stopped might be engaged in some criminal activity, the test for determining whether an officer had sufficient cause to stop a person is that the state must show objective data from which an experienced officer could make certain inferences and must show a resulting suspicion that the person is or has been engaged in wrongdoing or was a witness to criminal activity. Anderson v. St., 275 M 259, 912 P2d 212, 53 St. Rep. 125 (1996), followed in Hulse v. St., 1998 MT 108, 289 M 1, 961 P2d 75, 55 St. Rep. 415 (1998). See also Rupp v. St., 279 M 247, 927 P2d 1, 53 St. Rep. 1136 (1996).

Error in Admitting Breath Test Evidence — Dismissal of Charge: When the state conceded that it did not lay a proper foundation for the admission of blood alcohol concentration test results and no evidence was introduced that the testing instrument had been properly and timely calibrated, the District Court abused its discretion in admitting the breath test evidence, necessitating dismissal of the charge for failure of proof. St. v. Woods, 272 M 220, 900 P2d 320, 52 St. Rep. 762 (1995), distinguished in St. v. Delaney, 1999 MT 317, 297 M 263, 991 P2d 461, 56 St. Rep. 1267 (1999).

Arrest in Convenience Store Parking Lot Within Town Limits Within City Officer's Jurisdiction: When Henry did not cite any evidence of record supporting the argument that a city officer was without jurisdiction when the arrest was made, the District Court did not err in denying Henry's motion to dismiss charges or, in the alternative, to suppress evidence. St. v. Henry, 271 M 491, 898 P2d 1195, 52 St. Rep. 516 (1995).

Error to Impose Prosecution Legal Fees as Condition of Suspended Sentence: Henry was convicted of driving under the influence, first in City Court and then in District Court. As part of Henry's suspended sentence, the District Court imposed certain conditions, including payment of $10,550 to the town of Darby for legal fees incurred in prosecuting the case and for additional legal fees incurred in defending the appeal. The Supreme Court held that the imposition of prosecution legal fees is neither expressly nor implicitly authorized by statute and that the District Court abused its discretion in imposing the payment of prosecution legal fees as a condition of Henry's suspended sentence. St. v. Henry, 271 M 491, 898 P2d 1195, 52 St. Rep. 516 (1995).

Failure of City to Comply With Request for DUI Independent Blood Test — Due Process Violation: Defendant timely requested an independent blood test during the booking procedure on a DUI violation and was told that the test would be obtained, but the test was not obtained. A person accused of a criminal offense has a constitutional right to attempt to obtain exculpatory evidence, and when the offense charged involves intoxication, this right, as set out in St. v. Swanson, 222 M 357, 722 P2d 1155 (1986), encompasses the accused's right to obtain an independent blood test to establish sobriety, regardless of whether the accused submitted to a police-designated test. Failure to obtain the test when timely requested was a due process violation warranting reversal and dismissal of the charge. Whitefish v. Pinson, 271 M 170, 895 P2d 610, 52 St. Rep. 384 (1995). See also St. v. Peterson, 227 M 418, 739 P2d 958 (1987), and St. v. Klinkhammer, 256 M 275, 846 P2d 1008 (1993).

Arrest Not Required for Nonconsensual Blood Sample Without Warrant — No Fourth Amendment Violation: While administering first aid to plaintiff injured in a motorcycle accident rangers noticed telltale signs of alcohol use and requested that plaintiff submit to a Breathalyzer test. After plaintiff refused, park rangers instructed the medic to withdraw a sample of blood while administering an emergency I.V. Based largely on the blood sample, plaintiff was subsequently convicted of drunk driving. On appeal, a three-judge panel reversed the conviction, concluding that under U.S. v. Harvey, the rangers' failure to arrest the plaintiff before or shortly after obtaining the blood sample rendered the seizure unreasonable under the fourth amendment. On review, the Ninth Circuit Court vacated the conviction, holding that the fourth amendment does not require a suspect's arrest for officers to obtain a blood sample without consent or a warrant. U.S. v. Chapel, 55 F3d 800 (9th Cir. 1995), expressly overruling U.S. v. Harvey, 701 F2d 800 (9th Cir. 1983), which held that the fourth amendment requires authorities to arrest a suspect prior to a nonconsensual taking of blood without a warrant.

Reasonable Cause for Arrest — Citizen Informants Considered Presumptively Reliable: Facts and circumstances within an officer's personal knowledge (that plaintiff was in control of the vehicle in the parking lot) and facts imparted to him by three citizen informants (that plaintiff was intoxicated) were sufficient to warrant a reasonable person to believe that plaintiff was driving under the influence of alcohol. Information provided by citizen informants is considered presumptively reliable. Therefore, the officer had probable cause to arrest plaintiff, and the District Court did not err in suspending plaintiff's driver's license for 90 days. Santee v. St., 267 M 304, 883 P2d 829, 51 St. Rep. 1034 (1994), citing St. v. Sharp, 217 M 40, 702 P2d 959, 42 St. Rep. 1009 (1985), and St. v. Lee, 232 M 105, 754 P2d 512, 45 St. Rep. 903 (1988).

"Confusion Doctrine" Inapplicable: Stopped for suspicion of driving under the influence, appellant was read the implied consent form and asked to submit to a blood alcohol content (BAC) test. After appellant refused, the officer read appellant's Miranda rights and allowed appellant to call an attorney. Subsequently, appellant's license was suspended for refusing to submit to the BAC test. Appealing the suspension, appellant argued that the BAC test refusal should be excused because the officer's failure to inform appellant that a driver has no right to counsel before deciding whether to submit to the BAC test caused appellant to confuse his Miranda right to counsel with rights under the implied consent law. While not adopting the "confusion doctrine", the Supreme Court ruled that it applies only when Miranda rights are given prior to or contemporaneously with a driver being informed of rights under the implied consent law. Since appellant's Miranda rights were read after the implied consent form was read and after the driver's refusal to submit to the BAC test, it was unlikely that appellant confused the Miranda right to counsel with rights under the implied consent law. In re Suspension of Driver's License of Blomeyer v. St., 264 M 414, 871 P2d 1338, 51 St. Rep. 324 (1994), followed in Gentry v. St., 282 M 491, 938 P2d 693, 54 St. Rep. 450 (1997), and distinguished in Williams v. St., 1999 MT 5, 293 M 36, 973 P2d 218, 56 St. Rep. 20 (1999).

Issue of Suspension Absent Sworn Statement — Not Properly Raised: In oral argument following the conclusion of the arresting officer's testimony, Thompson's counsel argued that Thompson's driver's license could not be suspended unless there was a sworn report as required under 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10). The District Court properly declined to consider the issue as not having been properly raised or presented because: (1) neither the Department of Justice nor the County Attorney's office was given notice of the filing of the petition to review the license suspension; (2) no notice was given to the state or county that Thompson was raising an issue as to the filing of the proof of the sworn statement; and (3) neither the county nor the Department had an opportunity to present the actual report. Thompson v. Dept. of Justice, 264 M 372, 871 P2d 1333, 51 St. Rep. 272 (1994), followed in Gentry v. St., 282 M 491, 938 P2d 693, 54 St. Rep. 450 (1997).

Burden on Defendant to Prove Inability to Complete Test — Remedies Available: Hunter was arrested for DUI and asked to take a breath test. She consented but did not blow into the Breathalyzer hard enough to operate the machine. Hunter was then given other sobriety tests and again given a chance to take the breath test, but she stated that she believed she had performed enough tests. Hunter's driver's license was then seized for refusal to take the breath test. The Supreme Court held that Hunter had the burden of proof of showing that the arresting officer erroneously determined that Hunter refused to take the breath test. The statute does not give the driver the right to demand another type of test or require that the officer offer another type. If the driver believes that the officer has erroneously determined that the driver refused to take the breath test, the driver's remedy is to petition for reinstatement of the license. The Supreme Court reviewed the record and determined that Hunter had not met her burden of proof. Hunter v. St., 264 M 84, 869 P2d 787, 51 St. Rep. 158 (1994).

Withdrawal of Former Refusal to Take Breath Test Not Recognized: Hunter was arrested for DUI and asked to take a breath test. She consented but did not blow into the Breathalyzer hard enough to operate the machine. Hunter was then given other sobriety tests and again given a chance to take the breath test, but she stated that she believed she had performed enough tests. When threatened with seizure of her license, Hunter asked if there was anything else she could do. Hunter's driver's license was then seized for refusal to take the breath test. Hunter claimed that she withdrew her refusal to take more tests. The Supreme Court held that in offering generally to do anything else she was required to, Hunter did not clearly withdraw her former refusal. Citing Johnson v. Div. of Motor Vehicles, 219 M 310, 711 P2d 815 (1985), the Supreme Court also held that the arresting officer was not bound to accept a withdrawal of the earlier refusal. Hunter v. St., 264 M 84, 869 P2d 787, 51 St. Rep. 158 (1994).

Knowledge of Statutory Inference of Intoxication Irrelevant: Dixon was charged with rape of H.D., which occurred while H.D. was intoxicated. On cross-examination, Dixon's counsel asked H.D. whether she knew that the legal limit of intoxication in Montana is 0.10 (see 2003 amendment), to which question the prosecution objected on grounds of relevancy. The District Court sustained the objection, holding that the evidence of intoxication was relevant, but H.D.'s knowledge of the legal limit was irrelevant. The Supreme Court held that H.D.'s knowledge of her condition was relevant as impeachment evidence, but since there was no evidence that H.D. was in control of a motor vehicle, her knowledge of the 0.10 legal limit was irrelevant. St. v. Dixon, 264 M 38, 869 P2d 779, 51 St. Rep. 135 (1994).

Driving While Ability Impaired in New York Similar to Driving Under the Influence in Montana — License Suspension Affirmed: Montanye was arrested in New York for driving while impaired, and his driver's license was suspended in Montana under the reciprocal application of the Driver License Compact. Montanye contended that because conviction in New York of driving while impaired requires a lesser degree of intoxication than conviction for driving under the influence in Montana, the offenses are totally dissimilar and suspension of his license was improper. The Supreme Court noted that there were a few differences between the states' statutes, but that both laws deal with a driver's diminished ability to drive while under the influence of alcohol and both provide for suspension of license as punishment and are thus substantially similar. Therefore, the District Court did not err in revoking Montanye's license under Montana law. Montanye v. St., 262 M 258, 864 P2d 1234, 50 St. Rep. 1541 (1993), overruled in St. v. McNally, 2002 MT 160, 310 M 396, 50 P3d 1080 (2002). See also St. v. Young, 2012 MT 251, 366 Mont. 527, 289 P.3d 110.

Authority of City Court to Try DUI Charge Under State Statute — No Error in District Court Failure to Dismiss: McCarvel was charged in Billings City Court with DUI in violation of 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10). McCarvel moved to dismiss on the grounds that he was charged with a violation of a state statute rather than a city ordinance. The City Court refused to dismiss. McCarvel was convicted by a jury and took a de novo appeal to the District Court. The District Court refused to dismiss and McCarvel pleaded guilty. The Supreme Court held that the Billings City Court had jurisdiction over the DUI offense concurrent with the Justice's Court. Because McCarvel was charged with a violation of a state statute rather than a city ordinance, the language of the city ordinance was immaterial. Billings v. McCarvel, 262 M 96, 863 P2d 441, 50 St. Rep. 1460 (1993).

City Attorney's Authority to Try City Prosecution of Statutory DUI Violation Upheld: McCarvel was charged in Billings City Court with a violation of the state DUI statute. He was convicted by a jury and appealed to District Court in which, after the District Court refused to dismiss, he pleaded guilty. The Supreme Court held that the city attorney could lawfully prosecute a violation of a state statute in City Court because the City Court had concurrent jurisdiction with the Justice's Court and because it was the city attorney's duty to prosecute on behalf of the city offenses heard in that court. Billings v. McCarvel, 262 M 96, 863 P2d 441, 50 St. Rep. 1460 (1993).

Dismissal for Failure to Charge Offense of Which Convicted — Reckless Driving Not Lesser Included Offense of DUI: Barker was charged with DUI but was convicted of reckless driving by the Ravalli County Justice of the Peace. Barker appealed to the District Court and filed a motion to dismiss, which the District Court granted. The Supreme Court affirmed, holding that the reckless driving charge and the DUI charge were inapposite charges and that reckless driving was not a lesser included offense of DUI. The Supreme Court also held that the conviction should be set aside because Barker did not have notice that he was charged with reckless driving, which violated Barker's constitutional right to due process. St. v. Barker, 260 M 85, 858 P2d 360, 50 St. Rep. 970 (1993).

Information Available at Time of Arrest Sufficient to Establish Reasonable Grounds: McCullugh was arrested after officers found his truck off the road, with the front end in the ditch and the rear end up on the road a bit, and found McCullugh, who was obviously under the influence of alcohol, jacking up the back end of the truck. McCullugh asserted that the arresting officers should have ascertained whether he had his keys when he was arrested, whether the hood of the truck was warm, and whether he had been drinking prior to or after the accident. Although these facts would have supported the story McCullugh asserted later at trial (but not at the time of arrest), that he had become stuck when he lost his brakes, went to a friend's house where he began drinking, and later became concerned that the truck was in the road and returned to push it out of the roadway after leaving the keys on his friend's counter, that story was not the first or most natural conclusion a reasonable person would reach after observing a person obviously under the influence trying to move a vehicle stuck on the side of the road. The information available to the officers at the time of arrest was sufficient to warrant a reasonable person to believe that McCullugh was in physical control of the truck. McCullugh v. St., 259 M 406, 856 P2d 958, 50 St. Rep. 854 (1993), distinguished in Bush v. Dept. of Justice, 1998 MT 270, 291 M 359, 968 P2d 716, 55 St. Rep. 1118 (1998).

Discovery Exception Inapplicable — Blood Sample Admissible Under Other Law: After Henning's motion in limine for suppression of a voluntarily given blood sample was denied, he entered a plea of DUI upon the condition that the plea could be withdrawn if the District Court ruled his blood sample inadmissible. The District Court found that the state had a compelling state interest that outweighed Henning's privacy interest under 50-16-535. The Supreme Court held that 50-16-535(1)(i) is inapplicable because it applies only to discovery of health care information, and Henning did not contend that his blood test was not subject to discovery. The Supreme Court found the results of the test admissible under 61-8-404(1)(a) (now repealed and content reorganized in Title 61, chapter 8, part 10) and admissible under the rationale of St. v. Kirkaldie, 179 M 283, 587 P2d 1298 (1978). St. v. Henning, 258 M 488, 853 P2d 1223, 50 St. Rep. 626 (1993).

Independent Sobriety Test — Failure to Obtain Test Not Violation of Due Process if Test Not Requested: When the defendant failed to request an independent sobriety test, even though the defendant at one point stated that he wanted a test to be performed by his own doctor, the District Court was not clearly erroneous in determining that the defendant's due process rights were not violated. The mere fact that an independent sobriety test was not obtained was not a violation of a defendant's due process rights. St. v. Klinkhammer, 256 M 275, 846 P2d 1008, 50 St. Rep. 92 (1993).

Arrest by Peace Officer Outside Officer's Jurisdiction — Applicability of Driving Under the Influence Implied Consent Law:

A peace officer is by statute "any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority". Though a city police officer's authority did not extend beyond the city limits and his arrest of a driver beyond the city limits for being under the influence could only be a citizen's arrest, he was within the definition of a peace officer even when outside the geographical area in which he had jurisdiction because he was at the time of the arrest a peace officer in fact and by virtue of holding the particular job. Therefore, the implied consent law applied even though it refers to a person "arrested by a peace officer". Maney v. St., 255 M 270, 842 P2d 704, 49 St. Rep. 980 (1992).

In St. v. Updegraff, 2011 MT 321, 363 Mont. 123, 267 P.3d 28, the Supreme Court clarified the authority of out-of-jurisdiction peace officers to make arrests, concluding that an out-of-jurisdiction peace officer must meet the arrest standard that applies to a private person in the same circumstances, and if this standard is met, the officer may then follow the procedures applicable to peace officers when processing an arrest.

Lack of Formal Custody Transfer by Police Officer Outside Officer's Jurisdiction:

Police officer followed beyond the Chinook city limits a vehicle he believed was driven by a person with a revoked license. He radioed for backup and stopped the vehicle after noticing it was moving slowly and erratically. The driver's breath smelled of alcohol, and after field sobriety maneuvers, the police officer and a Deputy Sheriff who had arrived agreed that the driver was impaired. The police officer then arrested the driver and delivered him to the Sheriff's office in Chinook. The police officer did not have to formally transfer custody to the Deputy Sheriff for the police officer's citizen's arrest to be legal. Maney v. St., 255 M 270, 842 P2d 704, 49 St. Rep. 980 (1992), overruled in St. v. Hendrickson, 283 M 105, 939 P2d 985, 54 St. Rep. 516 (1997).

In St. v. Updegraff, 2011 MT 321, 363 Mont. 123, 267 P.3d 28, the Supreme Court clarified the authority of out-of-jurisdiction peace officers to make arrests, concluding that an out-of-jurisdiction peace officer must meet the arrest standard that applies to a private person in the same circumstances, and if this standard is met, the officer may then follow the procedures applicable to peace officers when processing an arrest.

Test for Review of Propriety of Suspension for Refusal to Take Test: Judicial review of the propriety of the suspension of a license for failure to take a blood alcohol test is limited to: (1) whether the arresting officer had reasonable grounds to believe that appellant had been driving or was in actual physical control of a vehicle, that the vehicle was on a way of this state open to the public, and that appellant was under the influence of alcohol; (2) whether appellant was placed under arrest; and (3) whether appellant refused to submit to a test. Maney v. St., 255 M 270, 842 P2d 704, 49 St. Rep. 980 (1992).

Burden of Proof on Driver to Prove Invalidity of Revocation: Because there is a presumption of correctness to the state's action of revocation of a driver's license until otherwise shown to be improper, the burden of proof falls on the driver to prove the invalidity of the state's action rather than to require the state to justify its act of revocation. Jess v. St., 255 M 254, 841 P2d 1137, 49 St. Rep. 951 (1992), followed in In re License Revocation of Gildersleeve, 283 M 479, 942 P2d 705, 54 St. Rep. 735 (1997), and Kleinsasser v. St., 2002 MT 36, 308 M 325, 42 P3d 801 (2002).

Applicability of 1989 Amendments Limited to 61-8-714: The 1989 amendments to 61-8-714 (now repealed and content reorganized in Title 61, chapter 8, part 10) regarding the criminal penalty for DUI violations did not alter or affect 61-5-208, the civil penalty section for DUI and BAC violations. The plain language of 61-8-714(6) limits application of 61-8-714 to the determination of penalties in 61-8-714. Dewart v. St., 254 M 215, 835 P2d 769, 49 St. Rep. 706 (1992).

Penalty for DUI Conviction in Excess of Misdemeanor — Justice's Court Jurisdiction: Defendant was fined $300, assessed costs, given a 6-month suspended sentence, and required to attend an alcohol treatment program that had no particular time limit. Defendant argued that the potential sentence for the DUI conviction could exceed 1 year, which effectively increased the offense beyond a misdemeanor classification and deprived the Justice's Court of original jurisdiction. The Supreme Court noted that the legislative purpose of alcohol treatment is not punishment, but protection of the public, and distinguished between fines levied as monetary punishment and costs imposed in a court's discretion as reimbursement for expenses of prosecution. Defendant's sentence did not amount to a felony; therefore, the Justice's Court had original jurisdiction. St. v. West, 252 M 83, 826 P2d 940, 49 St. Rep. 170 (1992).

Sufficient Foundation in Admission of Breath Test Results: Defendant contended that the state failed to lay a proper foundation proving that an Intoxilyzer was properly tested and certified prior to administration of a breath test, as required by ARM 23.4.209. However, the admission of test results was within the court's discretion in light of the facts that the arresting officer was certified to administer the test and that the Intoxilyzer was properly calibrated, had been inspected, and met Division requirements at the time of installation. St. v. West, 252 M 83, 826 P2d 940, 49 St. Rep. 170 (1992).

Element of Identity of Issues Not Present on Question of Collateral Estoppel — Partial Summary Judgment Properly Denied: Anderson sought judicial review of the seizure and suspension of his driver's license pursuant to 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10), which limits review to three underlying issues. The District Court's findings on these issues served as the bases for making the ultimate determination of whether Anderson was entitled to a license or whether his license was subject to suspension. After the District Court found that Anderson was entitled to a license, Anderson moved for partial summary judgment on the issue of the state's civil liability based on the doctrine of collateral estoppel. However, the question of liability was never considered as part of the judicial review proceeding, so denial of the partial summary judgment motion was proper on the grounds that the crucial estoppel element of identity of issues did not exist. Anderson v. St., 250 M 18, 817 P2d 699, 48 St. Rep. 871 (1991), distinguished in Farmers Plant Aid, Inc. v. Huggans, 266 M 249, 879 P2d 1173, 51 St. Rep. 803 (1994).

Lack of Particularized Suspicion of Wrongdoing — Seizure of License Improper: Because deputies who saw no evidence of erratic driving throughout their observation of Grinde's car lacked a particularized suspicion of wrongdoing on his part, the subsequent stop of his vehicle and the resulting arrest were illegal. Given these circumstances, the District Court properly returned Grinde's driver's license. Grinde v. St., 249 M 77, 813 P2d 473, 48 St. Rep. 586 (1991), clarifying Armstrong v. St., 245 M 420, 800 P2d 172, 47 St. Rep. 2057 (1990). However, see Bush v. Dept. of Justice, 1998 MT 270, 291 M 359, 968 P2d 716, 55 St. Rep. 1118 (1998), expressly overruling the Grinde interpretation that particularized suspicion as used in 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) is synonymous with the probable cause standard for warrantless searches.

Admissibility of Evidence Regarding Breathalyzer Printout — Present Sense Impression: An officer who had experienced problems with a Breathalyzer printer prior to testing defendant copied the numerical results of the calibration and test result from the display screen to the printout card. Defendant averred that it was error to admit the officer's testimony regarding the numbers observed on the screen and subsequently recorded on the printout, contending the testimony was inadmissible hearsay that did not fall within any recognized exceptions. However, the numbers were a present sense impression under Rule 803, M.R.Ev. (Title 26, ch. 10), constituting a written assertion describing or explaining an event or condition made while the declarant was perceiving the event or condition, and as such they fell within the statutory hearsay exception in 61-8-404 (now repealed and content reorganized in Title 61, chapter 8, part 10). Hoy v. Helena, 248 M 128, 809 P2d 1255, 48 St. Rep. 344 (1991), followed in St. v. Berosik, 1999 MT 238, 296 M 165, 988 P2d 775, 56 St. Rep. 938 (1999).

Manner in Which Vehicle Driven as Evidence of DUI: The Supreme Court cited St. v. Peterson, 236 M 247, 769 P2d 1221 (1989), for the proposition that the manner in which a vehicle is driven can be evidence of driving under the influence of alcohol. Therefore, driving at speeds over 100 miles an hour under wet road conditions, swerving off the road, plunging over two embankments, driving down ditches and across fields, smashing through the interstate fence, and failing to stop even though signaled to stop by three police officers demonstrated a manner of driving that would not be undertaken by a sober individual. Coupled with the detection of the odor of alcohol by an experienced officer following the crash, evidence was sufficient to suggest that the driver was intoxicated. St. v. Palmer, 247 M 210, 805 P2d 580, 48 St. Rep. 166 (1991), followed in St. v. Martinosky, 1999 MT 122, 294 M 427, 982 P2d 440, 56 St. Rep. 495 (1999).

Reinstatement of Driver's License of Person Stopped Without Probable Cause: The arresting officer stopped the defendant without probable cause. After stopping him, the officer suspected that the defendant was under the influence of alcohol. The defendant refused to take the Breathalyzer test. Subsequently, the case against him for DUI was dismissed, but the lower court upheld the suspension of the defendant's license. The Supreme Court reversed, stating that the statute was clear in requiring a showing of probable cause for stopping an individual before his license could be suspended for refusing to take the Breathalyzer test. Armstrong v. St. 245 M 420, 800 P2d 172, 47 St. Rep. 2057 (1990).

Mandatory Presumption of Intoxication — Jury Instruction — Unconstitutional Shifting of Burden: Following an accident in which defendant struck and killed a pedestrian, defendant was charged with negligent homicide after a breath test registered his blood alcohol content at 0.12. Defendant appealed his conviction, alleging that the jury instruction that a blood alcohol level greater than 0.10 raised a mandatory rebuttable presumption that he was under the influence of alcohol. The Supreme Court reversed the conviction, stating that the instruction requiring the jury to find intoxication "unless and until evidence is introduced which would support a finding of its nonexistence" may have led the jury to believe that defendant not only had to introduce contrary evidence but had an affirmative duty to convince the jury that he was not intoxicated. A mandatory rebuttable presumption that shifts the burden of persuasion to the defendant violates due process. The instruction was not harmless, and the court remanded for new trial. St. v. Leverett, 245 M 124, 799 P2d 119, 47 St. Rep. 1753 (1990).

Probable Cause Based on Observations of Third Party: The petitioner brought a motion before the District Court to have his driver's license restored on the grounds that the arresting officer did not have probable cause to stop him. The officer had not observed anything in the petitioner's driving that indicated he was under the influence. The arresting officer had relied on the observations of another officer who had been unable to continue his surveillance because he was transporting a prisoner. The District Court ordered the petitioner's driver's license to be restored. On appeal by the state, the Supreme Court ruled that an arresting officer can rely on information relayed by a reliable third person in determining if probable cause for arrest exists. Boland v. St., 242 M 520, 792 P2d 1, 47 St. Rep. 829 (1990), followed in Jess v. St., 255 M 254, 841 P2d 1137, 49 St. Rep. 951 (1992), and St. v. Williams, 273 M 459, 904 P2d 1019, 52 St. Rep. 1085 (1995). Boland was followed, with regard to the legality of an investigative stop upon a directive or request for action from a third-party officer, in St. v. Gouras, 2004 MT 329, 324 M 130, 102 P3d 27 (2004). However, see Bush v. Dept. of Justice, 1998 MT 270, 291 M 359, 968 P2d 716, 55 St. Rep. 1118 (1998), expressly overruling the Boland and Jess interpretation that reasonable grounds as used in 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) is synonymous with the probable cause standard for warrantless searches.

Trying Defendant Twice in Five-Year Period for Second Offense DUI Not Double Jeopardy: The defendant was convicted of DUI at 17 years of age. Several months later when he was 18, the defendant was arrested for a second incident and tried and convicted for DUI, second offense. Two years later, the defendant was arrested for a third time, initially with a third offense DUI. The prosecution amended the charge to a second offense DUI upon learning that the defendant had been a juvenile when convicted the first time. The defendant argued that charging him twice within a 5-year period under Montana's DUI scheme for second offense DUI constituted double jeopardy. The Supreme Court held that it was not double jeopardy because the defendant was not being tried twice for the same occurrence. Each charge arose from a separate set of facts. The court further stated that although the first conviction for second offense DUI might not have been correct since the first DUI conviction had occurred when the defendant was a minor, the second charge for a second offense DUI was proper. St. v. Chasse, 240 M 341, 783 P2d 1370, 46 St. Rep. 2178 (1989).

Permissive Inference That Person Was Under Influence: Section 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) creates a permissive inference that the person charged was under the influence of alcohol. The Justice Court erred in holding that the statute is unconstitutional because the language "it shall be presumed that the person was under the influence of alcohol" relieves the state from being required to prove every element of a criminal case beyond a reasonable doubt. St. v. Tollefson, 239 M 305, 780 P2d 621, 46 St. Rep. 1703 (1989).

License Suspension Hearing a Civil Proceeding — Requires Only Reasonable Belief That Defendant Under the Influence and in Control of Vehicle: The defendant was asleep in his vehicle with the motor running. The arresting officer smelled alcohol but did not administer any field sobriety tests. At the station house, the defendant refused to take a blood alcohol test. The Supreme Court ruled that a hearing to suspend an individual's driver's license is a civil proceeding and that the arresting officer only needs to show reasonable grounds to believe that the defendant was in control of the vehicle and under the influence of alcohol. Looking at the facts before it, the court ruled that the officer's belief that the defendant was in control of the pickup and under the influence was reasonable. Gebhardt v. St., 238 M 90, 775 P2d 1261, 46 St. Rep. 1114 (1989), followed in In re Turner v. St., 244 M 151, 795 P2d 982, 47 St. Rep. 1576 (1990).

Suspension of License Hearing — Need Only Show Reasonable Belief Vehicle on Highway: A hearing to suspend an individual's license for refusing to take a blood alcohol test is a civil proceeding separate and distinct from the criminal DUI charge. The arresting officer need only show that he had reasonable grounds to believe that the vehicle was on a way of the state open to the public. The Supreme Court ruled that considering statutory language and precedent, the officer had reasonable grounds to believe that the defendant's pickup, located approximately 10 feet from the traveled portion of the roadway, was on a way of the state open to the public. Gebhardt v. St., 238 M 90, 775 P2d 1261, 46 St. Rep. 1114 (1989), followed in Thompson v. Dept. of Justice, 264 M 372, 871 P2d 1333, 51 St. Rep. 272 (1994).

Admissibility of Government Pamphlets on Alcohol Consumption — Hearsay Exception: In a DUI trial, Department of Justice pamphlets relating to alcohol consumption were admitted in evidence for the limited purpose of showing that they were Department publications. The judge admonished the jury that the pamphlets were not admitted for their accuracy or truth. Defendant argued that they should have been admitted for their content, truth, and accuracy under the public records exception to the hearsay rule. Defendant failed to lay a proper foundation for admission under that exception because he did not show that the pamphlets were derived from the Department's regularly conducted and recorded activities, were published as a result of a duty imposed on the Department by law, or were the result of an investigation made under authority of law. St. v. Thompson, 237 M 384, 773 P2d 722, 46 St. Rep. 887 (1989).

Nature and Constitutionality of Audio-Video Tape Used as Evidence:

Driver was arrested for DUI, and an audio-video tape was made at the Sheriff's office of his actions and speech during field sobriety tests, the reading of his Miranda rights, and his waiver of those rights. The tape was objective evidence, not constitutionally prohibited testimonial compulsion. The court distinguished between the compelling of communications or testimony and real, physical, or objective evidence. The tape was introduced into evidence not for the incriminating content of the words of the defendant, but rather as evidence that helped the jury understand the testimony of the police who observed the defendant's unsteady walk and slurred speech. St. v. Thompson, 237 M 384, 773 P2d 722, 46 St. Rep. 887 (1989), followed in St. v. Devlin, 1999 MT 90, 294 M 215, 980 P2d 1037, 56 St. Rep. 383 (1999), and St. v. Van Kirk, 2001 MT 184, 306 M 215, 32 P3d 735 (2001).

An audio-video tape of a DUI defendant at the Sheriff's office was objective evidence and not protected by the fifth amendment; therefore, whether he was, or should have been, given a Miranda warning prior to the taping is not an issue. St. v. Thompson, 237 M 384, 773 P2d 722, 46 St. Rep. 887 (1989), affirmed in St. v. Devlin, 1999 MT 90, 294 M 215, 980 P2d 1037, 56 St. Rep. 383 (1999).

Driving Snowmobile Under Influence — Construction With Other Law — Snowmobile Law Penalty Alone Applies: In enacting Title 23, ch. 2, part 6, the Legislature duplicated the motor vehicle code concerns for regulation of snowmobiles upon streets, roads, and highways with respect to registration and licensing, accidents, enforcement, unlawful operation, penalties, and disposition of fines and forfeitures and provided a statutory scheme that supplants the motor vehicle code regarding snowmobiles. The Legislature clearly intended to impose a civil penalty for operating a snowmobile while under the influence in violation of 23-2-632, but the civil label of the penalty is not alone dispositive. Review of the statutory scheme and attendant penalties leads the court to conclude that the penalties in 23-2-642(2) and (3) are punitive in nature and constitute criminal penalties. Therefore, defendant could not be charged under 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10), the law relating to driving a motor vehicle under the influence, because to hold otherwise would allow conflicting criminal penalties. Defendant could only be charged under 23-2-632. (See 2005 amendment defining vehicle.) St. v. Delap, 237 M 346, 772 P2d 1268, 46 St. Rep. 856 (1989).

Compliance With Administrative Rules of Montana — Criminal Actions: Prior to administering the Intoxilyzer 5000 test to the defendant, the calibration checks read 0.060 and 0.062 for a simulator solution that was supposed to have had a known alcohol concentration of 0.10. The Administrative Rules of Montana require a calibration check to fall within a plus or minus one-tenth range of the known alcohol concentration of the reference solution to guarantee the instrument's accuracy prior to administering the test. The Supreme Court held that the evidence showed that the low calibration readings were not indicative of a faulty instrument but only of a gradually diminished alcohol content in the simulator solution. The court further held that the District Court did not err in holding that the test was administered in substantial compliance with the Administrative Rules of Montana. O'Brian v. St., 236 M 227, 770 P2d 507, 46 St. Rep. 316 (1989), followed in St. v. Carter, 285 M 449, 948 P2d 1173, 54 St. Rep. 1235 (1997).

Breathalyzer Test — Defendant's Refusal Made Prior to Miranda Warning Admissible: Under the holding of St. v. Jackson, 206 M 338, 672 P2d 255, 40 St. Rep. 1698 (1983), neither the results of the Breathalyzer test nor a defendant's refusal to submit to the test are communications protected by the fifth amendment of the U.S. Constitution or by Montana's constitutional prohibition against self-incrimination. Thus, a refusal to submit to a Breathalyzer test made prior to Miranda warnings is not subject to suppression because the Miranda warning does not apply to such nontestimonial conduct. Missoula v. Forest, 236 M 129, 769 P2d 699, 46 St. Rep. 237 (1989), followed in Helena v. Barrett, 245 M 35, 798 P2d 544, 47 St. Rep. 1865 (1990).

Field Sobriety Tests Not Mandatory to Establish Probable Cause to Arrest on DUI Charge: Conducting field sobriety tests is not a requisite for determining whether probable cause exists for arrest on a DUI charge under 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10). Probable cause must be based on an assessment of all relevant circumstances, and field sobriety tests are a tool that can assure the officer that the person is under the effect of intoxicating beverages. However, such tests are not mandatory and were not required as evidence in this case because the record was replete with other evidence supporting a DUI offense. Missoula v. Forest, 236 M 129, 769 P2d 699, 46 St. Rep. 237 (1989), followed in St. v. Hafner, 2010 MT 233, 358 Mont. 137, 243 P.3d 435.

Justice of Peace Lacking Jurisdiction to Modify Sentence: Respondent was found guilty of driving under the influence of alcohol, sentenced to a suspended sentence, and required to undergo alcohol treatment. When respondent had completed the treatment, the Justice of the Peace modified the initial sentence to order further treatment and conditions upon respondent's behavior. Under the plain meaning of 61-8-714 (now repealed and content reorganized in Title 61, chapter 8, part 10), the Justice of the Peace lacked jurisdiction to vacate or modify the original sentence. Therefore, the modifying order was properly annulled. Rivera v. Eschler, 235 M 350, 767 P2d 336, 46 St. Rep. 45 (1989).

Admissibility of "HGN" Test: The Supreme Court adopted the position of several out-of-state courts in holding that results of the horizontal gaze nystagmus (HGN) test are admissible in Montana as one method of indicating impairment. St. v. Clark, 234 M 222, 762 P2d 853, 45 St. Rep. 1859 (1988).

Swanson Rule Limited — No Police Duty to Assist in Obtaining Exculpatory Evidence: The rule set out in St. v. Swanson, 222 M 357, 722 P2d 1155, 43 St. Rep. 1329 (1986), applies only when: (1) the defendant has timely claimed the right to a blood test; and (2) the officer does not unreasonably impede the defendant's right to a blood test. Police officers have no affirmative duty to assist in gathering exculpatory evidence nor may they frustrate such efforts on the part of the accused. St. v. Clark, 234 M 222, 762 P2d 853, 45 St. Rep. 1859 (1988).

Facts Following Stop Prompting Probable Cause: A founded suspicion to stop for investigative detention may ripen into probable cause to arrest through the occurrence of facts or incidents after the stop. St. v. Lee, 232 M 105, 754 P2d 512, 45 St. Rep. 903 (1988), citing St. v. Sharp, 217 M 40, 702 P2d 959, 42 St. Rep. 1009 (1985). See also Jess v. St., 255 M 254, 841 P2d 1137, 49 St. Rep. 951 (1992), and St. v. Haldane, 2013 MT 32, 368 Mont. 396, 300 P.3d 657.

Officer's Persistence in Obtaining Blood Sample Pursuant to Search Warrant — Within Scope of Employment: Collins was arrested for DUI but refused to submit to a chemical test. Upon learning that Collins was on probation for a prior DUI and for other non-DUI offenses, the arresting officer obtained a search warrant authorizing extraction of a blood sample. Collins later filed an action alleging assault and battery and violation of his constitutional rights. The District Court found the officer acted outside the scope of his employment and that the blood sample was unauthorized and contrary to 61-8-402(3) (now repealed and content reorganized in Title 61, chapter 8, part 10). The Supreme Court reversed, finding it was clear the officer acted as he did to preserve evidence relating to non-DUI offenses and acted within the scope of his employment. Where law enforcement authorities have probable cause to believe an offense other than an underlying DUI has occurred for which a blood test is required to preserve evidence, a blood sample may be taken pursuant to a search warrant. Collins v. St., 232 M 73, 755 P2d 1373, 45 St. Rep. 878 (1988).

Knowledge of Term of Art Shown Through Testimony — Evidence of Prior Crimes Admissible: When a defendant understands the intricacy of proving a legal term of art and attempts through his own testimony to subvert proof of this element, he has clearly shown knowledge. A defendant who said he was not familiar with the term "under the influence" at the time of arrest and did not believe he was under the influence when arrested, opened the door to evidence of previous DUI convictions, which evidence was then properly admitted under the knowledge exception of Rule 404(b), M.R.Ev. (Title 26, ch. 10). St. v. Kinney, 230 M 281, 750 P2d 436, 45 St. Rep. 205 (1988).

Retroactive Application of Swanson Rule: Following arrest on a charge of driving under the influence of alcohol or drugs, defendant refused to take a breath test requested by the arresting officer and demanded to make a telephone call to an attorney and to obtain a blood test. Police told defendant that if he did not take the breath test, neither the telephone call nor the blood test would be permitted. Police then placed defendant in a holding cell, denying him the call and blood test for 10 hours. Upon conviction, defendant appealed, alleging police refusal denied him due process of law. Applying the Swanson rule, 222 M 357, 722 P2d 1155, 43 St. Rep. 1329 (1986), which established the right to obtain an independent blood test when accused of crime involving intoxication, the court reversed the conviction, ruling that Swanson should be retroactively applied. The 10-hour delay constituted an interference with defendant's right to obtain exculpatory evidence, which is the type of due process denial against which Swanson was designed to protect. St. v. Peterson, 227 M 418, 739 P2d 958, 44 St. Rep. 1198 (1987).

DUI Conviction Partially Based on Anonymous Tips — Substantial Independent Evidence to Support Conviction: The District Court did not err in allowing evidence and argument on the contents of two anonymous phone calls reporting a speeding car when the vehicle description, license number, speed, and direction of travel were corroborated by police officers. These facts constituted reasonable suspicion justifying a stop which "ripened into probable cause to arrest for DUI" upon the officers' observations of the defendant's impaired motor functions, and they indicated substantial evidence independent of the anonymous tips to support the conviction. St. v. Shaffer, 227 M 221, 738 P2d 491, 44 St. Rep. 1029 (1987).

No Authority to Consider Hardship as Mitigating Factor or to Grant Restricted License: Section 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) does not grant authority to the trial judge to consider the issue of hardship as a mitigating factor and does not give the judge authority to grant a restricted or probationary driver's license. In re Blake v. St., 226 M 193, 735 P2d 262, 44 St. Rep. 580 (1987).

Driving Under the Influence as Absolute Liability Offense: Driving under the influence is an absolute liability offense not requiring the proof of a mental state or a jury instruction on the mental state element of the charge. St. v. McDole, 226 M 169, 734 P2d 683, 44 St. Rep. 561 (1987), followed in St. v. West, 252 M 83, 826 P2d 940, 49 St. Rep. 170 (1992).

Officers Unaware of First Refusal to Take Breathalyzer Test — Privileges Reinstated After Ninety Days: The District Court did not err in reinstating after 90 days driving privileges suspended for 1 year, due to a second refusal to take a blood or Breathalyzer test, when officers who were unaware of a first refusal indicated the license would be suspended for only 90 days. In re Orman, 224 M 332, 731 P2d 893, 43 St. Rep. 2228 (1986).

Driving Under Influence in Privately Owned Parking Garage — Definition Applicable: A privately owned parking facility fit the definition of "ways of this state open to the public"; therefore, defendant was properly charged under 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) when arrested for DUI in a hotel parking garage. Billings v. Peete, 224 M 158, 729 P2d 1268, 43 St. Rep. 2097 (1986), followed in Santee v. St., 267 M 304, 883 P2d 829, 51 St. Rep. 1034 (1994), St. v. Schwein, 2000 MT 371, 303 M 450, 16 P3d 373, 57 St. Rep. 1587 (2000), and St. v. Krause, 2021 MT 24, 403 Mont. 105, 480 P.3d 222.

Probable Cause for Warrantless DUI Arrest: After a citizen reported a vehicle being driven recklessly, the undersheriff discovered the vehicle parked at defendant's trailer. Defendant stepped outside his trailer where he admitted driving and agreed upon request to perform field sobriety tests. Upon failing the tests, defendant was arrested and subsequently convicted of driving under the influence of alcohol. Defendant appealed, alleging that evidence had been obtained pursuant to illegal arrest. The Supreme Court affirmed the conviction, stating that the citizen's report, defendant's admissions, and the undersheriff's observations provided the undersheriff with probable cause for the arrest. Defendant had reduced privacy expectation once he stepped outside the trailer. Police may legally seize evidence likely to disappear before a warrant can be obtained. St. v. Ellinger, 223 M 349, 725 P2d 1201, 43 St. Rep. 1778 (1986), followed in Jess v. St., 255 M 254, 841 P2d 1137, 49 St. Rep. 951 (1992), and St. v. Peters, 2011 MT 274, 362 Mont. 389, 264 P.3d 1124. See also St. v. Lee, 232 M 105, 754 P2d 512, 45 St. Rep. 903 (1988), In re Bauer v. St., 275 M 119, 910 P2d 886, 53 St. Rep. 65 (1996), and Muller v. St., 2012 MT 66, 364 Mont. 328, 274 P.3d 737.

"Cline Instruction" Improper Statement of Law Regarding DUI: A jury instruction approved by the Supreme Court in St. v. Cline, 135 M 372, 339 P2d 657 (1959), stating that a violation of 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) occurred if a person drove while impaired by alcohol to the "slightest degree", was held to no longer be a proper statement of the law in light of subsequent legislative amendments which specifically spell out the extent of the influence of intoxicants necessary for conviction. The court held that the instruction must be either revised or abandoned to conform with 61-8-401 and remanded for a new trial. Helena v. Davis, 222 M 492, 723 P2d 224, 43 St. Rep. 1447 (1986).

Careless Handling of Blood Sample — Deprivation of Due Process and Fair Trial: Defendant was taken to a hospital where a blood sample was drawn; then he was transported back to the Sheriff's office where he was booked and his personal property, including the blood sample, was taken from him. The blood sample was left on the counter in the dispatch room rather than being refrigerated and was not given to defendant upon his release. The Supreme Court held that once the sample was taken from defendant, the authorities had a duty to properly care for it. Since this duty was not performed, the careless handling of the sample deprived defendant of his due process right to gather possible exculpatory evidence, precluding a fair trial. St. v. Swanson, 222

M 357, 722 P2d 1155, 43 St. Rep. 1329 (1986), distinguished in St. v. Heth, 230 M 268, 750 P2d 103, 45 St. Rep. 194 (1988), and St. v. Strand, 286 M 122, 951 P2d 552, 54 St. Rep. 1333 (1997).

Right to Independent Blood Test in Crime Involving Intoxication: The state interpreted 61-8-405 (now repealed and content reorganized in Title 61, chapter 8, part 10) to mean that the right to an independent blood test arises only after an accused takes a test designated by the arresting officer. The Supreme Court, citing an Arizona Appellate Court interpretation of an identical statute, found that such an interpretation would result in an unconstitutional restraint on the right of a criminal accused to attempt to obtain independent evidence of his innocence and deprive him of due process of law (Smith v. Cada, 562 P2d 390 (Ariz. App. 1977)). Therefore, it was held that a person accused of a crime involving intoxication has a right to obtain an independent blood test to establish his sobriety regardless of whether he submits to a police designated test under 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10). St. v. Swanson, 222 M 357, 722 P2d 1155, 43 St. Rep. 1329 (1986), distinguished in Walker v. St., 229 M 331, 746 P2d 624, 44 St. Rep. 2008 (1987), on grounds that defendant Walker was subject to civil penalty under 61-8-402, not criminal penalty under 61-8-405 (now repealed and content reorganized in Title 61, chapter 8, part 10).

Incorrect Statutory Reference — Charge Not Invalid: A complaint which used the statutory language of 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) to describe the offense but which listed a citation to 61-8-406 (now repealed and content reorganized in Title 61, chapter 8, part 10) was not made defective by the incorrect reference since the complaint adequately described and gave notice of the offense. The District Court did not err in granting a motion to amend the complaint to correct the statutory reference. St. v. Handy, 221 M 365, 719 P2d 766, 43 St. Rep. 897 (1986).

Appeal of Driver's License Suspension — Limited to Three Issues: The appeal under 61-8-403 (now repealed and content reorganized in Title 61, chapter 8, part 10) of a driver's license suspension under 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10) is limited to the following issues: (1) whether a police officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the ways of this state open to the public while under the influence of alcohol; (2) whether the person was placed under arrest; and (3) whether the person refused to submit to the test. The implied consent law is a civil administrative proceeding separate and distinct from the criminal action on the charge of driving while intoxicated. Each proceeds independently of the other. Therefore, it was reversible error in an appeal of a driver's license suspension for the District Court to hold that petitioner's driver's license should not have been suspended because the initial stop of his vehicle was illegal. In re Blake, 220 M 27, 712 P2d 1338, 43 St. Rep. 143 (1986).

Taking Test After Refusal of Test — No Cure of Refusal: Police officer informed driver three times that officer was requesting a Breathalyzer test. Each time driver asked if he could have an attorney present and was told he did not have that right. Each time driver failed to take the test. He may have been confused by the apparent conflict between his stated Miranda rights and the lack of a right to have an attorney present during the test, and he did not expressly refuse to submit to a test. About twenty minutes later, a doctor took a blood test at driver's request. Driver's attorney gave the results, showing a 0.20 blood alcohol level, to the prosecution. Driver's license was properly seized on his failure to take the requested test, and the later test did not cure driver's failure to take the requested test. It is refusal to take the test the officer requests that triggers automatic license suspension, and no code section allows a withdrawal or cure of a refusal. The driver's conduct and statements were an implied refusal. Any Miranda-warning confusion on driver's part was irrelevant when the officer told him he had no right to have an attorney present during a blood test. Johnson v. Div. of Motor Vehicles, 219 M 310, 711 P2d 815, 42 St. Rep. 2045 (1985), followed in Meyer v. St., 229 M 199, 745 P2d 694, 44 St. Rep. 1900 (1987), Walker v. St., 229 M 331, 746 P2d 624, 44 St. Rep. 2008 (1987), and In re Suspension of Driver's License of Blomeyer v. St., 264 M 414, 871 P2d 1338, 51 St. Rep. 324 (1994).

Justice's Court — No Authority to Vacate Conviction and Order Alteration of Driver's Civil Records: A Justice's Court does not have authority to vacate a conviction or to direct alteration of the records of the Division of Motor Vehicles. Therefore, a Justice's Court could not order the Division to strike a prior DUI conviction and not consider it in revoking the driver's license on a second conviction. The District Court properly granted the Division's motion to quash a Writ of Mandate issued by the District Court staying the actions of the Division. Lancaster v. Dept. of Justice, 218 M 97, 706 P2d 126, 42 St. Rep. 1425 (1985).

Implied Consent Suspension Not Relieved by Guilty Plea: Respondent's license was suspended when he refused to take a breath test. Two weeks after arrest, respondent pleaded guilty to the offense of DUI. The District Court found that the plea of guilty constituted a withdrawal of his refusal to take breath test under the implied consent statute and recommended respondent receive a probationary license. Supreme Court reversed and reinstated suspension of respondent's license. The revocation of a driver's license is a civil sanction, not a criminal penalty, and there is no connection between the DUI statute and the implied consent statute. A violation of both statutes means the suspensions run concurrently. Respondent was not eligible for a probationary license until the 90-day implied consent suspension was completed. In re Petition of Burnham, 217 M 513, 705 P2d 603, 42 St. Rep. 1342 (1985), followed in In re Blake, 220 M 27, 712 P2d 1338, 43 St. Rep. 143 (1986), and Walker v. St., 229 M 331, 746 P2d 624, 44 St. Rep. 2008 (1987).

Test to Be Designated by Arresting Officer: The District Court did not err in refusing to reinstate appellant's driving privileges that were suspended when appellant refused to take a breath test and insisted on a blood test. If an arrested person chooses to take a chemical test other than the test designated by the arresting officer and will not take the designated test, it is a refusal for which his driver's license will be suspended. (See 1993 amendment.) St. v. Christopherson, 217 M 449, 705 P2d 121, 42 St. Rep. 1320 (1985).

No Choice as to Type of Test — Jurisdiction on Appeal: The District Court did not err in denying appellant's motion to reinstate driving privileges. Appellant's insistence on taking a blood test and refusing breath test constitutes a refusal for purposes of suspending driving privileges. Requiring appellant to take a breath test was not a denial of due process. Appellant's notice of appeal that referred only to the motion to dismiss the criminal matter (the charge of DUI) was sufficient notice of appeal of the civil issue (reinstatement of driving privileges) to confer jurisdiction over the civil matter when both issues were in the same District Court order. St. v. Logan, 217 M 446, 705 P2d 123, 42 St. Rep. 1317 (1985), overruled by St. v. Swanson, 222 M 357, 722 P2d 1155, 43 St. Rep. 1329 (1986). See St. v. Peterson, 227 M 503, 741 P2d 392, 44 St. Rep. 1198 (1987).

Intoxicated Operator's Negligence — Sole Proximate Cause of Accident: In a civil action by the guardian of a person incapacitated in a motorcycle accident, the Supreme Court held that substantial credible evidence supported a finding that the operator, who was intoxicated at the time of the accident, was negligent; his negligence was the sole proximate cause of his accident. Although the state's design, construction, signing, and maintenance of the intersection at which the accident occurred were deficient, the plaintiff's own acts of negligence, including driving under the influence of alcohol, caused the accident. Any negligence by the state was not in any degree a proximate cause of the accident. Bartel v. St., 217 M 380, 704 P2d 1067, 42 St. Rep. 1266 (1985).

No Retroactive Application When Amended Statute Applied to Factual Situation Occurring Prior to Amendment: Section 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10) was amended in 1983 to provide for a 1-year revocation of a driver's license upon the holder's refusal to submit to a chemical test within 5 years of a previous refusal. The court held that application of this provision, when the first refusal had occurred prior to the 1983 amendment, was not a retroactive application of law precluded by 1-2-109. Stiffarm v. Furois, 217 M 335, 704 P2d 75, 42 St. Rep. 1227 (1985).

Motion to Suppress Results of Breathalyzer Test Denied — Affirmed on Appeal — No Transcript Forwarded: Charged with driving under the influence of alcohol, defendant moved to suppress results of Breathalyzer test. The Justice of the Peace denied the motion. In a bench trial the Justice Court found defendant guilty. On appeal to the District Court, defendant renewed his suppression motion on a set of stipulated facts. Motion was denied and defendant was convicted by a jury of violating 61-8-406 (now repealed and content reorganized in Title 61, chapter 8, part 10), but was acquitted of charges under 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10). On appeal to the Supreme Court, defendant stated that no trial transcript was being forwarded since the appeal of the denial of the suppression motion could be reviewed upon the face of the stipulated facts. The state included excerpts of the trial transcript that buttressed the lower court's decision on the suppression motion. The Supreme Court approved the state's approach since the suppression motion denial was not final and could be reversed at any time. St. v. Sharp, 217 M 40, 702 P2d 959, 42 St. Rep. 1009 (1985).

Failure to Seize License — Not Fatal to Enforcement of Statute: When, under 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10), an arresting officer fails to seize an individual's driver's license and fails to issue a 72-hour temporary driving permit to a driver who refuses to take the Breathalyzer test, the state may suspend the driver's license. An arresting officer's error in enforcing certain provisions of the statute does not automatically preclude enforcement of the entire statute. (See 1995 amendment.) In re Vinberg, 216 M 29, 699 P2d 91, 42 St. Rep. 615 (1985).

No Due Process Right to Presuspension Hearing: The defendant was arrested for driving under the influence of alcohol. The arresting officer initially seized the defendant's driver's license, then later returned it after the defendant refused to take the Breathalyzer test. The officer failed to issue a 72-hour temporary driving permit. (See 1995 amendment.) The Motor Vehicle Division subsequently suspended the defendant's driver's license. The defendant then petitioned for a hearing on the suspension issue. Although 61-8-402 and 61-8-403 (both now repealed and content reorganized in Title 61, chapter 8, part 10) provide a mechanism for a hearing before suspension, in this case the defendant's license was suspended before he had a hearing. Following the decision in Mackey v. Montryn, 443 US 1, 61 L Ed 2d 321, 99 S Ct 2612 (1979), the Montana Supreme Court held that deprivation of a driver's license does not require a presuspension hearing. Due process is satisfied by a prompt postsuspension hearing. In re Vinberg, 216 M 29, 699 P2d 91, 42 St. Rep. 615 (1985).

Foundation Required for Admissibility of Blood Test Results: Defendant on a charge of driving under the influence of alcohol or drugs in violation of 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) is entitled to the procedural safeguards of the Administrative Rules of Montana. To admit evidence of blood alcohol content and a test report, the state must lay a foundation pursuant to 61-8-404 (now repealed and content reorganized in Title 61, chapter 8, part 10) which incorporates ARM 23.3.931 (now repealed). The laboratory analysis must be done in a laboratory qualified under the rules of the Department of Justice. The report must be prepared in accordance with the rules of the Department. If a blood sample is taken, the person withdrawing the blood must be demonstrably qualified to do so. St. v. McDonald, 215 M 340, 697 P2d 1328, 42 St. Rep. 414 (1985), cited in St. v. Decker, 251 M 339, 828 P2d 1342, 48 St. Rep. 1046 (1991).

No Indication of Weight Trial Court Placed on Inadmissible Evidence — New Trial: In the appeal of a conviction under 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) for driving under the influence of alcohol, the Supreme Court ruled inadmissible blood test results entered into evidence by the trial court. The Supreme Court further ruled that it could not decide whether there was sufficient evidence to convict the defendant without the blood test results because the Supreme Court had no indication of the weight the trial court placed upon the test in its decision. The case was remanded for a new trial. St. v. McDonald, 215 M 340, 697 P2d 1328, 42 St. Rep. 414 (1985).

No Right to Counsel Before Deciding Whether to Submit to Chemical Testing — Blood Alcohol Test Not "Critical Stage" Event, Self-Incriminating Communication, or Denial of Due Process: Defendant was arrested on a charge of driving while under the influence of alcohol. He agreed to a chemical test after being told that he had a right to refuse the test and that he did not have a right to consult an attorney before deciding whether to submit to testing. The District Court granted the defendant's motion to suppress the results of the test on the basis of the 6th and 14th amendments to the U.S. Constitution. The Supreme Court reversed and found that neither the U.S. Constitution nor the Montana Constitution guarantees a defendant the opportunity to seek an attorney's advice before deciding whether to submit to a blood alcohol test, when consent is considered given as a matter of law. A Breathalyzer test is not susceptible to the suggestive manipulation characteristic of the "critical stage" event, the results of the test are not self-incriminating communications, and the statutory procedures for the test meet due process requirements. St. v. Armfield, 214 M 229, 693 P2d 1226, 41 St. Rep. 2430 (1984), followed in Meyer v. St., 229 M 199, 745 P2d 694, 44 St. Rep. 1900 (1987), In re Suspension of Driver's License of Blomeyer v. St., 264 M 414, 871 P2d 1338, 51 St. Rep. 324 (1994), St. v. Van Kirk, 2001 MT 184, 306 M 215, 32 P3d 735 (2001), and St. v. Michaud, 2008 MT 88, 342 M 244, 180 P3d 636 (2008).

Constitutional Requirement Satisfied by Sentence Founded on Prevention and Reformation: The defendant, who has an extensive record of driving under the influence of alcohol, was convicted on three counts of driving under the influence (DUI). She was sentenced to serve time in the county jail. The defendant contends her sentence violates the constitution as it does not provide for her rehabilitation. Article II, sec. 28, Mont. Const., requires that laws for punishment of crime be founded on the principles of prevention and reformation (prior to 1998 amendment). The defendant's sentence furthers the prevention principle through her incarceration, addresses the reformation principle through ordering her to abstain from the use of alcohol, and provides the avoidance of further incarceration as an incentive to reform. Thus, the constitutional requirement is satisfied. St. v. Bruns, 213 M 372, 691 P2d 817, 41 St. Rep. 2178 (1984).

Denial of Good Time and Parole Eligibility for Jail Inmates Not Denial of Equal Protection: The defendant was convicted of three counts of driving under the influence of alcohol (DUI) and sentenced to serve 10 months in the county jail. The sentence may be greater than would be served in the state prison for a more serious offense because county jail inmates are not entitled to a statutory good time allowance or parole eligibility as are prison inmates. The defendant contends that the denial of good time and parole eligibility to county jail inmates is a denial of equal protection. However, the Legislature may discriminate on a rational basis in the treatment of different classes of criminal offenders, as long as the different treatment is not based on any impermissible classification such as race, sex, or religion. The good time and parole eligibility rules have been devised to rationally address the special problems of rehabilitation and management of a large prison population. These benefits are not selectively endowed on the basis of any impermissible classification. Their denial to all DUI offenders, who statutorily are required to serve their time in the county jail, does not violate the Equal Protection Clause. St. v. Bruns, 213 M 372, 691 P2d 817, 41 St. Rep. 2178 (1984).

Impaired Driver Not Entitled to Treatment Instead of Punishment: The defendant, who has an extensive record of driving under the influence of alcohol, was convicted on three counts of driving under the influence (DUI) and sentenced to serve 10 months in the county jail. The defendant contends that 53-24-303 requires she be given treatment for alcoholism rather than criminal punishment. However, that section provides for treatment of persons incapacitated by alcohol. It is not intended to protect those who have committed criminal acts, who are distinguishable from persons whose only fault is an affinity for alcohol. While treatment of alcoholism is desirable, it is not required instead of criminal punishment for a person convicted of DUI. St. v. Bruns, 213 M 372, 691 P2d 817, 41 St. Rep. 2178 (1984).

Jail Sentence for DUI Not Cruel and Unusual Punishment: The defendant, who has an extensive record of driving under the influence of alcohol, was convicted on three counts of driving under the influence (DUI) and sentenced to serve 10 months in the county jail. The defendant contends her sentence is cruel and unusual punishment and a denial of equal protection because it may be greater than would be served in the state prison for a more serious offense since county jail inmates are not entitled to statutory good time allowance or parole eligibility as are prison inmates. However, the sentence falls within the maximum authorized by statute and is not so disproportionate to the crime that it shocks the conscience and outrages the moral sense of the community or of justice. Therefore, the sentence imposed is not cruel and unusual punishment that would render it unconstitutional. St. v. Bruns, 213 M 372, 691 P2d 817, 41 St. Rep. 2178 (1984).

Presumptions Formerly Applicable in Criminal Actions Only: Prior to its amendment, 61-8-401(3) (now repealed and content reorganized in Title 61, chapter 8, part 10) was applicable only to criminal prosecutions for driving while under the influence of alcohol. Thus, the District Court's refusal to incorporate the presumptions of subsection (3) into its jury instructions in a wrongful death action was proper. Scofield v. Estate of Wood, 211 M 59, 683 P2d 1300, 41 St. Rep. 1212 (1984).

Alcohol Abuse Program — Confidential Information — Use in Drunk Driving Prosecution or Arrest: Concerned that Magnuson was intoxicated, Kee attempted to keep him from driving away from the Kee ranch and, when the attempt failed, called the local Alcoholics Anonymous and talked of her fears to House, not knowing that Magnuson was in counseling with House under a federally funded program. Federal law provides that patients' records are confidential and that information received while performing any alcohol abuse prevention function cannot be used to initiate or substantiate any criminal prosecution. House called an undersheriff and told him Magnuson was intoxicated, was driving a Ford Bronco, that Tracy's Bar was his usual hangout, and that the undersheriff should watch out for Magnuson. While driving around, the undersheriff saw Magnuson driving erratically. When stopped, Magnuson smelled of alcohol, appeared drunk, and failed onsite sobriety tests. The information House gave the undersheriff was not tainted with the federal prohibition, and dismissal of a DUI charge on the grounds of taint would be reversed. House was not performing an alcohol abuse prevention function when he received the information from Kee, and thus the information he gave the undersheriff was not federally prohibited confidential records information. In addition, the information the undersheriff received from House was not used to initiate or substantiate any charge; the undersheriff's own observations were. St. v. Magnuson, 210 M 401, 682 P2d 1365, 41 St. Rep. 1121 (1984).

Field Sobriety Test Not a Search: Purdie was stopped as part of routine traffic control as he passed a vehicular accident. The police officer who stopped him smelled alcohol. When Purdie left the accident scene driving erratically, the police officer stopped him again and asked him to get out of the car and perform some field sobriety tests. He showed a lack of coordination during the tests. Purdie argued that the test results were the fruits of an illegal warrantless search. The Supreme Court disagreed. Field sobriety tests are not searches protected by the constitution. St. v. Purdie, 209 M 352, 680 P2d 576, 41 St. Rep. 754 (1984).

Section Not Applicable to Negligent Homicide Prosecutions: Section 61-8-402's (now repealed and content reorganized in Title 61, chapter 8, part 10) prohibition against nonconsensual extractions of blood samples does not apply to prosecutions for negligent homicide under 45-5-104. Therefore, it was proper to admit into evidence at defendant's trial on the charge of negligent homicide the results of a blood test performed without his consent. St. v. Thompson, 207 M 433, 674 P2d 1094, 41 St. Rep. 57 (1984), distinguished in St. v. Stueck, 280 M 38, 929 P2d 829, 53 St. Rep. 1288 (1996).

Refusal to Submit to Blood Alcohol Test Not Self-Incrimination: Use of evidence of a defendant's refusal to submit to a blood alcohol test in a DUI prosecution does not violate the defendant's United States Constitution fifth amendment right against self-incrimination. The language used in Art. II, sec. 25, Mont. Const., is substantially identical to and affords no basis for interpreting it more broadly than its federal counterpart. Montana's constitutional prohibition against self-incrimination is not offended by the admission of defendant's refusal to submit to a Breathalyzer sobriety test. St. v. Jackson, 206 M 338, 672 P2d 255, 40 St. Rep. 1698 (1983).

Motorist Asleep in Barrow Pit: Defendant was arrested when he was found slumped over the steering wheel of his car in the barrow pit with the engine running and the lights on. He was charged with being in actual physical control of a motor vehicle upon the highways while under the influence of alcohol. Defendant contended he was not in actual physical control of the vehicle and was not on the highway. The Supreme Court held that a motorist remains in a position to regulate a vehicle while asleep behind the steering wheel of the vehicle in the barrow pit and that movement of the vehicle is not required. The court also held that under the definition of highway found in 61-1-201 (now repealed — see 61-1-101 for definitions), the barrow pit is part of the way dedicated to public use. St. v. Taylor, 203 M 284, 661 P2d 33, 40 St. Rep. 451 (1983), followed in St. v. Peterson, 236 M 247, 769 P2d 1221, 46 St. Rep. 333 (1989). However, see St. v. Sommers, 2014 MT 315, 377 Mont. 203, 339 P.3d 65, in which the Supreme Court concluded that a defendant who was passed out in an inoperable vehicle at the time of his arrest did not necessarily have actual physical control of the vehicle.

Double Jeopardy: The defendant's involvement in a vehicular accident resulted in his conviction in Justice's Court of driving under the influence of alcohol and his conviction in District Court of aggravated assault. The defendant's constitutional right against being placed in double jeopardy was not violated as each offense requires proof of a fact the other does not. Driving under the influence requires proof of intoxication, while assault does not. Assault requires proof of bodily injury, while driving under the influence does not. St. v. Pierce, 199 M 57, 647 P2d 847, 39 St. Rep. 1205 (1982).

Intensive Care Patient — Incapability of Refusing Found: Investigating highway patrolman saw driver at scene of collision in which two persons in another auto were killed, received a blank stare when he questioned driver, saw driver in intensive care in hospital 2 hours later, with his eyes closed, lying on a bed with i.v.s being administered, and was told by a doctor that he could not speak to driver. Even though driver was conscious and apparently coherent, his physical condition was serious enough to render him incapable of refusing to consent to a blood test, and results of test made after the doctor authorized a nurse to draw blood from driver and give it to the patrolman were properly admitted in negligent homicide trial. St. v. Morgan, 198 M 391, 646 P2d 1177, 39 St. Rep. 1072 (1982).

Prosecutorial Comment on Presumption of Intoxication: In negligent homicide trial of defendant involved in auto collision while he was driving after drinking, a forensic scientist testified that blood taken from defendant 2 hours after the accident had a 0.17 blood alcohol content and that at that level one's driving ability would be obviously impaired and speech, hearing, balance, judgment, reaction time, and other motor skills would be affected. The trial judge ruled that because the charge was negligent homicide he would not instruct the jury on the statutory presumption that one with a 0.10 blood alcohol content level (see 2003 amendment) is under the influence. Prosecutor twice disregarded the ruling, stating in the cross-examination of a witness and in his closing argument that 0.10 is the legal level of intoxication. Prosecutor used an improper and unacceptable tactic, but defendant was not prejudiced as there was already sufficient evidence as to what a 0.17 blood alcohol content level meant. St. v. Morgan, 198 M 391, 646 P2d 1177, 39 St. Rep. 1072 (1982).

"In a Condition Rendering Him Incapable of Refusal": Rumley appealed his conviction for negligent homicide in connection with a motor vehicle accident. A sample of Rumley's blood was taken after the accident, and he filed a motion to suppress the results of a blood alcohol test. There was testimony that Rumley was confused and disoriented after the accident. Rumley suffered a fractured jaw, a broken foot, and numerous other injuries. In light of this evidence of incapacity, the District Court properly denied the motion to suppress, and the officer at the hospital, unable to receive a coherent response from Rumley, properly requested that a blood sample be taken. St. v. Rumley, 194 M 506, 634 P2d 446, 38 St. Rep. 1351A (1981).

Compliance With Administrative Rules: Although a criminal defendant is entitled to the safeguards of an administrative rule setting out blood testing procedures and implementing the statute providing for blood alcohol tests of drivers arrested for driving while under the influence before the presumption of being under the influence can arise from a certain blood alcohol level, it does not follow that the same procedural safeguards must be applied when blood test results are used in a civil proceeding, especially when the statutory presumption used in criminal cases is not relied upon. Therefore, where testimony in civil action established that witnesses for parties introducing test results followed good practice in the testing field, it was not error to fail, on a foundation for admitting test results, to prove compliance with the administrative rule. McAlpine v. Midland Elec. Co., 194 M 154, 634 P2d 1166, 38 St. Rep. 1577 (1981).

Intoxication — City Traffic Code Not in Conflict With State Statute: Where the defendant was found to have violated a city traffic code proscribing a certain level of intoxication "within this municipality", the District Court did not err in holding that the traffic code was not in conflict with a state statute proscribing the same conduct "upon the highways of this state". While the city has chosen to use language that does not precisely mirror the language of the corresponding state statute, any conflict between the ordinance and 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) is resolved when it is read in pari materia with 61-12-101, authorizing the city to regulate persons driving motor vehicles under the influence of alcohol. Billings v. Weatherwax, 193 M 163, 630 P2d 1216, 38 St. Rep. 1034 (1981).

Availability of Writ of Prohibition — Drunk Driving: Plaintiff was cited for driving while intoxicated. The Justice's Court did not hear the case although a trial has been scheduled. The defendant then sought a Writ of Prohibition against the Justice's Court to stop further proceedings in the prosecution of the D.W.I. charge. On appeal, the sole issue was whether the District Court judgment for the defendant Justice's Court, denying relief to the plaintiff and granting the motion to quash the Writ of Prohibition, was justified under the state of the record. The Supreme Court held that a Writ of Prohibition was not the appropriate remedy in the case. A Writ of Prohibition is available only when there is not a plain, speedy, and adequate remedy in the ordinary course of law. It is not issued as a matter of right but only in the exercise of sound judicial discretion when there is no other remedy. In this case, the plaintiff did not show why he could not assert his jurisdictional defense in the Justice's Court directly or by Writ of Certiorari in the District Court. State ex rel. Morse v. Justice Court, 192 M 95, 626 P2d 836, 38 St. Rep. 542 (1981). See also State ex rel. Aho v. Justice Court, 131 M 585, 313 P2d 542 (1959).

No Supervisory Control Power in District Court: Relator was arrested for driving while intoxicated. He refused to take a blood alcohol test and subsequently applied to the District Court for a Writ of Supervisory Control on the issue of the admissibility of evidence of the refusal, arguing that the nonlawyer Justice of the Peace was ill-equipped to handle the constitutional aspects of his case. Relator appealed from the District Court's ruling against him after hearing the Writ on the merits. The Supreme Court found no power in the District Courts to exercise supervisory control and stated that a Writ of Supervisory Control was not to be used as a means to circumvent the appeal process. Only in the most extenuating circumstances will a Writ be granted. State ex rel. Ward v. Schmall, 190 M 1, 617 P2d 140, 37 St. Rep. 1720 (1980).

District Court Jurisdiction Over D.W.I. Charge: Jurisdiction of the District Court over criminal matters depends on the maximum sentence that can be imposed for committing the crime. When the maximum sentence increases to give the District Court jurisdiction because of repeated D.W.I. offenses, proof of prior offenses does not become an element that must be proved at trial and can be proved at any time until sentencing. Thus, failure to introduce evidence of prior convictions at trial does not deprive the District Court of jurisdiction. St. v. Campbell, 189 M 107, 615 P2d 190, 37 St. Rep. 1337 (1980).

Properly Taken Blood Test: Applying the standard in St. v. Mangels, 166 M 190, 531 P2d 1313 (1975), that "... incapacity be determined on the basis of the best evidence which is reasonably available to the officer ...", the Supreme Court found that defendant was in a condition rendering him incapable of refusing to consent to the taking of a blood sample. Thus, it was unnecessary for him to be placed under arrest prior to the blood sample taking. This result was held to be consistent with the implied consent statute and the fourth amendment protection against unlawful searches. The latter issue was addressed in St. v. Deshner, 158 M 188, 489 P2d 1290 (1971). St. v. Campbell, 189 M 107, 615 P2d 190, 37 St. Rep. 1337 (1980).

Severance of Habitual Traffic Offender Charge Properly Denied: The District Court did not err in refusing to sever a habitual traffic offender charge from a D.W.I. charge and a negligent homicide charge. None of the three basic kinds of prejudice outlined in St. v. Orsborn, 170 M 480, 555 P2d 509 (1976), was found to outweigh the judicial economy resulting from a joint trial. This balancing process is left to the sound discretion of the trial judge, which was not abused. St. v. Campbell, 189 M 107, 615 P2d 190, 37 St. Rep. 1337 (1980), followed in St. v. Enright, 2000 MT 372, 303 M 457, 16 P3d 366, 57 St. Rep. 1590 (2000).

Written Notice to County Attorney: The phrase "it shall be its duty to set the matter for hearing upon 30 days' written notice to the county attorney" requires the District Court to give 30 days' written notice to the County Attorney before the hearing is held, rather than requiring a hearing to be set within 30 days of the filing of a petition. St. v. Johnson, 182 M 24, 594 P2d 333, 36 St. Rep. 893 (1979).

Blood Alcohol Test Found Voluntary: The admissibility of the results of the blood alcohol test in this case is not based on implied consent to the withdrawal of defendant's blood under 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10). Instead, it is bottomed on the actual consent of the defendant which he admits. The issue turns on whether defendant's consent was voluntary or was coerced by psychological means. The court held that there was substantial evidence that defendant's consent was free and voluntary and that the lower court committed no error in denying defendant's motion to suppress the results of the blood alcohol test. St. v. Kirkaldie, 179 M 283, 587 P2d 1298, 35 St. Rep. 1532 (1978).

Chain of Possession: Blood alcohol test results were admissible in evidence even though there was a discrepancy as to the blood sample seal number, there was a 3-day delay between taking of the sample and its arrival in Helena for analysis, and the sample was left on a desk in the Sheriff's office overnight and no testimony was given as to the overnight period. St. v. Nelson, 178 M 280, 583 P2d 435, 35 St. Rep. 1337 (1978).

District Court Jurisdiction: An information charging the defendant with the crime of driving while under the influence of intoxicating liquor (3rd offense) was sufficient to establish jurisdiction in the District Court even though 61-8-714 (now repealed and content reorganized in Title 61, chapter 8, part 10) uses the term "third or subsequent conviction" rather than "third offense" in providing for a potential penalty sufficiently harsh to invoke District Court jurisdiction. The defendant's prior convictions did not have to be proved at the trial in order to establish District Court jurisdiction. St. v. Nelson, 178 M 280, 583 P2d 435, 35 St. Rep. 1337 (1978).

Audio-Video Taping: The procedure of audio-video taping defendant arrested for driving while intoxicated was not violative of due process requirements, did not constitute an unreasonable search and seizure, and was held to be objective evidence outside the privilege against self-incrimination. St. v. Finley, 173 M 162, 566 P2d 1119 (1977).

Jurisdiction of District Court: While it is generally true that Justices' Courts have jurisdiction over offenses described in 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10), since third conviction may lead to sentence of up to 1 year, prosecution of third offense can be in District Court. St. v. Heine, 169 M 25, 544 P2d 1212 (1976).

Sufficiency of Evidence: Facts of accident scene, testimony of highway patrolman and ambulance attendant, admissions of defendant and daughter, and blood alcohol test constituted substantial and sufficient evidence to support conviction. St. v. Longacre, 168 M 311, 542 P2d 1221, 32 St. Rep. 1133 (1975), followed in St. v. Peterson, 236 M 247, 769 P2d 1221, 46 St. Rep. 333 (1989).

Arrest Required — Capability of Refusal: An arrest is required before a blood sample may be taken pursuant to 61-8-402 (now repealed and content reorganized in Title 61, chapter 8, part 10). When the record did not disclose that the defendant was incapable of refusal, a motion to suppress for failure to obtain the consent of the defendant was properly granted. St. v. Mangels, 166 M 190, 531 P2d 1313, 32 St. Rep. 177 (1975).

Search of Automobile: After a person has been removed from a car and arrested for driving while under the influence, search of the person's automobile is reasonable. St. v. Turner, 164 M 371, 523 P2d 1386 (1974).

Double Jeopardy: Conviction under 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) did not bar subsequent prosecution for involuntary manslaughter arising out of the same incident because proof of involuntary manslaughter requires proof of an additional fact. St. v. McDonald, 158 M 307, 491 P2d 711 (1971).

Improperly Conducted Test: Although it was improper to admit results of blood test showing that deceased's blood contained 0.15% alcohol by weight where testimony disclosed that tube used to collect blood sample had previously contained formalin and formaldehyde which could have resulted in higher than actual alcohol content result, error was not reversible in view of other testimony concerning deceased's state of intoxication. Benner v. B. F. Goodrich Co., 150 M 97, 430 P2d 648 (1967).

Jurisdiction of Justice of Peace: Since the driving of a vehicle on a highway while under the influence of intoxicating liquor is a misdemeanor under 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10), it falls within the jurisdiction of a Justice of the Peace under 3-10-303. Wilson v. Brodie, 148 M 235, 419 P2d 306 (1966).

Municipal Ordinance: A city ordinance which penalized drunken driving within the city in the same terms as 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) was valid and enforceable even though the Legislature had acted on the subject. Bozeman v. Ramsey, 139 M 148, 362 P2d 206 (1961).

Effect of Amendments: The defendant was not prejudiced by being charged under the original version of 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10), even though the 1957 amendments may have been applicable to his case, since the definition of the crime was not changed by the amendments. The 1957 amendments did not evince a legislative intent to repeal the 1955 enactment, rather they were a continuation of the enactment so that a violator could still be prosecuted thereunder. St. v. Cline, 135 M 372, 339 P2d 657 (1959).

Urine Test: Even though a urine alcohol test was not specifically provided for by 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) prior to 1961, the results thereof could be admitted in evidence, and together with the testimony of an expert witness interpreting the results could go to the jury. St. v. Cline, 135 M 372, 339 P2d 657 (1959).

Actual Physical Control: By defining the words "actual", "physical", and "control" as they are used in their ordinary meanings, it was held that if a person has existing or present bodily restraint, directing influence, domination, or regulation of an automobile while under the influence of intoxicant he violates the statute. St. v. Ruona, 133 M 243, 321 P2d 615 (1958), followed in In re Turner v. St., 244 M 151, 795 P2d 982, 47 St. Rep. 1576 (1990). The definition was clarified in St. v. Robison, 281 M 64, 931 P2d 706, 54 St. Rep. 61 (1997). In St. v. Sommers, 2014 MT 315, 377 Mont. 203, 339 P.3d 65, the Supreme Court outlined a variety of factors appropriate for a jury to consider in determining whether a defendant had actual physical control of a vehicle.

Constitutionality: The term "actual physical control" as used in 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) is not so vague, ambiguous, and uncertain as to render the statute void. St. v. Ruona, 133 M 243, 321 P2d 615 (1958). In St. v. Sommers, 2014 MT 315, 377 Mont. 203, 339 P.3d 65, the Supreme Court outlined a variety of factors appropriate for a jury to consider in determining whether a defendant had actual physical control of a vehicle.

Movement Unnecessary: Movement of the vehicle is unnecessary to charge an offense under this provision. St. v. Ruona, 133 M 243, 321 P2d 615 (1958). In St. v. Sommers, 2014 MT 315, 377 Mont. 203, 339 P.3d 65, the Supreme Court outlined a variety of factors appropriate for a jury to consider in determining whether a defendant had actual physical control of a vehicle.

Blood Test: An information charged the driver of a death car with manslaughter. A blood test taken from defendant soon after his arrival at the hospital pursuant to his written consent was transmitted to State Board of Health (functions now transferred to Department of Public Health and Human Services), analyzed, and showed an alcohol concentration of 0.13%. The result was admissible in evidence, as was the testimony of chemist of State Board of Health that the percentage of alcohol concentration was high enough to indicate that defendant was under the influence of intoxicating liquor at the time his car hit garage. St. v. Haley, 132 M 366, 318 P2d 1084 (1957).

Driving Under the Influence—Malum in Se: Under section 1746.2, R.C.M. 1935 (now repealed), it was a misdemeanor to drive a motor vehicle while under the influence of an intoxicating liquor. Driving while under the influence of an intoxicating liquor was an act "malum in se" and was embraced within section 1059, R.C.M. 1935 (now repealed), defining the offense of involuntary manslaughter in the commission of an unlawful act. St. v. Darchuck, 117 M 15, 156 P2d 173 (1945).

Opinion Evidence: Opinion evidence of witnesses for the state who had observed defendant, to the effect that he was under the influence of liquor while driving an automobile, was properly admitted. This, together with evidence that an accident occurred at the time he was so driving, showed the circumstances under which the offense was committed. St. v. Schnell, 107 M 579, 88 P2d 19 (1939).

Part Attorney General's Opinions

OPINIONS PRIOR TO 2021 GENERAL REVISION

City Court Jurisdiction of Third Offense DUI: Prior to 1987, a city court had jurisdiction of a third offense DUI only if that offense was adopted as a city ordinance and prosecuted as such by the city attorney. The 1987 amendment to 3-11-102 enabled third offense DUI to be prosecuted in city court as a violation of state law as well. 42 A.G. Op. 34 (1987).

City Attorney — No Authority to Prosecute Third DUI or Per Se Violations Without Ordinance: A city attorney has no authority to prosecute third offense DUI or per se violations under 61-8-401 and 61-8-406 (both now repealed and content reorganized in Title 61, chapter 8, part 10). However, a city may adopt an ordinance pursuant to 61-8-401(5) that would empower the city attorney to prosecute third offense DUI or per se violations under such a city ordinance. 42 A.G. Op. 12 (1987).

Jurisdiction of City Court: A City Court may issue an arrest warrant in the name of the state of Montana when a violation of 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) is charged. 41 A.G. Op. 95 (1986).

Time in Which Convictions Must Occur: Only those prior convictions which have occurred within 5 years of a current D.W.I. offense may be counted in determining whether the current prosecution is for a third offense. 38 A.G. Op. 63 (1980), overruled in St. v. Beckman, 284 M 459, 944 P2d 756 (1997), and St. v. Cooney, 284 M 500, 945 P2d 891 (1997). See also St. v. Thibert, 1998 MT 207, 290 M 408, 965 P2d 251, 55 St. Rep. 883 (1998).

Elements of D.W.I.: In order to sustain a conviction for driving under the influence of alcohol, the State must prove actual physical control of a motor vehicle while under the influence of alcohol. Section 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) does not require proof that a person is under the influence of alcohol to a degree which renders him incapable of safely driving a motor vehicle. 37 A.G. Op. 120 (1978).

Disclosure of Investigation Reports: County Attorneys, law enforcement personnel, and Coroners must release reports of accident investigations, autopsies, and related tests to persons specifically listed in statutes. Public access to the results of investigations not covered by statute is left to the discretion of the public official following the guidelines set forth in this opinion and 37 A.G. Op. 107 (1978). 37 A.G. Op. 112 (1978).

Part Law Review Articles

Rohlfs v. Klemenhagen, LLC: Is It Time to Revise Montana's Dram Shop Act?, Sharkey, 72 Mont. L. Rev. 127 (2011).

Face to Face: The Crime Lab Exception of Rule 803(8) of the Montana Rules of Evidence and the Montana Confrontation Clause, Weilhammer, 60 Mont. L. Rev. 167 (1999).

Determining Blood/Alcohol Concentration: Two Methods of Analysis, Thompson, 46 Mont. L. Rev. 364 (1985).

State v. Armfield: No Right to Counsel Under Montana's Implied Consent Statute, Wheeler, 46 Mont. L. Rev. 348 (1985).

Constitutional Challenges to Montana's Drunk Driving Laws, O'Sullivan, 46 Mont. L. Rev. 329 (1985).

Montana's Legislative Attempt to Deal With the Drinking Driver: The 1983 DUI Statutes, Rohan, 46 Mont. L. Rev. 309 (1985).

61-8-1002. Driving under influence.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 723, L. 2023. Amendment effective May 22, 2023.

Case Notes

No Constitutional Violation From Legislature's Imposition of Statutory THC Limit for Impaired Driving: The defendant was charged with vehicular homicide while under the influence after colliding with a motorcyclist while making a left turn. A blood draw after the accident showed a concentration of 19 nanograms per milliliter of THC in the defendant's bloodstream. Under 61-8-411 (now repealed), the THC level for impairment was 5 nanograms per milliliter. Five nanograms per milliliter is also the THC limitation contained in 61-8-1002, which was enacted in 2021. In District Court, the defendant argued that the 5 nanogram per milliliter limit on THC levels unconstitutionally violated his guaranteed right to due process of law. On appeal to the Supreme Court, he added a claim that the provision also violated his equal protection rights. The defendant presented evidence regarding the difficulty of measuring impairment due to marijuana use based on factors like an individual's metabolism and how frequently the individual uses the drug. The District Court rejected the defendant's due process arguments, and the Supreme Court affirmed that the Legislature's policy of setting a limit on THC levels in a driver's bloodstream met the requirements of substantive due process by being rationally related to the government's compelling public safety interest in preventing impaired driving. The Supreme Court also noted that the limitation on THC levels did not create any classifications and did not violate equal protection. St. v. Jensen, 2020 MT 309, 402 Mont. 231, 477 P.3d 335.

61-8-1008. Penalty for driving under influence — fourth and subsequent offenses.

Compiler's Comments

2021 Amendment — Coordination: Section 2, Ch. 473, L. 2021, a coordination section, in (2) in first sentence after the first "laws of another state" deleted "who was previously placed in a residential alcohol treatment program under subsection (1)(a)(i), whether or not the person successfully completed the program", in first sentence at end substituted "and the person was previously sentenced under subsection (1)(a)(i) or (1)(a)(ii), the person shall be punished by a fine of not less than $5,000 or more than $10,000, and by imprisonment in the state prison for a term of not more than 10 years" for "shall be punished by being sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or being fined an amount of not less than $5,000 or more than $10,000, or both", and inserted second sentence concerning ineligibility for a deferred sentence; inserted (3) concerning a person previously convicted and sentenced under subsection (2); inserted (4) concerning a person who has previously been convicted and sentenced under subsection (3) on one or more occasions; and made minor changes in style.

61-8-1010. Driving under influence — ignition interlock device — 24/7 sobriety and drug monitoring program.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 151, L. 2023. Amendment effective April 19, 2023.

61-8-1016. Implied consent — blood or breath tests for alcohol, blood or oral fluid for drugs, or testing for both — alcohol and drugs using recognized methods for each — refusal to submit to test — administrative license suspension.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 151, L. 2023. Amendment effective April 19, 2023.

Case Notes

Burden to Prove Suspension of Driver's License Improper Not Met — Case Decided on Pre-2021 Statute. Turner v. St., 2023 MT 88, 412 Mont. 284, 529 P.3d 863.

61-8-1018. Evidence admissible — conditions of admissibility.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 151, L. 2023. Amendment effective April 19, 2023.

61-8-1019. Administration of tests.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 151, L. 2023. Amendment effective April 19, 2023.

61-8-1027. Unlawful possession of marijuana, marijuana products, or marijuana paraphernalia in motor vehicle on highway.

Compiler's Comments

Effective Date: Section 116, Ch. 576, L. 2021, provided that this section is effective January 1, 2022.

Codification Change: Section 112, Ch. 576, L. 2021, provided that this section was to be codified as an integral part of Title 61, chapter 8, part 4. Chapter 498, L. 2021, repealed that part and enacted provisions of a similar nature in Title 61, chapter 8, part 10. In order to preserve the intent of Ch. 576, the Code Commissioner has codified this section in Title 61, chapter 8, part 10.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

61-8-1032. Mandatory suspension of license following certain implied consent action.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 151, L. 2023. Amendment effective April 19, 2023.

2021 Amendment — Coordination: Section 2, Ch. 373, L. 2021, a coordination section, in (3)(b) after "driver's blood" inserted "or breath".

CHAPTER 9
VEHICLE EQUIPMENT

Part 1
General Provisions

Part Attorney General's Opinions

Parochial School Vehicles and Head Start Vehicles as School Buses: Parochial school vehicles and Head Start vehicles used to transport children to and from school are school buses within the meaning of 61-1-116 (now repealed — see 61-8-102 for definitions), and as such they must comply with the provisions of Title 61 relative to school bus equipment, operation, and inspection. 39 A.G. Op. 63 (1982).

61-9-101. Application — exceptions.

Compiler's Comments

2019 Amendment: Chapter 299 in (4)(c) near end substituted "an interstate highway" for "part of the federal-aid interstate system". Amendment effective October 1, 2019.

2017 Amendment: Chapter 434 in (1) after "except" inserted "as provided in subsection (4) or"; inserted (4) pertaining to application of the chapter to operating and equipping motorcycles or quadricycles when on a paved highway; and made minor changes in style. Amendment effective May 22, 2017.

1997 Amendment: Chapter 431 inserted (3) providing that federal law controls when state law or regulation conflict with federal provisions; and made minor changes in style.

61-9-102. Uniformity of interpretation — definitions.

Compiler's Comments

2005 Amendment: Chapter 542 inserted (2) defining authorized emergency vehicle, emergency service vehicle, explosives, farm tractor, police vehicle, and right-of-way; and made minor changes in style. Amendment effective January 1, 2006.

61-9-103. Provisions uniform throughout state — power of local authorities.

Compiler's Comments

2005 Amendment: Chapter 542 inserted (2) defining local authorities; and made minor changes in style. Amendment effective January 1, 2006.

61-9-104. Required obedience to traffic laws.

Compiler's Comments

1991 Amendment: Near middle, after "misdemeanor", inserted "punishable as provided in 61-9-511".

Case Notes

Missing Vehicle Headlight Constituting Objective and Particularized Suspicion of Wrongdoing to Justify Investigative Stop: Officers conducting surveillance of a house where drug activities were suspected noticed that a vehicle leaving the area was missing a headlight. The officers believed that the driver, Farabee, may have just completed a drug transaction at the house and pulled over the vehicle, based on the fact that the vehicle appeared to be in violation of this section, which requires two working headlights. Upon receiving permission and searching the vehicle, the officers discovered marijuana and paraphernalia. On appeal, Farabee argued that the officer who stopped him did not have a particularized suspicion that Farabee was committing an offense because the stop occurred at 1:30 p.m., in broad daylight, and Farabee's headlights were turned off, so the officers could only speculate that the headlight was inoperable. The Supreme Court disagreed, holding that the officers' suspicions were particularized. From the objective and particularized data that the vehicle appeared to be missing a headlight, the officers made the reasonable inference that the headlight was inoperable. Particularized suspicion does not require certainty on the part of an officer; thus, the District Court's conclusion that Farabee was engaged in wrongdoing that justified an investigative stop was not clearly erroneous. St. v. Farabee, 2000 MT 265, 302 M 29, 22 P3d 175, 57 St. Rep. 1106 (2000), distinguishing Grinde v. St., 249 M 77, 813 P2d 473 (1991), and St. v. Reynolds, 272 M 46, 899 P2d 540 (1995).

Traffic Stop of Illegally Operated Vehicle Not Considered Pretext for Search of Vehicle for Narcotics: Officers conducting surveillance of a house where drug activities were suspected noticed that a vehicle leaving the area was missing a headlight. The officers believed that the driver, Farabee, may have just completed a drug transaction at the house and pulled over the vehicle, based on the fact that the vehicle appeared to be in violation of this section, which requires two working headlights. Upon receiving permission and searching the vehicle, the officers discovered marijuana and paraphernalia. On appeal, Farabee argued that the evidence should be suppressed because the officers used the equipment violation as a pretext to stop him and investigate their hunch, in violation of Art. II, sec. 10 and 11, Mont. Const. The Supreme Court disagreed, applying the rationale in Whren v. U.S., 517 US 806 (1996), that an officer's motive for a traffic stop does not render an objectively reasonable stop invalid. The constitutional reasonableness of a traffic stop does not depend on the subjective motivations of the individual officers involved. In this case, based on the objective and particularized data that the vehicle appeared to be missing a headlight, the officers made the reasonable inference that the headlight was inoperable, so the totality of the circumstances justified the investigative stop. Farabee's motion to suppress was properly denied. St. v. Farabee, 2000 MT 265, 302 M 29, 22 P3d 175, 57 St. Rep. 1106 (2000), distinguishing St. v. Lahr, 172 M 32, 560 P2d 527 (1977).

61-9-105. Obedience to peace officers, highway patrol officers, and public safety workers.

Compiler's Comments

1997 Amendment: Chapter 431 in first sentence substituted "peace officer" for "police officer" and after "patrol officer" inserted "or public safety worker"; inserted second sentence defining public safety worker; and made minor changes in style.

1989 Amendment: Changed "patrolman" to "patrol officer".

61-9-109. Driving vehicle in unsafe condition prohibited — applicability of chapter.

Compiler's Comments

2019 Amendment: Chapter 299 in (6)(c) near end substituted "an interstate highway" for "part of the federal-aid interstate system". Amendment effective October 1, 2019.

2017 Amendment: Chapter 434 inserted (6) pertaining to application of the chapter to operating motorcycles or quadricycles when on a paved highway. Amendment effective May 22, 2017.

1997 Amendment: Chapter 431 in (1), after "drive or", deleted "move or for the owner to cause or knowingly permit" and after "driven" deleted "or moved"; inserted (5) requiring maintenance of required lamps and equipment; and made minor changes in style.

Case Notes

Military Personnel: Noncommissioned officer acting under direct order to engage in emergency snow removal project related to threatened flood and who was operating a tilt-deck trailer upon a public highway without proper lights was immune from prosecution under this section. St., Fergus County, Lewistown v. Christopher, 345 F. Supp. 60 (D.C. Mont. 1972).

Part 2
Lighting Equipment

61-9-201. When lighted lamps are required.

Case Notes

Parked and Disabled Vehicle Not Proximate Cause of Accident — Verdict Supported by Substantial Evidence: Where the defendant parked his stalled pickup truck at the side of a frontage road and turned on the floodlights of the haygrinder he was pulling before leaving the truck to seek help, but the truck was nevertheless struck by the plaintiff's vehicle, the Supreme Court found that the jury verdict for the defendant was supported by substantial evidence. The record showed that the plaintiff had seen the defendant's lights from one-half mile away but failed to avoid the accident. The jury found defendant 0% negligent and plaintiff 100% negligent; it was entitled to conclude, as it did, that negligence on the part of the defendant was not the proximate cause of the accident. Griffel v. Faust, 205 M 372, 668 P2d 247, 40 St. Rep. 1370 (1983).

Driving Before Dusk: An automobile dealer's service manager went to plaintiff's ranch to pick up his car. While driving the car back to the dealer's garage for repairs, the service manager drove the car into a creek extensively damaging the car. The service manager had 1½ hours in which to drive the 50 miles back to town before dusk. The absence of one beam of one headlight did not establish either contributory negligence or assumption of risk on the part of plaintiff, so as to preclude his recovery of damages. Win Del Ranches, Inc. v. Rolfe & Wood, Inc., 137 M 44, 350 P2d 581 (1960).

Causal Relationship to Accident: Violation of section 32-1132, R.C.M. 1947 (now repealed), requiring headlights on automobiles between 1 hour after sunset and 1 hour before sunrise, constituted negligence. In considering whether or not such negligence contributed to an accident or barred recovery, courts must take into consideration the conditions existing at the time and place of the accident. Simpson v. Miller, 97 M 328, 34 P2d 528 (1934).

Unfavorable Atmospheric Conditions: In an action for damages for personal injuries sustained in a collision after dark between plaintiff's automobile, the lights of which were burning, and that of the defendant without lights, the negligence alleged was defendant's driving without lights when a reasonably prudent man would have had them burning. An instruction that if the accident occurred before the hour fixed by section 32-1132, R.C.M. 1947 (now repealed), for having lights, the absence of lights could not be deemed negligence, was properly refused. The hour fixed by statute was immaterial if the conditions were such as to require the display of lights. Knott v. Pepper, 74 M 236, 239 P 1037 (1925).

61-9-203. Headlamps on motor vehicles.

Compiler's Comments

1997 Amendment: Chapter 431 inserted third sentence in (2) permitting installation of modulating high beam on motorcycle but prohibiting owner from modulating during periods of required headlamp use; in (3) substituted "less than 24 inches" for "less than 22 inches"; inserted (4) prohibiting person from operating motor vehicle on highway with substance obscuring headlamps or diminishing visibility; inserted (5) permitting operation of motor vehicle with headlamps composed of treated or tinted substance if equipment complied with federal law at time of manufacture; and made minor changes in style.

1985 Amendment: Throughout section after "motorcycle", inserted "quadricycle" (effective January 1, 1986).

1983 Amendment: In (2), inserted second sentence prohibiting a motorcycle from being operated without headlamps upon a highway or street from one-half hour after sunset to one-half hour before sunrise or if persons and vehicles are not clearly discernible at 500 feet.

Case Notes

Permission to Search Car of Passenger's Parents — Warrantless Search Proper: The defendant was pulled over while driving a vehicle owned by his passenger's parents. The officer pulled the car over because it had a headlight out. The officer arrested the defendant for driving without a license and put him in the back of the police vehicle. The passenger then agreed to allow the officers to search his parent's car. After drugs and drug paraphernalia were found, the defendant was charged with drug-related crimes. The District Court subsequently denied the defendant's motion to exclude evidence obtained from the stop and warrantless search of the vehicle. The defendant eventually entered into an agreement to plead guilty, reserving the right to appeal. On appeal, the Supreme Court affirmed, finding that the District Court made sufficient findings of fact and conclusions of law, that the arresting officers had particularized suspicion, and that the passenger had common authority to grant consent for the search of the vehicle. St. v. Baty, 2017 MT 89, 387 Mont. 252, 393 P.3d 187.

61-9-204. Taillamps.

Compiler's Comments

2009 Amendment: Chapter 413 in (1) in second sentence substituted "with at least one mounted on each side of the rear of the vehicle" for "mounted on the rear". Amendment effective April 28, 2009.

2005 Amendment: Chapter 458 in (6) substituted (a) and (b) allowing the use of and defining blue dot taillights for former language that read: "This section does not prohibit a vehicle manufactured prior to 1960 from being equipped with a taillamp that includes within the red cover a center lens that is blue in color"; and made minor changes in style. Amendment effective April 28, 2005.

1997 Amendment: Chapter 431 in first and second sentences in (1), before "taillamp", inserted "properly functioning" and at end of second sentence, after "rear", substituted "that emit a red light plainly visible from a distance of 1,000 feet to the rear of the vehicle" for "which when lighted as herein required, shall comply with the provisions of this section"; at end of (3), after "headlamps", deleted "or auxiliary driving lamps"; inserted (5) prohibiting operation of motor vehicle with substance covering, obscuring, or diminishing visibility of taillamps; inserted (6) permitting operation of motor vehicle with taillamps with blue center lens on vehicle manufactured prior to 1960; and made minor changes in style.

1987 Amendment: In (1), in last sentence, inserted "motorcycle, motor-driven cycle, quadricycle, or".

1983 Amendment: Inserted (4) prohibiting motorcycles from being operated without tail lights on a highway or street from one-half hour after sunset to one-half hour before sunrise or when persons and vehicles are not clearly discernible at 500 feet.

Case Notes

Sufficient Particularized Suspicion to Justify Vehicle Traffic Stop for Illegal Taillight Covers — Motion to Suppress Properly Denied: A law officer initiated a traffic stop because the defendant's vehicle taillight covers appeared to obscure and diminish the visibility of the vehicle's taillights in potential violation of 61-9-204(5). During the traffic stop, the officer observed signs that the defendant was impaired by drugs and observed in plain view in the passenger door pocket a plastic bag with possible drug residue. The defendant was later charged with multiple drug and weapon violations and moved to suppress related to the evidence obtained after the traffic stop. On appeal, the Supreme Court affirmed, holding that the officer's testimony demonstrated that his stop of the defendant was supported by a particularized suspicion that the taillight covers violated 61-9-204(5). St. v. Massey, 2016 MT 316, 385 Mont. 460, 385 P.3d 544.

Statutory Violations a Jury Question: The plaintiff sued the defendants for injuries he suffered when he drove his truck into the rear of their car. The plaintiff alleged that the defendants violated various motor vehicle statutes and the duty of care owed to the plaintiff, but the Supreme Court found that these were questions of fact for the jury and substantial evidence supported the findings for the defendants. Substantial and sufficient evidence also was found to support the jury's determination that the defendants' actions did not proximately cause the plaintiff's injury. Gunnels v. Hoyt, 194 M 265, 633 P2d 1187, 38 St. Rep. 1492 (1981).

County Road Grader: Statute requiring that tail lamps be not more than 72 inches from ground did not apply to county road grader on which two red tail lamps had been mounted 10 feet from the ground. A motorist suing the county for injury sustained when his auto struck the road grader from rear was not entitled to an instruction that the statute had been violated and that the county was therefore negligent as matter of law. Bernhard v. Lincoln County, 150 M 557, 437 P2d 377 (1968).

61-9-205. New motor vehicles to be equipped with reflectors.

Compiler's Comments

1985 Amendment: In (1) after "motorcycle", inserted "quadricycle" (effective January 1, 1986).

61-9-206. Stop lamps — when required.

Compiler's Comments

1997 Amendment: Chapter 431 near beginning of (1), after "vehicle", deleted "including any motorcycle, quadricycle, or motor-driven cycle" and after "equipped" substituted "with at least two properly functioning stop lamps" for "with at least one stop lamp meeting the requirements of 61-9-218" and inserted second sentence requiring vehicle manufactured before 1956 and all cycles to be equipped with at least one functioning stop lamp; inserted (2) describing the required visibility of rear stop lamps; inserted (3) prohibiting stop lamp from projecting glaring light; and made minor changes in style.

1985 Amendment: After "motorcycle", inserted "quadricycle" (effective January 1, 1986).

Case Notes

Driving Without Properly Functioning Brake Lights Constitutes Sufficient Particularized Suspicion for Investigative Stop: Operating a motor vehicle that is not equipped with functional brake lights is a misdemeanor offense, and thus deputy's decision to pull over defendant's vehicle was supported by a particularized suspicion. St. v. Faber, 2008 MT 368, 346 M 449, 197 P3d 941 (2008).

61-9-207. Application of succeeding sections.

Compiler's Comments

1997 Amendment: Chapter 431 at beginning substituted "Sections 61-9-208 through 61-9-229" for "Those sections of this chapter which follow immediately, including 61-9-208 through 61-9-211 and 61-9-213 relating to clearance and marker lamps, reflectors, and stoplights" and after "enumerated" substituted "in those sections" for "namely passenger buses, trucks, truck tractors, and certain trailers, semitrailers, and pole trailers, respectively"; at end of second sentence substituted "1,000 feet" for "500 feet"; and made minor changes in style.

61-9-208. Additional equipment required on certain vehicles.

Compiler's Comments

1997 Amendment: Chapter 431 at end of (1) and (4)(d), after "side", deleted "and one stoplight"; deleted (3)(b) that required a truck tractor to have "on the rear, one stoplight"; inserted second sentence in (6)(a) requiring safety chain or cable to be connected to towing vehicle hitch or frame; in (6)(b), after "reflectors", inserted "and two stoplights" and deleted second sentence that read: "If any trailer or semitrailer is so loaded or is of such dimensions as to obscure the stoplight on the towing vehicle, then such vehicle shall also be equipped with one stoplight"; and made minor changes in style.

61-9-209. Color of clearance lamps, side marker lamps, reflectors, and backup lamps.

Compiler's Comments

1997 Amendment: Chapter 431 in (3), after "reflectors", inserted "and stoplights"; substituted exception language in (3)(a) regarding rear signal devices defined in 61-9-218 for "the stoplight or other signal device which may be red, amber, or yellow"; at end of (3)(c), after "white", deleted "amber, or red"; and made minor changes in style.

61-9-213. Lamp or flag on projecting load.

Compiler's Comments

1997 Amendment: Chapter 431 in first sentence in (1) inserted "the following lamps and reflectors"; at beginning of (1)(a) substituted "red lamp" for "red light or lantern" and after "least" substituted "500 feet to the sides and 1,000 feet to the rear and located to indicate maximum overhang" for "500 feet to the sides and rear"; inserted (1)(b) requiring display of red reflector visible from the rear with low beams from 100 feet to 600 feet; at beginning of first sentence of (2) substituted "red lights and reflectors" for "red light or lantern" and in second sentence, after "12 inches square", substituted "marking the extremities of the load, at each point where a lamp or reflector would otherwise be required by this section" for "and so hung that the entire area is visible to the driver of a vehicle approaching from the rear"; and made minor changes in style.

61-9-214. Lamps on parked vehicles.

Case Notes

Violation as Negligence: A violation of section 32-1132, R.C.M. 1947 (now repealed), constituted negligence, and a traveler on the highway was entitled to assume that a truck standing upon the highway at night would display lights both upon the front and rear thereof. Ashley v. Safeway Stores, Inc., 100 M 312, 47 P2d 53 (1935).

61-9-215. Lamps on farm tractors, farm equipment, and implements of husbandry.

Compiler's Comments

1997 Amendment: Chapter 431 in (2), after "system", inserted "or an implement of husbandry being towed by a motor vehicle"; in (2)(a), (2)(b), (3), and (4)(b), after "indicate", deleted "as nearly as practicable"; in first sentence in (3), after "requirements", substituted "61-9-220 or 61-9-222" for "61-9-222 or 61-9-220 respectively, or as an alternative, 61-9-224"; at end of (4)(a), after "61-9-222", deleted "or 61-9-224"; in second sentence of (4)(c), after "lamps must", deleted "be installed or capable of being positioned so as to"; and made minor changes in style.

61-9-216. Lamps on other vehicles and equipment.

Compiler's Comments

1997 Amendment: Chapter 431 in two places in first sentence and one place in second sentence increased required distance for visibility from "500 feet" to "1,000 feet"; in first sentence, near beginning substituted "61-9-109(4)" for "61-9-109(3)"; and made minor changes in style.

Case Notes

Headlamp Illumination Requirements Erroneously Stated — Harmless Error: A jury instruction regarding the applicable statutory provisions governing the degree of illumination required of headlamps of motor vehicles, although erroneously stated by a judge, constituted only harmless error since the outcome of the verdict against defendant was not affected and since the statute that was erroneously involved actually helped defendant. Lauman v. Lee, 192 M 84, 626 P2d 830, 38 St. Rep. 499 (1981).

61-9-217. Spot lamps, fog lamps, and auxiliary lamps.

Compiler's Comments

1997 Amendment: Chapter 431 in first sentence in (2), after "lamps", inserted "that provide a low, wide-angle light pattern to increase short-range visibility", near beginning of second sentence, after "not", deleted "less than 12 inches", and inserted fourth sentence prohibiting substitution of fog lamp for headlamps; deleted former (3) that read: "(3) Any motor vehicle may be equipped with not to exceed two auxiliary passing lamps mounted on the front at a height not less than 24 inches or more than 42 inches above the level surface upon which the vehicle stands. The provisions of 61-9-220 shall apply to any combination of headlamps and auxiliary passing lamps"; in first sentence in (3), after "lamps", inserted "that produce a long-range, pencil-shaped light pattern and that are used to supplement the upper beams of headlamps" and inserted fourth sentence prohibiting use of auxiliary driving lamps as substitute for required headlamps; inserted (4) prohibiting use of auxiliary off-road lamps mounted above 42 inches; and made minor changes in style.

Case Notes

Parked and Disabled Vehicle Not Proximate Cause of Accident — Verdict Supported by Substantial Evidence: Where the defendant parked his stalled pickup truck at the side of a frontage road and turned on the floodlights of the haygrinder he was pulling before leaving the truck to seek help, but the truck was nevertheless struck by the plaintiff's vehicle, the Supreme Court found that the jury verdict for the defendant was supported by substantial evidence. The record showed that the plaintiff had seen the defendant's lights from one-half mile away but failed to avoid the accident. The jury found defendant 0% negligent and plaintiff 100% negligent; it was entitled to conclude, as it did, that negligence on the part of the defendant was not the proximate cause of the accident. Griffel v. Faust, 205 M 372, 668 P2d 247, 40 St. Rep. 1370 (1983).

61-9-218. Signal lamps and signal devices — when required.

Compiler's Comments

1997 Amendment: Chapter 431 deleted former (1) that read: "(1) Any motor vehicle may be equipped and when required under this chapter shall be equipped with a stop lamp or lamps on the rear of the vehicle which shall display a red or amber light, or any shade of color between red and amber, visible from a distance of not less than 100 feet to the rear in normal sunlight, and which shall be actuated upon application of the service (foot) brake, and which may but need not be incorporated with one or more other rear lamps"; in first sentence in (1), after "vehicle", inserted "or combination of vehicles" and after "with" inserted "signal", at beginning of third and fifth sentences inserted exception clause, and in third and fifth sentences substituted "not less than 300 feet" for "not less than 100 feet"; inserted (2) requiring signal lamps on certain vehicles; inserted (3) setting visibility distance for signal lamps on vehicles manufactured before 1964 and providing an exemption from signal lamp requirement for vehicles manufactured before 1953; and made minor changes in style.

61-9-220. Multiple-beam road-lighting equipment.

Compiler's Comments

2011 Amendment: Chapter 209 in first sentence and in subsection (3) after "motor-driven cycle" inserted "or low-speed electric vehicle"; and made minor changes in style. Amendment effective January 1, 2012.

1997 Amendment: Chapter 431 in first sentence of introductory clause, after "driving lamps", deleted "or the auxiliary passing lamp"; in first sentence in (3) substituted "manufactured after January 1, 1956" for "registered in this state after January 1, 1956"; and made minor changes in style.

1985 Amendment: In lead-in and in (3) inserted "quadricycle(s)" after "motorcycle(s)" (effective January 1, 1986).

Case Notes

Instructions on Statutes Preferred: In a wrongful death action arising out of a head-on collision, plaintiff offered instructions quoting federal and state laws which concern the dimming of headlights at night on the highway. The court gave the instruction concerning the federal regulations but refused to give the instruction quoting 61-9-220 and 61-9-221. Plaintiff pointed out that a violation of the federal regulation may be considered by the jury in determining negligence, while a violation of a Montana statute is negligence as a matter of law. The Supreme Court said it would have been preferable for the District Court to instruct on Montana statutes as they pertain to the use of high and low beams of headlights at night. The court also found that the instruction given was consistent with the statutes, so the jury was not misled. Lindberg v. Leatham Bros., Inc., 215 M 11, 693 P2d 1234, 42 St. Rep. 137 (1985).

Headlamp Illumination Requirements Erroneously Stated — Harmless Error: A jury instruction regarding the applicable statutory provisions governing the degree of illumination required of headlamps of motor vehicles, although erroneously stated by a judge, constituted only harmless error since the outcome of the verdict against defendant was not affected and since the statute that was erroneously involved actually helped defendant. Lauman v. Lee, 192 M 84, 626 P2d 830, 38 St. Rep. 499 (1981).

61-9-221. Use of multiple-beam road-lighting equipment.

Compiler's Comments

1997 Amendment: Chapter 431 near beginning in (2) substituted "within 500 feet" for "within 300 feet"; and made minor changes in style.

Case Notes

Lights Flicked at Oncoming Police Car With High Beams On — No Particularized Suspicion to Stop Vehicle — Case Remanded to Grant Motion to Suppress Evidence Obtained at Stop. St. v. Gardner, 2022 MT 3, 407 Mont. 72, 501 P.3d 925.

Instructions on Statutes Preferred: In a wrongful death action arising out of a head-on collision, plaintiff offered instructions quoting federal and state laws which concern the dimming of headlights at night on the highway. The court gave the instruction concerning the federal regulations but refused to give the instruction quoting 61-9-220 and 61-9-221. Plaintiff pointed out that a violation of the federal regulation may be considered by the jury in determining negligence, while a violation of a Montana statute is negligence as a matter of law. The Supreme Court said it would have been preferable for the District Court to instruct on Montana statutes as they pertain to the use of high and low beams of headlights at night. The court also found that the instruction given was consistent with the statutes, so the jury was not misled. Lindberg v. Leatham Bros., Inc., 215 M 11, 693 P2d 1234, 42 St. Rep. 137 (1985).

61-9-225. Number of driving lamps required or permitted.

Compiler's Comments

1985 Amendment: In (1) after "motorcycle", inserted "quadricycle" (effective January 1, 1986).

61-9-226. Special restrictions on lamps — definition.

Compiler's Comments

2005 Amendment: Chapter 542 inserted (5) defining school bus. Amendment effective January 1, 2006.

1997 Amendment: Chapter 431 at beginning of (3), after "Flashing", inserted "blinking, sequential, rotating, or pulsating" and after "except" substituted "vehicles that are authorized by this chapter to contain the lights" for "an authorized emergency vehicle, school bus, snow removal equipment"; inserted (4) prohibiting flashing or rotating decorative license plate or undercarriage lighting on vehicle if not included when manufactured; and made minor changes in style.

Administrative Rules

ARM 23.3.401 Emergency vehicles.

61-9-227. Blinker-type or revolving red light on certain private vehicles — use — identification card.

Compiler's Comments

1997 Amendment: Chapter 431 in first sentence in (1), after "red light", inserted "or both" and at end of second sentence inserted "while responding to but not upon returning from a fire or other emergency"; in (2), after "carry", substituted "on the vehicle" for "attached to a convenient location on the vehicle to which the red light is attached"; and made minor changes in style.

1981 Amendment: In (1) substituted language permitting authorized firefighters and search and rescue and volunteer emergency medical personnel to use a blinker-type or revolving red light on the front or top of privately-owned vehicles while on emergency duty for former text that read: "Firefighters, when authorized by the chief of their respective department, shall be permitted to use a blinker-type red light on the front of their privately owned motor vehicles with the word "FIRE" inscribed on the lens, which lens shall not exceed 5½ inches in diameter. This light shall be used on emergency duty only."; inserted "or search and rescue or volunteer emergency medical personnel" after "Any firefighter" at the beginning of (2); substituted "person" for "chief of his department" before "authorizing" near the end of (2).

Administrative Rules

ARM 23.3.401 Emergency vehicles.

61-9-228. Standards for lights on snow-removal equipment.

Compiler's Comments

2021 Amendment: Chapter 201 in (1) near middle of second sentence after "the use of flashing lights" inserted "and all colored lights, except blue lights" and deleted last sentence that read: "The standards and specifications for lamps referred to in this section shall correlate with and so far as possible conform with those approved by the American association of state highway officials"; in (2) after "any highway unless the lamps" substituted "on the equipment" for "thereon"; and made minor changes in style. Amendment effective April 16, 2021.

Part 3
Brakes

61-9-301. Brake equipment required.

Case Notes

Double Jeopardy: Conviction under section 32-21-143, R.C.M. 1947 (now repealed), did not bar prosecution for involuntary manslaughter arising out of the same accident in subsequent action, because proof of the latter requires proof of an additional fact. St. v. McDonald, 158 M 307, 491 P2d 711 (1971).

61-9-302. Service brakes — adequacy.

Compiler's Comments

2005 Amendment: Chapter 542 at beginning substituted "motor vehicle, trailer, semitrailer, and pole trailer" for "vehicle"; after "special mobile equipment" deleted "as defined in 61-1-104"; and made minor changes in style. Amendment effective January 1, 2006.

61-9-303. Parking brakes — adequacy.

Compiler's Comments

1985 Amendment: Near beginning after "motorcycles", inserted "quadricycles" (effective January 1, 1986).

61-9-304. Brakes required on all wheels — exceptions.

Compiler's Comments

2005 Amendment: Chapter 542 in (4) at end deleted "as defined in 61-1-104". Amendment effective January 1, 2006.

1993 Amendment: Chapter 276 in (3), after "front wheels", substituted "if the vehicle was manufactured before July 25, 1980" for "except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes"; and made minor changes in style.

1985 Amendment: In (5) after "brakes", substituted "However, a quadricycle" for "provided that such" and after "motor-driven cycle" changed "is" to "must be" (effective January 1, 1986).

61-9-308. Two means of emergency brake operation.

Compiler's Comments

1997 Amendment: Chapter 431 at beginning of (1) and (2) deleted "After January 1, 1966"; and made minor changes in style.

61-9-309. Single control to operate all brakes.

Compiler's Comments

1997 Amendment: Chapter 431 at beginning deleted "After January 1, 1966"; and made minor changes in style.

1985 Amendment: Near beginning after "motorcycles", inserted "quadricycles" (effective January 1, 1986).

61-9-310. Reservoir capacity and check valve.

Compiler's Comments

1997 Amendment: Chapter 431 at beginning of (2) deleted "After January 1, 1966"; and made minor changes in style.

61-9-311. Warning devices.

Compiler's Comments

1997 Amendment: Chapter 431 at end of first sentence in (1), after "below", substituted "60 pounds per square inch" for "50% of the air compressor governor cutout pressure"; at beginning of (2) deleted "After January 1, 1966"; and made minor changes in style.

61-9-312. Performance ability of brakes.

Compiler's Comments

2001 Amendment: Chapter 574 in (3) substituted "61-3-411(2)(a)" for "61-3-411(3)(a)". Amendment effective July 1, 2001.

1997 Amendment: Chapter 431 substituted text outlining required braking distances for various vehicles for former text (see 1997 Session Law for former text and table).

1985 Amendment: Inserted "quadricycles" in classification B-1 (effective January 1, 1986).

61-9-313. Maintenance of brakes.

Case Notes

Proximate Cause — Jury Question: The court properly refused to grant a directed verdict against defendant for failing to keep its brakes from freezing and in failing to display brake lights and keep them free from snow because whether such violations proximately caused the death of plaintiff's husband was a question of fact for the jury to determine. However, the erroneous jury instruction on the sudden emergency doctrine necessitated a new trial on the issue of liability. Kudrna v. Comet Corp., 175 M 29, 572 P2d 183 (1977).

61-9-314. Hydraulic brake fluid.

Compiler's Comments

1985 Amendment: In (3) substituted reference to department of justice for reference to division of motor vehicles.

61-9-315. Brakes on motor-driven cycles.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in three places.

61-9-321. Engine compression brake device — use.

Compiler's Comments

2009 Amendment: Chapter 146 inserted (3) through (5) requiring that department peace officers work with law enforcement to enforce muffler standards, providing for notice of a deficiency, and providing a penalty. Amendment effective October 1, 2009.

2005 Amendment: Chapter 542 in (1) near beginning after "commercial motor vehicle" deleted "as defined in 61-1-134"; and made minor changes in style. Amendment effective January 1, 2006.

Effective Date: This section is effective October 1, 2003.

Part 4
Miscellaneous Regulations

61-9-401. Horns, security alarms, and warning devices.

Compiler's Comments

1997 Amendment: Chapter 431 in (3), after "equipped", substituted "with a security alarm" for "with a theft alarm" and at end, after "signal", inserted "while the vehicle is in motion"; and made minor changes in style.

1985 Amendment: In (4) substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.3.401 Emergency vehicles.

61-9-402. Audible and visual signals on police, emergency vehicles, and on-scene command vehicles — immunity.

Compiler's Comments

2023 Amendment — Code Commissioner Correction: See 2023 Session Law for amendment made by sec. 10, Ch. 567, L. 2023. Amendment effective October 1, 2023.

In (5) the Code Commissioner substituted "61-8-387 and 61-8-388" for "61-8-388 and 61-8-389" to correct an erroneous reference.

2021 Amendment: Chapter 246 in (3)(a) in first sentence in two places before "two red and two amber" inserted "at least"; inserted (3)(b) providing for additional red flashing lights; in (3)(c) at beginning inserted "The specifications for"; and made minor changes in style. Amendment effective April 19, 2021.

2007 Amendments — Composite Section: Chapter 449 in (6) near beginning after "state or of a" substituted "governmental fire agency organized under Title 7, chapter 33" for "fire department"; and made minor changes in style. Amendment effective June 1, 2007.

Chapter 520 in (5) near middle after "signal or light" substituted "as provided in 61-8-346 and" for "only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation". Amendment effective October 1, 2007.

2005 Amendment: Chapter 542 in (7) in third sentence after "as defined in" substituted "61-8-102" for "61-1-118"; and in (8) at beginning substituted "police vehicle" for "police car". Amendment effective January 1, 2006.

2003 Amendments — Composite Section: Chapter 352 in (1) deleted former second sentence that read: "The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation"; in (5) near beginning after "upon the" substituted "operators" for "drivers"; in (10) near middle after "provided in" substituted "61-8-301(4)" for "61-8-315" and at end substituted "61-8-715" for "61-8-715(2)"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 379 at end of (10) substituted "61-8-715(1)" for "61-8-715(2)". Amendment effective October 1, 2003.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1999 Amendment: Chapter 520 at end of (4)(a) inserted "subject to the provisions of 61-8-209 and 61-8-303"; inserted (4)(b) concerning limit on liability; inserted (8) concerning reckless endangerment of a highway worker; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 431 at beginning of third sentence in (5) inserted exception clause; in first sentence in (6), after "equipped", substituted "with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof" for "with a portable signal lamp that is green in color and capable of magnetic attachment to the exterior roof" and inserted third sentence restricting display of green lights, lenses, or globes to on-scene command and control vehicle; inserted (7) restricting use of flashing or alternating headlamp or backup lights to police or emergency vehicle; and made minor changes in style.

1987 Amendment: Near beginning of (6), after "required in", deleted "subsections (1), (2), and (3) of".

1985 Amendments: Chapter 361 inserted (7) permitting a police car and authorized emergency vehicle to be equipped with a portable green magnetic signal lamp designating it as the on-scene command and control vehicle in an emergency or disaster.

Chapter 503 in (4) substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.3.401 Emergency vehicles.

Case Notes

Public Duty Doctrine Inapplicable Based on Special Relationship Between Pursuing Officers and Pedestrian: Plaintiff was injured when defendant, a runaway juvenile probationer, hit plaintiff with a stolen vehicle while being pursued by law enforcement officers during a high-speed chase through Harlowton. Plaintiff sued the county and the County Sheriff for damages related to the crash. The District Court granted summary judgment to the county and the County Sheriff, holding that the public duty doctrine applied and that neither plaintiff's nor the juvenile's actions were foreseeable. On appeal, the Supreme Court disagreed. The public duty doctrine generally shields law enforcement officers from negligence claims, but an exception arises when there is a special relationship between an officer and an individual that gives rise to a special duty that is more particular than the duty owed to the public at large. Applying the circumstances set out in Nelson v. Driscoll, 1999 MT 193, 295 M 363, 983 P2d 972 (1999), the court noted that the first exception to the public trust doctrine is whether a statute intended to protect a specific class of persons, of which plaintiff is a member, creates a special relationship. Under 61-8-107, a duty of care is created on the part of the drivers of emergency vehicles to drive with due regard for the safety of all persons. Based on this special relationship, the court held that the public duty doctrine did not apply. As a bystander on a public road, plaintiff was within the scope of risk and was thus a foreseeable plaintiff. Last, the court considered the issue of causation. Plaintiff claimed negligence on the part of the county and the officers, but plaintiff was actually injured by the actions of the juvenile, so the question was whether the juvenile's actions were intervening superseding acts that broke the chain of causation as a matter of law. Whether plaintiff's injuries were caused primarily by the juvenile or by the officers was an issue that reasonable minds might disagree upon and therefore appropriately adjudicated by a jury, so the Supreme Court reversed the summary judgment and remanded for trial on the issues of breach of duty, causation, including intervening superseding cause, and damages. Eklund v. Trost, 2006 MT 333, 335 M 112, 151 P3d 870 (2006), applying Stenberg v. Neel, 188 M 333, 613 P2d 1007 (1980), and Day v. St., 980 P2d 1171 (Utah 1999).

Failure to Use Siren — Reckless Driving Conviction Affirmed: Appellant contended he was not guilty of reckless driving because the officer who pursued him at speeds of up to 110 miles an hour did not use his siren. The argument was without merit. This section simply requires that a police car be equipped with a siren. The mere presence of the siren on the car does not mandate its use; therefore, use of a siren is not an essential element of the offense of reckless driving. St. v. Keil, 231 M 187, 751 P2d 680, 45 St. Rep. 532 (1988).

Duty to Drive With "Due Regard": In interpreting 61-8-107, the test for "due regard" is whether, with the privileges and immunities provided by that statute, the driver of an emergency vehicle acted in a reasonably careful manner. Stenberg v. Neel, 188 M 333, 613 P2d 1007, 37 St. Rep. 1170 (1980).

Attorney General's Opinions

Yield of Right-of-Way Required Upon Approach of Emergency Vehicle Using Only Visual Signals: Upon the immediate approach of an authorized emergency vehicle making use of only visual signals pursuant to this section, other drivers shall yield the right-of-way or stop. They may then proceed past the signal with caution and at a reasonable and proper speed. 43 A.G. Op. 11 (1989).

61-9-403. Mufflers — prevention of noise.

Case Notes

Excessive Smoke and Revving — Particularized Suspicion Justifying Stop: A police officer's observation of excessive smoke being emitted from a vehicle supported a reasonable suspicion that the defendant was operating a vehicle in noncompliance with 61-9-403. This observation, together with another officer's earlier observation of the vehicle excessively revving its engine in a parking garage, provided sufficient particularized suspicion to stop the defendant. Helena v. Brown, 2017 MT 248, 389 Mont. 63, 403 P.3d 341.

61-9-404. Mirrors.

Compiler's Comments

1997 Amendment: Chapter 431 at beginning deleted "On and after January 1, 1960"; and made minor changes in style.

61-9-405. Windshields required, exception — unobstructed and equipped with wipers — window tinting and sunscreening — restrictions — exemptions — definitions.

Compiler's Comments

2005 Amendment: Chapter 542 deleted former (5)(a) that read: "(a) "Camper" means a structure designed to be mounted in the cargo area of a truck or attached to an incomplete vehicle for the purpose of providing shelter for persons"; deleted former (5)(e) that read: "(e) "Motor home" means a multipurpose passenger vehicle that provides living accommodations"; and made minor changes in style. Amendment effective January 1, 2006.

1997 Amendment: Chapter 431 inserted (1) requiring that certain vehicles be equipped with front windshield and providing exceptions to requirements; in (2)(a), after "poster", inserted "substance", and after "vehicle" substituted "that materially obstructs, obscures, or impairs" for "that obstructs"; inserted (2)(b) prohibiting driving of vehicle with shattered or defective windshield that materially impairs driver's view; and made minor changes in style.

1995 Amendment: Chapter 133 in (4)(b), at end, substituted "24%" for "35%"; in (4)(c), near middle, substituted "14%" for "20%"; inserted (6) relating to vehicles with tinted windows to which additional sunscreening material has been applied; in (7), near beginning before "vehicle", inserted "multipurpose"; and made minor changes in style.

1991 Amendment: In (2), at end after "windshield", deleted "which device shall be so constructed as to be controlled or operated by the driver of the vehicle"; inserted (4) concerning prohibiting windshield sunscreening material below the AS-1 line or red, yellow, or amber material above the AS-1 line, establishing acceptable level of luminous reflectance and light transmission for side and rear window sunscreening material, and requiring windows of camper, motor home, pickup cover, slide-in camper, or other vehicle to meet standards for safety glazing material specified by federal law; inserted (5) defining camper, glass-plastic glazing material, light transmission, luminous reflectance, motor home, multipurpose vehicle, pickup cover, slide-in camper, and sunscreening material; inserted (6) concerning exception for certain vehicles and vehicles with waiver certificate affixed or registered in state on October 1, 1991; and made minor changes in style.

Case Notes

Obscured Vision — Negligence: A driver who permits the windshield of his vehicle to become so covered with dust and dirt so as to obscure his vision so that he cannot readily perceive the condition of the road is negligent. However, the mere fact that dust is observable on the windshield is not evidence of negligence on the part of the driver. West v. Wilson, 90 M 522, 4 P2d 469 (1931).

61-9-406. Restrictions as to tire equipment — particular tires, chains, or traction devices — definitions.

Compiler's Comments

2015 Amendment: Chapter 93 in (6) at beginning substituted "The department of transportation may determine" for "If the department of transportation determines", substituted "traction devices" for "traction equipment", and after "pneumatic rubber tires" deleted former remainder of introductory clause and (a) through (c) that read: "the department may establish the following recommendations or requirements with respect to the use of the equipment for all vehicles using the highway:

(a) chains or other approved traction devices recommended for driver wheels;

(b) chains or other approved traction devices required for driver wheels; or

(c) chains required for driver wheels"; deleted former (7) that read: "(7) Equipment required by subsection (6)(b) or (6)(c) must conform to rules established by the department of justice"; in (7) in first sentence substituted "traction device requirement" for "traction equipment recommendation or requirement", in second sentence substituted "traction devices" for "traction equipment", and in last sentence before "requirements" deleted "recommendations or"; and made minor changes in style. Amendment effective March 18, 2015.

2007 Amendment: Chapter 114 in (3) at beginning of third sentence inserted exception clause; inserted (4) concerning use of retractable devices on tires; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 542 in (4) near beginning after "local authorities" inserted "as defined in 61-8-102"; in (7) in second sentence near end after "axle" inserted "as defined in 61-10-104"; inserted (8) defining metal tire and pneumatic tire; and made minor changes in style. Amendment effective January 1, 2006.

1991 Amendments: Chapter 448 in (3), near middle of second sentence after "tire tread", inserted language concerning all season mud and snow tires; inserted (5) concerning Department establishing recommendations or requirements for use of chains or other traction devices; inserted (6) concerning conformance of equipment to Department of Justice rules; inserted (7) concerning Department maintaining signs indicating tire or traction device recommended or required on roadway; and made minor changes in style.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 448, L. 1991, provided: "A statement of intent is necessary for this bill because it amends 61-9-406 by adding subsection (5) that allows the department of highways to recommend or require the use of chains or other approved traction devices under certain conditions in conformance with rules authorized in subsection (6) to be established by the department of justice. It is the intent of the legislature that the recommendations or requirements of the department of highways or the rules established by the department of justice not require the installation of chains or approved traction devices on the driver wheels of more than one axle of a vehicle."

61-9-407. Fenders, splash aprons, or flaps required on certain vehicles — dimension and location.

Compiler's Comments

2005 Amendment: Chapter 458 in (3) near beginning after "rod" substituted "as defined in 61-1-101" for "vehicles"; deleted former (4) that read: "(4) For purposes of 61-9-430 and this section, "street rod" means a vehicle manufactured before 1949 that has been modified in body style or design"; and made minor changes in style. Amendment effective April 28, 2005.

1997 Amendment: Chapter 431 in first sentence near beginning in (1), after "vehicle", substituted "except a motorcycle, quadricycle, motor-driven cycle, or farm tractor" for "any recreational van, truck, bus, truck tractor, trailer, pole trailer, or semitrailer"; in (1)(c) and (1)(d), after "weight", inserted "or rating"; inserted (3) regarding application of section; inserted (4) defining street rod; and made minor changes in style.

1991 Amendment: In (1), in first sentence, inserted "recreational vehicle, van"; and made minor changes in style.

1987 Amendment: In (1), in first sentence, inserted "pole trailer" in list of vehicles.

61-9-408. Safety glazing material in motor vehicles — definition.

Compiler's Comments

1997 Amendment: Chapter 431 at beginning deleted "On or after January 1, 1956"; and made minor changes in style.

61-9-409. Seatbelts required in vehicles manufactured after 1964.

Compiler's Comments

1997 Amendment: Chapter 431 in (1) substituted "after January 1, 1965, and on or before January 1, 1968, must be" for "commencing with the 1966 models unless such vehicle is"; inserted (2) requiring designated seating position in vehicle manufactured after 1968 to be equipped with regulation safety belt system; inserted (3) requiring required safety belts to remain installed and working; and made minor changes in style.

Case Notes

Seatbelt Rendered Inoperable — Negligence Per Se: Pursuant to 61-9-409, there is a duty to maintain a motor vehicle in a way that seatbelts are available for the driver's and passenger's use in the event they choose to use them. Breach of that duty constitutes negligence per se. Nothing in 61-13-106, in this section, or in Kopischke v. First Cont. Corp., 187 M 471, 610 P2d 668 (1980), precludes evidence that seatbelts were unavailable and thus not in use at the time of an accident. Nor does the fact that the unavailability of a seatbelt was not the cause of the original accident relieve the duty under 61-9-409 to provide seatbelts. Califato v. Gerke, 258 M 68, 852 P2d 121, 50 St. Rep. 428 (1993).

No Seatbelt Defense: In the light of the history and the numerous legislative problems that must be considered to effectively extend the seatbelt rule of law, the well-reasoned position of the Washington court in Amend v. Bell, 89 Wash. 2d 124, 570 P2d 138 (1977), produces the better rule. To adopt a seatbelt defense when the Legislature has failed to do so would be ill-advised. The trial court properly refused to allow defendant to introduce evidence that plaintiff's failure to use a seatbelt contributed to her injuries. (See 61-13-106.) Kopischke v. First Cont. Corp., 187 M 471, 610 P2d 668, 37 St. Rep. 437 (1980), distinguished in Califato v. Gerke, 258 M 68, 852 P2d 121, 50 St. Rep. 428 (1993), in cases in which a person breaches the duty to make seatbelts available by rendering the seatbelt inoperable.

61-9-412. Display of warning devices when vehicle disabled — definition.

Compiler's Comments

2005 Amendment: Chapter 542 inserted (7) defining flammable liquid; and made minor changes in style. Amendment effective January 1, 2006.

Case Notes

Instruction on Duty to Display Traffic Warning Flags — Important Theory of Case: Plaintiff objected to giving of an instruction regarding his duty to display warning flags on the highway near his disabled vehicle on the ground that because a truck parked behind the disabled vehicle was exhibiting its flashing emergency lights, there was no need for warning flags. The Supreme

Court disagreed, noting both the statutory duty to place warning flags and defendant's right to instruction on that duty as an important theory of the case. Smith v. Rorvik, 231 M 85, 751 P2d 1053, 45 St. Rep. 451 (1988).

Negligence: Driver of truck was negligent in allowing the truck, which had run out of gas, to stand on highway at nighttime without placing flares required by sec. 8, Ch. 199, L. 1943 (section 31-108, R.C.M. 1947 (now repealed)). Burns v. Fisher, 132 M 26, 313 P2d 1044, 67 ALR 2d 1 (1957).

61-9-413. Vehicles transporting explosives.

Compiler's Comments

1985 Amendment: In (4) substituted reference to department of justice for reference to division of motor vehicles.

61-9-414. Logging trucks.

Compiler's Comments

2007 Amendment: Chapter 298 deleted former (2)(a)(i) that read: "(i) be made of steel chain, steel cable, or a combination of steel chain and steel cable"; and made minor changes in style. Amendment effective April 26, 2007.

2001 Amendment: Chapter 373 in (2)(a) in first sentence after "three" and near beginning of second sentence after "The" substituted "wrappers" for "binders"; in (2)(a)(i) at end inserted "or a combination of steel chain and steel cable"; in (2)(a)(ii) after "minimum" substituted "working load limit of at least 3,000 pounds" for "diameter of three-eighths of an inch"; at end of (2)(a)(iii) substituted "binder" for "fastener"; in (2)(b)(i) at beginning substituted "Wrappers" for "Binders" and at end substituted "binder" for "fastener"; in (2)(b)(ii) substituted "The complete wrapper and binder assembly must have a working load limit of at least 3,000 pounds" for "The minimum diameter of the portions of the fastener under direct stress from the binder must be three-eighths of an inch"; in (2)(b)(iii) near beginning after "portion of the" substituted "binder" for "fastener", near middle after "holding the" substituted "wrapper" for "binder", after "fastened to the" substituted "wrapper" for "binder", and before "so that" substituted "binder" for "fastener"; in (2)(c) in first sentence and near beginning of second sentence substituted "wrappers" for "binders"; in (2)(d) near middle of first sentence after "sufficient" substituted "wrappers" for "binders"; inserted (3) defining binder and wrapper; and made minor changes in style. Amendment effective October 1, 2001.

1997 Amendment: Chapter 431 near beginning of first sentence in (1), after "combination", inserted "except pole trailers" and after "equipped" inserted language regarding load limits of required chains, cables, steel straps, or fiber webbings and inserted second and third sentences relating to determination of number of tie-down assemblies and working load limits; at beginning of (2) inserted introductory language for requirements of actively engaged pole trailer; at end of first sentence in (2)(a), after "equipment", deleted "on any truck or truck trailer combination actively engaged in transporting logs upon the public highways of the state"; and made minor changes in style.

61-9-415. Slow-moving vehicles.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) near middle after "flag person" inserted "as defined in 61-8-102"; and made minor changes in style. Amendment effective January 1, 2006.

1999 Amendment: Chapter 449 inserted (4) requiring that a slow-moving vehicle be driven in the right lane as far right as possible when traveling on an interstate or other four-lane highway; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 431 in first sentence in (1), after "unlawful", deleted "after January 1, 1970" and after "machinery" deleted "designed for use at speeds less than 25 miles per hour"; and made minor changes in style.

Administrative Rules

ARM 18.8.510A Regulations and equipment for pilot vehicles.

61-9-416. Commercial tow truck definition — requirements.

Compiler's Comments

2011 Amendment: Chapter 80 in (1) inserted second sentence regarding consideration of tow truck as a commercial tow truck; and made minor changes in style. Amendment effective October 1, 2011.

2003 Amendment: Chapter 352 in (1)(d) near beginning of first sentence after "requirements of" substituted "61-9-402(7)" for "61-9-402(5)"; and in (4) at end substituted "61-9-402(5)" for "61-9-402(4)". Amendment effective October 1, 2003.

1999 Amendment: Chapter 520 at end of (1)(b) substituted "as provided in 61-9-431" for "of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department"; at end of (2) substituted "61-9-431" for "subsection (1)(b):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 450 feet in advance of the disabled vehicle and an equal distance to the rear of the disabled vehicle; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 600 feet in advance of the disabled vehicle, except on a divided highway where the disabled vehicle does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the disabled vehicle"; deleted former (3) and (4) that read: "(3) A local government unit may adopt an ordinance exempting a commercial tow truck operator from the requirements of subsection (2) within the limits of an incorporated city or town.

(4) When a motor vehicle is disabled on the highway during the hours of darkness, the tow truck operator called to render assistance shall immediately upon arrival place warning signs upon the highway as prescribed in this section and shall also place not less than one red flare, red lantern, or warning light or reflector in close proximity to each warning sign"; inserted (4) concerning limit on liability; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 431 deleted last sentence in (1)(b) that read: "When a motor vehicle is disabled on the highway, the tow truck operator called to render assistance during the hours of darkness shall immediately upon arrival place warning signs upon the highway as prescribed in this section and shall also place not less than one red flare, red lantern, or warning light or reflector in close proximity to each warning sign"; in (1)(d), after "flashing", substituted "red or amber light meeting the requirements of 61-9-402(5)" for "or steady red or amber light"; in third sentence in (1)(g), after "towed", deleted "during the hours of darkness and the rear lamp or lamps on the disabled vehicle cannot be lighted" and after "capable of" substituted "displaying a stop signal, turn signal, and taillamps" for "emitting a stop and a directional signal"; in (2), after "roadway", deleted "outside a business or residence district"; in (2)(b), after "hour", inserted "or no speed limit is posted"; inserted (3) authorizing local government unit to adopt ordinance exempting commercial tow truck operator from warning sign requirements; inserted (4) requiring operator rendering after dark road service to place warning signs and flare, lantern, or light on highway; and made minor changes in style.

1995 Amendment: Chapter 283 in (1) substituted introductory clause for former language that read: "A commercial tow truck used to tow a vehicle by means of a crane, hoist, towbar, towline, or dolly must be"; in (1)(d), near beginning of first sentence after "red", inserted "or amber" and after "light" inserted "or both a red and amber light" and in fifth sentence, near beginning after "red", inserted "or amber"; in (1)(g), near beginning of first sentence after "cord", inserted "or other device" and after "displaying" substituted "stop, turn, and tail lights" for "a light" and in second sentence, near middle after "rear light", inserted "that is capable of emitting a stop and a directional signal" and near end, after "cord", inserted "or other device"; in (3) inserted reference to 61-8-906 and 61-8-907; and made minor changes in style. Amendment effective March 29, 1995.

1991 Amendment: Throughout section substituted "truck" for "car"; in first sentence of (1)(b) inserted language establishing dimensions, lettering, and color for highway warning signs, inserted third sentence pertaining to wording on highway warning signs, and deleted requirement that warning signs be placed 200 feet in front of and behind disabled vehicle when the rendering of assistance necessitates obstruction of portion of roadway outside business or residence district; in (1)(c), before "fire extinguisher", inserted "dry chemical", and substituted "5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department" for "2 quart capacity of a type capable of extinguishing a fire"; inserted (2) pertaining to placement of highway warning signs in front of and behind disabled vehicles when the rendering of assistance necessitates the obstruction of portion of roadway outside a business or residence district; and made minor changes in style. Amendment effective February 15, 1991.

1985 Amendment: In (1)(a) and (1)(b) substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 18.8.519 Wreckers and/or tow vehicle requirements.
ARM 23.3.404 Qualified tow car service.
ARM 23.3.405 Tow car service rotation system.

Case Notes

Application Limited: Where logging truck was struck from behind while engaged in removing disabled automobile from ditch, contention that logging truck violated this section by not being equipped with appropriate warning and safety devices was without merit since this section applies to tow cars and not vehicles such as logging truck herein involved. State ex rel. Eacker v. District Court, 154 M 36, 459 P2d 686 (1969).

61-9-417. Headgear required for minor motorcycle riders.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 654, L. 2023. Amendment effective October 1, 2023.

1997 Amendment: Chapter 431 inserted (2) prohibiting person from operating motorcycle on state highway without protective headgear for passengers under age 18; and made minor changes in style.

1985 Amendment: In first sentence, after "motorcycle", inserted "or quadricycle" (effective January 1, 1986).

Administrative Rules

ARM 23.3.417 Standards for protective headgear.

61-9-418. Motorcycle and quadricycle noise suppression devices — motorcycle and quadricycle spark arrester.

Compiler's Comments

2007 Amendment: Chapter 105 inserted (2) adopting noise limits for motorcycles and quadricycles operated off a highway on public lands, exempting vehicles operated for special events, and requiring spark arresters on the vehicles; and made minor changes in style. Amendment effective October 1, 2007.

1985 Amendment: In lead-in inserted "or quadricycle(s)" after "motorcycle(s)" three times; and in (1) through (6) changed "motorcycle" to "cycle" (effective January 1, 1986).

61-9-419. "Properly restrained" defined.

Compiler's Comments

1997 Amendment: Chapter 431 at end of section, after "type", substituted "required by 61-9-409" for "specified in 61-9-410"; and made minor changes in style.

Source: Sections 61-9-419 through 61-9-423 are based on the Wisconsin Statutes Annotated (W.S.A.), sections 347.48(4) and 347.50(1), (3), and (4).

61-9-420. Child safety restraint systems — standards — exemptions.

Compiler's Comments

2021 Amendment: Chapter 100 in first sentence substituted current text requiring child safety restraints for certain passengers who are children for former first sentence that read: "If a child under 6 years of age and weighing less than 60 pounds is a passenger in a motor vehicle, that motor vehicle must be equipped with one child safety restraint for each child in the vehicle and each child must be properly restrained." Amendment effective October 1, 2021.

2011 Amendment: Chapter 280 in (1) inserted second sentence pertaining to appropriate child safety restraint. Amendment effective July 1, 2011.

2003 Amendment: Chapter 407 in (1) near beginning substituted "6 years of age and weighing less than 60 pounds" for "2 years of age"; deleted former (2) that read: "(2) A child between 2 and 4 years of age or weighing less than 40 pounds who is a passenger in a motor vehicle must be properly restrained or restrained in a safety belt that meets applicable federal motor vehicle safety standards"; in (2) at end deleted "purchased after January 1, 1984"; deleted former (4) that read: "(4) A person is not required to have more than three child safety restraint systems in a vehicle"; in (3) at end deleted "system or safety belt"; and made minor changes in style. Amendment effective October 1, 2003.

1997 Amendment: Chapter 431 substituted language in (1) and (2) requiring vehicle to be equipped with regulation child safety restraint if child under 2 years of age or if child between ages 2 and 4 or weighs less than 40 pounds is passenger for "No resident of Montana who is the parent or legal guardian of a child under the age of 2 may transport the child in a motor vehicle owned by the resident or his spouse unless the child is properly restrained.

(2) No resident of Montana who is the parent or legal guardian of a child between 2 and 4 years old or weighing less than 40 pounds may transport the child in a motor vehicle owned by the resident or his spouse unless the child is properly restrained or is restrained in a safety belt of the type specified in 61-9-410"; at beginning of (4) substituted "person" for "resident or his spouse"; and made minor changes in style.

1985 Amendment: In (3) and (5) substituted references to department of justice for references to division of motor vehicles.

Internal Organization: Chapter 503, L. 1985, substituted references to Department of Justice for references to Division of Motor Vehicles.

Statement of Intent: The statement of intent attached to SB 22 (Ch. 177, L. 1983) provided: "A statement of legislative intent is required for this bill [SB 22] because the bill authorizes the Division of Motor Vehicles of the Department of Justice, consistent with 61-9-504, to adopt rules prescribing standards for child safety restraint systems to be approved for installation in vehicles owned by residents of Montana. The intention is that the standards adopted incorporate federal standards that specify requirements for child restraint systems and seatbelts used in motor vehicles and prescribe proper procedures for restraining a child under 4 years old with acknowledgment of certain exemptions allowed in [SB 22]. The rules should also provide for informational activity to bring the new rules to the awareness of the public."

Source: Sections 61-9-419 through 61-9-423 are based on the Wisconsin Statutes Annotated (W.S.A.), sections 347.48(4) and 347.50(1), (3), and (4).

Administrative Rules

ARM 23.3.418 Standards for child safety restraint systems.
ARM 23.3.419 Exemptions.

Law Review Articles

When Consumer Protection Becomes Preordained: Malcolm v. Evenflo and Montana's Products Liability Standard, Harkins, 73 Mont. L. Rev. 161 (2012).

61-9-421. Certain vehicles exempt.

Compiler's Comments

1985 Amendment: In (1) after "moped", inserted "quadricycle" (effective January 1, 1986).

Source: Sections 61-9-419 through 61-9-423 are based on the Wisconsin Statutes Annotated (W.S.A.), sections 347.48(4) and 347.50(1), (3), and (4).

61-9-422. Evidence admissible without presumption of negligence.

Compiler's Comments

Source: Sections 61-9-419 through 61-9-423 are based on the Wisconsin Statutes Annotated (W.S.A.), sections 347.48(4) and 347.50(1), (3), and (4).

61-9-423. Penalty.

Compiler's Comments

2011 Amendment: Chapter 280 in (1) inserted exception clause; inserted (2) pertaining to waiver of fine; and made minor changes in style. Amendment effective July 1, 2011.

1997 Amendment: Chapter 431 substituted language that violation of section is punishable by fine not exceeding $100 for former text that read: "Violation of 61-9-420 is punishable as follows:

(1) On initial violation a citation shall be issued. No penalty may be assessed if the violation of 61-9-420 is corrected within 30 days by providing the proper court with proof that a child safety restraint system meeting the requirements of 61-9-420 was purchased or leased and properly installed in the vehicle. If not corrected, the violation shall be punishable by a fine of not less than $10 or more than $25.

(2) Subsequent violation within 3 years is punishable by a fine of not less than $25 or more than $100."

1985 Amendment: Near beginning of (1) substituted "citation" for "warning", in second sentence of (1) after "providing", inserted "the proper court with", and in last sentence of (1) after "corrected", deleted "a citation may be issued and".

Source: Sections 61-9-419 through 61-9-423 are based on the Wisconsin Statutes Annotated (W.S.A.), sections 347.48(4) and 347.50(1), (3), and (4).

61-9-426. Air-conditioning equipment — use of flammable refrigerant prohibited — definition.

Compiler's Comments

2005 Amendment: Chapter 542 in (4) after "motor vehicle" deleted "as defined in 61-1-102" and after "special mobile equipment" deleted "as defined in 61-1-104"; and made minor changes in style. Amendment effective January 1, 2006.

Saving Clause: Section 4, Ch. 418, L. 2003, was a saving clause.

Effective Date: Section 5, Ch. 418, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 18, 2003.

61-9-427. Air-conditioning equipment — sale prohibited.

Compiler's Comments

Saving Clause: Section 4, Ch. 418, L. 2003, was a saving clause.

Effective Date: Section 5, Ch. 418, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 18, 2003.

61-9-428. Window tinting and sunscreening — waiver — conditions.

Compiler's Comments

2007 Amendment: Chapter 242 at end of first sentence after "physician" inserted "licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102"; and made minor changes in style. Amendment effective October 1, 2007.

61-9-430. Bumpers.

Compiler's Comments

2005 Amendment: Chapter 458 in (2) near beginning after "rod" deleted "vehicles" and after "defined in" substituted "61-1-101" for "61-9-407(4)"; and made minor changes in style. Amendment effective April 28, 2005.

61-9-431. Use of warning signs, flares, reflectors, lanterns, and flag persons.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 567, L. 2023. Amendment effective October 1, 2023.

2013 Amendment: Chapter 113 in (1) inserted "exclusive of the berm or shoulder"; in (2) inserted "or reflectorized fluorescent pink" and substituted ""accident ahead", "emergency vehicle ahead"" for ""hazard ahead"". Amendment effective October 1, 2013.

2003 Amendments — Composite Section: Chapter 352 in (6) near middle after "provided in" substituted "61-8-301(4)" for "61-8-315" and at end substituted "61-8-715" for "61-8-715(2)"; and made minor changes in style. Amendment effective October 1, 2003.

Chapter 379 at end of (6) substituted "61-8-715(1)" for "61-8-715(2)". Amendment effective October 1, 2003.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Effective Date: This section is effective October 1, 1999.

61-9-432. Low-speed and medium-speed electric vehicles — required equipment.

Compiler's Comments

2011 Amendment: Chapter 209 in (1) inserted reference to low-speed electric vehicles; in (2) inserted reference to medium-speed electric vehicle; and made minor changes in style. Amendment effective January 1, 2012.

Effective Date: Section 6, Ch. 233, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 23, 2007.

61-9-435. Exhaust noise limitation.

Compiler's Comments

Effective Date: Section 61, Ch. 329, L. 2007, provided that this section is effective January 1, 2008.

61-9-436. Certain vehicles to carry tire traction devices during winter months.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

61-9-437. Airbag fraud prohibition — definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

Part 5
Enforcement — Penalties

61-9-501. Inspections by officers of department.

Compiler's Comments

2009 Amendment: Chapter 146 in (3) at end of second sentence inserted exception clause; inserted (4) providing that the notice require that the muffler be in proper repair and adjustment within 14 days; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: In (1) and (3) substituted references to department of justice for references to division of motor vehicles.

61-9-502. Semiannual inspection of school buses.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-9-503. Owners and drivers to comply with inspection laws.

Compiler's Comments

2009 Amendment: Chapter 146 in (2) near beginning after "comply and" deleted "shall within 5 days"; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: In (1) in two places and in (2) substituted references to department of justice for references to division of motor vehicles.

61-9-504. Rules.

Compiler's Comments

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.3.420 Safety equipment for fertilizer trailers.

61-9-511. Violation of chapter — penalty.

Compiler's Comments

1995 Amendment: Chapter 134 in (3), at beginning, deleted "On failure of payment of fines, the offender in cases of misdemeanor" and inserted current language providing for contempt and enforcement on failure of payment of fine; in (4), at beginning of first sentence, inserted "If property is not found in an amount necessary to satisfy the unpaid portion of the fine and if the court makes a written finding that community service is inappropriate, the person" and in second sentence, after "the imprisonment shall be", substituted "the number of days that the fine is divisible by the dollar amount of the incarceration credit contained in 46-18-403" for "computed upon the basis of $25 of the fine for each day's incarceration"; and made minor changes in style.

1991 Amendments: Chapter 40 in (1), before "declared", deleted "by this chapter or other law of this state"; in (2), at end of first sentence after "$100", deleted "or by imprisonment for not more than 10 days", at end of second sentence, after "$200", deleted "or by imprisonment for not more than 20 days or by both such fine and imprisonment", and at end of third sentence, after "$500", deleted "or by imprisonment for not more than 6 months or by both fine and imprisonment"; in (3) increased basis of fine for 1 day of incarceration from "$2" to "$25"; and made minor changes in style.

Chapter 109 in (3) increased basis of fine for 1 day of incarceration from "$2" to "$25".

61-9-512. Violation of rules — penalty.

Compiler's Comments

2005 Amendment: Chapter 366 in (2) and (3) substituted "61-10-154" for "44-1-1005"; and made minor changes in style. Amendment effective October 1, 2005.

1989 Amendment: In (2), before "any standard", inserted "a violation of".

1987 Amendment: In (1) substituted "is" for "shall be deemed"; and inserted (2) and (3) relating to penalties imposed for violation of Department rules.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Adoption of Federal Commercial Vehicle Regulations by Montana Department of Transportation (MDT) Not Unconstitutional Delegation of Legislative Authority — Policy of Statute (Adoption of Safety Standards for Certain Types of Vehicles), Rationale (Ensure Safety of Private and Commercial Vehicles), and Parameters for MDT's Standards (to Be Modeled After Federal Commercial Rules) Provided by 61-10-154 — Statute Sufficiently Clear, Definite, and Certain for MDT to Know Rights and Obligations. St. v. Akhmedli, 2023 MT 120, 412 Mont. 538, 531 P.3d 562.

61-9-515. Violations of provisions relating to fenders, splash aprons, or flaps — penalty.

Compiler's Comments

1991 Amendment: At end, after "$25", deleted "or by imprisonment in the county jail for a period of not more than 30 days or by both such fine and imprisonment"; and made minor changes in style.

61-9-516. Penalty for seatbelt violations.

Compiler's Comments

1997 Amendment: Chapter 431 after "61-9-409" deleted "and 61-9-410"; and made minor changes in style.

61-9-518. Violation of motorcycle or quadricycle requirements — penalty.

Compiler's Comments

1991 Amendment: In (2), in first sentence after "$100", deleted "or by imprisonment for not more than 10 days or by both such fine and imprisonment", in second sentence, after "$200", deleted "or by imprisonment for not more than 20 days or by both such fine and imprisonment", and in third sentence, after "$500", deleted "or by imprisonment for not more than 6 months or by both such fine and imprisonment"; and made minor changes in style.

61-9-519. Violation of tire restrictions — penalty.

Compiler's Comments

1991 Amendment: After "misdemeanor" inserted penalty clause.

61-9-520. Violation of tire chain or traction device use — penalty.

Compiler's Comments

2021 Amendment: Chapter 126 in (1) in introductory clause following "punished by a fine of" deleted "$25, and no jail sentence may be imposed. Bond for this offense shall be $25"; inserted (1)(a) regarding a bond amount of $250; inserted (1)(b) requiring a $750 bond when an incident requires closure of all lanes in one or both directions; and made minor changes in style. Amendment effective October 1, 2021.

2015 Amendment: Chapter 93 in (1) and (2) substituted "61-9-406(6) and (7)" for "61-9-406(5) through (7)". Amendment effective March 18, 2015.

61-9-521. Violation of engine compression brake device provisions — penalty.

Compiler's Comments

Effective Date: This section is effective October 1, 2003.

Applicability: Section 4, Ch. 357, L. 2003, provided: "[Section 2] [61-9-521] applies to violations occurring on or after April 1, 2004."

61-9-522. Airbag fraud penalty.

Compiler's Comments

Effective Date: This section is effective October 1, 2023.

CHAPTER 10
SIZE — WEIGHT — LOAD

Chapter Administrative Rules

Title 18, chapter 8, ARM Motor Carrier Services Division.

Part 1
Standards, Permits, and Fees

Part Compiler's Comments

Turnpike Doubles — Study: Section 4, Ch. 672, L. 1991, provided: "(1) The department of highways [now department of transportation] shall conduct a study over the next 2 years of:

(a) all interchanges in Montana and the ability of the interchanges to accommodate twin 45s as turnpike doubles;

(b) the impact on highways of permitting twin 45s as turnpike doubles;

(c) terminal positions to interchanges; and

(d) the concept of permitting twin 45s as turnpike doubles.

(2) The department of highways [now department of transportation] shall report its finding of the study to the 53rd legislature."

Part Administrative Rules

ARM 18.8.306 Fuel, size, weight, safety, and cargo hauling authority requirements.
ARM 18.8.412 Self-propelled motor homes.
ARM 18.8.414 Increase in weight and/or change of classification.
Title 18, chapter 8, subchapter 5, ARM Overdimensional permit requirements.
Title 18, chapter 8, subchapter 6, ARM Overweight permit requirements.
ARM 18.8.1002 Mobile home towing unit (toter) requirements.

Part Case Notes

Mandatory Nature of Penalty: Once court determined that defendant was driving logging truck upon highways of state when gross weight exceeded maximum gross weight allowed by statute by some 28,000 pounds, court had no choice but to levy an additional fine of $1,000. The penalty is in addition to the other penalties provided by statute, is obligatory upon judge, is not a violation of double jeopardy provision of constitution, and does not violate statute providing that when action is punishable under different provisions of code, punishment may be had under only one of them. State ex rel. Oleson v. District Court, 151 M 12, 438 P2d 560 (1968).

61-10-101. Standards of maximum dimensions, weights, etc.

Compiler's Comments

1995 Amendment: Chapter 236 deleted reference to 61-10-105. Amendment effective March 24, 1995.

61-10-102. Width — definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 115, L. 2023. Amendment effective July 1, 2023.

2011 Amendment: Chapter 210 inserted (5) pertaining to when a rear flag vehicle escort is not required; inserted (6)(a) defining construction equipment; and made minor changes in style. Amendment effective October 1, 2011.

2005 Amendments — Composite Section: Chapter 241 in (1) in exception clause substituted "subsections (2) and (3)" for "subsection (2)"; inserted (3) outlining conditions under which width of recreational vehicle and camper being operated for noncommercial purposes may exceed 102 inches and defining recreational vehicle or camper appurtenances for purposes of section; and made minor changes in style. Amendment effective May 1, 2005.

Chapter 542 substituted (5) defining flag vehicle for former (4) that read: "(4) For the purposes of this section, "county road" has the same meaning as the term is defined in 60-1-103." Amendment effective January 1, 2006.

1999 Amendment: Chapter 449 inserted (2)(b) requiring that an implement of husbandry or hay-hauling vehicle over 16½ feet wide be followed by a flag vehicle escort when traveling on an interstate or other four-lane highway; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 283 in second sentence in (2)(a) substituted "vehicle is more than 12 feet 6 inches wide" for "vehicle is more than 12 feet wide", at end of third sentence inserted "or to movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay", and at end of fifth sentence inserted "unless the movement of the implements or vehicles is restricted to a county road within 100 miles of the farming operation of the owner"; in (2)(c), in second sentence, substituted "grinder is more than 12 feet 6 inches wide" for "grinder is more than 12 feet wide"; and inserted (4) defining county road for the section. Amendment effective April 16, 1997.

1993 Amendment: Chapter 413 inserted (2)(c) providing that subsection (1) does not apply to a commercial hay grinder moved upon the highway if certain travel conditions and precautions are met and requiring a permit for a hay grinder with a width over 102 inches; and made minor changes in style.

1989 Amendment: At beginning of (1) inserted exception clause; in (2)(a), at beginning of fourth sentence, inserted "Lights which meet the requirements of 61-9-219(4) must be displayed on the" and at end deleted "shall properly display lights which meet the standard requirements of 61-9-219"; inserted (2)(b) relating to travel by a commercial vehicle that is hauling hay; near beginning of (3) substituted "department" for "highway patrol division"; and made minor changes in phraseology. Amendment effective March 27, 1989.

1983 Amendment: Inserted (3) excluding a safety device determined by the highway patrol as being necessary for safe and efficient operation of motor vehicles from being included in calculating bus widths.

Statement of Intent: The statement of intent attached to HB 488 (Ch. 109, L. 1983) provided: "A statement of intent is required for this bill because it gives the highway patrol authority to allow by rule a safety device on a vehicle to protrude beyond the 102-inch width limit set in 61-10-102. This authorization is necessary to conform with federal law that excludes from the 102-inch width limit safety-related appendages such as rear view mirrors, turn signal lamps, marker lamps, steps and handholds for entry and egress, flexible fender extensions, mudflaps, splash and spray suppressant devices or designs, refrigeration units, or air compressors which the highway patrol may interpret as necessary for safe and efficient operation of commercial motor vehicles."

Administrative Rules

ARM 18.8.510A and 18.8.511A Pilot vehicles.
ARM 18.8.510B Oversize load signs.

61-10-103. Height.

Compiler's Comments

2019 Amendment: Chapter 437 in (1) inserted exception clause; inserted (2) detailing exceptions for certain farming vehicles; and made minor changes in style. Amendment effective October 1, 2019.

1987 Amendment: Increased height from 13 feet 6 inches to 14 feet.

Preamble: The preamble to Ch. 73, L. 1987, read: "WHEREAS, to establish uniformity with neighboring states in the matter of height of trucks traveling between states, Montana must adopt a height limit of 14 feet."

61-10-104. Length — definitions.

Compiler's Comments

2021 Amendment: Chapter 89 in (2)(b)(i) substituted "80 feet in length plus a maximum 4 feet of front overhang and 6 feet of rear overhang" for "75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang"; in (6)(c) after "first trailer" inserted "or the front bunk on a pole trailer" and at end substituted "rear overhang" for "loads"; and made minor changes in style. Amendment effective October 1, 2021.

2017 Amendment: Chapter 68 in (2)(b)(i) after "A stinger-steered" deleted "automobile or" and at end deleted ""Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls"; inserted (2)(b)(ii) regarding maximum length and overhang for a stinger-steered automobile transporter; in (6) inserted definitions of stinger-steered automobile transporter and stinger-steered boat transporter; and made minor changes in style. Amendment effective March 2, 2017.

2011 Amendment: Chapter 131 in (6) inserted definition of steering axle. Amendment effective October 1, 2011.

2005 Amendment: Chapter 542 inserted (6)(a) defining axle; and made minor changes in style. Amendment effective January 1, 2006.

1997 Amendments: Chapter 58 in (2)(a), near middle of second sentence, inserted "or 61 feet in combined trailer length"; and made minor changes in style.

Chapter 232 in (5)(a), in third sentence, substituted "61-10-124(2)" for "61-10-124(3)"; and made minor changes in style. Amendment effective January 1, 1998.

1995 Amendments: Chapter 209 in (1) increased length from 45 feet to 55 feet.

Chapter 313 in (5)(a), in first sentence after "one", deleted "trailer".

1993 Amendment: Chapter 423 inserted (5) concerning maximum length of truck and trailer hauling logs; and in (6)(c), near beginning, inserted "except as provided in subsection (5)(a)".

1991 Amendments: Chapter 327 in (3), at end, increased allowable overall length from 65 feet to 75 feet; and made minor changes in style.

Chapter 672 in (1), at end, increased maximum overall length from 40 feet to 45 feet; in (2)(a), at end before "combination length limit", substituted "a" for "an overall"; in (2)(c) and (3), after "have", substituted "a combination length" for "an overall length, inclusive of front and rear bumpers"; in (4) substituted "a length" for "an overall length, inclusive of front and rear bumpers"; and inserted (5) defining combination length, combined trailer length, length, and Rocky Mountain double.

1989 Amendment: In (2)(a) increased length to 53 feet from 48 feet, in two places inserted "truck tractor-semitrailer-semitrailer", and inserted "or the two semitrailers" before "may not exceed 28½ feet"; inserted (2)(b) relating to stinger-steered automobile or boat transporters; and in (3) allowed triple saddle-mount of three vehicles from dual saddle-mount of two vehicles.

1983 Amendment: In (2) inserted first three sentences, relating to length limits for truck tractor semitrailer combinations, and in fourth sentence, substituted "75" for "65", inserted exception relating to special permits, and at beginning substituted "All other combinations" for "A combination of truck and trailer, tractor and semitrailer, tractor-semitrailer-full-trailer, or tractor-semitrailer-semitrailer converted to a trailer by use of a dolly equipped with a fifth wheel".

1981 Amendment: Increased the maximum length in (2), (3), and (4) from 60 to 65 feet.

61-10-107. Maximum gross weight.

Compiler's Comments

2015 Amendment: (Temporary version) Chapter 219 in (1)(b) inserted "or on Montana highway 16 from the border between Canada and the United States to 20 miles south of the border". Amendment effective October 1, 2015.

2005 Amendment: Chapter 342 in (1)(a) at beginning of fourth sentence inserted exception clause; inserted (1)(b) concerning exemption from weight limits on portion of highway 93; and made minor changes in style. Amendment effective October 1, 2005, and terminates on occurrence of contingency.

2001 Amendment: Chapter 283 in (1) deleted former fourth sentence that read: "A vehicle or combination may not have more than nine axles" and inserted last two sentences providing that the maximum gross weight may not exceed the weight limits adopted by the department and requiring the department to adopt rules for weight limits. Amendment effective October 1, 2001.

1997 Amendment: Chapter 232 deleted former (3) requiring special permit for vehicles exceeding 80,000 pounds in gross weight (see 1997 Session Law for former text); deleted (4) regarding special permit for farm vehicles (see 1997 Session Law for former text); and made minor changes in style. Amendment effective January 1, 1998.

1995 Amendment: Chapter 236 in (2)(a), in first sentence after "subsection (1)", substituted remainder of subsection relating to tires and maximum loads per axle for "its maximum load per inch of tire width, excluding the steering axle, may not exceed 500 pounds, based on the table in 61-10-105(3)"; inserted (2)(b) concerning exception for passenger buses; inserted (2)(c) concerning computation of maximum tire weight; and made minor changes in style. Amendment effective March 24, 1995.

Date of Compliance: Section 15, Ch. 236, L. 1995, provided: "All equipment existing on or after [the effective date of this act] [effective March 24, 1995] must comply with the provision of 61-10-107(2) by January 1, 1996."

1993 Amendment: Chapter 399 in (1) inserted second sentence describing axle load; and in (2) decreased maximum load per inch of tire width from 600 pounds to 500 pounds. Amendment effective January 1, 1995.

Compliance Date: Section 2, Ch. 399, L. 1993, was a date of compliance and provided: "All equipment existing on or after [the date the governor signs this act] [signed April 19, 1993] must comply with the provisions of 61-10-107(2) by January 1, 1996."

1991 Amendments: Chapter 16 in (3) corrected citation to subsection of 61-10-124; and made minor changes in style.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1989 Amendment: In fourth sentence of (1), in formula, substituted "W = 500 ((LN/(N - 1)) + 12N + 36)" for "W equals 500 (LN/N minus 1 plus 12N plus 36)".

Termination Provision Repealed: Section 1, Ch. 10, L. 1989, repealed sec. 8, Ch. 474, L. 1987, which terminated the amendment at end of subsection (3) July 1, 1989. Repealer effective February 15, 1989.

1987 Amendment: Near end of (3), inserted "and permits issued under 61-10-124(4) must specify".

1983 Amendment: In (1), in last sentence inserted "group of axles" and exception at end, made minor change in phraseology, and at end deleted "However, the maximum allowable gross weight on a group of axles may not exceed the following values" and a corresponding table (see 1981 Session Law for text); and in (4) substituted "(3)" for "(1)".

1981 Amendments: Chapter 40 substituted "An axle may not carry a load in excess of" and "A vehicle or combination may not have more than nine axles" for language allowing the department of highways to grant a special permit specifying highway routings in (1); inserted subsection (3) requiring department to issue special permit for vehicle or combination exceeding 80,000 pounds.

Chapter 366 inserted subsection (2) limiting a vehicle's maximum load per inch of tire width, excluding steering axle, to 600 pounds.

Chapter 392 inserted subsection (4) requiring that special permit issued for the transportation of agricultural products by farm vehicles from a harvesting combine or other machinery to the point of first unloading be for the full term of the harvest season of product transported.

Administrative Rules

ARM 18.8.431 Maximum allowable weight.

ARM 18.8.605 Wintertime and durational overweight permits.

Attorney General's Opinions

Reducible Loads — Compliance of State Statutes With Federal Law: Montana oversize and overweight vehicle permit provisions, as applied to reducible loads, comply with federal law and regulations because the provisions became grandfathered exceptions after July 1, 1956. Therefore, with the exception of longer combination vehicles, which are subject to 1991 law, and groups of two or more consecutive axles, whose overall gross weight is subject to 1974 law, Montana's oversize and overweight vehicle permit provisions in effect on July 1, 1956, may be applied to vehicles carrying reducible loads. 48 A.G. Op. 6 (1999).

61-10-108. Reduction under special circumstances.

Compiler's Comments

1995 Amendment: Chapter 236 substituted "61-10-107" for "61-10-105". Amendment effective March 24, 1995.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1987 Amendment: Near middle of section, after "department", inserted "of highways".

61-10-109. Operation without special permits prohibited.

Compiler's Comments

1997 Amendment: Chapter 232 near end inserted "under 61-10-121 through 61-10-125". Amendment effective January 1, 1998.

1995 Amendment: Chapter 236 deleted reference to 61-10-105. Amendment effective March 24, 1995.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1981 Amendment: Inserted "dimensions or" in first sentence; substituted "61-10-101 through 61-10-108" for "61-10-105"; deleted reference to 61-10-107 following "special permit issued".

Case Notes

Special Permit Valid Under Federal-Aid Highway Act: The Montana state Highway Commission (now Transportation Commission) on July 1, 1956, had the authority under section 32-1123, R.C.M. 1947 (now repealed), to issue special permits for overweight vehicles. Since this statute had been reenacted into law each time other provisions of the section were changed, continuous authority had been provided for the issuance of the special permits. The state Highway Commission (now Transportation Commission) had the power to issue permits without jeopardizing the right of the State of Montana to receive federal funds for highway purposes. State ex rel. Dick Irvin, Inc. v. Anderson, 164 M 513, 525 P2d 564 (1974).

Attorney General's Opinions

Reducible Loads — Compliance of State Statutes With Federal Law: Montana oversize and overweight vehicle permit provisions, as applied to reducible loads, comply with federal law and regulations because the provisions became grandfathered exceptions after July 1, 1956. Therefore, with the exception of longer combination vehicles, which are subject to 1991 law, and groups of two or more consecutive axles, whose overall gross weight is subject to 1974 law, Montana's oversize and overweight vehicle permit provisions in effect on July 1, 1956, may be applied to vehicles carrying reducible loads. 48 A.G. Op. 6 (1999).

61-10-110. Federal law.

Compiler's Comments

1995 Amendment: Chapter 236 near beginning of first and second sentences deleted reference to 61-10-105; and made minor changes in style. Amendment effective March 24, 1995.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Federal Statute: Federal highway law can be found in Title 23, U.S.C.

61-10-111. Governor's authority to exempt vehicles from size and weight limits.

Compiler's Comments

Effective Date: This section is effective October 1, 2001.

61-10-113. Issuance of permits for overweight and oversize loads — interstate agreements.

Compiler's Comments

Name Change: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

61-10-121. Permits for excess size and weight — exempt from environmental review — agents.

Compiler's Comments

2021 Amendment: Chapter 89 in (1)(a) in middle of first sentence after "respective jurisdictions" substituted "may issue a special permit" for "may issue telephonically or in writing a special permit" and after last sentence deleted former text that read: "A permit may not be issued for a period greater than the period for which the GVW license is valid, including grace periods, as provided in this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit." Amendment effective October 1, 2021.

2015 Amendments — Composite Section: Chapter 55 in (1)(a) substituted "subsection (4)" for "subsection (3)"; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 173 inserted (5) concerning fees and permits for the movement of certain vehicles or objects on highways. Amendment effective October 1, 2015.

2013 Amendment: Chapter 218 inserted (3) exempting permits for oversized vehicles when existing roads through existing rights-of-way are used; and made minor changes in style. Amendment effective October 1, 2013.

1995 Amendments: Chapter 71 near beginning of (1), after "department of transportation", inserted "or its agent under subsection (3)"; and inserted (3) providing that the Department may enter into a contract with a private party to act as an agent of the Department for the purpose of issuing a special permit.

Chapter 236 in (1)(a), near end of first sentence and at end of second sentence, deleted reference to 61-10-105; and made minor changes in style. Amendment effective March 24, 1995.

1991 Amendments: Chapter 166 in (1), at beginning of first sentence, inserted "Upon application and with good cause shown", before "issue", deleted "in their discretion, upon application in writing and with good cause shown", and after "issue" inserted "telephonically or in writing"; and made minor changes in style.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 166, L. 1991, provided: "The house committee on highways and transportation has determined that a statement of intent is necessary for this bill. It is the intent of the legislature to provide the department of highways [now department of transportation] the means to facilitate the securing of oversize permits by the motor carrier industry. To that end, the department should issue permits telephonically regardless of whether the weigh stations are equipped with computers."

Administrative Rules

ARM 18.8.101 Definitions.

Title 18, chapter 8, subchapter 2, ARM Proportional registration.

Title 18, chapter 8, subchapter 5, ARM Overdimensional permit requirements.

ARM 18.8.601 Overweight single trip permits.

ARM 18.8.602 Speed and bridge crossing conditions imposed for excessive overweight vehicles.

ARM 18.8.801 Permit insurance.

ARM 18.8.901 Confiscation of permits.

ARM 18.8.1002 Mobile home towing unit (toter) requirements.

Case Notes

Special Permit Valid Under Federal-Aid Highway Act: The Montana state Highway Commission (now Transportation Commission) on July 1, 1956, had the authority under section 32-1123, R.C.M. 1947 (now repealed), to issue special permits for overweight vehicles. Since this statute had been reenacted into law each time other provisions of the section were changed, continuous authority had been provided for the issuance of the special permits. The state Highway Commission (now Transportation Commission) had the power to issue permits without jeopardizing the right of the State of Montana to receive federal funds for highway purposes. State ex rel. Dick Irvin, Inc. v. Anderson, 164 M 513, 525 P2d 564 (1974).

Attorney General's Opinions

Reducible Loads — Compliance of State Statutes With Federal Law: Montana oversize and overweight vehicle permit provisions, as applied to reducible loads, comply with federal law and regulations because the provisions became grandfathered exceptions after July 1, 1956. Therefore, with the exception of longer combination vehicles, which are subject to 1991 law, and groups of two or more consecutive axles, whose overall gross weight is subject to 1974 law, Montana's oversize and overweight vehicle permit provisions in effect on July 1, 1956, may be applied to vehicles carrying reducible loads. 48 A.G. Op. 6 (1999).

Collateral References

Tax Appeals and Oversize Loads: A Final Report on the Activities of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2014).

61-10-122. Discretion of issuer — conditions.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1987 Amendment: At beginning of section, after "department", inserted "of highways".

Administrative Rules

ARM 18.8.101 Definitions.

Title 18, chapter 8, subchapter 5, ARM Overdimensional permit requirements.

ARM 18.8.601 Overweight single trip permits.

ARM 18.8.801 Permit insurance.

ARM 18.8.901 Confiscation of permits.

ARM 18.8.1002 Mobile home towing unit (toter) requirements.

Attorney General's Opinions

Authority of Department Officers to Issue Citation for Violation of Special Permit Speed Limits: Department of Transportation Motor Carrier Services Division compliance officers have the authority to issue a citation for violation of a special permit condition when the permit condition violated is a speed limit imposed on the permitted vehicle. 44 A.G. Op. 30 (1992).

61-10-123. Haystack movers.

Compiler's Comments

2005 Amendment: Chapter 542 in (7) at end inserted "as defined in 61-8-102"; and made minor changes in style. Amendment effective January 1, 2006.

61-10-124. Special permits — fees.

Compiler's Comments

2021 Amendment: Chapter 89 in both versions deleted former (3) that read: "(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit"; and made minor changes in style. Amendment effective October 1, 2021.

2019 Amendment: (Both versions) Chapter 299 in (2)(d) near middle of first sentence after "for travel only on" substituted "interstate highways" for "highways that are part of the federal-aid interstate system" and after "a 2-mile radius of an" substituted "interstate highway interchange" for "interchange on the interstate system"; and in (4)(a) near middle of first sentence substituted "interstate highways, as defined in 60-1-103, and on other highways within a 2-mile radius of an interstate highway interchange" for "highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways". Amendment in temporary version effective October 1, 2019.

2011 Amendment: Chapter 34 in (1) near beginning after "subsections" deleted "(2)(b)"; in (2)(a) near beginning inserted "(2)(h)" [(2)(g) in version effective on occurrence of contingency]; in (2)(b) deleted former second sentence that read: "The fee for this permit is $75"; inserted (2)(h) [(2)(g) in version effective on occurrence of contingency] regarding issuance of term permit for overlength vehicle; and made minor changes in style. Amendment effective October 1, 2011.

2005 Amendment: Chapter 509 in (4)(b) substituted "a combination of vehicles powered by a cab-over or tilt-cab truck tractor or a truck may not exceed an overall length of 105 feet, inclusive of front and rear bumpers and overhang" for "the combined trailer length may not exceed 95 feet"; inserted (4)(c) providing that a combination of vehicles powered by a conventional truck tractor may not exceed an overall length of 110 feet, inclusive of the front and rear bumpers and overhang; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 285 in (2)(a) at beginning of third sentence inserted exception clause; inserted (2)(g) providing that a Rocky Mountain double carrying baled hay may not exceed 88 feet of combined trailer length; and made minor changes in style. Amendment effective April 11, 2003.

2001 Amendment: Chapter 327 deleted former (4)(b) and (4)(c) that read: "(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang"; inserted (4)(b) limiting combined trailer length to 95 feet; in (4)(d) substituted "61-10-201" for "61-10-203"; and made minor changes in style. Amendment effective October 1, 2001.

1999 Amendment: Chapter 317 in (2)(a) at end of third sentence deleted "and the long semitrailer cargo unit of the combination may not exceed 48 feet in length"; inserted (2)(f) regarding nondivisible loads; inserted (6) defining a nondivisible load; and made minor changes in style. Amendment effective April 16, 1999.

1997 Amendment: Chapter 232 deleted former (1) that read: "(1) As used in this section, "crane" means a self-propelled, single unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm"; in (1), near middle after "issued for size", deleted "and weight" and after "61-10-104" deleted "and 61-10-106 through 61-10-110"; deleted former (5) that read: "(5) The owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for excess weight if the crane has a current special mobile equipment identification plate and if the department of transportation has approved the configuration of the crane through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is $200"; in (4)(f), after "must have", deleted "a restricted route permit under 61-10-107(3) and"; adjusted subsection references; and made minor changes in style. Amendment effective January 1, 1998.

1995 Amendments: Chapter 236 in (2), near end, deleted reference to 61-10-105; in (3)(b), in second sentence after "This permit", deleted "covers a period of 1 year and"; in (5), near middle of first sentence, substituted "excess weight" for "overweight"; and made minor changes in style. Amendment effective March 24, 1995.

Chapter 312 inserted (3)(e) authorizing the issuance of a term permit for a truck tractor-semitrailer combination for a semitrailer that is 53 feet to 57 feet in length.

1993 Amendments: Chapter 575 in (3)(c), after "required by 61-10-201", deleted "and 61-10-202"; and made minor changes in style. Amendment effective January 1, 1994.

Chapter 621 in (7)(b), after "permit", substituted (7)(b)(i) through (7)(b)(iv) relating to requirements for person, firm, or corporation applying for truck-trailer-trailer special permit for former language that read: "under this subsection (7) operated the truck-trailer-trailer combination before July 1, 1987;

(c) truck-trailer-trailer operations are restricted to the specified routes those vehicles operated on before July 1, 1987; and

(d) a person, firm, or corporation applying for a permit provides the department of transportation with an affidavit designating the routes the vehicle operated on before July 1, 1987"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendments: Chapter 320 in (3)(a), in three places, inserted reference to subsection (7); inserted (7) to allow issuance of special permits for certain truck-trailer-trailer combinations operated before July 1, 1987; and made minor changes in style.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Chapter 672 in (3)(a) inserted third and fourth sentences concerning combined trailer length and semitrailer cargo unit length of Rocky Mountain double and excepting Rocky Mountain double from combination length limit; in (3)(c), near beginning after "gross weight", substituted "fees required by 61-10-201 and 61-10-202" for "fee required by 61-10-203"; and in (3)(d), near beginning before "length", inserted "combination".

Effective Date: Section 1, Ch. 604, L. 1991, amended 1-2-201 to provide that "Every statute providing for taxation or the imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed therein". The Code Commissioner has determined that pursuant to sec. 1, Ch. 604, L. 1991, the amendment to this section by Ch. 672 is effective January 1, 1992.

1989 Amendment: In (2) and (3)(a) inserted reference to subsection (3)(d); inserted (3)(d) referring to combinations of vehicles between 95 feet and 100 feet in length; and made minor change in phraseology. Amendment effective April 4, 1989.

Termination Provision Repealed: Section 1, Ch. 10, L. 1989, repealed sec. 8, Ch. 474, L. 1987, which terminated on July 1, 1989, the amendments made by Ch. 474. Repealer effective February 15, 1989.

1987 Amendments: Chapter 73 near middle of (3)(a) increased height from 13½ to 14 feet.

In Chapter 248 section 1 was codified as subsection (1). Section 2 inserted (5) establishing criteria and fee for issuance of 30-day special permit for overweight crane.

Chapter 370 in (2), at end after "department", and in (4), near middle of second sentence after "department", inserted "of highways".

Chapter 474, near beginning of (2) and (3)(a), inserted reference to subsection (6); in third sentence of (3)(a), after "trailers", inserted "or more than two units designed for or used to carry a load", after "permitted" substituted "except as provided in subsection (6)" for "under this section", and near beginning of fourth sentence inserted "and special permits under subsection (6) must specify"; and inserted (6) establishing conditions under which Department may issue special permits for truck-trailer-trailer or truck-semitrailer-trailer-trailer combinations.

Preamble: The preamble to Ch. 73, L. 1987, read: "WHEREAS, to establish uniformity with neighboring states in the matter of height of trucks traveling between states, Montana must adopt a height limit of 14 feet."

Preamble: The preamble to Ch. 474, L. 1987, provided: "WHEREAS, Montana is surrounded by states and provinces that allow motor carriers to pull special vehicle combinations upon their four-lane highways while Montana prohibits such combinations; and

WHEREAS, shippers will increasingly route their shipments around Montana to the detriment of Montana's transportation industry and of public revenues if special vehicle combinations continue to be excluded here; and

WHEREAS, highway traffic safety will be enhanced by the allowance and strict regulation of special vehicle combinations."

1983 Amendments: Chapter 462 inserted (2)(c) establishing the allowable gross weight of a five-axle logging vehicle as 80,000 pounds. This amendment was effective April 12, 1983.

Chapter 487, in (2)(a) in first sentence, substituted "95" for "85" and at end inserted two sentences prohibiting special permits for vehicle combinations of more than two trailers and allowing special permits for vehicle combinations to prescribe conditions of operation.

1981 Amendment: Increased the trip permit fee from $6 to $10 and inserted the $75 fee for term permits.

Administrative Rules

ARM 18.8.426 Custom combines.
ARM 18.8.509 Special permit restrictions — super-load permit.
ARM 18.8.511A When pilot vehicles are required.
ARM 18.8.517 Special vehicle combinations.
ARM 18.8.518 Special vehicle combination driver certification.
ARM 18.8.801 Permit insurance.

61-10-125. Other fees.

Compiler's Comments

2019 Amendment: Chapter 326 in (1) at beginning deleted "There is charged" and at end of introductory clause inserted "the department of transportation shall charge for distances traveled"; in (1)(a) inserted "up"; in (1)(c) substituted "200 miles and over" for "over 200 miles traveled"; inserted (2) concerning the issuance of wintertime or durational permits; in (3)(a) and (4) at beginning substituted "The department of transportation shall charge" for "There is charged"; and made minor changes in style. Amendment effective May 7, 2019.

2005 Amendment: Chapter 24 inserted (2)(a)(vii) providing a fee of $3,000 for a term permit for a load in excess of statutory limits but that does not exceed 35,000 pounds in excess axle weight; and made minor changes in style. Amendment effective October 1, 2005.

2003 Amendment: Chapter 311 inserted (2)(a)(v) through (2)(a)(vii) imposing fees for term permits for loads in excess of the limits in 61-10-107(1) and not over a specific excess axle weight with no axle or axle group exceeding the maximum weight allowed by a weight analysis; and in (2)(d) in two places after "department" inserted "of transportation". Amendment effective October 1, 2003.

1995 Amendment: Chapter 71 inserted (2)(a)(ii) providing for a $500 term permit for a load not exceeding a total of 10,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight; inserted (2)(a)(iii) providing for a $750 term permit for a load not exceeding a total of 15,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight; inserted (2)(a)(iv) providing for a $1,000 term permit for a load not exceeding a total of 20,000 pounds in excess axle weight, with no single axle exceeding 5,000 pounds in excess axle weight; inserted (2)(b) providing that the fees in subsection (2)(a) are annual fees but may be prorated and providing for an additional fee of $10 if the fees are paid other than annually; inserted (2)(c) providing that a permit issued is valid for a period not less than 1 calendar quarter or more than 1 calendar year; and inserted (2)(d) providing that a term permit may not be issued for loads that exceed 10,000 pounds in excess axle weight unless the person applying for the permit has obtained approval from the Department.

1993 Amendment: Chapter 571 in (1), at beginning, deleted "In addition to the permit fee" and at end substituted "provided for by the formula in 61-10-107(1) but that does not exceed axle limits set forth in 61-10-107(1)" for "or the sum of the excess axle loads, whichever is greater"; inserted (2) providing for charging a fee for a term permit for a load not exceeding 5,000 pounds in excess axle weight; inserted (3) providing for charging a fee for a load exceeding the single axle, tandem axle, or axle group limits and listing the fee by poundage; inserted (4) relating to rounding off of mileage and weight; inserted (5) providing that a vehicle must be licensed to the maximum allowable weight before an overweight permit may be issued; and made minor changes in style. Amendment effective January 1, 1994.

1981 Amendment: Increased the fee in (1) from $5 to $10, in (2) from $15 to $30, and in (3) from $25 to $50.

61-10-126. Deposit of fees.

Compiler's Comments

2017 Amendment: Chapter 267 at end substituted "provided for in 15-70-125" for "in the state special revenue fund". Amendment effective July 1, 2017.

2015 Amendment: Chapter 126 near middle substituted "department of transportation" for "department of revenue". Amendment effective March 27, 2015.

2001 Amendment: Chapter 257 substituted reference to department of revenue for reference to state treasurer. Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1995 Amendments: Chapter 236 deleted reference to 61-10-105; and made minor changes in style. Amendment effective March 24, 1995.

Chapter 509 substituted "highway nonrestricted account" for "state highway account"; and made minor changes in style. Amendment effective July 1, 1995.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

61-10-128. When authorities may restrict right to use roadway.

Compiler's Comments

2019 Amendment: Chapter 90 in (3) near beginning inserted "or a vehicle loaded with fertilizer"; in (3)(b) near end inserted "or a bill of lading"; and in (3)(c) in middle inserted "or point of unloading". Amendment effective March 21, 2019.

2001 Amendment: Chapter 518 inserted (4) exempting hay grinders and their towing units from weight limits. Amendment effective October 1, 2001.

1997 Amendment: Chapter 232 deleted former (3)(b) that read: "(b) a permit has been issued under 61-10-107(3), regardless of the vehicle's gross weight, specifying the route from point of loading to the nearest nonrestricted road"; inserted (3)(c) regarding use of direct route; deleted (4) that read: "(4) A permit referred to in subsection (3) may be revoked for violating any condition of the permit"; and made minor changes in style. Amendment effective January 1, 1998.

1995 Amendment: Chapter 236 in (1) deleted reference to 61-10-105; and made minor changes in style. Amendment effective March 24, 1995.

1993 Amendment: Chapter 57 in (2), near beginning of third sentence, inserted reference to Department of Transportation and at end inserted "subject to the provisions of subsection (3)"; inserted (3) regarding prohibition or restriction of a vehicle loaded with perishable seed potatoes; inserted (4) regarding revocation of a transportation permit; and made minor changes in style. Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 57, L. 1993, provided: "The legislature in 1991 temporarily prohibited the department of transportation from subjecting seed potato haulers to weight and speed restrictions under certain conditions and with a permit requirement. It is the intent of the legislature to now make that prohibition permanent under the same conditions and permit requirements as were contained in the 1991 temporary law. The legislature expects that with the passage of time, roads will be upgraded and that equipment used by the potato haulers will be upgraded in a fashion that will eliminate the wear and tear on roads that makes special weight and speed restrictions necessary. For the time being, the legislature recognizes the necessity of exempting seed potato haulers from special restrictions under certain conditions. The legislature intends to allow the exemption with the understanding that in the future, the people involved in the seed potato industry will continue to work on upgrading their equipment so that eventually the equipment will not require exemptions from special speed and weight limits and that as equipment is replaced, the new equipment will meet regular limits, without special exemptions, that will protect the state's highways."

1991 Amendments: Chapter 476 in (3), in introductory clause, substituted "seed potatoes" for "agricultural seeds"; inserted (3)(b) regarding operation of a vehicle under permit regardless of gross weight; inserted (4) regarding revocation of the permit; and made minor changes in style. Amendment effective April 20, 1991.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 476, L. 1991, provided: "It is the intent of the legislature to allow the department of highways to require vehicles transporting perishable seed potatoes on restricted roads to be routed to the nearest road that is not restricted, even if the routing is not the shortest route to the destination."

Termination Date Extended: Section 2, Ch. 476, L. 1991, amended sec. 1, Ch. 237, L. 1989, which extended the termination date for this section, established in sec. 4, Ch. 468, L. 1987, and provided: "This act terminates June 30, 1993."

Termination Provision Amended: Section 1, Ch. 237, L. 1989, amended sec. 4, Ch. 468, L. 1987, to extend termination date to June 30, 1991. Amendment effective March 22, 1989.

1987 Amendments: Chapter 370 in (2), at beginning of first and second sentences after "department", inserted "of highways".

Chapter 468 at beginning of (1) inserted "Neither the department nor" and after "local authority may" deleted "not"; in (2), at end of third sentence, inserted "subject to the provisions of subsection (3)"; and inserted (3) establishing conditions under which Department or local authority may impose restriction on weight of vehicle loaded with perishable agricultural seeds that is traveling on public highway. Amendment terminates June 30, 1991.

1981 Amendment: Inserted "and speed" following "weight" in first sentence of (2).

61-10-129. Rules regarding overlength vehicles.

Compiler's Comments

1991 Amendments: Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Chapter 672 in two places deleted reference to subsection (4) of 61-10-124.

Termination Provision Repealed: Section 1, Ch. 10, L. 1989, repealed sec. 8, Ch. 474, L. 1987, which terminated this section July 1, 1989. Repealer effective February 15, 1989.

1987 Statement of Intent: The statement of intent attached to Ch. 474, L. 1987, provided: "A statement of intent is required for this act because section 4 [5] [61-10-129] grants to the department of highways [now department of transportation] authority to make rules prescribing qualifications of drivers and for the equipping and operation of special vehicle combinations.

The legislature intends that the rules for operation of special vehicle combinations be consistent with those rules adopted by states and provinces allowing these vehicle combinations. Rules are to include provisions for general operation, equipment, combination description, drivers, speed, stability, weight, load sequence, operational procedures, accidents, and insurance.

The legislature intends that the department of highways may restrict the operation of special vehicle combinations during times or periods when adverse conditions, weather, or other safety considerations make such operation unsafe or inadvisable."

Administrative Rules

ARM 18.8.517 Special vehicle combinations.

ARM 18.8.518 Special vehicle combination driver certification.

61-10-130. Custom combiner's special permit — fee — collection — distribution — not transferable.

Compiler's Comments

2019 Amendment: Chapter 299 in (3) in third sentence near beginning substituted "an interstate highway, as defined in 60-1-103" for "a highway that is part of the federal-aid interstate system"; in (4) in first sentence at end substituted "an interstate highway, as defined in 60-1-103" for "a highway that is part of the federal-aid interstate system"; and made minor changes in style. Amendment effective October 1, 2019.

2001 Amendments — Composite Section: Chapter 369 in (3) and (4) in first sentences increased distance to 100-mile radius from 50-mile radius; in (3) deleted former fourth sentence that read: "The truck may not be operated in excess of 40 miles per hour"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 574 in (4) near beginning after "limitations" deleted "and until July 1, 1991, may be operated within the same tolerances granted trucks under subsection (3)"; at end of (6)(a) substituted "state general fund" for "county general fund in the county in which the permittee declares the greatest amount of time will be spent to operate"; and made minor changes in style. Amendment effective July 1, 2001.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1989 Amendment: In introductory clause of (1) inserted "overlength" and substituted "may pay a special permit fee" for "shall pay a fee"; in introductory clause of (2) inserted "overlength" and before "fee" inserted "special permit"; inserted (3) relating to transport of agricultural products under a custom combiner's special permit; inserted (4) relating to combine trailers; deleted former (6) that read: "(6) Any owner or operator of any equipment included in the unit definition in subsection (1) or (2) of this section who violates any provision of this section is guilty of a misdemeanor and punishable by a fine of not more than $300 or by a sentence of not more than 60 days in the county jail, or both"; and inserted (8) authorizing the adoption of administrative rules. Amendment effective March 20, 1989.

1989 Statement of Intent: The statement of intent attached to Ch. 183, L. 1989, provided: "This bill requires a statement of intent because [subsection (8) of section 1] [61-10-130(8)] authorizes the department of highways [now department of transportation] to adopt administrative rules to implement the act. The act is intended to provide a special permit fee for the vehicles and equipment of custom combiners operating in the state, in lieu of the usual vehicle license fees and gross vehicle weight, overwidth, overlength, and overheight fees otherwise required. The custom combiner has the option of paying the regular fees.

The act also permits the use of the custom combiner's truck or trailer to haul grain, but only from the field to the point of first unloading, within certain limitations. This authority is given so that the combiner may assist the producer in getting the harvested grain out of the field and is not intended to allow transportation of the grain in commerce.

It is the intent of the legislature that the department of highways adopt necessary rules to implement the custom combiner's special permit and to regulate the operation of the vehicles involved in conformity with the act and special permit requirements."

1985 Amendment: In first sentence of (1) made minor changes in phraseology for clarity.

1983 Amendments: Chapter 48 deleted "for a period beginning July 1 and ending October 31" after "per unit" at end of the first sentence in (1); at end of first sentence in (2), deleted "for a period beginning May 1 and ending October 31 of the same year" after "per unit"; at end of (3), substituted "the calendar year in which the fee is collected" for "a period beginning July 1 and ending October 31"; and in (4), changed "December 1" to "January 31".

Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

Administrative Rules

ARM 18.8.426 Custom combines.

61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — definition.

Compiler's Comments

2021 Amendment: Chapter 89 in (3) in middle of first sentence after "and may" inserted "except for trucks exempted by department administrative rule" and in last sentence after "10,000 pounds" inserted "except those exempted by department administrative rule"; and made minor changes in style. Amendment effective October 1, 2021.

2011 Amendment: Chapter 142 in (3) in first sentence substituted "all trucks and commercial motor vehicles of 26,000 pounds GVW or greater" for "vehicles, except passenger cars and pickup trucks under 14,000 pounds GVW and recreational vehicles that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer". Amendment effective October 1, 2011.

2009 Amendment: Chapter 340 in (1)(a) near end of first sentence after "portable" inserted "scales used on an engineered site", and in second sentence after "nearest" substituted "stationary scales or engineered site for use of portable scales if those stationary scales or an engineered site is" for "scales if those scales are"; in (3) at end of second sentence after "crews" inserted "when the portable scales are used on an engineered site"; inserted (4) defining engineered site; and made minor changes in style. Amendment effective October 1, 2009.

2005 Amendments — Composite Section: Chapter 366 in (1)(b) at beginning substituted "If it is determined in the weighing process that the maximum allowable weights specified in 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110 have been exceeded, the peace officer, officer of the highway patrol, or employee of the department of transportation" for "That person"; deleted former (4) through (7) that read: "(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of the joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of transportation shall cooperate to ensure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the motor carrier services functions of the department of transportation. Each employee designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles used by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of the commercial motor vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of transportation who is appointed pursuant to 61-12-201 has:

(a) the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203;

(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120 that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was obtained; and

(c) the authority, if probable cause exists, to stop and inspect a supply tank connected to the engine of any diesel-powered motor vehicle operating on the public highways of this state in order to determine compliance with Title 15, chapter 70, part 3.

(7) The department of transportation shall report to the revenue and transportation interim committee at least once each year on its enforcement, pursuant to the authority provided in subsection (6)(c), of the provisions of Title 15, chapter 70, part 3, and on any impacts that enforcement has had on the state special revenue fund"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 542 in (1)(a) in first sentence near middle after "recreational vehicles" deleted "as defined in 61-1-132" and inserted "travel trailers, or motor homes"; in (3) in first sentence near middle after "recreational vehicles" deleted "as defined in 61-1-132"; and made minor changes in style. Amendment effective January 1, 2006.

Termination Provision Repealed: Section 1, Ch. 111, L. 2003, repealed sec. 2, Ch. 206, L. 2001, which terminated the 2001 amendments to this section July 1, 2003. Effective March 25, 2003.

2001 Amendment: Chapter 206 at end of (6) inserted "who is appointed pursuant to 61-12-201"; inserted (6)(c) allowing department employee to stop and inspect diesel-powered motor vehicles for nontaxed, dyed diesel fuel in supply tank; inserted (7) requiring department to report to interim committee; and made minor changes in style. Amendment effective October 1, 2001, and terminates July 1, 2003.

1995 Amendment: Chapter 236 in two places in (1) deleted reference to 61-10-105; and made minor changes in style. Amendment effective March 24, 1995.

1993 Amendments: Chapter 70 in (1), in second sentence after "unload", substituted "at a designated facility" for "immediately" and inserted third and fourth sentences regarding issuance of and authorization under an excess weight permit; in (2), in first sentence after "cared for", deleted "and removed from the highway right-of-way" and substituted second sentence prohibiting leaving material on highway right-of-way for former language that read: "The removal shall be within a reasonable time designated by the person who has compelled the unloading"; and made minor changes in style.

Chapter 575 in (3), near middle of first sentence after "under", substituted "14,000 pounds" for "8,000 pounds" and inserted last sentence concerning inspection and weighing; in (5), in second sentence, substituted "motor carrier services" for "gross vehicle weight"; and made minor changes in style. Amendment effective January 1, 1994.

1991 Amendment: Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Termination Provision Repealed: Section 1, Ch. 149, L. 1991, repealed sec. 5, Ch. 446, L. 1989, which terminated the 1989 amendments to this section July 1, 1991. Repealer effective March 25, 1991.

1989 Amendments: Chapter 57 in first sentence of (1), after "61-10-110", inserted "except recreational vehicles as defined in 61-1-132"; and in (3), after "G.V.W.", inserted "and recreational vehicles as defined in 61-1-132 (that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer)".

Chapter 446 inserted (6)(b) relating to documents on shipments of agricultural seeds. Amendment effective April 5, 1989, and terminates July 1, 1991.

Preamble: The preamble to Ch. 446, L. 1989, provided: "WHEREAS, the growth and spread of noxious weeds in the State of Montana has become one of the single greatest natural threats to the state's agricultural industry and economy; and

WHEREAS, this threat frequently materializes when seeds shipped into this state contain unlawful noxious weed seeds which become planted with agricultural seed crops before the Department of Agriculture has the knowledge and opportunity to embargo the shipment; and

WHEREAS, the Legislature of the State of Montana finds it appropriate to use existing Department of Highways personnel and the facilities in the Gross Vehicle Weight Division to obtain bills of lading on all seed shipments into the state and forward the bills of lading to the Montana Department of Agriculture in order to enhance its enforcement capabilities."

1987 Amendment: Throughout section, after "department", inserted "of highways".

1985 Amendment: Inserted (4) requiring department to work with highway patrol in enforcement of motor safety standards; inserted (5) requiring department to designate employees as peace officers with authority to enforce compliance with motor safety standards; and deleted second and third sentences of former (4) that read: "This section does not relieve the public service commission from its responsibility as the lead agency as required in 69-12-201 through 69-12-203 and 69-12-205. The commission, highway patrol, and the department shall cooperate to assure minimum duplication and maximum coordination of enforcement effort."

1981 Amendment: Deleted "licensing" after "motor carriers" in (4).

Administrative Rules

ARM 18.8.519 Wreckers and/or tow vehicle requirements.
ARM 18.8.1302 Vehicles authorized to bypass weigh stations.
ARM 18.8.1502 Federal motor carrier safety rules and state modifications.

Case Notes

Commercial Trucking Closely Regulated Industry — Warrantless Inspection Permitted — Evidence of Alcoholic Beverage Consumption Properly Obtained: The District Court did not err in upholding a stop and warrantless inspection of the defendant's truck by an officer of the Montana Department of Transportation (MDT). Because commercial trucking is a closely regulated activity in Montana, and because Montana's regulatory scheme complies with the notice and focus requirements of New York v. Burger, 482 US 691 (1987), an MDT officer was authorized to stop the defendant's vehicle for inspection without a warrant and without particularized suspicion of a violation. After detecting evidence that the defendant might be under the influence of alcohol, the MDT officer was authorized to make further investigation and to enlist the assistance of the Montana Highway Patrol as a matter of public safety. After the initial stop of the defendant's truck, evidence of his consumption of alcohol was in plain view in the truck and could be seized and used in a subsequent prosecution. St. v. Beaver, 2016 MT 332, 386 Mont. 12, 385 P.3d 956.

Escape From Arresting Officer — Physical Restraint Not Prerequisite of Arrest: A valid arrest is an underlying element of "official detention" as that term is used in 45-7-306 and is therefore also an underlying element of the offense of escape. A valid arrest occurred when a Department of Highways (now Department of Transportation) enforcement officer stopped a truck to weigh it and a passenger began to unload it, threatened the officer when he was told to stop unloading, and was twice told he was under arrest. Actual physical restraint of the passenger is not a prerequisite to a valid arrest. The standard for an arrest when there is no physical restraint is whether a reasonable person, innocent of any crime, would have felt free to walk away under the circumstances. The passenger was properly charged with and convicted of the offense of escape. St. v. Thornton, 218 M 317, 708 P2d 273, 42 St. Rep. 1614 (1985), followed, as to the lack of need for physical restraint, in St. v. Widenhofer, 286 M 341, 950 P2d 1383, 54 St. Rep. 1438 (1997).

61-10-142. Display of permit.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1987 Amendment: At end of section, after "department", inserted "of highways".

61-10-144. Violation of standards — tolerance.

Compiler's Comments

2021 Amendment: Chapter 89 in (2) in middle of first sentence substituted "61-10-141" for "61-10-141(4)". Amendment effective October 1, 2021.

2019 Amendment: Chapter 299 in (3) in first sentence after "operated on any highway, except" substituted "an interstate highway, as defined in 60-1-103" for "a highway that is part of the federal-aid interstate system". Amendment effective October 1, 2019.

2009 Amendment: Chapter 340 in (2) near beginning of first sentence after "open" substituted "stationary scale or portable scale on an engineered site, as defined in 61-10-141(4)" for "state scale, permanent or portable". Amendment effective October 1, 2009.

2001 Amendments — Composite Section: Chapter 254 in (2) in five places substituted "10%" for "7%, or 10% for garbage trucks"; in (3) substituted "100-mile radius" for "50-mile radius" and deleted former second sentence that read: "The farm vehicle or combination of vehicles may not exceed 40 miles an hour"; and deleted former (4) that read: "(4) For the purposes of this section, a garbage truck means only a motor vehicle operated by a Class D motor carrier, as determined and regulated by the public service commission pursuant to 69-12-301(5)." Amendment effective October 1, 2001.

Chapter 369 in (2) in five places substituted "10%" for "7%, or 10% for garbage trucks"; in (3) in first sentence increased distance to 100-mile radius from 50-mile radius and deleted former second sentence that read: "The farm vehicle or combination of vehicles may not exceed 40 miles an hour"; deleted former (4) that read: "(4) For the purposes of this section, a garbage truck means only a motor vehicle operated by a Class D motor carrier, as determined and regulated by the public service commission pursuant to 69-12-301(5)"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 216 throughout (2) after "7%" inserted "or 10% for garbage trucks"; inserted (4) defining garbage truck; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 232 in (3), at beginning of first sentence, substituted "Farm vehicles transporting agricultural products from a harvesting combine or other harvesting machinery" for "An operator of a vehicle or combination of vehicles subject to the provisions of 61-10-107(4)" and throughout subsection inserted "farm" before "vehicle"; and made minor changes in style. Amendment effective January 1, 1998.

1995 Amendments: Chapter 62 in (2), in five places before "7%", deleted reference to former 5% allowable axle weight limitation and after "7%" deleted reference to exception for a vehicle or combination of vehicles transporting livestock; and made minor changes in style.

Chapter 236 in (1), near end, deleted reference to 61-10-105; and made minor changes in style. Amendment effective March 24, 1995.

1993 Amendment: Chapter 70 in (2)(a), at beginning, substituted "may be required to be" for "must be"; inserted (2)(b) regarding issuance of a permit; and made minor changes in style.

1983 Amendment: In (2), in last half of first sentence substituted "allowable total gross weight limitations ... transporting livestock" for "allowable weight limitations by more than 7%", in second sentence substituted "total gross or axle weight limitations by more than 5%, or 7% if the vehicle or combination of vehicles is transporting livestock" for "weight limitations by more than 7%", and in last sentence substituted present language for "Violations in excess of 7% are subject to the fines provided in 61-10-145, and all loads in excess of 7% must be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing."

1981 Amendment: In (3) substituted the language relating to penalties for vehicles or combinations of vehicles exceeding the allowable weight limitations for former text that read: "The operator of a vehicle who has received a permit for the movement of agricultural products during harvest season under 61-10-107 is exempt from the single trip permit fee of $10 charged under subsection (2)."

Case Notes

Evidence of Compliance: A prosecution was instituted for the alleged overweight of a truck driven by the defendant for violation of section 32-1123, R.C.M. 1947 (now repealed). The defendant offered evidence which showed that he had been weighed by a state police weighing station a few hours earlier and was found to be within the legal limit. It was reversible error for the court to direct the jury to return a verdict of guilty. St. v. Baillargeron, 126 M 310, 249 P2d 799 (1952).

61-10-145. Penalties.

Compiler's Comments

1997 Amendment: Chapter 232 deleted former (4) that read: "(4) The penalties in subsection (1) do not apply to an operator who fails to secure a special permit as provided for in 61-10-107(3) if the vehicle or combination of vehicles is not overweight with that permit. The failure to obtain the special permit is punishable under 61-10-146 and under this section as provided in 61-10-146, and the operator is required to purchase the permit. If the vehicle or combination of vehicles exceeds the weight limitations allowed by special permit and the operator fails to obtain a permit under 61-10-107(3), the penalties of subsection (1) apply to the weight exceeding 80,000 pounds"; and made minor changes in style. Amendment effective January 1, 1998.

1995 Amendment: Chapter 236 in (1), in two places, and in (3) deleted reference to 61-10-105. Amendment effective March 24, 1995.

1993 Amendment: Chapter 70 in (1)(b) increased penalty from $50 to $75; in (1)(c) increased penalty from $70 to $125; in (1)(d) increased penalty from $100 to $175; in (1)(e) increased penalty from $160 to $250; in (1)(f) increased penalty from $220 to $275; and made minor changes in style.

1991 Amendment: In (4), in second sentence after "under 61-10-146", inserted "and under this section as provided in 61-10-146"; and made minor changes in style.

1985 Amendment: Inserted (2) relating to penalties for motor vehicles equipped with a retractable axle.

1983 Amendment: In (1), in first sentence changed fine from "not less than $15 or more than $50" to "not less than $30 or more than $100"; increased fines in subsections (1)(a) through (1)(l) as follows: (1)(a), from $15 to $30; (1)(b), from $25 to $50; (1)(c), from $35 to $70; (1)(d), from $50 to $100; (1)(e), from $80 to $160; (1)(f), from $110 to $220; (1)(g), from $150 to $300; (1)(h), from $200 to $400; (1)(i), from $250 to $500; (1)(j), from $300 to $600; (1)(k), from $500 to $1,000; and (1)(l), from $1,000 to $2,000; inserted (3) relating to penalties for failure to secure a special permit; and deleted former (4), which read: "All fines and forfeitures shall be remitted monthly by the county treasurer to the state treasurer for deposit in the state general fund."

1981 Amendment: Deleted term of imprisonment for violating 61-10-101 through 61-10-110 in (1); added subsection (3) establishing that violation of section is a misdemeanor.

Case Notes

Instructions to Jury: In a prosecution for the overweight of a truck in violation of section 32-1123, R.C.M. 1947 (now repealed), it was reversible error for the judge to instruct the jury that they could fix the fine at not less than $10 nor more than $50, or could leave the fixing of the fine to the court, since it did not state the law correctly. The penalty prescribed is fine or imprisonment and that is what the jury should have been informed. St. v. Baillargeron, 126 M 310, 249 P2d 799 (1952).

61-10-146. Special permits — misrepresentations and violations as misdemeanor.

Compiler's Comments

2021 Amendment: Chapter 89 in (2)(b) in first sentence in two places substituted "61-10-124(3)" for "61-10-124(4)". Amendment effective October 1, 2021.

1997 Amendment: Chapter 232 in (2)(b), in two places, substituted "61-10-124(4)" for "61-10-124(6)"; and made minor changes in style. Amendment effective January 1, 1998.

1991 Amendments: Chapter 16 in two places in (2)(b) changed reference to subsection of 61-10-124.

Chapter 122 inserted (2)(a) establishing additional penalty for operating a vehicle or combination of vehicles without or in violation of the conditions of a special overweight permit; in two places in (2)(b) changed reference to subsection of 61-10-124; and made minor changes in style.

Termination Provision Repealed: Section 1, Ch. 10, L. 1989, repealed sec. 8, Ch. 474, L. 1987, which terminated subsection (2) July 1, 1989. Repealer effective February 15, 1989.

1987 Codification: Section 4, Ch. 474, L. 1987, was codified as subsection (2) of this section.

Attorney General's Opinions

Authority of Department Officers to Issue Citation for Violation of Special Permit Speed Limits: Department of Transportation Motor Carrier Services Division compliance officers have the authority to issue a citation for violation of a special permit condition when the permit condition violated is a speed limit imposed on the permitted vehicle. 44 A.G. Op. 30 (1992).

61-10-147. Penalties for using highway when use is restricted.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 115, L. 2023. Amendment effective July 1, 2023.

61-10-148. Disposition of fines and forfeited bonds.

Compiler's Comments

2005 Amendment: Chapter 542 in (1) near end of first sentence after "treasurer to the" substituted "state" for "department of revenue". Amendment effective January 1, 2006.

2002 Amendment: Chapter 13 in (2) at end substituted "deposited in the state general fund" for "distributed to the county treasurer for deposit in the county road fund". Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided: "(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002."

2001 Amendments — Composite Section: Chapter 257 in (1) in first sentence substituted "department of revenue, as provided in 15-1-504" for "state treasurer". Amendment effective July 1, 2001.

Chapter 574 in (1) in first sentence before "all the money" deleted "one-half of" and deleted former second sentence that read: "The remaining half, less the deductions required by law, must be deposited in the county road fund." Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1999 Amendment: Chapter 389 in (1) at end of first sentence substituted "state general fund" for "highway nonrestricted account in the state special revenue fund". Amendment effective July 1, 1999.

1995 Amendment: Chapter 509 substituted "highway nonrestricted account" for "state highway account"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 87 in (2), near middle, substituted "60-2-128" for "60-2-105".

1987 Amendments: Chapter 316 near beginning of (1) inserted reference to subsection (2); and inserted (2) regarding disposition of fines and forfeited bonds.

Chapter 557 in (1) inserted last sentence creating exception for fines and forfeited bonds paid to Justices' Courts.

Coordination Instruction: Section 66, Ch. 557, L. 1987, provided in part: "If House Bill No. 28, including the section of that bill amending 61-10-148, is passed and approved, the amendment to 61-10-148 in this bill shall read: "This subsection does not apply to fines and forfeited bonds paid to justices' courts.""

House Bill No. 28 was approved April 1, 1987, and the language in 61-10-148 was changed accordingly.

1983 Amendments: Chapter 277 substituted reference to state special revenue fund for reference to earmarked revenue fund.

Chapter 601, near beginning of section after "61-12-701", substituted language through end of section for former language, which read: "fines collected under 61-10-146 or 61-10-147 belong to the general road fund of the county and shall, immediately after their collection, be paid by the court or magistrate collecting them to the county treasurer for the use and benefit of that fund, except for that portion of the fines otherwise allocated by law which the county treasurer shall transmit to the state treasurer who shall credit them to the appropriate account in the earmarked revenue fund."

Severability Clause: Section 13, Ch. 226, L. 1965, was a severability clause.

61-10-154. Department of transportation to adopt motor carrier safety standards — enforcement — designation of peace officers — duties — violations.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 37 inserted (6)(e) regarding enforcement within the exterior boundaries of a reservation whose tribal government has entered into an agreement with the department of transportation; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 126 inserted (6)(d) concerning department authority to issue citations when certain vehicle configurations cause lane blockage; and made minor changes in style. Amendment effective October 1, 2021.

2019 Amendment: Chapter 163 in (8) substituted "transportation interim committee" for "revenue and transportation interim committee" and after "biennially" inserted "in accordance with 5-11-210"; and made minor changes in style. Amendment effective April 18, 2019.

Preamble: The preamble attached to Ch. 163, L. 2019, provided: "WHEREAS, the Legislature recognizes that transportation issues in Montana warrant the attention and focus of a separate interim committee; and

WHEREAS, the Legislature intends to form a Transportation Interim Committee to be composed of the traditional interim committee membership specified in section 5-5-211, MCA, and for the committee to hold six meetings during the 2019-2020 interim; and

WHEREAS, the Legislature intends that the creation of the Transportation Interim Committee will lessen the workload of the Revenue Interim Committee with respect to the Department of Transportation and the workload of the Law and Justice Interim Committee with respect to the Department of Justice's Motor Vehicles Division, allowing the Transportation Interim Committee to have a minimal impact on the Legislative Branch's interim committee budget; and

WHEREAS, the Legislature intends the Transportation Interim Committee to prepare a final report that includes a recommendation to the 2021 Legislature regarding whether to maintain a separate Transportation Interim Committee into the future."

2015 Amendment: Chapter 3 in (8) substituted "biennially" for "at least once each year". Amendment effective October 1, 2015.

Effective Date: This section is effective October 1, 2005.

2005 Amendment — Coordination: Section 38, Ch. 428, L. 2005, a coordination section, provided that if Senate Bill No. 459 and [this act] are both passed and approved, then [section 8(7)] [61-10-154(7)] of Senate Bill No. 459 must be amended as follows:

"(7) A violation of the standards adopted pursuant to this section is punishable as provided in 61-9-512, and the court, upon conviction~~, or forfeiture of bail that is not vacated~~ as defined in 61-5-213, shall forward a record of conviction ~~or forfeiture~~ to the department within 5 days in accordance with 61-11-101." Senate Bill No. 459 was approved as Ch. 366, L. 2005.

Administrative Rules

Title 18, chapter 8, subchapter 15, ARM Safety requirements.

Case Notes

Adoption of Federal Commercial Vehicle Regulations by Montana Department of Transportation (MDT) Not Unconstitutional Delegation of Legislative Authority — Policy of Statute (Adoption of Safety Standards for Certain Types of Vehicles), Rationale (Ensure Safety of Private and Commercial Vehicles), and Parameters for MDT's Standards (to Be Modeled After Federal Commercial Rules) Provided by 61-10-154 — Statute Sufficiently Clear, Definite, and Certain for MDT to Know Rights and Obligations. St. v. Akhmedli, 2023 MT 120, 412 Mont. 538, 531 P.3d 562.

Commercial Trucking Closely Regulated Industry — Warrantless Inspection Permitted — Evidence of Alcoholic Beverage Consumption Properly Obtained: The District Court did not err in upholding a stop and warrantless inspection of the defendant's truck by an officer of the Montana Department of Transportation (MDT). Because commercial trucking is a closely regulated activity in Montana, and because Montana's regulatory scheme complies with the notice and focus requirements of New York v. Burger, 482 US 691 (1987), an MDT officer was authorized to stop the defendant's vehicle for inspection without a warrant and without particularized suspicion of a violation. After detecting evidence that the defendant might be under the influence of alcohol, the MDT officer was authorized to make further investigation and to enlist the assistance of the Montana Highway Patrol as a matter of public safety. After the initial stop of the defendant's truck, evidence of his consumption of alcohol was in plain view in the truck and could be seized and used in a subsequent prosecution. St. v. Beaver, 2016 MT 332, 386 Mont. 12, 385 P.3d 956.

61-10-155. Rulemaking authority.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1989 Statement of Intent: The statement of intent attached to Ch. 371, L. 1989, provided: "A statement of intent is required for this bill because it grants rulemaking authority to the department of highways [now department of transportation] to implement, interpret, and carry out MCA provisions relating to vehicle size and weight, licensing requirements, and special permits.

The legislature intends that the department have discretion to adopt rules or to amend existing rules in a manner that will promote the enforcement of provisions regulating vehicles pursuant to Title 61, chapter 10. It is intended that the department, with its expertise and experience in the administration and enforcement of gross vehicle weight laws, supplement the statutory provisions with enforceable rules necessary to further the administration and regulation of vehicles under chapter 10.

It is contemplated that the rules supplement and interpret the provisions of chapter 10 by, among other things, providing:

(1) guidance and direction for the administration and collection of gross vehicle weight fees;
(2) implementation and regulation of the permit systems authorized by statute; and
(3) regulation of the movement of vehicles with oversize or overweight loads for the purposes of ensuring highway safety and protecting the state highway system.

The legislature intends this rulemaking authority to apply to the existing provisions of chapter 10 as well as to any legislation passed in this session amending chapter 10."

Effective Date: Section 3, Ch. 371, L. 1989, provided that this section is effective March 29, 1989.

Administrative Rules

Title 18, chapter 8, ARM Motor Carrier Services Division.

Part 2
Gross Vehicle Weight Licensing Requirements

Part Compiler's Comments

Severability Clause: Section 2, Ch. 293, L. 1967, was a severability clause.

61-10-201. Weight fees on motortrucks, truck tractors, and buses.

Compiler's Comments

2001 Amendment: Chapter 327 near beginning after "licensing of vehicles" deleted "and except as provided in 61-10-203". Amendment effective October 1, 2001.

1997 Amendment: Chapter 232 at end inserted "plus an additional $100.00 to exceed the 80,000 lbs. federal gross weight limit"; and made minor changes in style. Amendment effective January 1, 1998.

1995 Amendments: Chapter 88 in first sentence, after "based upon", inserted "the manufacturer's rated capacity for trucks with a capacity of 1 ton or less and upon" and under Schedule I substituted fee schedule for manufacturer's rated capacity up to 1/2 ton, manufacturer's rated capacity of 3/4 ton, and manufacturer's rated capacity of 1 ton for fee schedule for motortrucks, truck tractors, and buses up to 6,000 pounds, $7.50, 6,001 through 8,000 pounds, $9.50, 8001 through 10,000 pounds, $13.25, 10,001 through 12,000 pounds, $15, and 12,001 through 14,000 pounds, $17 and before "16,000 lbs." substituted "Up to" for "14,001 through". Amendment effective January 1, 1996.

Chapter 236 near end, in over 80,000 pounds category, deleted reference to 61-10-105. Amendment effective March 24, 1995.

1993 Amendment: Chapter 575 in introduction inserted "and except as provided in 61-10-203", after "tractor" inserted "and bus", and near end inserted "and the maximum gross weight of any towed unit of each truck and truck tractor"; and in Schedule I reduced fees except fee for vehicles up to 6,000 pounds (see 1993 Session Law for former amounts), inserted fee categories for vehicles over 42,000 pounds and under 80,000 pounds, and in last category substituted "Over 80,000 lbs." for "Over 42,000 lbs." and substituted "750.00 plus an additional 46.00 for each ton or fraction of a ton in excess of 80,000 lbs." for "62.50 per ton or fraction thereof"; and made minor changes in style. Amendment effective January 1, 1994.

Administrative Rules

ARM 18.8.101 Definitions.
ARM 18.8.408 Tow cars (wreckers).
ARM 18.8.412 Self-propelled motor homes.
ARM 18.8.414 Increase in weight and/or change of classification.
ARM 18.8.415 Monthly-quarterly G.V.W. fees.
ARM 18.8.428 Fertilizer vehicles.

Case Notes

Dump Truck Not Implement of Husbandry — No Exemption: An old dump truck used in a ranching operation was not exempt from registration and payment of fees as an implement of husbandry because it was not designed for agricultural purposes. St. v. Patton, 227 M 167, 737 P2d 498, 44 St. Rep. 983 (1987).

61-10-206. Special fees — certain farm vehicles.

Compiler's Comments

2005 Amendment: Chapter 542 inserted (3) concerning treatment of certain fertilizer applicators. Amendment effective January 1, 2006.

2003 Amendment: Chapter 55 in (1) at end of introductory clause after "provided in" substituted "61-10-201" for "Schedule I and Schedule II"; inserted (1)(a)(ii) regarding payment of the fee for motortrucks used to transport timber harvested on the owner's ranch, farm, orchard, or dairy from point of harvest to market; and made minor changes in style. Amendment effective February 28, 2003.

1995 Amendment: Chapter 314 deleted (1)(c) that read: "(c) fertilizer spreader trucks and spreader trailers used exclusively to transport and apply fertilizer to agricultural fields and plots"; deleted former (2) that read: "(2) The applicant under the fertilizer exception for special fees under subsection (1)(c) shall show, when the fee is paid as provided in 61-10-222, a valid fertilizer dealer license issued by the department of agriculture as provided in 80-10-202"; and made minor changes in style. Amendment effective January 1, 1996.

1993 Amendment: Chapter 575 in (1) increased fee from 16% to 35%; in (1)(a), near beginning after "motortrucks", deleted "trailers, and semitrailers"; inserted (1)(c) relating to fertilizer spreader trucks and spreader trailers used exclusively to transport and apply fertilizer to agricultural fields and plots; inserted (2) requiring an applicant for an exception to show a valid fertilizer dealer license; in (3) deleted second sentence that read: "The terms "trailers and semitrailers" as used herein shall not include farm wagons"; and made minor changes in style. Amendment effective January 1, 1994.

Administrative Rules

ARM 18.8.101 Definitions.
ARM 18.8.428 Fertilizer vehicles.

61-10-209. Monthly payment — quarterly payment — penalty for failure to pay fee.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 115, L. 2023. Amendment effective July 1, 2023.

1993 Amendment: Chapter 575 in (1), near beginning after "trucks", deleted "trailers", after "tractors" deleted "pole-trailers", and after "or" deleted "semitrailers" and inserted "buses"; and made minor changes in style. Amendment effective January 1, 1994.

1985 Amendment: In (4) substituted reference to department of justice for reference to division of motor vehicles.

1981 Amendment: Inserted "a 1-month period for one-twelfth the regular fee or for" before "a 3-month period" in (1); increased the additional fee in (1) from $1 to $5; substituted "months" for "quarters" near the end of (1); divided former subsection (2) (relating to quarterly payment of gross weight or special fee for trucks, trailers, tractors, pole trailers, or semitrailers, and misdemeanor penalty for failure to pay fee) into subsections (2), (2)(b), and (3); added subsection (2)(a) prohibiting operation of a vehicle exceeding 24,000 pounds gross weight after the expiration of the 1-month period until the owner pays the required monthly, quarterly, or yearly license fee; inserted "1-month or" before "3-month period" at the end of (2)(b); substituted "in violation of subsection (2)" for a several-day time limit in (3).

Administrative Rules

ARM 18.8.101 Definitions.
ARM 18.8.414 Increase in weight and/or change of classification.
ARM 18.8.415 Monthly-quarterly G.V.W. fees.
ARM 18.8.420 G.V.W. validating identification.
ARM 18.8.429 Display of monthly or quarterly G.V.W. fee receipts.

Attorney General's Opinions

Forest Service Development Road: Because a United States Forest Service development road is not, by statutory definition, a highway, the provisions of law regarding license plates do not apply to vehicles operated solely on U.S. Forest Service development roads. 37 A.G. Op. 9 (1977).

61-10-211. Fees on motortrucks, truck tractors, trailers, and semitrailers from other states.

Compiler's Comments

1997 Amendment: Chapter 232 in (2), in over 80,001 lbs. category and triple combination category increased each fee by $20. Amendment effective January 1, 1998.

1995 Amendment: Chapter 88 in first sentence of (1), after "truck tractor", deleted "trailer, and semitrailer" and in second sentence, after "fee", inserted "provided in subsection (2)" and after "state" inserted "and the registered gross vehicle weight of the motortruck or truck tractor"; deleted former (2) that read: "(2) The fee shall be collected for any single vehicle. When any combination of truck, truck tractor, semitrailer, or trailer totals more than 6,000 pounds gross weight, the fee shall be collected for each unit in the combination"; substituted (2) providing schedule for each trip in Montana for "The fee shall be:

(a) $10 for each trip of 200 miles or less;

(b) $15 for each trip of over 200 miles to 400 miles;

(c) $20 for each trip of over 400 miles"; inserted (4) providing for fees for each nonresident, unlicensed or unregistered trailer or semitrailer entering Montana; and made minor changes in style. Amendment effective January 1, 1996.

1981 Amendment: Increased the fee in (3)(a) from $5 to $10, in (3)(b) from $7.50 to $15, and in (3)(c) from $10 to $20.

Administrative Rules

ARM 18.8.101 Definitions.
ARM 18.8.422 Temporary trip permits.

61-10-212. Temporary trip permits showing payment of fees — display.

Administrative Rules

ARM 18.8.101 Definitions.
ARM 18.8.422 Temporary trip permits.

61-10-213. Time for payment of fees by nonresidents — disposition.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 115, L. 2023. Amendment effective July 1, 2023.

Administrative Rules

ARM 18.8.101 Definitions.
ARM 18.8.422 Temporary trip permits.

61-10-214. Exemptions.

Compiler's Comments

2011 Amendment: Chapter 278 in (4) substituted "15-6-201(1)(a), (1)(d), (1)(e), (1)(g), (1)(h), (1)(i), (1)(k), (1)(l), (1)(n), or (1)(o)" for "15-6-201(1)(a), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(l), or (1)(m)". Amendment effective October 1, 2011.

Applicability: Section 6, Ch. 278, L. 2011, provided: "[This act] applies to tax years beginning after December 31, 2011."

2005 Amendments — Composite Section — Code Commissioner Correction: Chapter 532 in (4) in first sentence after "(1)(g)" substituted "(1)(j), or (1)(k) and 15-6-228(4)" for "(1)(o), (1)(q), and (1)(v)". Amendment effective October 1, 2005.

Chapter 584 in (4) in first sentence after "through" deleted "(1)(e)", after "(1)(g)" substituted "(1)(i)" for "(1)(o)", after "(1)(q)" inserted "(1)(s)", and after "and" substituted "(1)(x)" for "(1)(v)". Amendment effective May 6, 2005.

Retroactive Applicability: Section 10, Ch. 584, L. 2005, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to property tax exemption applications made after December 31, 2004."

1999 Amendment: Chapter 409 in first sentence of (3) before "dealer's" deleted "licensed" and substituted "61-4-102 and 61-4-125" for "61-4-103". Amendment effective October 1, 1999.

Applicability: Section 34(1), Ch. 409, L. 1999, provided that this section applies to license terms beginning after December 31, 1999.

1995 Amendment: Chapter 18 in (4), near end of first sentence, inserted reference to 15-6-201(1)(v); and made minor changes in style.

1991 Amendments — Code Commissioner Instruction: Chapter 311 inserted (4) exempting vehicles exempt from property tax and allowing Department to require documentation.

The Code Commissioner inserted reference to wholesaler after dealer, pursuant to sec. 12, Ch. 383, L. 1991, that directed the Code Commissioner to change "dealer" to "dealer and wholesaler" or "dealer or wholesaler", as the usage requires.

Name Change: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1981 Amendment: Deleted "and in the case of vehicles having a gross loaded weight of less than 24,000 pounds" following "dealer's property only" in first sentence of (3); added the last phrase in (3) beginning "for a period . . .".

Administrative Rules

ARM 18.8.101 Definitions.
ARM 18.8.422 Temporary trip permits.
ARM 18.8.426 Custom combines.

61-10-215. Additional tax by municipalities prohibited — exceptions.

Administrative Rules

ARM 18.8.101 Definitions.

61-10-221. Purpose of fees.

Administrative Rules

ARM 18.8.101 Definitions.

61-10-222. Time for payment of fees.

Compiler's Comments

2005 Amendment: Chapter 596 in second sentence after "current" substituted "temporary registration permit issued under 61-3-224" for "20-day permit issued under the provisions of 61-4-111 or 61-4-112"; deleted former (2) and (3) that read: "(2) A person who applies for a GVW license after July 1 of any year shall pay one-half of the fees provided in this part.

(3) When a person applies for registration required under chapter 3 for a period of time other than the calendar year, the fees provided in this part must be computed for the registration period at one-twelfth of the applicable fee for each month or part of month in the registration period"; and made minor changes in style. Amendment effective January 1, 2006.

1995 Amendment: Chapter 342 in (1), near middle of second sentence after "current", substituted "20-day permit" for "rear windshield sticker"; and made minor changes in style. Amendment effective January 1, 1996.

Applicability: Section 6, Ch. 342, L. 1995, provided: "[This act] applies to motor vehicle transfers occurring on or after January 1, 1996."

Administrative Rules

ARM 18.8.101 Definitions.

61-10-223. Expiration date.

Administrative Rules

ARM 18.8.101 Definitions.

61-10-224. GVW license transferable.

Administrative Rules

ARM 18.8.101 Definitions.

61-10-225. Disposition of fees collected by county treasurer.

Compiler's Comments

2017 Amendment: Chapter 267 at end of first sentence substituted "highway restricted account provided for in 15-70-126" for "highway revenue account". Amendment effective July 1, 2017.

2005 Amendment: Chapter 542 in first sentence near middle substituted "state" for "department of revenue". Amendment effective January 1, 2006.

2001 Amendments — Composite Section: Chapter 257 in first sentence substituted "department of revenue, as provided in 15-1-504" for "state treasurer"; and made minor changes in style. Amendment effective July 1, 2001.

Chapter 574 at beginning of first sentence substituted "The county treasurer shall transmit" for "At the time of collecting" and after "61-10-222" deleted "each county treasurer shall retain 5% of the fees for the cost of administration and for deposit in the general fund of the county. The remaining 95% must be remitted monthly." Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1995 Amendment: Chapter 509 at end of second sentence inserted "in the highway revenue account"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Administrative Rules
ARM 18.8.101 Definitions.

61-10-226. Deposit of state highway money.

Compiler's Comments

2017 Amendment: Chapter 267 in (1) near beginning after "department" inserted "of transportation" and near end substituted "highway restricted account provided for in 15-70-126" for "highway revenue account in the state special revenue fund". Amendment effective July 1, 2017.

1995 Amendment: Chapter 509 in (1), at beginning, deleted "Any reference to the state highway fund means the state highway account in the state special revenue fund" and inserted "highway revenue account in the"; and made minor changes in style. Amendment effective July 1, 1995.

1989 Amendment: In (3) substituted "state" for "other". Amendment effective July 1, 1989.

1983 Amendments: Chapter 277 substituted references to state special revenue fund for references to earmarked revenue fund.

Chapter 281, in (3), substituted "a federal or other special revenue fund" for "the federal and private revenue fund".

1981 Amendment: Deleted "from the counties" in subsection (3); added subsection (5) requiring money received from the counties to be deposited in the earmarked revenue fund to the credit of the department.

Administrative Rules
ARM 18.8.101 Definitions.

61-10-227. Blank forms furnished to county treasurers.

Compiler's Comments

2005 Amendment: Chapter 130 in (3) after "forms" substituted "registration decals" for "stickers"; and made minor changes in style. Amendment effective October 1, 2005.

Administrative Rules
ARM 18.8.101 Definitions.

61-10-231. Enforcement.

Compiler's Comments

2000 Amendment by Referendum: Chapter 515, L. 1999, in two places after "this part" deleted "and 61-3-502(1)". Amendment effective November 7, 2000.

Saving Clause: Section 50, Ch. 515, L. 1999, was a saving clause.

Severability: Section 51, Ch. 515, L. 1999, was a severability clause.

Effective Date — Applicability: Section 52(1), Ch. 515, L. 1999, provided: "If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000.".

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Administrative Rules
ARM 18.8.101 Definitions.

61-10-232. Violation — penalty.

Administrative Rules
ARM 18.8.101 Definitions.
ARM 18.8.429 Display of monthly or quarterly G.V.W. fee receipts.

61-10-233. Excess weight — penalties.

Compiler's Comments

2005 Amendment: Chapter 130 in (1)(a) after "registration and" substituted "registration" for "payment"; in (1)(b) after "weight" substituted "license" for "receipt" and after "under" substituted "this part" for "61-10-227"; and made minor changes in style. Amendment effective October 1, 2005.

1981 Amendment: Changed "tax receipt" to "payment receipt" in (1)(a).

Administrative Rules
ARM 18.8.101 Definitions.
ARM 18.8.414 Increase in weight and/or change of classification.

Part 11
Multistate Highway Transportation Agreement

61-10-1101. Multistate Highway Transportation Agreement — enactment and text.

Compiler's Comments

2001 Amendment: Chapter 358 in Article I: in section 1 deleted former (e) that read: "(e) the 1974 revision of federal law (23 U.S.C. 127) did not contain any substantial improvements for vehicle size and weight standards in the western states and deprives states of interstate matching money if vehicle weights and widths are increased, even though the interstate system is nearly 92% complete"; and in section 2 inserted (f) concerning facilitating communication; in Article II: in section 1 inserted definition of cooperating committee; and in definition of designated representative inserted "under Article XII"; in Article IV: in section 1 at beginning inserted "Each participating jurisdiction must have two designated representatives" and in second sentence inserted "the cooperating", inserted (d) recommending improvements, and inserted (e) concerning performing functions necessary to facilitate agreement; in section 2 in two places inserted references to designated representatives; and in section 4 in first sentence after "jurisdiction" deleted "no later than November 1" and at end deleted "Copies of all such reports shall be made available to the transportation committee of the western conference, council of state governments, and to the western association of state highway and transportation officials"; in Article V: in section 1 in (a) in description of "W" inserted "more consecutive axles", in (b) near beginning after "jurisdictions that" deleted "in the event", after "of vehicles" inserted "in interstate commerce", and after "subsection (a) of this section" substituted "be authorized under special permit authority by each participating jurisdiction for vehicle combinations in excess of statutory weight of 80,000 pounds or statutory lengths" for "would result in withholding or forfeiture of federal-aid funds pursuant to section 127, Title 23, U.S. Code, the operation of such vehicle or combination of vehicles at axle and gross weights within the limits set forth in subsection (a) of this section will be authorized under special permit authority by each participating jurisdiction that could legally issue such permits prior to July 1, 1956, provided all regulations and procedures related to such issuance in effect as of July 1, 1956, are adhered to", deleted former (c) that read: "(c) the objectives of subsections (a) and (b) of this section relate to vehicles or combinations of vehicles in regular operation, and the authority of any participating jurisdiction to issue special permits for the movement of any vehicle or combinations of vehicles having dimensions and/or weights in excess of the maximum statutory limits in each participating jurisdiction will not be affected", in (d) substituted "the cooperating committee may recommend that the participating jurisdictions jointly" for "in recognition of the limited prospects of federal revision of section 127, Title 23, U.S. Code, and in order to protect participating jurisdictions against any possibility of withholding or forfeiture of federal-aid highway funds, it is the further objective of the participating jurisdictions to", deleted former (f) that read: "(f) in recognition of desire for a degree of national uniformity of size and weight regulations, it is the further objective to encourage development of broad, uniform size and weight standards on a national basis and further that procedures adopted under this agreement be compatible with national standards", and inserted (e) concerning further objectives of the participating jurisdictions; inserted Article XI concerning funding; inserted Article XII concerning selection of designated representatives; and made minor changes in style. Amendment effective October 1, 2001.

1989 Amendment: In Article V, section 1(a), in formula, substituted "W = 500 ((LN/(N - 1)) + 12N + 36)" for "W = 500 ((LN/N - 1) + 12N + 36)".

CHAPTER 11
RECORDS AND REPORTS OF CONVICTIONS

Part 1
General Provisions

61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 686, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 498 in (2) at end of last sentence substituted "61-8-1009" for "61-8-732"; and in (5)(a) near end substituted "61-8-1002" for "61-8-401, 61-8-406, 61-8-410, or 61-8-411". Amendment effective January 1, 2022.

Chapter 576 in (5)(a) after "license issued pursuant to" substituted "16-12-203 or 16-12-508" for "50-46-307 or 50-46-308"; and in (5)(b) substituted reference to the department of revenue for reference to the department of public health and human services. Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

Severability: Section 113, Ch. 576, L. 2021, was a severability clause.

2016 Amendment by Initiative: Initiative Measure No. 182, proposed by initiative petition and approved at the general election held November 8, 2016, in (5)(a) in two places after "registry identification card" inserted "or license". Amendment effective June 30, 2017.

2013 Amendments — Composite Section: Chapter 153 in (5)(a) inserted reference to 61-8-411; and made minor changes in style. Amendment effective October 1, 2013.

Chapter 194 in (1), (2), and (5)(b) after "after the conviction" deleted "becomes final"; deleted former (4) that read: "(4) A conviction becomes final for the purposes of this part upon the later of:

(a) expiration of the time for appeal of the court's judgment or sentence to the next highest court;

(b) forfeiture of bail that is not vacated; or

(c) imposition of a fine or court cost as a condition of a deferred imposition of a sentence or a suspended execution of a sentence"; and made minor changes in style. Amendment effective October 1, 2013.

2011 Amendment: Chapter 419 inserted (6) relating to surrender of registry identification cards for medical use of marijuana. Amendment effective July 1, 2011.

Severability: Section 39, Ch. 419, L. 2011, was a severability clause.

2009 Amendment: Chapter 76 in (5)(a) at beginning of first sentence inserted "On a conviction referred to in subsection (1) of a person who holds a commercial driver's license or who is required to hold a commercial driver's license", after "judgment" deleted "on a conviction", and inserted second sentence applying the subsection provisions only to the conviction of a person who holds or is required to hold a commercial driver's license; inserted (5)(b) clarifying who is required to hold a commercial driver's license; and made minor changes in style. Amendment effective March 25, 2009.

Applicability: Section 3, Ch. 76, L. 2009, provided: "[This act] applies to convictions occurring on or after [the effective date of this act]." Effective March 25, 2009.

2005 Amendment: Chapter 428 in (1) near beginning of second sentence after "5 days" inserted "after the conviction becomes final"; in (2) near middle of first sentence after "highways" inserted "except for standing or parking statutes or ordinances", after first "conviction" substituted "as defined in 61-5-213" for "or forfeiture", and at end after second "conviction" substituted "becomes final" for "or a forfeiture of bail that is not vacated, except for a conviction or a forfeiture of bail for a standing or parking statute or ordinance"; inserted (4) establishing when a conviction becomes final; inserted (5) prohibiting a court from taking any action that prevents a traffic conviction from appearing on a person's driving record, except for parking violations; and made minor changes in style. Amendment effective October 1, 2005.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2001 Amendment: Chapter 207 in first sentence in (1) after "chapter 5" inserted "or chapter 8, part 8" and after "license" inserted "or commercial driver's license"; at end of first sentence in (2) after "or ordinance" deleted "and may recommend the suspension of the driver's license of the convicted person" and deleted former third and fourth sentences that read: "The department shall issue a restricted probationary license unless the person is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee is subject to the restrictions and may not operate a vehicle in violation of the restrictions"; and made minor changes in style. Amendment effective October 1, 2001.

Applicability: Section 16, Ch. 207, L. 2001, provided: "[This act] applies to driver's licenses issued or renewed and to offenses committed after September 30, 2001."

1999 Amendment: Chapter 455 in (2) in first sentence near middle after "vacated" substituted "except for a conviction or a forfeiture of bail for a" for "of any person in the court for a violation of any motor vehicle laws, other than regulations governing" and after "parking" inserted "statute or ordinance" and in second sentence after "complete" substituted "a chemical dependency education course, treatment, or both, as ordered by the court under" for "an alcohol information course as provided in"; and made minor changes in style. Amendment effective October 1, 1999.

1997 Amendment: Chapter 525 in (2), at end of second sentence, substituted "61-8-732" for "61-8-714 and 61-8-722"; and made minor changes in style.

Applicability: Section 14, Ch. 525, L. 1997, provided: "[This act] applies to offenses committed on or after October 1, 1997."

1991 Amendment: In (2), in second sentence after "restricted probationary license", deleted "in lieu of the suspension required in 61-5-208(2)", after "individual" inserted "comply with the requirement that he", after "attend" inserted "and complete" and deleted "a driver improvement school or", and after "an alcohol" substituted "information course as provided in 61-8-714 and 61-8-722" for "treatment program if one is available".

1987 Amendment: In four places, before "license" or "licenses", substituted "driver's" for "operator's or chauffeur's" and made minor change in phraseology. Amendment effective January 1, 1988.

1985 Amendments: Chapter 74 near beginning of (1) before "revocation", inserted "suspension or".

Chapter 444 in (2) inserted last sentence subjecting a licensee to the restrictions established on a probationary driver's license, and prohibiting the operation of a vehicle in violation of those restrictions.

Chapter 503 in (1) in four places, in (2) in three places, and in (3) in two places substituted references to department of justice for references to division of motor vehicles.

Case Notes

No Youth Court Authority to Expunge DUI Offenses — Elements of Judicial Estoppel Not Met: Following Darrah's completion of a Youth Drug Court program in 2004, the Youth Court ordered that Darrah's prior criminal record be expunged, including a previous minor in possession offense and a 2002 DUI. Darrah was subsequently charged in 2005 with second offense DUI, based on the prior 2002 DUI, and in 2006 Darrah was charged with third offense DUI. Citing the principle of judicial estoppel, Darrah asserted that because the Youth Court record had been expunged, the 2002 DUI should not count against him. The District Court disagreed and Darrah appealed. The Supreme Court applied the elements of judicial estoppel set out in Vogel v. Intercontinental Truck Body, Inc., 2006 MT 131, 332 M 322, 137 P3d 573 (2006), and determined that Darrah had failed to demonstrate that each element was met, so judicial estoppel did not apply. Further, there is no authority under which the Youth Court could order expungement of Darrah's DUI offenses. The District Court was affirmed. St. v. Darrah, 2009 MT 96, 350 M 70, 205 P3d 792 (2009), following St. v. Chesley, 2004 MT 165, 322 M 26, 92 P3d 1212 (2004).

Justice's Court — No Authority to Vacate Conviction and Order Alteration of Driver's Civil Records: A Justice's Court does not have authority to vacate a conviction or to direct alteration of the records of the Division of Motor Vehicles. Therefore, a Justice's Court could not order the Division to strike a prior DUI conviction and not consider it in revoking the driver's license on a second conviction. The District Court properly granted the Division's motion to quash a Writ of Mandate issued by the District Court staying the actions of the Division. Lancaster v. Dept. of Justice, 218 M 97, 706 P2d 126, 42 St. Rep. 1425 (1985).

Implied Consent Suspension Not Relieved by Guilty Plea: Respondent's license was suspended when he refused to take a breath test. Two weeks after arrest, respondent pleaded guilty to the offense of DUI. The District Court found that the plea of guilty constituted a withdrawal of his refusal to take breath test under the implied consent statute and recommended respondent receive a probationary license. Supreme Court reversed and reinstated suspension of respondent's license. The revocation of a driver's license is a civil sanction, not a criminal penalty, and there is no connection between the DUI statute and the implied consent statute. A violation of both statutes means the suspensions run concurrently. Respondent was not eligible for a probationary license until the 90-day implied consent suspension was completed. In re Petition of Burnham, 217 M 513, 705 P2d 603, 42 St. Rep. 1342 (1985), followed in In re Blake, 220 M 27, 712 P2d 1338, 43 St. Rep. 143 (1986), and Walker v. St., 229 M 331, 746 P2d 624, 44 St. Rep. 2008 (1987).

Attorney General's Opinions

State Law Conflicting With Local Ordinances: Because the Legislature prior to the 1981 amendments to 61-8-714 (now repealed and content reorganized in Title 61, chapter 8, part 10) had provided that jail sentences could not be imposed for the first or second offense of driving under the influence of alcohol, municipal ordinances addressing such offense must be consistent with state law. 37 A.G. Op. 143 (1978).

Law Review Articles

Montana's Legislative Attempt to Deal With the Drinking Driver: The 1983 DUI Statutes, Rohan, 46 Mont. L. Rev. 309 (1985).

61-11-102. Records to be kept by department.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 335 deleted former (8)(b) that read: "(b) The department shall adopt rules governing the destruction of records"; and made minor changes in style. Amendment effective May 7, 2019.

Chapter 445 in (3)(c) near middle after "federal motor carrier safety administration" deleted "as an imminent hazard under 49 CFR 383.52" and after "record the" substituted "suspension or revocation" for "disqualification". Amendment effective May 10, 2019.

2017 Amendment: Chapter 323 in (7)(a) at end substituted "when the department certifies the record" for former text that read: "when the reproduction of the information is signed by a named custodian of the record and the following certification appears on each page:

The individual named below, being a designated custodian of the driver records of the department of justice, motor vehicle division, certifies this document as a true reproduction, in accordance with 61-11-102(7), of the information contained in a computer storage device of the department of justice, motor vehicle division.

Signed:........................

(Print Full Name)"; substituted (8) for former text that read: "(8) The department may remove any individual Montana driving record from the active database of electronic files maintained under this section if there has been no change in license status on or additional reports of conviction to the record in the immediately preceding 16 years. Any individual driving record removed must be retained elsewhere by the department as an inactive record in an electronic storage device that is searchable and retrievable"; and made minor changes in style. Amendment effective October 1, 2017.

2013 Amendment: Chapter 123 in (7)(a) substituted "61-11-102(7)" for "61-11-102(5)". Amendment effective October 1, 2013.

2011 Amendment: Chapter 296 inserted (3)(a) and (3)(b) relating to CDLIS driver records; in (3)(c) at end substituted "CDLIS driver record" for "person's individual Montana driving record"; and made minor changes in style. Amendment effective January 30, 2012.

2009 Amendment: Chapter 41 inserted (1)(c) concerning receipt and use of computer-generated driving record; and in (5)(b) at end deleted "A court or the office of a clerk of court of this state that is electronically connected by a terminal device to the department's central database of electronic individual Montana driving records may receive and use as evidence without further foundation the computer-generated certified information obtained by the terminal device from the file. An authorized employee of a court of record of this state may certify in writing that an order, record, or paper was produced from a terminal device that is located in and under the control of the court and that is connected to the department's central database of electronic individual Montana driving records files and that the order, record, or paper was not altered in any way"; Amendment effective January 1, 2010.

2005 Amendments — Composite Section: Chapter 428 inserted (2)(c) requiring the department to retain records in accordance with federal law. Amendment effective October 1, 2005.

Chapter 596 substituted (1) concerning central database of electronic files for former text that read: "The department shall file every application for a driver's license received by it and shall maintain suitable indexes containing, in alphabetical order:

(a) all applications denied and on each the reasons for denial;

(b) all applications granted; and

(c) the name of each licensee whose license has been suspended or revoked by the department and after each name the reasons for the action"; substituted (2)(a) concerning content for driving record for former text that read: "The department shall also file all accident reports and abstracts of court records of convictions received by it under the laws of this state. The department shall maintain records in a manner that allows an individual record of each licensee, showing the convictions of the licensee and certain traffic accidents in which the licensee has been involved. The records must be readily ascertainable and available for the consideration of the department upon any application for renewal of a license and at other suitable times. A record of involvement in a traffic accident may not be entered on a licensee's record unless the licensee was convicted, as defined in 61-11-203, for an act causally related to the accident"; in (2)(b) near beginning substituted "person" for "licensee" and at end substituted "person's individual Montana driving record" for "licensee's record"; in (3) near end after "forward" substituted "by electronic or other means, a report of the conviction" for "a certified copy of the record" and at end inserted "or licensed"; deleted former (4) that read: "(4) The department may photograph, microphotograph, photostat, or reproduce on film any of its records. The film or reproducing material must be durable, and the device used to reproduce the records on the film or material must accurately reproduce and perpetuate the original records. A photograph, microphotograph, photostatic copy, or photographic film of the original record is an original record for all purposes and is admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or certified copy of the original record is a transcript of the original for purposes stated in this section"; in (5)(a) at beginning inserted exception clause, after "when the" inserted "reproduction of the information is signed by a named custodian of the record and the", after "certification" deleted "by a custodian of the record", and in form substituted "61-11-102(5)" for "61-11-102(6)"; inserted (5)(b) concerning certification from electronic files; inserted (6) concerning removal of record from active database; and made minor changes in style. Amendment effective January 1, 2006.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2003 Amendment: Chapter 428 in (2)(a) in second sentence after "maintain" substituted "records in a manner that allows" for "convenient records or make suitable notations in order that"; inserted (2)(b) requiring the department to record an imminent hazard disqualification; and made minor changes in style. Amendment effective October 1, 2003.

Applicability: Section 23(3), Ch. 428, L. 2003, provided that this section applies to conduct or offenses that occur on or after October 1, 2003.

1987 Amendment: Inserted (4) through (6) relating to reproduction and computer storage of Department records.

1985 Amendment: In (1), (1)(c), (2) in two places, and (3) substituted references to department of justice for references to division of motor vehicles.

Case Notes

Previous DUI Conviction Not to Be Considered for Purposes of Felony DUI — Former Requirement for Expungement of Record Held Self-Executing — Lorash Distinguished — Expungement Applicable to Local Records: Bowles was convicted of DUI in 1977 and did not receive another DUI for 5 years but was convicted of two other DUI offenses after 1982. When Bowles was arrested for DUI in Park County in 1996, Park County charged Bowles with felony DUI, fourth offense, counting the 1977 conviction as one of three prior convictions. Bowles moved for dismissal of the felony charge, contending that the 1977 record should have been expunged pursuant to the 1981 version of 61-8-714(5) (now repealed and content reorganized in Title 61, chapter 8, part 10), and the District Court granted the motion. The Supreme Court held that the District Court properly dismissed the felony charge because the expungement provision in effect at the time, unlike the expungement provision in 46-18-204 that was litigated in St. v. Lorash, 238 M 345, 777 P2d 884 (1989), was self-executing and did not require the defendant to move the court to have the record of conviction expunged. The requirement for expungement applied to the 1977 conviction, despite the change in the law in 1989 requiring that the record be held as confidential criminal justice information, because the requirement for expungement was self-executing. The Supreme Court also noted that the expungement requirement applied to records of conviction notwithstanding the requirement in this section that the Department of Justice maintain records of convictions of licensees. Further, the Supreme Court also held, relying upon St. v. Brander, 280 M 148, 930 P2d 31 (1996), that because "expungement" means to destroy and was without limitation, all traces of the conviction record should have been destroyed, that the record of the 1977 conviction was maintained by the Park County Sheriff in violation of the law, and that the 1977 county conviction record should not have been used as the basis for the felony charge. In response to the state's argument that the expungement requirement, enacted in 1981, applied prospectively only to convictions occurring after the requirement's effective date, the Supreme Court noted that it had rejected that argument in St. v. Reams, 284 M 448, 945 P2d 52, 54 St. Rep. 972 (1997). St. v. Bowles, 284 M 490, 947 P2d 52, 54 St. Rep. 962 (1997).

Admissibility of Certified Abstract of Driving History and Copy of Suspension Notification Letter: Once certified as set out in subsection (6) of this section, the authenticity of motor vehicle license information is established for purposes of admissibility without extrinsic evidence. Therefore, a certified abstract of driving history was admissible as was a certified copy of a suspension notification letter, which fell within the class of self-authenticating documents under Rule 902, M.R.Ev. (Title 26, ch. 10); the public document exception to the hearsay rule under Rule 803, M.R.Ev. (Title 26, ch. 10); and the requirements of the best evidence rule under Rule 1005, M.R.Ev. (Title 26, ch. 10). Taken together, this evidence was sufficient to sustain a conviction for driving with a suspended license. Billings v. Lindell, 236 M 519, 771 P2d 134, 46 St. Rep. 557 (1989).

Justice's Court — No Authority to Vacate Conviction and Order Alteration of Driver's Civil Records: A Justice's Court does not have authority to vacate a conviction or to direct alteration of the records of the Division of Motor Vehicles. Therefore, a Justice's Court could not order the Division to strike a prior DUI conviction and not consider it in revoking the driver's license on a second conviction. The District Court properly granted the Division's motion to quash a Writ of Mandate issued by the District Court staying the actions of the Division. Lancaster v. Dept. of Justice, 218 M 97, 706 P2d 126, 42 St. Rep. 1425 (1985).

61-11-104. Justices of the peace — availability of records.

Compiler's Comments

1987 Amendment: After "Justices of the peace" deleted "and county treasurers", after "shall" substituted "make available" for "furnish", and after "department" deleted "statements of all fees, fines, and forfeitures and".

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

61-11-105. Release of information — fees.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 28, Ch. 365, L. 2023. Amendment effective October 1, 2023.

2013 Amendment: Chapter 196 in (6) after "requester" inserted "by an authorized agent as provided in 61-3-116 or" and after "fee" substituted "provided for in 2-17-1103 or 61-3-116" for "established under 2-17-1103"; in (7) after "use" inserted "an authorized agent as provided in 61-3-116 or"; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 296 inserted (3)(b) relating to disclosure of information from a CDLIS driver record; and made minor changes in style. Amendment effective January 30, 2012.

2007 Amendment: Chapter 329 in (5)(a) near beginning of third sentence decreased fee from 8 cents to 6 cents. Amendment effective January 1, 2008.

2005 Amendment: Chapter 596 in (5)(a) in second sentence substituted "61-11-102(5)" for "61-11-102(6)". Amendment effective January 1, 2006.

2003 Amendment: Chapter 533 in (1) at beginning of introductory clause after "Subject to the" substituted "limitations of this section" for "provisions of subsection (2)" and near middle after "record of a" inserted "driver or"; inserted (1)(a) to include a driver's or licensee's name, driver's license number, and date of birth in the record information; in (1)(b) near beginning after "status" inserted "including the license type and any endorsements, the license issue date, license restrictions, any suspensions, revocations, or cancellations that have been imposed against the driver or licensee" and at end before "expiration date" inserted "the license"; in (1)(c) and in (1)(d) before "licensee" inserted "driver or"; in (2) near beginning after "may not" inserted "enter into any agreement to disclose or sell, in bulk, any data contained in an individual Montana driving record unless the requester of the information provides the department with the names, driver's license numbers, and dates of birth of the drivers or licensees from whose records a change in license status or conviction activity is to be reported"; in (5)(a) at beginning of first sentence inserted "Subject to the requirements of subsection (6) and except as provided in subsection (5)(b)" and inserted third sentence establishing a fee of 8 cents for each driving record searched by the department to report a change in license status or conviction activity; in (5)(b) at beginning substituted "An individual Montana driving record" for "All driving records"; inserted (6) subjecting certain electronically transmitted driving records to the convenience fee in 2-17-1103; inserted (7) allowing the department to require certain record requesters to use a point of entry for electronic government services to obtain the record; and made minor changes in style. Amendment effective July 1, 2003.

2001 Amendment: Chapter 363 at beginning of (1) substituted "Subject to the provisions of subsection (2)" for "Except as provided in subsection (2)"; and substituted (2) prohibiting disclosure of information except pursuant to 61-11-507, 61-11-508, or 61-11-509 for former text that read: "Unless the merits of public disclosure exceed the demands of individual privacy, a driving record of a licensee released under subsection (1) may not disclose an individual's address, social security number, photograph, medical or disability information, or information provided through means of a tracking device." Amendment effective April 23, 2001.

1999 Amendment: Chapter 416 in (1) after "request" deleted "and with the licensee's approval"; deleted former (1)(a) that read: "(a) licensee identification data, which may not include the individual's residence address, or information provided through means of an electronic tracking device"; inserted (2) prohibiting disclosure of individual's address, social security number, photograph, medical or disability information, or information provided by tracking device when driving record released unless public disclosure exceeds individual privacy demands; deleted second sentence in (3) that read: "The department shall, upon request, furnish a criminal justice agency or any person or firm having a legitimate purpose as determined by the department with the individual Montana driving record of a licensee showing the items listed in subsections (1)(a) through (1)(d)"; and made minor changes in style. Amendment effective October 1, 1999.

1993 Amendment: Chapter 346 in (1), after "individual", inserted "Montana"; in (1)(a), after "data", inserted "which may not include the individual's residence address, or information provided through means of an electronic tracking device"; in second sentence of (2), after "individual", inserted "Montana"; in first sentence of (3) increased fee from $3 to $4 and after "each" inserted "individual Montana driving", in second sentence, after "certified", inserted "Montana", and at beginning of third sentence substituted "All" for "Individual"; and made minor changes in style. Amendment effective July 1, 1993.

1991 Amendment: At beginning of (1) inserted exception clause and after "request" inserted "and with the licensee's approval"; in (1)(a), after "data", deleted "and address"; inserted last sentence in (2) requiring Department to furnish driving record to agency or individual determined to have legitimate purpose; and made minor changes in style.

1991 Statement of Intent: The statement of intent attached to Ch. 525, L. 1991, provided: "To implement 61-11-105(2), a statement of intent is required for this bill to provide guidelines for the adoption of rules under which the department of justice may determine if a person or firm has a legitimate purpose for requesting the individual driving record of a licensee. "Legitimate purpose" includes the formation and execution of a contract when the contract relies in part upon the contents of an individual's driving record."

1989 Amendment: Inserted (1) specifying information required to be furnished by Department; inserted (3) establishing fees for providing information; and made minor change in phraseology.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Part 2

Habitual Traffic Offenders

Part Case Notes

Unlawful Operation of Motor Vehicle by Minor — Not Violative of Habitual Traffic Offender Law: A finding that a youth has violated 61-12-601 (now repealed) upholds the policy of the habitual traffic offender law and is consistent with the philosophy of emphasizing rehabilitation over retribution. St. v. Gee, 222 M 498, 723 P2d 934, 43 St. Rep. 1452 (1986).

Validity of Citations May Not Be Challenged in Habitual Offender Hearing—Act Constitutional: Defendant, against whom proceedings were brought under the habitual traffic offender law, challenged the law's constitutionality. The District Court denied defendant's constitutional claims and adjudged defendant a habitual offender. On appeal, the Supreme Court affirmed and held: (1) defendant had adequate notification of all citations involved, even though one citation was omitted from the complaint, because the record substantiated the convictions and there was no ambiguity regarding the convictions; (2) the law does not violate due process or constitute cruel and unusual punishment; (3) the statutory point system is not arbitrary or capricious; (4) traffic offender points that previously resulted in license suspension may be used to determine habitual offender status; (5) due process does not require that a ticketed motorist be advised that habitual traffic offender points result from a conviction; (6) in a hearing to determine habitual offender status, the defendant cannot collaterally attack a citation for which he forfeited bail; (7) the fact that defendant was not advised of his right to counsel in relation to several citations does not prevent use of those citations to determine habitual offender status; and (8) in a license revocation hearing, the District Court Judge does not have power to issue a probationary license, regardless of 3-5-311. State ex rel. Majerus v. Carter, 214 M 272, 693 P2d 501, 41 St. Rep. 2468 (1984), followed in part and distinguished in part in In re Driver's License of Anderson, 284 M 109, 943 P2d 978, 54 St. Rep. 797 (1997).

Administrative Suspension Not to Remove Habitual Offender Points: The Highway Patrol petitioned to have defendant formally declared a habitual traffic offender. The District Court refused, contending that the defendant had accumulated only 11 points since his license had been suspended under 61-5-206. At that time he had 27 habitual offender points. The District Court held that those points were removed by the administrative suspension. The Supreme Court vacated the judgment, holding that the removal of points required by 61-11-211 applied only to revocations and not to administrative suspensions. No contrary legislative intent is indicated by the statutes. Suspension of a license under 61-5-206 is a civil proceeding and not a criminal prosecution. The deprivation of the driving privilege under 61-5-206 is intended to protect the public and is not done for the punishment of the individual. The Supreme Court held that the same traffic offense may be used first to suspend a license under 61-5-206, and then to be cumulated with additional points to allow revocation as a habitual offender. State ex rel. Griffith v. Brustkern, 202 M 438, 658 P2d 410, 40 St. Rep. 194 (1983).

61-11-203. Definitions — habitual traffic offenders — point schedule.

Compiler's Comments

2019 Amendment: Chapter 445 in (1)(a) at end inserted "resulting from a violation of traffic regulations on highways in this state or a traffic statute or traffic regulation in another jurisdiction"; in (2) substituted "when the department receives a report of conviction, the department shall assign points based on the point schedule" for "the point schedule used"; in (2)(d) after "or drugs of any kind" deleted "or operation of a motor vehicle by a person with alcohol concentration of 0.08 or more"; in (2)(f) near end after "information and assistance" deleted "as described in 61-7-105"; in (2)(g) increased amount of property damage from $250 to $1,000 and near end substituted "violation of Title 61, chapter 7" for "violation of the law"; in (2)(j) after "liability protection offenses" deleted "under 61-6-301 and 61-6-302"; in (3) deleted former first sentence that read: "There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence"; and made minor changes in style. Amendment effective May 10, 2019.

2015 Amendment: Chapter 395 in (2)(l) substituted "61-8-725(2)(a)" for "61-8-725(2)". Amendment effective October 1, 2015.

2011 Amendment: Chapter 19 reoutlined section to remove point schedule used to determine habitual traffic offenders from definition of habitual traffic offender and relocate it in (2); and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 155 in (6) near end of first sentence after "safety" deleted "size, weight, and load restrictions". Amendment effective October 1, 2009.

2005 Amendments — Composite Section: Chapter 428 in definition of conviction substituted "has the meaning provided in 61-5-213" for "means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle that is prohibited by law, ordinance, or administrative order"; and made minor changes in style. Amendment effective October 1, 2005.

Chapter 542 in (2)(f) near end substituted "described" for "defined"; in (5) at end after "highway" deleted "as the term is defined in 61-1-201"; and made minor changes in style. Amendment effective January 1, 2006.

Severability: Section 39, Ch. 428, L. 2005, was a severability clause.

2003 Amendments — Composite Section: Chapter 329 in definition of habitual traffic offender in (d) substituted "0.08" for "0.10". Amendment effective April 15, 2003.

Chapter 556 deleted definition of driver in need of rehabilitation and improvement that read: ""Driver in need of rehabilitation and improvement" means a person who within a 2-year period accumulates 18 or more conviction points according to the schedule specified in subsection (3)"; and made minor changes in style. Amendment effective May 5, 2003.

2001 Amendment: Chapter 218 inserted definition of driver in need of rehabilitation and improvement; and made minor changes in style. Amendment effective April 6, 2001.

1999 Amendments — Composite Section: Chapter 43 in (2)(l) after "speeding" inserted "except as provided in 61-8-725(2)". Amendment effective May 28, 1999.

Chapter 309 inserted definition of moving violation; and inserted (6) regarding what constitutes traffic regulation. Amendment effective October 1, 1999.

Chapter 395 in definition of conviction inserted "or nolo contendere"; and made minor changes in style. Amendment effective October 1, 1999.

Severability: Section 8, Ch. 43, L. 1999, was a severability clause.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1995 Amendment: Chapter 393 in definition of habitual traffic offender, in (j) at beginning, substituted "any of the" for "a" and after "protection" substituted "offenses under 61-6-301 and 61-6-302" for "offense under 61-6-304"; and made minor changes in style.

1993 Amendment: Chapter 365 in definition of habitual traffic offender inserted (j) allocating 5 points for a mandatory motor vehicle liability protection offense under 61-6-304; and in (2)(k) substituted "subsection (k)" for "subsection (j)".

1989 Amendment: In definition of habitual traffic offender, at end of (b), inserted "or negligent vehicular assault"; and made minor changes in phraseology.

1987 Amendment: Inserted "(3)" before "There shall . . ."; and redesignated former (3) as (4).

1983 Amendment: In (2)(d), after "drugs of any kind" inserted "or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more".

Case Notes

Conviction Held to Not Be Within Three-Year Period: Anderson challenged the Department of Justice's declaration that he was a habitual traffic offender on the basis that he had had three DUI convictions within a 3-year period. Anderson had been convicted of his first DUI by a City Court in 1991 and had appealed that conviction to District Court. In 1996, the parties stipulated to have the case remanded to the City Court for imposition of the sentence. The Supreme Court held that the conviction was in 1991 and not in 1996 when Anderson stipulated to dismiss his appeal and have the case remanded for sentencing and that therefore the conviction was not within the 3-year period. In re Driver's License of Anderson, 284 M 109, 943 P2d 978, 54 St. Rep. 797 (1997).

License Revocation Proceedings No Challenge to Validity of Convictions — Point System Not Arbitrary or Capricious: Licensing drivers is within the police power of the state, and courts will not substitute their opinion for the Legislature's as to point system. A defendant can be charged habitual offender points for citations of which he claims he is innocent because a defendant is not entitled to attack prior convictions in a revocation hearing. In a revocation hearing, a defendant is entitled to dispute only the accuracy of the records, not the propriety of the convictions. State ex rel. Majerus v. Carter, 214 M 272, 693 P2d 501, 41 St. Rep. 2468 (1984), followed in part and distinguished in part in In re Driver's License of Anderson, 284 M 109, 943 P2d 978, 54 St. Rep. 797 (1997).

Violation in Another State Included in Habitual Offender Calculation: Defendant was declared a habitual traffic offender. In order to reach the point designation, a speeding violation from the state of Washington was included. Defendant contended that because violations of Montana speed limits mandated by federal fuel conservation conditions may not be included in the calculation, the Washington violation should not be included. The court found that the Washington violation would not be a mere conservation violation in Montana but a violation of the interstate nighttime speed limit. Under 61-5-401, Montana has adopted a Driver License Compact giving effect to violations committed in other jurisdictions. The Washington violation was correctly treated as a speeding violation in the habitual traffic offender calculation. State ex rel. Landon v. Macek, 208 M 172, 676 P2d 228, 41 St. Rep. 247 (1984).

Habitual Offender — Complaint Invalid for Lack of Substantiation of Prior Charge: The complaint to have defendant declared to be a habitual offender was invalid on its face since one of the offenses claimed against defendant, the point value of which was necessary to meet the 30-point requirement of this section, was a conviction under 61-7-108 for failure to report an accident by the quickest means, but no summons or other information was appended sufficient to substantiate the conviction. With respect to that charge the complaint should have stated the date of the alleged charge, the place it occurred, the arresting officer, but most importantly that there was bodily injury or death involved, or that apparent property damage in the amount of $100 or more was incurred. State ex rel. Sol v. Orcutt, 180 M 15, 588 P2d 996 (1979).

Law Review Articles

Constitutional Challenges to Montana's Drunk Driving Laws, O'Sullivan, 46 Mont. L. Rev. 329 (1985).

Montana's Legislative Attempt to Deal With the Drinking Driver: The 1983 DUI Statutes, Rohan, 46 Mont. L. Rev. 309 (1985).

61-11-204. Department's duties.

Compiler's Comments

2017 Amendment: Chapter 323 in (2) in second sentence substituted "include a record" for "include a certified record". Amendment effective October 1, 2017.

2005 Amendment: Chapter 596 in (2) at end of first sentence substituted "record of the convictions and bond forfeitures upon which the habitual traffic offender designation was based" for "reproduction of the person's driving record as contained in the computer storage device used by the department for recordkeeping". Amendment effective January 1, 2006.

2003 Amendment: Chapter 556 deleted former (3) and (4) that read: "(3) If the records maintained by the department show that a person's driving record brings the person within the definition of a driver in need of rehabilitation and improvement, the department shall:

(a) declare the person a driver in need of rehabilitation and improvement;

(b) notify the person that unless the person enrolls in and successfully completes, within 90 days of notification, a certified driver rehabilitation and improvement course, as provided in 61-2-302, the person's driver's license will be suspended for a period not to exceed 6 months or until the person has successfully completed the course, whichever occurs first;

(c) provide the person with a list of certified driver rehabilitation and improvement courses and information about how the person may comply with the provisions of this subsection (3) if a driver rehabilitation and improvement program does not exist near the person's residence; and

(d) send the notice as provided in subsection (2).

(4) If the person fails to enroll in a certified driver rehabilitation and improvement program or fails to successfully complete the program or an appropriate substitute within 90 days, the department may suspend the person's driver's license as provided in 61-5-206 for a period not to exceed 6 months or until the person has successfully completed the course, whichever occurs first." Amendment effective May 5, 2003.

2001 Amendment: Chapter 218 inserted (3) concerning declaration of and notice to a person who is a driver in need of rehabilitation and improvement; inserted (4) concerning license suspension for failure to enroll in certified driver rehabilitation and improvement program; and made minor changes in style. Amendment effective April 6, 2001.

1999 Amendment: Chapter 309 in second sentence in (2) substituted "certified reproduction" for "certified copy" and after "record" substituted "as contained in the computer storage device used by the department for recordkeeping" for "and copies of all relevant abstracts of convictions and bond forfeitures". Amendment effective October 1, 1999.

Applicability: Section 25, Ch. 309, L. 1999, provided: "[This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999."

1995 Amendment: Chapter 338 in (1), after "habitual traffic offender", deleted "as defined in 61-11-203(2)"; inserted (1)(a) through (1)(c) establishing Department's duties related to declaration, revocation, and notification relating to habitual traffic offender; in (2) inserted first sentence requiring first-class mail, substituted second sentence relating to certified copy of convictions and bond forfeitures for "forthwith certify two copies of that person's driving record and two copies of all relevant abstracts of conviction", and substituted last two sentences relating to notice of right to appeal declaration and revocation for former last two sentences that read: "One copy of the record and abstracts shall be certified to the attorney general and one copy of the record and abstracts shall be certified to the county attorney for the county wherein the person is found. If the person is not licensed by Montana to drive a motor vehicle but is licensed in another state, the department may certify the copy of the records and abstracts to the attorney general and also to the county attorney for the county in which the person is found or, in the alternative, to the county attorney for the county of Lewis and Clark"; and made minor changes in style.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in three places.

Case Notes

Notice of Necessity for Driver to Complete Driver Rehabilitation and Improvement Course Not Required Following Repeal of Notice Requirement — Substantive Right Not Affected: Keeney accumulated 30 conviction points in a 3-year period and was notified by the Department of Justice that his driver's license was revoked for 3 years. Keeney had accumulated 18 conviction points on speeding violations by May 2, 2003, the last points being acquired from a speeding violation in Idaho. Prior to its May 5, 2003, repeal, subsection (3)(b) of this section required that a driver who accumulated 18 or more conviction points be notified of the necessity to complete a driver rehabilitation and improvement course. Keeney asserted that his due process rights were violated when the Department failed to notify him of his status as a habitual offender under the former notice requirement, essentially challenging the perceived retroactive application of the repealed provision. However, the Department was not notified of the Idaho violation until May 28, 2003. Therefore, the Department properly applied the law as it stood on May 5, 2003. The Department did not change the method of calculating points for speeding infractions prior to the repeal and did not punish Keeney for violations that occurred before the repeal, but rather properly considered the previous violations as points against Keeney's record when he finally accumulated 30 points. Once Keeney reached the 30-point plateau within a 3-year period, he was correctly sent a notice of revocation and afforded the option for judicial review of the revocation. Procedural due process required nothing more because it was not necessary to advise Keeney of his continuing duty to act as a law-abiding citizen. In re Driver's License of Keeney v. Dept. of Justice, 2006 MT 152, 332 M 446, 139 P3d 814 (2006).

61-11-207. Abstracts admissible as evidence.

Compiler's Comments

1995 Amendment: Chapter 338 at beginning of first sentence substituted "A copy of a driving record maintained by the department, including abstracts" for "Official abstracts", substituted "correct account of its records" for "correct account of the said convictions and bond forfeitures", and at end, after "this part", deleted "upon establishing the proper foundation"; inserted last two sentences relating to effect of certified driving record and types of copies; and made minor changes in style.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

Case Notes

Certified Record — Statutory Language Required: The record forwarded by the administrator of the Highway Patrol should include the statement set forth in the statute that it is a correct account of the convictions and bond forfeitures. State ex rel. Sol v. Orcutt, 180 M 15, 588 P2d 996 (1979).

61-11-210. Appeals.

Compiler's Comments

2005 Amendment: Chapter 596 in (2) near middle after "certified" substituted "record of the" for "copy of the abstracts of the records of"; and in (3) in first sentence near middle after "certified" substituted "record" for "abstracts". Amendment effective January 1, 2006.

1995 Amendment: Chapter 338 inserted (1) allowing filing of petition challenging declaration and revocation; inserted (2) requiring Department to give County Attorney certified copies of abstracts of record of convictions and bond forfeitures; in (3) substituted current language relating to hearing requirements for "At the time and place designated in the order, the court shall hold a hearing upon the show cause order. If the court finds that the defendant is not the person named in the verified complaint or that he is not an habitual traffic offender as defined in 61-11-203(2), the proceedings shall be dismissed"; in (4), near beginning of first sentence, substituted "the petitioner is the person declared by the department to be a habitual traffic offender and that the petitioner is a habitual traffic offender" for "the defendant is the same person named in the verified complaint and that the defendant is an habitual traffic offender as defined in 61-11-203(2)" and after "the court shall" substituted "dismiss the petition" for "so find and adjudge the defendant an habitual traffic offender, and by appropriate order direct the person so adjudged to surrender to the court his license to operate a motor vehicle on the streets and highways of this state" and inserted last sentence relating to granting of petition; in (5), near beginning of first sentence after "adverse to the", substituted "petitioner" for "defendant", after "clerk of the court" deleted "wherein the hearing is held", and at end substituted "together with the petitioner's driver's license if the license has not been previously surrendered" for "together with the defendant's license", in second sentence substituted "If the petition is granted" for "If the proceeding is dismissed", after "clerk of the court" deleted "wherein the hearing is held", and after "court's order" substituted "granting the petition" for "dismissing the proceeding, which", in third sentence substituted "grounds upon which the relief was granted" for "grounds upon which the dismissal was based", after "conviction points" inserted "if any", and at end substituted "petitioner" for "defendant", and inserted last sentence requiring correction of petitioner's driving record; and made minor changes in style.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles in two places.

Case Notes

Driver's License — Property Interest, Not Right — Revocation Not Cruel and Unusual Punishment: Revocation of driver's license under habitual traffic offender's law is civil in nature, and the due process standards are not as strict as in criminal actions. The law's predispositional court hearing satisfies due process rights, and a postdispositional hearing is not necessary.

Licensing drivers is within the police power of the state, and the fact that the law gives a judge no discretion to determine who is a habitual traffic offender or the consequences of being one does not constitute cruel or unusual punishment. State ex rel. Majerus v. Carter, 214 M 272, 693 P2d 501, 41 St. Rep. 2468 (1984).

61-11-211. Department to revoke license of habitual offender — removal of points upon revocation.

Compiler's Comments

1995 Amendment: Chapter 338 at beginning of first sentence substituted "After it declares a person to be a habitual offender" for "Upon receipt of a court order declaring an individual a habitual offender", before "driver's license" inserted "person's", after "driving privilege" deleted "of the individual named in the order", and substituted "date of the declaration" for "date of the order" and at beginning of second sentence deleted "Additionally" and at end, after "remove from", substituted "the person's record the habitual offender points upon which the habitual traffic offender designation was based" for "that individual's record those habitual offender points that were certified to the county attorney in the certification required by 61-11-204".

1991 Amendment: At end of first sentence inserted "subject to the provisions of 61-2-302"; and made minor changes in style.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Administrative Suspension Not to Remove Habitual Offender Points: The Highway Patrol petitioned to have defendant formally declared a habitual traffic offender. The District Court refused, contending that the defendant had accumulated only 11 points since his license had been suspended under 61-5-206. At that time he had 27 habitual offender points. The District Court held that those points were removed by the administrative suspension. The Supreme Court vacated the judgment, holding that the removal of points required by 61-11-211 applied only to revocations and not to administrative suspensions. No contrary legislative intent is indicated by the statutes. Suspension of a license under 61-5-206 is a civil proceeding and not a criminal prosecution. The deprivation of the driving privilege under 61-5-206 is intended to protect the public and is not done for the punishment of the individual. The Supreme Court held that the same traffic offense may be used first to suspend a license under 61-5-206, and then to be cumulated with additional points to allow revocation as a habitual offender. State ex rel. Griffith v. Brustkern, 202 M 438, 658 P2d 410, 40 St. Rep. 194 (1983).

Law Review Articles

Constitutional Challenges to Montana's Drunk Driving Laws, O'Sullivan, 46 Mont. L. Rev. 329 (1985).

61-11-212. Penalties.

Compiler's Comments

1995 Amendment: Chapter 338 in introductory clause substituted "declared to be" for "adjudged"; in (1) substituted "date of the declaration" for "date of the final order of the court adjudging the person a habitual traffic offender"; and made minor changes in style.

1991 Amendment: At end of (1) inserted "subject to the provisions of 61-2-302"; and made minor changes in style.

1985 Amendment: In (3) substituted reference to department of justice for reference to division of motor vehicles.

61-11-213. Habitual traffic offender operating motor vehicle guilty of misdemeanor.

Compiler's Comments

1995 Amendment: Chapter 338 at beginning substituted "A person who is declared" for "A person found", after "in this state" substituted "during the period of revocation of the person's driver's license or driving privileges" for "while the order of the court prohibiting the operation remains in effect", and substituted "period of not less than 14 days or more than 1 year" for "period of not more than 1 year"; and made minor changes in style.

1991 Amendment: At end of first sentence inserted requirement that Department extend revocation period for an additional 1 year; and made minor changes in style.

Case Notes

Four-Wheeler Driven on Road — Motor Vehicle by Statutory Definition: A four-wheeler driven by the defendant on roads around town was a motor vehicle, as defined in 61-1-101, even if two subsections of the definition applied to it as a motor vehicle. Therefore driving the four-wheeler was covered by the provisions of this section. St. v. Otten, 2011 MT 83, 360 Mont. 144, 253 P.3d 834.

Extreme Emergency — Burden of Proof on Defendant: The extreme emergency provision set forth in this section that would allow a habitual offender to drive is not an element of the offense to be proven by the state. It is a defense, and the burden of proof of that extreme emergency can properly be placed on the defendant. St. v. George, 219 M 377, 711 P2d 1379, 43 St. Rep. 26 (1986).

No Extreme Emergency: The burden of proving extreme emergency is on the defendant. In this case, the defendant has failed to meet that burden as he has not shown by a preponderance of the evidence that it was necessary for him to drive to save life, limb, or property in an extreme emergency. St. v. George, 219 M 377, 711 P2d 1379, 43 St. Rep. 26 (1986).

Witness' Statement Not Referred to in Affidavit — No Ex Post Facto Problem — Admissible as Prior Inconsistent Statement: Defendant was convicted of operating a motor vehicle while designated a habitual traffic offender. Proceeding pro se, the defendant argued on appeal that failure to refer to a witness' statement in the affidavit supporting leave to file information constituted an ex post facto problem. The court held that he simply misunderstood that legal theory. The court further held that the statement, which asserted that defendant drove from Great Falls to Loma, was admissible as a prior inconsistent statement because the witness testified at trial that he, not the defendant, drove that distance. St. v. Grant, 217 M 357, 704 P2d 1064, 42 St. Rep. 1248 (1985).

Part 5
Montana Driver Privacy Protection Act

Part Compiler's Comments

Effective Date: Section 17, Ch. 363, L. 2001, provided that this part is effective on passage and approval. Approved April 23, 2001.

61-11-503. Definitions.

Compiler's Comments

2019 Amendment: Chapter 335 in definition of motor vehicle record substituted "identification card, or title or registration for a motor vehicle, trailer, semitrailer, pole trailer, camper, motorboat, personal watercraft, sailboat, snowmobile, or off-highway vehicle" for "motor vehicle title, motor vehicle registration, or identification card issued by the department". Amendment effective May 7, 2019.

2007 Amendment: Chapter 130 in definition of express consent in second sentence near middle after "as defined in" substituted "30-18-102" for "2-20-103". Amendment effective October 1, 2007.

Preamble: The preamble attached to Ch. 130, L. 2007, provided: "WHEREAS, the 56th Montana Legislature adopted the Montana Electronic Transactions With State Agencies and Local Government Units Act in an effort to establish processes by which citizens, businesses, and other entities could effectively, efficiently, and legally transact official business with state and local governments through technology enabled by electronic means; and

WHEREAS, the 57th Montana Legislature adopted the Uniform Electronic Transactions Act in an effort to expand processes by which citizens, businesses, and other entities can effectively, efficiently, and legally transact official business through technology enabled by electronic means; and

WHEREAS, the adoption and implementation of the Uniform Electronic Transactions Act has eliminated the need for the Montana Electronic Transactions With State Agencies and Local Government Units Act."

2003 Amendment: Chapter 533 in definition of personal information in (a) after "social security number" substituted "driver's license or" for "driver" and after "identification number" inserted "date of birth". Amendment effective July 1, 2003.

61-11-508. Permitted disclosure of personal information — specific uses.

Compiler's Comments

2023 Amendments — Composite Section: Section 1, Ch. 538, L. 2023, in (1)(b)(i) after "functions, including" inserted "county government elections officials verifying voter registration information and"; in (2)(c) inserted final clause regarding disclosure of only the final four numbers of a social security number; and made minor changes in style. Amendment effective May 18, 2023.

Section 1, Ch. 627, L. 2023, in (2)(a) and (2)(b) at beginning inserted “it is disclosed”; inserted (2)(d) regarding the department of revenue; and made minor changes in style. Amendment effective May 19, 2023.

2019 Amendment: Chapter 445 inserted (2) concerning the disclosure of a social security number under certain circumstances and made minor changes in style. Amendment effective May 10, 2019.

61-11-509. Permitted disclosure of personal information, excluding highly restricted personal information — specific uses.

Compiler's Comments

2003 Amendment: Chapter 533 in introductory clause near middle after “61-11-510” inserted “and subject to the provisions of 61-11-105”. Amendment effective July 1, 2003.

61-11-510. Prerequisites to disclosure.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 627, L. 2023. Amendment effective May 19, 2023.

2021 Amendment: Chapter 142 in (3)(d) near middle substituted “Montana tax appeal board” for “state tax appeal board”. Amendment effective October 1, 2021.

Saving Clause: Section 49, Ch. 142, L. 2021, was a saving clause.

2015 Amendment: Chapter 348 in (3)(b)(i) substituted “2-6-1006” for “2-6-110(2)”. Amendment effective October 1, 2015.

Severability: Section 72, Ch. 348, L. 2015, was a severability clause.

2003 Amendment: Chapter 533 inserted (3)(b)(iii) concerning incorporation of the convenience fee; in (3)(c) near beginning after “provided in” inserted “61-11-105(5)(b)”; and made minor changes in style. Amendment effective July 1, 2003.

CHAPTER 12
MISCELLANEOUS PROVISIONS

Part 1
Powers of Local Authorities

61-12-101. Powers of local authorities to regulate traffic.

Compiler's Comments

2015 Amendments — Composite Section: Chapter 173 inserted (2) concerning limitations of local authority's power to regulate traffic; and made minor changes in style. Amendment effective October 1, 2015.

Chapter 374 in (1)(h) in two places after “bicycles” inserted “or mopeds”. Amendment effective October 1, 2015.

2011 Amendment: Chapter 247 in (15) after “vehicles” deleted “as defined in 61-1-101”; inserted (16) relating to regulation and operation of golf carts; and made minor changes in style. Amendment effective April 22, 2011.

2005 Amendments — Composite Section — Coordination: Chapter 468 in first sentence after “respect to” inserted “sidewalks”; in (10) at end after “authorized” substituted “in Title 7, chapter 14, and Title 61, chapter 8” for “herein”; in (11) in two places, near middle of (12), and near beginning of (13) substituted references to operating a vehicle for references to driving a vehicle; inserted (15) allowing local authorities to regulate the operation of motorized nonstandard vehicles on sidewalks, streets, and highways; and made minor changes in style. Amendment effective April 28, 2005.

Chapter 542 in (6) near beginning after “through highway” inserted “as defined in 61-8-341” and near middle after “intersection” inserted “as defined in 61-8-102”; in (8) after “bicycles” inserted “as defined in 61-8-102”; and made minor changes in style. Amendment effective January 1, 2006.

Section 11, Ch. 468, L. 2005, a coordination section, amended this section in (15) by changing “[section 1]” to “61-1-101”.

Style changes were slightly different in the chapters. In each case, the codifier chose appropriate text.

Case Notes

Municipality's Authority to Adopt Ordinance Limiting University Students' Rights to Park on City Streets: A university student association challenged the legality of a city ordinance limiting parking in residential areas near the university to residents of those areas. The Supreme Court held that municipalities have the power to regulate parking and that regulating parking to relieve congestion in certain residential neighborhoods was a reasonable exercise of governmental authority. Assoc. Students v. Missoula, 261 M 231, 862 P2d 380, 50 St. Rep. 1301 (1993).

Escalating Fines for Parking Violations — Unconstitutional: An escalating fine schedule for parking violations where the amount to be paid depends on the length in the delay in paying after being cited is in violation of the basic principle of law that punishment must be for the violation and proportional to the gravity of the offense and hence is violative of Art. II, sec. 28, Mont. Const., which provides that laws for punishment of crime shall be founded on principles of prevention and reformation. Missoula v. Shea, 202 M 286, 661 P2d 410, 40 St. Rep. 91 (1983).

Parking Ordinance — Presumption That Owner Parked Vehicle — Unconstitutional Shifting of Burden: In striking down a parking ordinance, the Supreme Court held that to make the owner of a vehicle prima facie liable upon proof that his vehicle has been parked illegally is equivalent to a presumption that the owner parked the vehicle. The effect of the presumption is to violate constitutional due process requirements by shifting the burden of persuasion to defendant and contradicting the presumption of innocence. Missoula v. Shea, 202 M 286, 661 P2d 410, 40 St. Rep. 91 (1983).

Parking Ordinance — Vicarious Criminal Responsibility: A city may, in the exercise of its police power, enact a parking ordinance that provides that the registered owner of a motor vehicle is vicariously criminally responsible for illegal parking by another unless it is shown that the vehicle was being used without the owner's consent. Such an ordinance does not violate due process restrictions (overruling a contrary holding in St. v. Jetty, 176 M 519, 579 P2d 1228 (1978)), but the ordinance must conform to the absolute liability requirements of 45-2-104. Missoula v. Shea, 202 M 286, 661 P2d 410, 40 St. Rep. 91 (1983).

Intoxication — City Traffic Code Not in Conflict With State Statute: Where the defendant was found to have violated a city traffic code proscribing a certain level of intoxication "within this municipality", the District Court did not err in holding that the traffic code was not in conflict with a state statute proscribing the same conduct "upon the highways of this state". While the city has chosen to use language that does not precisely mirror the language of the corresponding state statute, any conflict between the ordinance and 61-8-401 (now repealed and content reorganized in Title 61, chapter 8, part 10) is resolved when that section is read in pari materia with this section, authorizing the city to regulate persons driving motor vehicles under the influence of alcohol. Billings v. Weatherwax, 193 M 163, 630 P2d 1216, 38 St. Rep. 1034 (1981).

Driving Under Influence: A city ordinance which penalized drunken driving within the city in the same terms as subsections (a) and (d), section 32-2142, R.C.M. 1947 (now 61-8-401(1) and 61-8-714, both since repealed and content reorganized in Title 61, chapter 8, part 10), was valid and enforceable even though the Legislature had acted on the subject. Bozeman v. Ramsey, 139 M 148, 362 P2d 206 (1961).

Conflicting Statute and Ordinance: A former statute provided that motor vehicles shall not pass a standing streetcar at a distance less than 8 feet nor at a speed greater than 6 miles an hour. A city ordinance provided that on business streets automobiles must not be driven faster than 12 miles an hour and must stop when passing a standing streetcar on the side on which passengers are discharged and received. The ordinance was controlling, and under it defendant was not required to stop when driving on the opposite side of a standing streetcar or to clear it by a space of 8 feet. Carey v. Guest, 78 M 415, 258 P 236 (1927).

Attorney General's Opinions

Mandatory Seatbelt Ordinance: Under Montana law and the Montana Constitution, a municipality with self-governing powers may enact a mandatory seatbelt ordinance that provides for a fine or jail sentence for violation of the ordinance as long as the fine or penalty does not exceed $500 and the imprisonment does not exceed 6 months for any one offense, and as long as such an ordinance is not prohibited by the city charter. (See T. 61, ch. 13, part 1, enacted in 1987.) 41 A.G. Op. 47 (1986).

City Council — Lack of Authority to Regulate Crosswalk on Federal-Aid Highway in Manner Inconsistent With State Law: A city council may not enact an ordinance requiring a driver of a motor vehicle on a federal-aid or state highway to stop for a pedestrian within a crosswalk when the pedestrian is not on the half of the roadway on which the vehicle is traveling and when the pedestrian is not close enough to be in danger. 41 A.G. Op. 10 (1985).

Board of County Commissioners — Right to Set Speed Limits: A Board of County Commissioners, constituted in a commission form of government, may alter otherwise statutorily established speed limits by compliance with 61-8-310. It may further adopt traffic ordinances to the extent permitted under 61-12-101(14), and any such ordinances may include penalty provisions. 40 A.G. Op. 51 (1984).

Motor Vehicle Parking Offenses — Civil Penalty: A city with general government powers may not establish a civil penalty and collection system for motor vehicle parking offenses. 40 A.G. Op. 31 (1984).

Collateral References

Tax Appeals and Oversize Loads: A Final Report on the Activities of the Revenue and Transportation Interim Committee, Mont. Leg. Serv. Div. (2014).

61-12-102. Private parking services — parking citations — definitions.

Compiler's Comments

2005 Amendment: Chapter 542 in definition of private parking service after "motor vehicles" deleted "as defined in 61-1-102"; and made minor changes in style. Amendment effective January 1, 2006.

Part 2
Enforcement by Department of Transportation Personnel

61-12-201. Appointment of employees and out-of-state personnel as peace officers — definition.

Compiler's Comments

1997 Amendment: Chapter 42 inserted (3) defining Department as Department of Transportation. Amendment effective March 12, 1997.

1995 Amendment: Chapter 360 in (1), at end of second sentence, inserted "and employees of other states" and inserted third sentence regarding appointment of out-of-state enforcement personnel; and inserted (2) allowing joint weigh station agreements and providing for staffing levels.

1993 Amendment: Chapter 575 in second sentence, near end, substituted "motor carrier services" for "gross vehicle weight"; and made minor changes in style. Amendment effective January 1, 1994.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Administrative Rules

ARM 18.8.1401 Qualifications and training for Motor Carrier Services Division personnel as peace officers.

61-12-202. Training of department peace officers — rules.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 18.8.1401 Qualifications and training for Motor Carrier Services Division personnel as peace officers.

61-12-204. Identification badge and uniform — safety equipment.

Compiler's Comments

1991 Amendment: Inserted (2) concerning issuance of soft body armor to employees appointed as peace officers.

61-12-205. Power to inspect vehicle registration, receipts, and other documents.

Compiler's Comments

2005 Amendment: Chapter 366 near beginning substituted "designated or appointed as peace officers under 61-10-154 or 61-12-201" for "appointed under 61-12-201"; and made minor changes in style. Amendment effective October 1, 2005.

61-12-206. Offenses for which arrest authorized.

Compiler's Comments

2015 Amendment: Chapter 220 in (5) substituted "part 3 [renumbered into Title 15, chapter 70, part 4]" for "parts 2 and 3"; and made minor changes in style. Amendment effective October 1, 2015.

2005 Amendment: Chapter 366 near beginning of introductory clause substituted "designated or appointed as peace officers under 61-10-154 or 61-12-201" for "appointed under 61-12-201"; and in (6) at beginning substituted "61-10-154" for "44-1-1005". Amendment effective October 1, 2005.

1997 Amendment: Chapter 125 deleted former (6) that read: "(6) 15-71-101 through 15-71-105"; and made minor changes in style. Amendment effective January 1, 1998.

1995 Amendments — Composite Section: Chapter 360 inserted (7) allowing arrests for violations of 44-1-1005 and applicable safety rules; inserted (8) allowing arrests for violations of Title 69, chapter 12; deleted former (2) that read: "(2) These employees may not arrest for violations other than those specified in this section"; and made minor changes in style.

Chapter 538 in (1), at end of introductory clause, deleted "only"; inserted (1) regarding certain violations of chapters 3 and 5; in (2), at beginning, deleted "part 1"; deleted (1)(f) through (1)(i) that read: "(f) section 61-3-502(1);

(g) sections 61-10-201, 61-10-203, 61-10-206, 61-10-209, and 61-10-211 through 61-10-215;

(h) sections 61-10-222 through 61-10-224;

(i) sections 61-10-231 through 61-10-233"; and made minor changes in style. Amendment effective July 1, 1995.

Because one chapter added subsections and the other chapter deleted subsections, the codifier renumbered subsections to reflect both additions and deletions.

1993 Special Session Amendment: Chapter 10 substituted (1)(d) referring to Title 15, chapter 70, parts 2 and 3, for former (1)(d) referring to 15-70-302 through 15-70-307; and deleted former (1)(e) referring to 15-70-311 through 15-70-314. Amendment effective January 1, 1994.

1993 Amendment: Chapter 575 in (1)(h) inserted references to 61-10-203, 61-10-206, 61-10-209, and 61-10-211. Amendment effective January 1, 1993.

1991 Amendment: Inserted (1)(f) referencing 15-71-101 through 15-71-105.

Attorney General's Opinions

Authority of Department Officers to Issue Citation for Violation of Special Permit Speed Limits: Department of Transportation Motor Carrier Services Division compliance officers have the authority to issue a citation for violation of a special permit condition when the permit condition violated is a speed limit imposed on the permitted vehicle. 44 A.G. Op. 30 (1992).

61-12-208. Duty upon making arrest — power to fix and accept bail.

Compiler's Comments

2005 Amendment: Chapter 366 at beginning of first sentence substituted "designated or appointed as peace officers under 61-10-154 or 61-12-201" for "appointed under 61-12-201". Amendment effective October 1, 2005.

1995 Amendment: Chapter 360 at beginning of first sentence substituted "Employees appointed under 61-12-201" for "Such employees" and at end of third sentence inserted "or of awaiting the arrival of another peace officer who has been called to the scene, or the person may be transported, as provided in 46-7-101"; and made minor changes in style.

Part 3
Motor Club Service Companies

61-12-301. Terms defined.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-12-303. Requirements for license.

Compiler's Comments

1999 Amendment: Chapter 472 in (1)(f) after "certificate from the" substituted "secretary of state" for "corporation commissioner of the state of Montana"; in (3) at end inserted "and that the company is financially responsible"; and made minor changes in style. Amendment effective October 1, 1999.

1991 Amendment: In (1)(e) substituted "commissioner" for "state treasurer"; and made minor changes in style.

61-12-304. Deposits required.

Compiler's Comments

1991 Amendment: In first sentence, near beginning after "company", deleted "as herein defined except as hereinafter stated" and after "deposited with the" substituted "commissioner" for "state treasurer", in middle of second sentence, before "5 years", inserted "the preceding" and after "5 years" deleted "immediately last past", and at beginning of third sentence, before "cash", deleted "foregoing" and after "not" deleted "required in any instance as"; and made minor changes in style.

61-12-305. Continuance of license.

Compiler's Comments

1991 Amendment: At beginning substituted "Subject to payment by January 1 of each year of the annual license fee required under 61-12-303, each" for "Every", after "license" substituted "continues in force as long as the company is entitled to the license under this part or until the license is" for "issued hereunder shall expire annually on January 1 of each year unless sooner", and after "suspended" substituted "or otherwise terminated" for "as hereinafter provided"; and made minor changes in style.

61-12-306. Revocation of license.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-12-307. Financial statement to be filed.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-12-308. Service contract to be filed with commissioner.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-12-310. Form of contract.

Compiler's Comments

2001 Amendment: Chapter 227 in (1) substituted "the name of the motor club service company" for "the exact corporate or other name of the company"; in (2) substituted "the location of its home office, giving street number, city, and state" for "the exact location of its home office and of its usual place of business in this state, giving street number and city"; and made minor changes in style. Amendment effective October 1, 2001.

61-12-314. Applicability.

Compiler's Comments

2011 Amendment: Chapter 103 inserted (3) regarding motor club service company; and made minor changes in style. Amendment effective April 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

61-12-315. Penalty for violation.

Compiler's Comments

2001 Amendment: Chapter 227 substituted language regarding liability under 33-1-317 for a violation of Title 61, chapter 12, part 3, for former language that read: "If any person shall violate the provisions of this part, such person shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months or by both such fine and imprisonment." Amendment effective October 1, 2001.

Part 4
Removal and Sale of Abandoned Vehicles

Part Compiler's Comments

Severability Clause: Section 10, Ch. 288, L. 1967, was a severability clause.

61-12-401. Taking vehicle into custody.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 165 inserted (1)(d) concerning tribal law enforcement agencies; in (2) near middle after "city police" inserted "tribal law enforcement agency"; in (3) in two places inserted reference to the tribal law enforcement agency; in (4)(a) near middle inserted reference to the tribal law enforcement agency of the reservation in which the vehicle is located; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 552 in (1) near beginning inserted "and department of fish, wildlife, and parks personnel"; inserted (1)(e) relating to game wardens; in (2) near beginning inserted "or department of fish, wildlife, and parks"; in (3) near beginning of introductory clause substituted "or the department of fish, wildlife, and parks" for "of the city in which the vehicle is being stored" and near end of introductory clause inserted "or department of fish, wildlife, and parks"; and made minor changes in style. Amendment effective May 15, 2021.

2019 Amendment: Chapter 102 in (1) near beginning substituted "vehicle" for "motor vehicle"; and made minor changes in style. Amendment effective October 1, 2019.

2013 Amendment: Chapter 117 in (3) at beginning inserted "If the Montana highway patrol" and after "stored" inserted language regarding removal and storage of vehicle; in (3)(a) at beginning before "may request" inserted language regarding payment of charges established by rule; inserted (3)(b) concerning how a claim for payment is made; and made minor changes in style. Amendment effective October 1, 2013.

2007 Amendment: Chapter 461 inserted (3)(b) authorizing landowner to remove abandoned vehicle; and made minor changes in style. Amendment effective October 1, 2007.

1999 Amendment: Chapter 513 at end of (1)(b) deleted "within the county"; at end of (1)(c) deleted "within the city"; in (2) inserted second sentence concerning reimbursement from motor vehicle recycling and disposal program; and made minor changes in style. Amendment effective July 1, 1999.

1987 Amendment: In (2) substituted "storage" for "preservation".

Case Notes

Lack of Efforts to Notify Vehicle Owner After Vehicle Towed — Not Abandoned or Junk Vehicle — Summary Judgment Proper: Springer owned a van that he parked on a Bozeman street. A parking control officer placed a notice of abandoned vehicle specifying a September 25 tow date on the van. On the tow date, Springer moved the van to the other side of the street. Three days later, the van was towed and subsequently destroyed. Springer was never notified of the towing. Springer brought an action against the officer and the city to recover damages for destruction of the van. The District Court determined that the van was neither an abandoned vehicle under this section nor a junk vehicle under 75-10-501 and that the city did not take reasonable efforts to notify Springer that the van had been towed, as required by 61-12-402. Summary judgment awarding damages to Springer was proper. Springer v. Becker, 284 M 267, 949 P2d 641, 54 St. Rep. 876 (1997).

Attorney General's Opinions

Duty of Sheriff Regarding Abandoned Vehicles: The County Sheriff is obligated to take, store, and sell abandoned vehicles taken into custody by the highway patrol pursuant to this section. 42 A.G. Op. 32 (1987).

Payment of Expenses When Abandoned Vehicles Taken by City Police — Recovery of Costs: The city police are obligated to pay all expenses connected with the removal, storage, and sale of vehicles taken into custody by the city police pursuant to 61-12-401. Expenses associated with these responsibilities can be recovered from the proceeds of the sale of the abandoned vehicles pursuant to 61-12-407. 42 A.G. Op. 32 (1987).

Payment of Expenses When Abandoned Vehicles Taken by Highway Patrol or Sheriff — Recovery of Costs: The county is obligated to pay all expenses connected with removal, storage, and sale of vehicles taken into custody by the highway patrol or by the Sheriff pursuant to 61-12-401. Expenses associated with these responsibilities can be recovered from the proceeds of the sale of the abandoned vehicles pursuant to 61-12-407. 42 A.G. Op. 32 (1987).

61-12-402. Notice to owner.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 454, L. 2023, repealed sec. 5, Ch. 427, L. 2019, and sec. 1, Ch. 72, L. 2021, which terminated the 2019 amendments to this section June 30, 2023. Effective May 8, 2023.

2021 Amendment: Chapter 165 in both versions in (4) at end inserted "as provided in 61-12-404(1)(a) or at least 60 days before the vehicle is sold as provided in 61-12-404(1)(b)". Amendment effective October 1, 2021.

Extension of Termination Date: Section 1, Ch. 72, L. 2021, amended sec. 5, Ch. 427, L. 2019, by extending the termination date imposed by Ch. 427 to June 30, 2023. Effective March 23, 2021.

2019 Amendment: Chapter 427 inserted (7)(a)(ii) regarding disposal of junk nonmotorized vehicles; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2021.

2007 Amendment: Chapter 53 in (7)(a) in fourth sentence after "records under" inserted "61-3-225 and" and after "75-10-512" deleted "and 75-10-513". Amendment effective October 1, 2007.

2003 Amendment: Chapter 176 in (7)(a) at beginning of fourth sentence substituted "If the vehicle is being stored by a motor vehicle wrecking facility" for "A release provided by" and inserted fifth sentence requiring sheriff or police to transmit release to operator if vehicle stored by qualified tow truck operator; inserted (7)(b) allowing licensed vehicle meeting junk vehicle definition valued at $500 or less to be directly submitted for disposal; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 513 in (1) in first sentence after "county" inserted "or the chief of police of the city" and at end substituted "is being stored of where and when the vehicle was taken into custody and of where the vehicle is being stored" for "was located at the time it was taken into custody of the place where the vehicle is being held" and at end of second sentence inserted "of the chief of police"; inserted (2) concerning notification to sheriff or chief of police by highway patrol; in first sentence of (3) after "police" inserted "in the jurisdiction where the vehicle is being stored"; in (5) near end of first sentence substitute "is being stored" for "was abandoned"; in (7) near middle of first sentence after "less" deleted "as determined by the department" and inserted second sentence concerning appropriate person to determine value; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 496 in (6), in first sentence after "as defined in 75-10-501, and", substituted "that has a" for "certified as having an appraised" and after "determined by the department" deleted "of revenue" and in fourth sentence inserted "for disposal"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendment: Chapter 283 in (6), in first sentence, increased appraised value of junk vehicle from $100 to $500; and made minor changes in style. Amendment effective March 29, 1995.

1993 Special Session Amendment: Chapter 27 in (6), in first sentence after "determined by the", deleted "county assessor in accordance with the rules of the"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In (1), near end of second sentence, substituted "storage" for "preservation"; and in (4), at end of last sentence, substituted "provided in the same manner as prescribed in 25-13-701(1)(b)" for "within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail".

1985 Amendments: Chapter 355 in (1) near beginning of first sentence, after "Montana highway patrol", substituted "the highway patrol" for "or the city police, they", and in second sentence, after "Montana highway patrol", deleted "or the city police"; in (2) in two places, after "sheriff", inserted "or the city police", and at end of first sentence, inserted "taken into custody under 61-12-401"; in (5) and (6) in five places after "sheriff" inserted "or the city police".

Chapter 503 in (3) in two places substituted reference to department of justice for reference to division of motor vehicles.

2019 Amendment: Chapter 427 inserted (7)(a)(ii) regarding disposal of junk nonmotorized vehicles; and made minor changes in style. Amendment effective July 1, 2019, and terminates June 30, 2021.

2007 Amendment: Chapter 53 in (7)(a) in fourth sentence after "records under" inserted "61-3-225 and" and after "75-10-512" deleted "and 75-10-513". Amendment effective October 1, 2007.

2003 Amendment: Chapter 176 in (7)(a) at beginning of fourth sentence substituted "If the vehicle is being stored by a motor vehicle wrecking facility" for "A release provided by" and inserted fifth sentence requiring sheriff or police to transmit release to operator if vehicle stored by qualified tow truck operator; inserted (7)(b) allowing licensed vehicle meeting junk vehicle definition valued at $500 or less to be directly submitted for disposal; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 513 in (1) in first sentence after "county" inserted "or the chief of police of the city" and at end substituted "is being stored of where and when the vehicle was taken into custody and of where the vehicle is being stored" for "was located at the time it was taken into custody of the place where the vehicle is being held" and at end of second sentence inserted "of the chief of police"; inserted (2) concerning notification to sheriff or chief of police by highway patrol; in first sentence of (3) after "police" inserted "in the jurisdiction where the vehicle is being stored"; in (5) near end of first sentence substitute "is being stored" for "was abandoned"; in (7) near middle of first sentence after "less" deleted "as determined by the department" and inserted second sentence concerning appropriate person to determine value; and made minor changes in style. Amendment effective July 1, 1999.

1997 Amendment: Chapter 496 in (6), in first sentence after "as defined in 75-10-501, and", substituted "that has a" for "certified as having an appraised" and after "determined by the department" deleted "of revenue" and in fourth sentence inserted "for disposal"; and made minor changes in style. Amendment effective January 1, 1998.

Effective Date — Applicability: Section 42(1), Ch. 496, L. 1997, provided: "Except for the purposes of subsection (2), [this act] is effective January 1, 1998, and applies to tax years beginning after December 31, 1997."

1995 Amendment: Chapter 283 in (6), in first sentence, increased appraised value of junk vehicle from $100 to $500; and made minor changes in style. Amendment effective March 29, 1995.

1993 Special Session Amendment: Chapter 27 in (6), in first sentence after "determined by the", deleted "county assessor in accordance with the rules of the"; and made minor changes in style. Amendment effective January 1, 1994.

Applicability: Section 171(2), Ch. 27, Sp. L. November 1993, provided that the amendments to this section apply to tax years after December 31, 1993.

1987 Amendment: In (1), near end of second sentence, substituted "storage" for "preservation"; and in (4), at end of last sentence, substituted "provided in the same manner as prescribed in 25-13-701(1)(b)" for "within the time requirements prescribed for notice by certified or registered mail and shall have the same contents required for a notice by certified or registered mail".

1985 Amendments: Chapter 355 in (1) near beginning of first sentence, after "Montana highway patrol", substituted "the highway patrol" for "or the city police, they", and in second sentence, after "Montana highway patrol", deleted "or the city police"; in (2) in two places, after "sheriff", inserted "or the city police", and at end of first sentence, inserted "taken into custody under 61-12-401"; in (5) and (6) in five places after "sheriff" inserted "or the city police".

Chapter 503 in (3) in two places substituted reference to department of justice for reference to division of motor vehicles.

Case Notes

Lack of Efforts to Notify Vehicle Owner After Vehicle Towed — Not Abandoned or Junk Vehicle — Summary Judgment Proper: Springer owned a van that he parked on a Bozeman street. A parking control officer placed a notice of abandoned vehicle specifying a September 25 tow date on the van. On the tow date, Springer moved the van to the other side of the street. Three days later, the van was towed and subsequently destroyed. Springer was never notified of the towing. Springer brought an action against the officer and the city to recover damages for destruction of the van. The District Court determined that the van was neither an abandoned vehicle under 61-12-401 nor a junk vehicle under 75-10-501 and that the city did not take reasonable efforts to notify Springer that the van had been towed, as required by this section. Summary judgment awarding damages to Springer was proper. Springer v. Becker, 284 M 267, 949 P2d 641, 54 St. Rep. 876 (1997).

61-12-403. Reclaiming vehicle.

Compiler's Comments

1999 Amendment: Chapter 513 near middle of second sentence substituted "is being stored" for "was located at the time it was taken into custody"; and made minor changes in style. Amendment effective July 1, 1999.

1987 Amendment: Near end of second sentence substituted "storage" for "preservation".

1985 Amendment: In second sentence, after "the county", inserted "or the city police of the city".

61-12-404. Sale or release of vehicle if not reclaimed.

Compiler's Comments

2021 Amendment: Chapter 165 in (1)(a) at beginning inserted exception clause; inserted (1)(b) concerning the disposition of vehicles as a result of the arrest of the driver of the vehicle; in (2) and (3) substituted "subsection (1)(a) or (1)(b)" for "subsection (1)"; and made minor changes in style. Amendment effective October 1, 2021.

2003 Amendment: Chapter 176 near end of (1) after "stored" substituted "may" for "shall"; inserted (2) requiring sheriff or police to release vehicle to tow truck operator upon election not to sell vehicle; in (3) after "subsection (1)" inserted "or released pursuant to subsection (2)"; and made minor changes in style. Amendment effective October 1, 2003.

1999 Amendment: Chapter 513 in (1) before "certified" deleted "registered or" and near end substituted "the vehicle is being stored" for "it is located at the time it was taken into custody"; and made minor changes in style. Amendment effective July 1, 1999.

1985 Amendment: In (1) after "the county", inserted "or the city police of the city".

61-12-405. Certificate of sale or release.

Compiler's Comments

2021 Amendment: Chapter 165 in (1)(a) substituted "61-12-404(1)(a) or (1)(b)" for "61-12-404(1)". Amendment effective October 1, 2021.

2003 Amendment: Chapter 176 in (1)(a) after "sold" inserted "as provided in 61-12-404(1)"; inserted (2) requiring sheriff or police to execute certificate of release to tow truck operator in duplicate and to deliver original to operator while retaining copy if vehicle released and requiring release certificate to include operator name and address, release date, description, and no warranty stipulation as to vehicle condition or title; and made minor changes in style. Amendment effective October 1, 2003.

1985 Amendment: In (1) after "sheriff", inserted "or the city police".

61-12-406. Issuing certificate of title.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 176 near end after "sale" inserted "or upon presentation by the operator of a certificate of release". Amendment effective October 1, 2003.

Chapter 477 substituted "certificate of title" for "certificate of ownership". Amendment effective January 1, 2004.

Applicability: Section 85(1), Ch. 477, L. 2003, provided that this section applies to motor vehicle certificates of title and registrations on or after January 1, 2004.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

61-12-407. Transmitting return of sale and balance of proceeds.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendment: Near end of (1) and (2) substituted "storage" for "preservation".

1985 Amendments: Chapter 355 in (1) near beginning, after "sheriff", inserted "or the city police" and near middle, after "county treasurer", inserted "or to the city treasurer, respectively"; in (2) after "county treasurer", inserted "or the city police shall transmit to the city treasurer"; and in (3) substituted present language for "Upon receipt of the return of sale and such balance the county treasurer shall file the return in his office and deposit the balance in the county road fund on all vehicles seized by the sheriff or highway patrol. The county treasurer shall transmit to the city treasurer the balance of the proceeds of the sale after deducting the costs incurred in the sale and the costs and expenses incurred in the removal, preservation, and custody of vehicles seized by city police, and the city treasurer shall deposit such proceeds in the city street fund."

Chapter 503 in (1) substituted reference to department of justice for reference to division of motor vehicles.

Attorney General's Opinions

Payment of Expenses When Abandoned Vehicles Taken by City Police — Recovery of Costs: The city police are obligated to pay all expenses connected with the removal, storage, and sale of vehicles taken into custody by the city police pursuant to 61-12-401. Expenses associated with these responsibilities can be recovered from the proceeds of the sale of the abandoned vehicles pursuant to 61-12-407. 42 A.G. Op. 32 (1987).

Payment of Expenses When Abandoned Vehicles Taken by Highway Patrol or Sheriff — Recovery of Costs: The county is obligated to pay all expenses connected with removal, storage, and sale of vehicles taken into custody by the highway patrol or by the Sheriff pursuant to 61-12-401. Expenses associated with these responsibilities can be recovered from the proceeds of the sale of the abandoned vehicles pursuant to 61-12-407. 42 A.G. Op. 32 (1987).

61-12-408. Penalty.

Compiler's Comments

Severability Clause: Section 10, Ch. 288, L. 1967, was a severability clause.

Part 5
Identification Cards

Part Administrative Rules

ARM 23.3.147 Identification cards.

61-12-501. Authority of department to issue identification cards — lawful presence verification.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 686, L. 2023. Amendment effective October 1, 2023.

2011 Amendment: Chapter 207 in (1) at end inserted language regarding maintaining residence in this state and federally authorized presence; inserted (2) pertaining to application for identification card by noncitizen; and made minor changes in style. Amendment effective October 1, 2011.

1993 Amendment: Chapter 346 at end deleted (1) and (2) that read: "(1) who is not the holder of a valid driver's license; or

(2) whose driver's license is suspended"; and made minor changes in style. Amendment effective July 1, 1993.

1985 Amendments: Chapter 495 in lead-in, after "person", deleted "over the age of 18 years"; in (1) inserted "who is"; and inserted (2) authorizing department to issue identification cards to any person whose driver's license is suspended.

Chapter 503 substituted reference to department of justice for reference to division of motor vehicles.

61-12-502. Veteran designation.

Compiler's Comments

2019 Amendment: Chapter 335 deleted former (1) that read: "(1) The department shall formulate and adopt rules governing the issuance and cancellation of identification cards that comport with the proof of identity, residence, and authorized presence standards for a driver's license issued under Title 61, chapter 5"; and made minor changes in style. Amendment effective May 7, 2019.

2013 Amendment: Chapter 322 inserted (2) regarding veteran designations; and made minor changes in style. Amendment effective January 1, 2014.

2011 Amendment: Chapter 207 inserted current language regarding issuance and cancellation of identification cards for former language that read: "The department shall formulate and adopt reasonable rules for the application for and issuing of identification cards and cancellation thereof and shall require the furnishing of such information necessary for the purpose of this part." Amendment effective October 1, 2011.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

Administrative Rules

ARM 23.3.147 Identification cards.

61-12-504. Fees for identification cards — expiration of cards.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 686, L. 2023. Amendment effective October 1, 2023.

2013 Amendment: Chapter 315 in (1) at beginning substituted "Upon application for an identification card" for "Fees not in excess of $8 for identification cards", after "part" inserted "a fee of $16", and at end inserted "except that the fee for a card issued under subsection (3)(b) is $8"; in (3)(a) inserted exception clause and substituted "8 years" for "4 years"; inserted (3)(b) regarding expiration of identification card for person under 21 years of age; and made minor changes in style. Amendment effective July 1, 2013.

2011 Amendment: Chapter 207 inserted (3)(b) pertaining to identification card issued to person whose presence is temporarily authorized under federal law; and made minor changes in style. Amendment effective October 1, 2011.

1997 Amendment: Chapter 472 in second sentence of (1) substituted "person with a disability" for "handicapped person".

1993 Amendment: Chapter 346 in first sentence of (1) increased fee from $1 to $8 and inserted second and third sentences allowing free cards for handicapped persons and individuals discharged from correctional facilities; and inserted (2) providing for expiration of identification cards. Amendment effective July 1, 1993.

1992 Special Session Amendments: (Temporary version) Section 4, Ch. 5, in (1), at beginning of second sentence, inserted exception clause; inserted (2) requiring transfer of funds to the general fund on or before June 30, 1993; and made minor changes in style. Amendment effective January 21, 1992.

(Version effective July 1, 1993) Section 6, Ch. 5, at end substituted requirement of deposit in the general fund for deposit in the Montana highway patrol identification card fund for use by Department to defray costs of issuing identification cards; and made minor changes in style. Amendment effective July 1, 1993.

Effective Date — Termination: Section 7(1), Ch. 5, Sp. L. January 1992, provided that this section is effective on passage and approval (approved January 21, 1992) and terminates July 1, 1993.

1985 Amendment: Substituted reference to department of justice for reference to division of motor vehicles.

1983 Amendment: Substituted reference to state special revenue fund for reference to revolving fund.

Part 7
Disposition of Fines

61-12-701. Disposition of fines and forfeitures.

Compiler's Comments

2002 Amendment: Chapter 13 at beginning deleted "Except as provided in 61-10-148(2)"; and made minor changes in style. Amendment effective August 16, 2002.

Retroactive Applicability: Section 36(3), Ch. 13, Sp. L. August 2002, provided: "(3) [Sections 1, 2, 5, 8, 12, 17, 19, 22, 23, and 25 through 30] apply retroactively, within the meaning of 1-2-109, to July 1, 2002."

2001 Amendment: Chapter 257 near middle substituted reference to department of revenue for reference to state treasurer; and made minor changes in style. Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1989 Amendment: In middle of section changed "patrolman" to "patrol officer".

1987 Amendments: Chapter 316 at beginning inserted exception clause.

Chapter 557 near beginning, after "court", inserted "except a justice's court"; and deleted former (2) that read: "(2) At the time of payment of the fine or forfeiture, there must be filed with the appropriate treasurer a complete statement showing the total of the fines or forfeitures received or incurred, giving the title of the court and cause, and subscribed to by the person or officer making the payments."

1985 Amendment: In (1) near middle, after "general fund of the state", inserted "or, if the apprehension or arrest was by a sheriff or deputy sheriff, must be paid to the county treasurer for deposit in the county general fund"; in (2) near beginning, changed "state treasurer" to "appropriate treasurer"; and made minor changes in phraseology.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

61-12-702. Court costs — fees and expenses of counties.

Compiler's Comments

1985 Amendment: Near beginning, before "treasurer", inserted "or county"; near end, after "against the", substituted "state or county" for "state of Montana"; and made minor changes in phraseology.

Attorney General's Opinions

Prisoners' Costs Borne by State Not Deductible From Fees: Expenses for the cost of boarding prisoners incarcerated for violating state highway laws must be borne by the state and may not be deducted from any fines, fees, or forfeitures imposed before transmittal of state funds to the State Treasurer. 34 A.G. Op. 30 (1971).

Part 8
Disclosure of Data From Rental Vehicles

61-12-801. Disclosure of data from rental vehicle — definitions.

Compiler's Comments

Effective Date: This section is effective October 1, 2007.

Part 9
Licensure of Manufactured Home Dealers

61-12-901. Manufactured home dealers — licensure — bond requirements — rulemaking — definition.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

Part 10
Recorded Data

Part Compiler's Comments

Effective Date: This part is effective October 1, 2015.

CHAPTER 13
SEATBELTS

Part 1
Montana Seatbelt Use Act

Part Compiler's Comments

Severability: Section 8, Ch. 439, L. 1987, was a severability section.

Statement of Intent: The statement of intent adopted with Ch. 439, L. 1987, provided: "A statement of intent is required for this bill because section 3(3) grants to the department of justice general rulemaking authority to analyze and exempt from wearing seatbelts those occupants who make frequent stops with a motor vehicle in their official job duties."

61-13-103. Seatbelt use required — exceptions.

Compiler's Comments

2019 Amendment: Chapter 335 deleted former (3) that read: "(3) The department may adopt rules to implement subsection (2)(e)"; and made minor changes in style. Amendment effective May 7, 2019.

2011 Amendment: Chapter 280 inserted (4)(b) allowing stopping of vehicle if child not properly restrained; and made minor changes in style. Amendment effective July 1, 2011.

2007 Amendment: Chapter 242 in (2)(a) after "physician" inserted "licensed physician assistant, or advanced practice registered nurse, as defined in 37-8-102"; and made minor changes in style. Amendment effective October 1, 2007.

2005 Amendment: Chapter 542 in (2) (c) after "motorcycle" deleted "as defined in 61-1-105" and after "motor-driven cycle" deleted "as defined in 61-1-106"; and in (2)(d) after "special mobile equipment" deleted "as defined in 61-1-104". Amendment effective January 1, 2006.

2003 Amendment: Chapter 407 in (1) at end inserted "or, if 61-9-420 applies, is properly restrained in a child safety restraint"; deleted (2)(e) that read: "(e) children subject to the provisions of 61-9-420"; and made minor changes in style. Amendment effective October 1, 2003.

Statement of Intent: The statement of intent adopted with Ch. 439, L. 1987, provided: "A statement of intent is required for this bill because section 3(3) grants to the department of justice general rulemaking authority to analyze and exempt from wearing seatbelts those occupants who make frequent stops with a motor vehicle in their official job duties."

Administrative Rules

ARM 23.3.425 Exemptions from seatbelt law.

ARM 23.3.426 Application for and use of exemption certificate.

Case Notes

"Free Men" Not Free to Ignore State Motor Vehicle Laws: Operation of a motor vehicle on public roads is a privilege and is subject to reasonable regulation by the state in the valid exercise of the state's police power. Reasonable regulations include mandatory vehicle registration, insurance, and seatbelt usage. The privilege may be revoked for failure to comply with regulations. No one in the state is exempt from the regulations, including appellant, who claims to be a "free man" who is not a 14th amendment citizen and who therefore does not need to obey state or federal law. St. v. Folda, 267 M 523, 885 P2d 426, 51 St. Rep. 1149 (1994).

61-13-104. Penalty — no record permitted.

Compiler's Comments

2003 Amendment: Chapter 556 in (1) at end of second sentence substituted "61-11-203(2)(m)" for "61-11-203(3)(m)". Amendment effective May 5, 2003.

2001 Amendment: Chapter 218 at end of second sentence of (1) substituted "61-11-203(3)(m)" for "61-11-203(2)(m)"; and made minor changes in style. Amendment effective April 6, 2001.

1993 Amendment: Chapter 365 in second sentence of (1) substituted "61-11-203(2)(m)" for "61-11-203(2)(l)".

61-13-106. Evidence not admissible.

Case Notes

Evidence of Use or Nonuse of Seatbelt Admissible in Case for Damages Related to Vehicle's Seatbelt System — Writ of Supervisory Control Granted — District Court' s Grant of Motion in Limine Reversed: Decedent's vehicle was struck by another vehicle, causing his car to roll. The personal representative of the decedent's estate, alleging that the decedent was killed because his seatbelt, which he was wearing at the time of the accident, had slackened and caused him to be ejected from the vehicle as it rolled, filed a lawsuit against Ford, the vehicle manufacturer, alleging negligent design and strict liability. The District Court granted Ford's motion in limine to prohibit evidence of the decedent's use of his seatbelt at the time of the accident pursuant to 61-13-106, or for the personal representative to forego his negligence claims if he chose to introduce evidence of the use of the seatbelt. The personal representative filed a petition for a writ of supervisory control, arguing that the District Court was proceeding under a mistake of law. The Supreme Court granted the petition and held that as long as an action for damages is related to injuries arising out of the condition of the vehicle's seatbelt system, 61-13-106 does not prohibit evidence of seatbelt use. Stokes v. 13th Judicial District Court, 2011 MT 182, 361 Mont. 279, 259 P.3d 754.

Seatbelt Rendered Inoperable — Negligence Per Se: Pursuant to 61-9-409, there is a duty to maintain a motor vehicle in a way that seatbelts are available for the driver's and passenger's use in the event they choose to use them. Breach of that duty constitutes negligence per se. Nothing in 61-9-409, in this section, or in Kopischke v. First Cont. Corp., 187 M 471, 610 P2d 668 (1980), precludes evidence that seatbelts were unavailable and thus not in use at the time of an accident. Nor does the fact that the unavailability of a seatbelt was not the cause of the original accident relieve the duty under 61-9-409 to provide seatbelts. Califato v. Gerke, 258 M 68, 852 P2d 121, 50 St. Rep. 428 (1993).

CHAPTER 14
RULEMAKING

Part 1
Vehicle Services

61-14-101. Rulemaking authority — vehicle services.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 389 in (10)(b) inserted "loaner". Amendment effective April 29, 2021.

Chapter 407 inserted (1)(a)(ii) and (1)(a)(iii) allowing adoption of rules for defining fleet and for the issuance of fleet series license plates; and made minor changes in style. Amendment effective October 1, 2021.

Preamble: The preamble attached to Ch. 389, L. 2021, provided: "WHEREAS, the Legislature finds that the distribution and sale of motor vehicles within this state vitally affects the general economy of the state, the public interest, and the public welfare; and

WHEREAS, in order to promote the public interest and the public welfare and in the exercise of the state's police power, it is necessary to regulate motor vehicle manufacturers, distributors, and factory or distributor representatives and to regulate dealers of motor vehicles doing business in this state in order to prevent frauds, impositions, and other abuses on its citizens and to protect and preserve the investments and properties of the citizens of this state."

Severability: Section 20, Ch. 389, L. 2021, was a severability clause.

Effective Date: Section 31(1), Ch. 335, L. 2019, provided that this section is effective on passage and approval. Approved May 7, 2019.

Part 2
Driver's Licenses, Identification Cards, and Commercial Driver's Licenses

61-14-201. Rulemaking authority — driver's licenses and identification cards.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 304, L. 2023. Amendment effective October 1, 2023.

2021 Amendment: Chapter 381 inserted (21) concerning rules governing restrictions for personal communication limitations and other medical information that would be helpful to a peace officer during a traffic stop; and made minor changes in style. Amendment effective October 1, 2021.

Effective Date: Section 31(1), Ch. 335, L. 2019, provided that this section is effective on passage and approval. Approved May 7, 2019.

61-14-202. Rulemaking authority — commercial driver licensing.

Compiler's Comments

2023 Amendment — Coordination: See 2023 Session Law for amendment made by sec. 3, Ch. 646, L. 2023. Amendment effective May 19, 2023, except for subsection (1)(d), which is effective on occurrence of contingency.

The amendment to this section made by section 3, Ch. 744, L. 2023, was rendered void by section 6, Ch. 744, L. 2023, a coordination section.

Applicability: Section 6, Ch. 646, L. 2023, provided: "A holder of a commercial learner's permit that was issued prior to the adoption of administrative rules on or before January 1, 2024, pursuant to [section 2(3)] [61-5-110(3)] is exempt from the entry-level driver training records check requirements under [sections 2(3) and 3(4) through (6)] [61-5-110(3) and 61-14-202(4) through (6)] as long as the permit holder obtains a commercial driver's license prior to the expiration, renewal, or extension of the commercial learner's permit."

Effective Date: Section 31(1), Ch. 335, L. 2019, provided that this section is effective on passage and approval. Approved May 7, 2019.

Part 3
Other Rulemaking Authority

61-14-301. Other rulemaking authority.

Compiler's Comments

Effective Date: Section 31(1), Ch. 335, L. 2019, provided that this section is effective on passage and approval. Approved May 7, 2019.

TITLES 62 THROUGH 66

RESERVED

Part 3
Other Rulemaking Authority

61-14-301. Other rulemaking authority.

Compiler's Comments

Effective Date: Section 31(1), Ch. 335, L. 2019, provided that this section is effective on passage and approval. Approved May 7, 2019.

TITLE 67
AERONAUTICS

CHAPTER 1
GENERAL PROVISIONS

Chapter Collateral References

Economical Management of State-Owned Aircraft, Report to the 53rd Legislature, Mont. Leg. Council (1992).

Part 1
Definitions and Policy

67-1-101. Definitions.

Compiler's Comments

2005 Amendment — Code Commissioner Correction: Chapter 300 in definition of airport near beginning after "land or water" deleted "except a restricted landing area" and after "that is" inserted "intended or"; deleted definition of airport and landing field that read: ""Airport and landing field" means any area of land or water, or both, that is used or is made available for the landing and takeoff of aircraft, owned, leased, controlled, operated, or maintained by the United States, the state of Montana, or any county or municipality or any of the authorized agencies or branches of a county or municipality within the state of Montana"; deleted definition of airport hazard area that read: ""Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this title"; in definition of building or structure near middle substituted "the airport affected area designated pursuant to 67-7-201" for "the area described in 67-5-201 hereof as safety zones"; deleted definition of established perimeter of an airport or landing field that read: ""Established perimeter of an airport or landing field", for the purposes of computing all distances and elevations as contemplated by chapter 5, is the metes and bounds and elevations along the respective sides of the airport or landing field as determined by the United States government, the state of Montana, a county, a municipality, or any other public authority owning, leasing, controlling, operating, or maintaining the airport or landing field. The determination and definition must be evidenced by a plat showing the metes and bounds and elevations that must be filed in the records of the public authority for official purposes and subject to inspection and examination at all reasonable times by any interested persons"; in definition of governing body near beginning inserted exception clause; in definition of height of buildings and structures substituted reference to Title 67, chapter 7, for "chapter 5"; in definition of municipality after "Municipality" deleted "or "political subdivision""; inserted definition of NPIAS airport; inserted definition of political subdivision; inserted definition of YDNL; and made minor changes in style. Amendment effective April 19, 2005.

In definition of height of buildings and structures the code commissioner deleted a reference to landing field to reflect deletion of definition of airport and landing field.

1993 Amendment: Chapter 279 substituted "Aircrew" for "Airman" as defined term; in definition of governing body substituted "a city commission, town council, or county commission and the boards, departments, and divisions of those entities, by whatever name they are known, that have charge of finances and management of a municipality or a county" for "bodies and boards by whatever names they are known having charge of finances and management of a municipality"; and made minor changes in style.

1991 Amendment: In definition of Board changed reference to 2-15-1812 to 2-15-2506, pursuant to the authority of sec. 62, Ch. 16, L. 1991, which allows the Code Commissioner to correct erroneous references; and in definition of Department changed "department of commerce provided for in Title 2, chapter 15, part 18" to "department of transportation provided for in Title 2, chapter 15, part 25". Amendment effective July 1, 1991.

1981 Amendment: In definition of department substituted "department of commerce" for "department of community affairs"; changed internal references to the department; in definition of board changed internal reference.

Definitions Not Codified: Section 1-706, R.C.M. 1947 (first part) (en. sec. 6, Ch. 12, L. 1939); section 1-710(1), R.C.M. 1947 (en. sec. 1, Ch. 287, L. 1947); section 1-808, R.C.M. 1947 (en. sec.

1, Ch. 288, L. 1947, amd. sec. 40, Ch. 348, L. 1974); and section 1-901(1), R.C.M. 1947 (en. sec. 1, Ch. 433, L. 1971), were not codified but have not been repealed and are still valid law.

Short Title Not Codified: Section 1-101, R.C.M. 1947 (en. sec. 1, Ch. 152, L. 1945), was not codified but has not been repealed and is still valid law.

Case Notes

Negligence Not Imputed: The Supreme Court held that neither the plain meaning of "operation of aircraft" nor the Legislature's intent in enacting it is to impute a pilot's negligence to the owner or lessor. Haker v. SW. Ry. Co., 176 M 364, 578 P2d 724 (1978).

67-1-102. Policy.

Case Notes

Purchase of Aircraft: The powers of the State Aeronautics Commission include the power to purchase and maintain aircraft. Holtz v. Babcock, 143 M 341, 389 P2d 869 (1963).

67-1-103. Board of aeronautics.

Attorney General's Opinions

Preemption by Federal Law: Title 49, U.S.C. § 1305, preempts the state Board of Aeronautics' authority to regulate the intrastate rates, routes, and services of air carriers that are either specifically exempted or certified by the federal Civil Aeronautics Board. 39 A.G. Op. 41 (1981).

67-1-104. Governmental nature of aeronautical functions.

Case Notes

Immunity From Suit — Airport Manager as Agent of Municipality: Under the 1889 Montana Constitution, when city and county leased hangar facilities and designated one of two lessees as airport manager, and the lessees were obligated to maintain only the portion of the airport leased to them, the city and county having retained control over the unleased portions, the airport manager was the agent of the city and county and was not liable for an accident occurring on unleased portion. A municipality was immune from suit for injuries resulting from the maintenance or operation of an airport. Barovich v. Miles City, 135 M 394, 340 P2d 819 (1959); Holland v. W. Airlines, Inc., 154 F. Supp. 457 (D.C. Mont. 1957).

Liability Insurance: Under the 1889 Montana Constitution, the fact that the city had obtained a policy of liability insurance did not in itself result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. Holland v. W. Airlines, Inc., 154 F. Supp. 457 (D.C. Mont. 1957).

Part 2
Uniform Principles

Part Compiler's Comments

Uniform State Law: Sections 67-1-202 through 67-1-204, 67-1-206, and 67-1-201 are similar to sec. 2 through 4, 11, and 12, respectively, of the Uniform Aeronautics Act approved by the National Conference of Commissioners on Uniform State Laws in 1922 and adopted in the states of Arizona, Delaware, Georgia, Hawaii, Idaho, Indiana, Maryland, Michigan, Minnesota, Missouri, Nevada, New Jersey, North Carolina, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, and Wisconsin.

This Act was withdrawn from the active list of acts recommended for adoption by the National Conference of Commissioners on Uniform State Laws in August, 1943. See Handbook of the National Conference, 1943, p. 66.

67-1-202. State sovereignty in space.

Case Notes

Federal Regulatory Power Over Air Space: Federal regulatory power over air space is as complete and as valid as federal regulatory power over navigable waters, to the extent that the latter power rests upon the commerce clause. U.S. v. Helsley, 615 F2d 784 (1979), reversing U.S. v. Helsley, 463 F. Supp. 1111 (D.C. Mont. 1979).

Law Review Articles

The Vertical Limit of State Sovereignty, Reinhardt, 72 J. Air L. & Com. 65 (2007).

67-1-203. Spatial ownership.

Law Review Articles

Airspace Near Airport Runways: Private Property Rights Versus Rights of the Traveling Public, Laitos & Schoenwald, 59 Plan. & Envtl. L. 3 (2007).

67-1-204. Lawfulness of flight and landings.

Compiler's Comments

1995 Amendment: Chapter 206 in (5) inserted second sentence defining livestock to include ostriches, rheas, and emus; and made minor changes in style.

Applicability: Section 14, Ch. 206, L. 1995, provided: "[This act] applies to tax years beginning after December 31, 1995."

1987 Amendment: In (1), at end, changed "department of commerce" to "department of transportation"; inserted (7) prohibiting operation of aircraft while under influence of alcohol or drugs; and inserted (8) requiring reporting of information regarding flying under the influence violations.

Montana Changes: Section 1, Ch. 542, L. 1987, inserted (7) and (8), which are not provisions of the Uniform Aeronautics Act.

1985 Amendment: Inserted (2) referring to landings and takeoffs from public waters; inserted (3) referring to landings and takeoffs from public roads; in (4) inserted "on the water"; and in (6) in the first sentence, inserted "private" before "lands".

Case Notes

Nature of Liability: Section 67-1-204, which provides that no person shall operate an aircraft in a careless or reckless manner so as to endanger the life or property of others, does not create a civil cause of action against a person who violates this section; but rather, it establishes duties the violation of which result in imposition of criminal penalties. Haker v. SW. Ry. Co., 176 M 364, 578 P2d 724 (1978).

67-1-205. Penalties.

Compiler's Comments

1987 Amendment: Near beginning of section inserted "except 67-1-204(8)".

Case Notes

Nature of Liability: Section 67-1-204, which provides that no person shall operate an aircraft in a careless or reckless manner so as to endanger the life or property of others, does not create a civil cause of action against a person who violates that section; but rather, it establishes duties the violation of which result in imposition of criminal penalties. Haker v. SW. Ry. Co., 176 M 364, 578 P2d 724 (1978).

67-1-211. Alcohol concentration standards — evidence admissible — administration of tests.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 151, L. 2023. Amendment effective April 19, 2023.

2021 Amendment: Chapter 498 in (1) after "concentration" inserted "as defined in 61-8-1001" and after "weight or more" deleted "as defined in 61-8-407"; in (6) substituted "61-8-1019" for "61-8-405" and substituted "61-8-1001" for 61-8-407"; and made minor changes in style. Amendment effective January 1, 2022.

Applicability: Section 48, Ch. 498, L. 2021, provided: "[This act] applies to DUI incidents taking place on or after [the effective date of this act]." Effective January 1, 2022.

Saving Clause: Section 45, Ch. 498, L. 2021, was a saving clause.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1991 Amendment: Throughout section inserted references to measured amount of detected presence of alcohol; in (1) and (6), before "alcohol", deleted "blood"; in (1), after "61-8-407", inserted "it may be inferred", after "person is" deleted "conclusively presumed to be", and after "alcohol" deleted "or drugs"; in (2) inserted reference to drugs or combination of drugs and alcohol; in (4), in two places, inserted reference to combination of drugs and alcohol; in (4) and (5), before "test", deleted "chemical"; in (4) substituted "in his body" for "or drug content of his blood"; in (5), after "purpose of determining", deleted "the alcohol content of" and substituted "body" for "blood"; and made minor changes in style.

67-1-214. Standards for meteorological evaluation towers — report — notification — penalty.

Compiler's Comments

2013 Transition: Section 2, Ch. 256, L. 2013, provided: "The owner of a tower meeting the description provided in [section 1] [67-1-214] that was erected prior to [the effective date of this act] [April 22, 2013] shall bring the tower into compliance with the standards provided in [section 1] [67-1-214] within 1 year of [the effective date of this act] [April 22, 2013]."

Effective Date: Section 4, Ch. 256, L. 2013, provided that this section is effective on passage and approval. Approved April 22, 2013.

Part 3
Finance

67-1-301. Money — receipt and disbursement.

Compiler's Comments

2019 Amendment: Chapter 455 in (3) through (5) substituted current text regarding deposit of aviation fuel tax for former text (see 2019 Session Law for former text); and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

2015 Amendment: Chapter 220 in (3)(a) and (3)(a)(i) substituted "15-70-343(1)(c) [renumbered 15-70-403(1)(c)]" for "15-70-204(1)(a)"; in (3)(a)(ii) and (3)(c) substituted "15-70-356(6) [renumbered 15-70-425(6)]" for "15-70-221(5)"; in (4) substituted "15-70-356 [renumbered 15-70-425]" for "15-70-221" and substituted "gasoline tax" for "gasoline license tax"; and made minor changes in style. Amendment effective October 1, 2015.

2009 Amendment: Chapter 22 in (3)(a) at beginning inserted exception clause and at end and in (3)(a)(i) substituted reference to 15-70-204(1)(a) for reference to 15-70-204(1); in (3)(a)(ii) near beginning after "gallon to" inserted "provide refunds pursuant to 15-70-221(5), to"; deleted former (3)(a)(ii)(B) that read: "25% of the amount collected from scheduled passenger air carriers certified under 14 CFR, part 121 or 135"; in (3)(c) near beginning after "may" inserted "after refunds are provided pursuant to 15-70-221(5)"; and made minor changes in style. Amendment effective July 1, 2009.

Applicability: Section 4, Ch. 22, L. 2009, provided: "[This act] applies to taxes imposed on aviation fuel after June 30, 2009."

2001 Amendment: Chapter 404 deleted former (3) that read: "(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds"; in (3)(a) after "the proceeds of the" changed reference to aviation fuel tax from 3 cents a gallon to 4 cents a gallon; in (3)(a)(ii)(A) near beginning substituted "2 cents a gallon" for "1 cent a gallon", after "grants to municipalities" inserted "for airport development or improvement programs and to provide navigational aids, safely improvements, weather reporting services", and at end substituted "services for airports and landing fields and for the state's airways" for "purposes as provided in subsection (4)(b)"; inserted (3)(b) authorizing loans to local governments and state agencies for aeronautical purposes; in (5) after "account provided for in" substituted "subsection (3)(a)(ii)" for "67-1-305" and near end after "pavement preservation" inserted "grants, with the approval of the board"; and made minor changes in style. Amendment effective July 1, 2001.

2000 Amendment: Chapter 8 in (4)(a) substituted "3-cent-a-gallon tax" for "2-cent-per-gallon tax"; in (4)(a)(i) substituted "2 cents" for "1 cent"; inserted (4)(a)(ii)(B) concerning 25% of collections from passenger air carriers; inserted (6) concerning deposit of 25% of collections from passenger air carriers; and made minor changes in style. Amendment effective May 18, 2000.

1999 Amendment: Chapter 585 in (4)(a) increased tax from 3 cents a gallon to 4 cents a gallon; in (4)(a)(i) increased per gallon tax from 1 cent to 2 cents; inserted (4)(a)(iii)(B) requiring deposit in special revenue fund of 25% of amount collected from scheduled passenger air carriers certified under 14 CFR, part 121 or 135; inserted (6) requiring deposit of 25% of aviation fuel tax collected from passenger air carriers into separate account for pavement preservation at airports served by carriers; and made minor changes in style. Amendment effective July 1, 1999.

1993 Amendment: Chapter 642 in (4)(a), near beginning, substituted "3-cent" for "1-cent" and substituted reference to the tax imposed on aviation fuel for reference to the gasoline license tax; inserted (4)(a)(ii) and (4)(a)(iii) providing for deposit of the proceeds of 1 cent of the aviation fuel tax in the aeronautical loan account for loans to local governments and state agencies and providing for deposit of the proceeds of 1 cent of the aviation fuel tax in the state special revenue fund for the Department to use for grants to municipalities for airports; inserted (4)(b) and (4)(c) stating what the money deposited in the accounts may be used for; in (5), at beginning, inserted exception clause and near middle substituted "aviation fuel" for "gasoline"; and made minor changes in style. Amendment effective July 1, 1993, and on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million, the 3-cent figure in subsection (4)(a) becomes 2 cents and the provisions relating to loans to local governments terminate.

Effective Date — Contingent Termination: Section 17, Ch. 642, L. 1993, provided that this section is effective July 1, 1993, and terminates on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million. The balance in the aeronautical loan account reached $1 million in December 2000, and the amendments to this section terminated on the first day of the month 60 days after that occurrence.

1987 Amendment: At end of (3)(a) deleted "in amounts not to exceed the required sponsor's share of projects authorized by the United States government for funding from the federal Airport and Airway Improvement Act of 1982"; and inserted (4) specifying treatment of bond proceeds on termination of airport loan program.

Termination Date: Section 2, Ch. 41, L. 1987, amended sec. 4, Ch. 676, L. 1985, to read: "This act is effective on passage and approval. This act terminates June 30, 1989, except that a loan made prior to June 30, 1989, is subject to the provisions of this act notwithstanding the duration of the loan."

1985 Amendment: Inserted (3) creating airport loan program.

1985 Session Law Reference: The reference to sec. 1, Ch. 676, L. 1985, in (3)(a)(i) was left in its original form because the section was an appropriation that was not codified. It appropriated $1.7 million from the long-range building program for airport improvement upon sale of bonds for that purpose.

1985 Effective and Termination Dates: Section 4, Ch. 676, L. 1985, provided: "This act is effective on passage and approval. [Approved May 6, 1985] This act terminates June 30, 1987, except that a loan made prior to June 30, 1987, is subject to the provisions of this act notwithstanding the duration of the loan."

1983 Amendments: Chapter 277 substituted references to state special revenue fund for references to earmarked revenue fund.

Chapter 654 inserted former (3), which was temporary and deleted by the compiler. But see "1983 Effective and Termination Dates" compiler's comment below as to continuing application to loans. Former (3) read: "(3) (a) There shall be deposited in the state special revenue fund to the credit of the department of administration, to be used, upon recommendation of the department of commerce, to provide loans to local and state government agencies for airport improvement projects in amounts not to exceed the required sponsor's share of projects authorized by the United States government for funding from the federal Airport and Airway Improvement Act of 1982:

(i) a portion, as provided in House Bill 900, Laws of 1983, [Section 5 of HB 900 appropriated $1.3 million from the bond proceeds and insurance clearance account for statewide airport improvement.] of the proceeds received from the sale of long-range building program bonds upon the authorization and sale of the bonds by the state and notwithstanding the provisions of Title 17, chapter 7, part 2; and

(ii) all repayments of loans, including interest, made pursuant to subsections (3)(a) and (3)(b).

(b) All loans must:

(i) bear an interest rate that fully retires the long-range building bonds issued under the authorization provided by the 48th legislature;

(ii) mature not later than such bonds; and

(iii) include reimbursement of administrative costs as required by subsection (3)(c).

(c) An amount equal to 1% of the loans provided under subsection (3)(a) may be allocated from the state special revenue fund for administrative purposes."

1983 Effective and Termination Dates: Section 2, Ch. 654, L. 1983, provided: "This act is effective on passage and approval. This act terminates on June 30, 1985, except that a loan made prior to June 30, 1985, is subject to the provisions of this act notwithstanding the duration of such loan."

Case Notes

Purchase of Aircraft: The Commission is empowered to purchase aircraft, the expense of which is to be paid out of the aviation fund as an expense of administration. Holtz v. Babcock, 143 M 341, 389 P2d 869 (1963).

Appropriation: The appropriation made by p. 761, L. 1947, from the gasoline drawback fund was an appropriation of the 1 cent gasoline tax for payment of the expenses of the Commission. State ex rel. St. Aeronautics Comm'n v. Bd. of Examiners, 121 M 402, 194 P2d 633 (1948).

Nature of Gasoline Tax: The practical operation of the aeronautics laws was to levy a 1 cent per gallon tax on the user of gasoline for aviation purposes. The tax was used to regulate the aviation operators. Therefore, it was not a revenue measure and was not subject to Art. XII, sec. 10, 1889 Mont. Const. (now Art. VIII, sec. 14, 1972 Mont. Const.). It was not necessary that the proceeds of the 1 cent gasoline tax be paid into the treasury as part of the general fund, but it was competent for the Legislature to provide that it be kept as a separate fund. State ex rel. St. Aeronautics Comm'n v. Bd. of Examiners, 121 M 402, 194 P2d 633 (1948).

Attorney General's Opinions

General Fund Responsible for Payment of Airport Loan Program Shortfall: Proceeds from bonds issued under the long-range building program were appropriated for use by the airport improvement program. As bond retirement occurred, a deficit shortfall was created between the bond payments and the repayment of the loans. Although the Legislature in 1993 established a different loan program with imposition of a 1-cent tax on aviation fuel pursuant to this section, there was no suggestion that proceeds from that tax were to be used for payment of bond proceeds under the previous loan program. Despite the fact that a legislative audit recommended that payment of the shortfall on the bonds should be paid from either of two special revenue accounts of the Aeronautics Division, the Attorney General held that both the bond instrument and the appropriation of bond proceeds clearly showed that the general fund was the proper source for payment on the bond shortfall. 47 A.G. Op. 7 (1997).

67-1-302. Industrial revenue projects.

Attorney General's Opinions

General Fund Responsible for Payment of Airport Loan Program Shortfall: Proceeds from bonds issued under the long-range building program were appropriated for use by the airport improvement program. As bond retirement occurred, a deficit shortfall was created between the bond payments and the repayment of the loans. Although the Legislature in 1993 established a different loan program with imposition of a 1-cent tax on aviation fuel pursuant to 67-1-301, there was no suggestion that proceeds from that tax were to be used for payment of bond proceeds under the previous loan program. Despite the fact that a legislative audit recommended that payment of the shortfall on the bonds should be paid from either of two special revenue accounts of the Aeronautics Division, the Attorney General held that both the bond instrument and the appropriation of bond proceeds clearly showed that the general fund was the proper source for payment on the bond shortfall. 47 A.G. Op. 7 (1997).

67-1-303. Airline property tax — state airports.

Compiler's Comments

2019 Amendment: Chapter 455 in (2) substituted "aeronautics operations account provided for in 67-1-308" for "state special revenue fund to the credit of the department of transportation" and made minor changes in style. Amendment effective July 1, 2019.

Applicability: Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

2001 Amendments — Composite Section: Chapter 257 in (1) and (2) substituted references to department of revenue for references to state treasurer or state treasury. Amendment effective July 1, 2001.

Chapter 404 in (2) at end substituted "67-1-301(3)(a)(i)" for "67-1-301(4)(a)(i)". Amendment effective July 1, 2001.

Applicability: Section 49, Ch. 257, L. 2001, provided: "[This act] applies to remittances of state money made to the department of revenue for fiscal years beginning after June 30, 2001."

1993 Amendment: Chapter 642 in (2), at end, inserted reference to subsection (4)(a)(i) of 67-1-301. Amendment effective July 1, 1993.

1991 Amendment: Substituted references to Department of Transportation for references to Department of Commerce. Amendment effective July 1, 1991.

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

1981 Amendment — Function of Department of Commerce: The reference to the department of commerce in (2) was changed from the department of community affairs pursuant to the transfer of functions in Title 76 provided in subsection (2)(c) of sec. 6, Ch. 274, L. 1981.

67-1-306. Special aeronautical loan account.

Compiler's Comments

Contingent Effective Date: Section 17, Ch. 642, L. 1993, provided that this section is effective on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million. The balance in the aeronautical loan account reached $1 million in December 2000, and this section became effective on the first day of the month 60 days after that occurrence.

67-1-307. Aeronautical loans.

Compiler's Comments

Contingent Effective Date: Section 17, Ch. 642, L. 1993, provided that this section is effective on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million. The balance in the aeronautical loan account reached $1 million in December 2000, and this section became effective on the first day of the month 60 days after that occurrence.

67-1-308. Aeronautics operations account.

Compiler's Comments

Effective Date: Section 16, Ch. 455, L. 2019, provided: "[This act] is effective July 1, 2019."

Applicability: Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

67-1-309. Airport grant account.

Compiler's Comments

Effective Date: Section 16, Ch. 455, L. 2019, provided: "[This act] is effective July 1, 2019."

Applicability: Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

CHAPTER 2
DEPARTMENT OF TRANSPORTATION AERONAUTICAL POWERS AND DUTIES

Chapter Compiler's Comments

Transfer of Functions: Sections 6 and 12 through 14, Ch. 512, L. 1991, provided: "Section 6. Transportation functions of department of commerce transferred. (1) The following functions of the department of commerce are transferred to the department of transportation:

(a) developing, encouraging, regulating, and licensing aeronautics in Title 67;

(b) allocating funds for public transportation under 7-14-102 [now repealed];

(c) transloading facilities under 7-14-120;

(d) rail planning activities in Title 60, chapter 11; and

(e) state representation activities under 60-21-101.

(2) Unless inconsistent with [sections 1 through 14], any reference to the department of commerce in 7-14-102 [now repealed], 7-14-120; Title 60, chapters 11 and 21; and Title 67 is changed to department of transportation.

Section 12. Transfer of rulemaking authority. Any existing authority of the department of highways, the department of commerce, or the department of revenue to make rules on the various functions transferred by the provisions of [sections 1 through 14] is extended to the provisions of [sections 1 through 14].

Section 13. Application of transfer provisions. The provisions of 2-15-131 through 2-15-137 govern:

(1) the merger into the department of transportation [of] the functions of the department of highways and those functions of the departments of commerce and revenue specified in [sections 1 through 14]; and

(2) the transfer of the various functions contained in [sections 1 through 14].

Section 14. Governor to implement. The governor shall implement the provisions of [sections 1 through 14] by executive order."

Part 1
General Powers

67-2-101. Aeronautical powers and duties of department.

Case Notes

Purchase of Aircraft: The Commission is empowered to purchase aircraft, the expense of which is to be paid out of the state aviation fund as an expense of administration. Holtz v. Babcock, 143 M 341, 389 P2d 869 (1963).

Expert Witness: An officer and employee of the State Aeronautics Commission may not be required to testify as an expert witness in any suit, action, or proceeding involving any aircraft. McCutcheon v. Larsen, 134 M 511, 333 P2d 1013 (1959).

67-2-102. Rules, orders, and standards.

Compiler's Comments

Redundant Language Not Codified: Section 1-319, R.C.M. 1947, was not codified because it is redundant with 67-2-102. The section was not repealed and is still valid law.

Administrative Rules

Title 18, chapter 12, ARM Aeronautics Division.

67-2-105. Air search and rescue volunteers — expenses — workers' compensation coverage.

Compiler's Comments

1993 Amendment: Chapter 279 substituted reference to aircrew for reference to airman.

Part 3
State Airports

67-2-301. State airports — acquisition.

Compiler's Comments

2001 Amendment: Chapter 125 in (1)(a) inserted reference to Title 70, chapter 30; in (5) substituted "in Title 70, chapter 30" for "by the laws of this state for the acquisition of real property for public purposes"; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

Administrative Rules

ARM 18.12.701 Operating rules of Yellowstone Airport.

67-2-302. State airports — operation.

Compiler's Comments

2007 Amendment: Chapter 17 in (1)(b) increased authorized lease term from 10 years to 40 years. Amendment effective October 1, 2007.

2003 Amendment: Chapter 167 in (1)(a) increased permissible length of lease from 10 years to 40 years; and made minor changes in style. Amendment effective October 1, 2003.

1981 Amendment: Added subsection (4) relating to law enforcement in and around state airports.

Administrative Rules

ARM 18.12.701 Operating rules of Yellowstone Airport.

Part 4
Intergovernmental Cooperation

67-2-401. Cooperation — federal government.

Compiler's Comments

1993 Amendment: Chapter 279 substituted "aircrews" for "airmen".

67-2-403. Federal aid.

Compiler's Comments

2009 Amendment: Chapter 10 in (4) in third sentence near end after "disburse the" substituted "money appropriated" for "moneys"; and made minor changes in style. Amendment effective October 1, 2009.

Part 5
Enforcement

67-2-503. Use of reports.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral. Amendment effective October 1, 2009.

CHAPTER 3
REGULATION AND LICENSING

Part 1
General Provisions

Part Administrative Rules

Title 18, chapter 12, subchapter 3, ARM Aircraft registration.

67-3-101. Regulation and licensing — general provisions.

Compiler's Comments

1993 Amendment: Chapter 279 substituted reference to aircrew and aircrews for reference to airman and airmen.

1987 Amendment: In (2), near middle of first sentence, inserted "sales" before "dealers".

1985 Amendments: Chapters 398 and 508 deleted former (3) that read: "approve airport and restricted landing area sites and license airports, restricted landing areas, or other air navigation facilities, in accordance with rules adopted by the department, and may annually renew these licenses. Licenses granted under this section or under any prior law shall be annually renewed upon payment of the fee. The department may not charge for approving certificates of proposed property acquisition for airport or restricted landing area purposes. It may charge for the issuance and annual renewal of each license for an airport or restricted landing area not to exceed $1".

Chapter 508 in (1) and (2) increased maximum fees from $1 to $10; and near beginning of (3) substituted "federal aviation administration" for "civil aeronautics authority".

Case Notes

Nature of Tax: The statute providing for a 1 cent per gallon tax on aviation fuel was held a regulatory measure, not a revenue measure. State ex rel. St. Aeronautics Comm'n v. Bd. of Examiners, 121 M 402, 194 P2d 633 (1948).

67-3-102. Exceptions.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1993 Amendment: Chapter 279 substituted "aircrew" for "airman".

67-3-103. Licenses and certificates — exhibition.

Compiler's Comments

1993 Amendment: Chapter 279 substituted references to aircrew for references to airman; and made minor changes in style.

67-3-104. Department orders.

Compiler's Comments

1985 Amendment: Deleted former (1)(a) that read: "refuses to issue a certificate of approval, issue a license, or renew a license for an airport, restricted landing area, or other air navigation facility".

Part 2
Aircraft, Aircrews, and Instructors

Part Administrative Rules

Title 18, chapter 12, subchapter 3, ARM Aircraft registration.

Part Law Review Articles

Bibliography of Air Law 2006, Heere, 32 Air & Space L. 392 (2007).

Liability Aspects of Air Traffic Services Provision, Chatzipanagiotis, 32 Air & Space L. 326 (2007).

Not in My Back Yard! The Federal-Local Conflict Over General Aviation Airports, Brysacz, 72 J. Air L. & Com. 561 (2007).

Recent Developments in Aviation Law, Beiersdorf & Guidea, 72 J. Air L. & Com. 207 (2007).

The Vertical Limit of State Sovereignty, Reinhardt, 72 J. Air L. & Com. 65 (2007).

67-3-201. Aircraft registration and licensing required.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1987 Amendments: Chapter 370 in (3) deleted reference to subsection (3).

Chapter 453 throughout section substituted "must" for "shall"; in (1) changed reference to subsection (7) to reference to subsection (6); in (2), in first sentence after "registered", inserted reference to March 1, after "which" substituted "must" for "may", and after "therefor" substituted reference to fee schedule for "of not more than $10"; in (3), in introductory language, changed reference to subsection (7) to reference to subsection (6) and substituted "do not" for "shall not"; in (4), in first sentence after "registered", substituted "in a particular county" for "as property within a particular county"; deleted former (5) that read: "(5) Except as provided in 15-6-210, all aircraft shall be subject to all state, county, and school district tax levies and all other levies designated for aircraft- or airport-related uses. Such aircraft shall not be liable for other city tax levies"; and in (6), after "shall", inserted reference to fee required in 67-3-206. Amendment applicable to taxable years beginning after December 31, 1987, and to aircraft registered on or after January 1, 1988.

1983 Amendment: Near beginning of (1), inserted reference to (7); after "appropriate effective" inserted "registration"; after "permit issued" inserted "or approved"; in (2), changed registration date from June 1 to March 1; in (3), substituted "(7)" for "(6)"; and inserted (7) referring to registration of ultralight aircraft.

1981 Amendment: Substituted "June 1" for "March 1" in (2).

Case Notes

Regularly Scheduled Flights — Timetables Determined by Customer — Not Subject to Central Assessment: Because the customer determined the routine timetable of flights rather than the airline, the airline did not perform "regularly scheduled flights" required for central assessment. Richland Aviation, Inc. v. St., 2017 MT 122, 387 Mont. 409, 394 P.3d 1198.

Nature of Tax: The licensing statute is a regulatory measure, and the gasoline tax levied is a license tax. State ex rel. St. Aeronautics Comm'n v. Bd. of Examiners, 121 M 402, 194 P2d 633 (1948).

67-3-202. Penalty for registration violations.

Compiler's Comments

1987 Amendments: Chapter 370 in (1), near middle of first sentence, deleted reference to subsection (3).

Chapter 453 in (1) changed reference to subsection (7) to reference to subsection (6) and near end of first sentence, after "penalty", substituted reference to five times annual registration fee for "fee of $100 shall"; deleted former (2) that read: "(2) Except for aircraft exempt from property taxation as provided in 15-6-210, an application for registration shall be accompanied by a copy of the receipt for or statement of personal property tax paid, signed by the treasurer of the county where the aircraft is registered, or a statement of lien assignment against real property, signed by the county assessor where the aircraft is registered. A person who pays personal property tax on his aircraft to any jurisdiction other than the county where the aircraft is required to be registered is liable for the tax in that county without credit for such other taxes paid. In addition to this civil liability, a person who attempts to establish the situs of his aircraft in any jurisdiction other than the county where the aircraft is required to be registered with intent to avoid payment of taxes to that county commits the offense of false swearing as defined in 45-7-202"; and in (2), after "person who", inserted "owns or causes or authorizes an aircraft to be operated or who". Amendment applicable to taxable years beginning after December 31, 1987, and to aircraft registered on or after January 1, 1988.

1983 Amendment: In (1), substituted "(7)" for "(6)"; and changed registration date from June 1 to March 1.

1981 Amendment: Substituted "June 1" for "March 1" in (1).

67-3-203. Registration application — payment of fees — deposit of fees.

Compiler's Comments

Applicability: This section applies to taxable years beginning after December 31, 1987, and to aircraft registered on or after January 1, 1988.

67-3-204. Fee in lieu of tax on registered aircraft — decal.

Compiler's Comments

1991 Amendment: In (3) substituted "15-6-145" for "15-6-147". Amendment effective May 15, 1991.

Applicability: Section 18(1), Ch. 773 L. 1991, provided that the 1991 amendment to this section applies to tax years beginning on or after January 1, 1992.

Applicability: This section applies to taxable years beginning after December 31, 1987, and to aircraft registered on or after January 1, 1988.

67-3-205. Aircraft registration account — source of funds — allocation.

Compiler's Comments

2019 Amendment: Chapter 455 in (2) substituted current text for former text that read: "Money in the account is allocated as follows:

(a) 90% to the state general fund; and

(b) 10% to the department for the purpose of administering and enforcing aircraft registration". Amendment effective July 1, 2019.

Applicability: Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

2007 Amendment: Chapter 19 in (3) after "subsection (2)" deleted "(a)", after "be made" substituted "when received" for "twice annually", and deleted former second sentence that read: "The first allocation must be made between March 15 and March 30 and the second allocation must be made between July 1 and July 15"; deleted former (4) that read: "(4) The allocation required in subsection (2)(b) must be made on July 1 of each year"; and made minor changes in style. Amendment effective October 1, 2007.

2001 Amendment: Chapter 574 in (2)(a) at end substituted "state general fund" for "counties in the proportion that each county's collections bear to the total collections statewide"; and deleted former (5) and (6) that read: "(5) On receipt of the money allocated as provided in subsection (2)(a), the county treasurer shall distribute the money in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(6) The allocations required in subsection (2)(a) are considered statutory appropriations as described in 17-7-502." Amendment effective July 1, 2001.

1989 Amendment: In (6) changed reference to subsection (2) to reference to subsection (2)(a). Amendment effective July 1, 1989.

Applicability: This section applies to taxable years beginning after December 31, 1987, and to aircraft registered on or after January 1, 1988.

67-3-206. Schedule of fees in lieu of tax for aircraft.

Compiler's Comments

2019 Amendment: Chapter 455 in (1) increased all fees in the table by a multiple of 1.5; and in (3) increased fee from $20 to $30. Amendment effective July 1, 2019.

Applicability: Section 17, Ch. 455, L. 2019, provided: "[This act] applies to aviation fuel sold on or after [the effective date of this act] but does not apply to contracts for essential air services entered into before [the effective date of this act]." Effective July 1, 2019.

Saving Clause: Section 15, Ch. 455, L. 2019, was a saving clause.

1997 Amendment: Chapter 402 in (1), in introductory clause, inserted "is based on the age and type of aircraft and"; inserted (2) concerning age of aircraft and determination of model year of aircraft; and made minor changes in style. Amendment effective January 1, 1998.

Effective Dates — Applicability: Section 9(1), Ch. 402, L. 1997, provided: "Except as provided in subsection (2), [this act] is effective January 1, 1998, and applies to property subject to a fee in lieu of tax purchased after December 31, 1997."

Applicability: This section applies to taxable years beginning after December 31, 1987, and to aircraft registered on or after January 1, 1988.

Administrative Rules

ARM 18.12.314 Fees.

67-3-211. Aircrew licensing.

Compiler's Comments

1993 Amendment: Chapter 279 substituted references to aircrew member for references to airman and airman's; and made minor changes in style.

1983 Amendment: After "permit issued" inserted "or approved".

Case Notes

Nature of Tax: The licensing statute is a regulatory measure, and the gasoline tax levied is a license tax. State ex rel. St. Aeronautics Comm'n v. Bd. of Examiners, 121 M 402, 194 P2d 633 (1948).

67-3-212. Flight plan required.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 636 (Ch. 417, L. 1983) read: "A statement of intent is required for this bill because it provides rulemaking authority to the Department of Commerce [now Department of Transportation] in section 1 [67-3-212].

The Legislature intends that rules be made that provide a reasonable definition of origination of a flight. The purpose here is not to cover the flight that originates out of state and takes a short stop in Montana to pick up fuel with the intent of continuing directly on the journey. The Legislature also recognizes that rules may be required to conform enforcement to the manner in which the Federal Aviation Administration administers the flight plans filed with it. The Legislature intends that the Department should adopt any rules necessary in this regard."

CHAPTER 7
AIRPORT AFFECTED AREAS

Chapter Compiler's Comments

Effective Date: Section 31, Ch. 300, L. 2005, provided: "[This act] is effective on passage and approval." Approved April 19, 2005.

Applicability: Section 32, Ch. 300, L. 2005, provided: "(1) Except as provided in subsection (2), [sections 3 through 19] [Title 67, ch. 7] do not apply to a governing body that had expended funds to begin the process of designating or had already designated an airport influence area or that had established a zoning district and airport zoning regulations on or before [the effective date of this act]. The provisions of Title 67, chapters 4, 5, and 6 apply to the governing body as those provisions read before [the effective date of this act]. [Effective April 19, 2005.]

(2) If a governing body alters an airport influence area established before [the effective date of this act] or amends the regulations for the airport influence area or any adopted airport zoning regulations, then the provisions of [sections 3 through 19] [Title 67, ch. 7] apply."

Part 1
General Provisions

Part Law Review Articles

Regulatory Takings: The Search for a Definitive Standard, Dringman, 55 Mont. L. Rev. 245 (1994).

CHAPTER 10
MUNICIPAL AIRPORTS

Chapter Compiler's Comments

Severability Clause Not Codified: Section 1-827, R.C.M. 1947 (en. sec. 20, Ch. 288, L. 1947), was not codified but has not been repealed and is still valid law.

Chapter Law Review Articles

Bibliography of Air Law 2006, Heere, 32 Air & Space L. 392 (2007).

Recent Developments in Aviation Law, Beiersdorf & Guidea, 72 J. Air L. & Com. 207 (2007).

The Vertical Limit of State Sovereignty, Reinhardt, 72 J. Air L. & Com. 65 (2007).

Part 1
General Provisions

Part Case Notes

Independent Exercise of Eminent Domain Power by Joint Airport Board Member: Plaintiffs argued that 67-10-205(2)(c) mandates that a proceeding for eminent domain may not be brought by a single municipal member of a joint airport board but rather only as a joint action with the other signatories. The Supreme Court found this to be an overly narrow interpretation in light of other statutory authority in Title 67, ch. 10, parts 1 and 2, which empowers municipalities to act either jointly or independently, and under the broad grant of power to cities under Art. XI, sec. 4, Mont. Const. By its terms, 67-10-205(2)(c) requires joint action when an eminent domain proceeding is brought pursuant to the authority of the joint airport board; however, it does not preclude action separate and apart from the board. Lake v. Lake County, 233 M 126, 759 P2d 161, 45 St. Rep. 1354 (1988).

67-10-102. Acquisition and establishment of airports.

Compiler's Comments

2005 Amendment: Chapter 300 in (1) in first sentence near end after "land for airport" deleted "or landing field" and in second sentence near middle after "regulate airports" deleted "or landing fields". Amendment effective April 19, 2005.

2001 Amendment: Chapter 125 in (1) in first sentence inserted reference to Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

Case Notes

Damages Recoverable for Diminution in Value of Land Caused by Change in Access: In an action to condemn 20.45 acres of land for the purpose of expanding a municipal airport, landowners appealed the commissioners' assessment to the District Court. Prior to trial, the District Court granted the airport board's motion in limine and excluded evidence on diminution of value of landowners' remaining land due to the abandonment of a county road contained in the condemned parcel, ruling that landowners had no legal interest in the continuance of a county road unless discontinuance of that road deprived them of access to their remaining property. The Supreme Court reversed, ruling that although condemnees cannot recover damages for a reduction in traffic flow caused by discontinuance of a county road, they can recover damages if the change in access has caused a substantial change in value in the condemnees' land and landowners should have been permitted to introduce evidence on this issue. McCone County v. James, 198 M 430, 646 P2d 1209, 39 St. Rep. 1107 (1982).

Necessity of Eminent Domain — Balancing Test: When a flight path easement to insure safe flight would adequately serve public need, it was not necessary for the county to acquire a fee simple title. Silver Bow County v. Hafer, 166 M 330, 532 P2d 691 (1975).

Subterfuge to Circumvent Debt Limitation: When Airport Commission, which was agent of city and county, borrowed funds from the State Aeronautics Commission, the language whereby county's obligation to repay was seemingly limited was a subterfuge to circumvent the debt limitation imposed by law and to avoid the requirement of approval by a majority of the electors of the county because the Airport Commission was itself obligated to pay interest on the loan. Burlington N., Inc. v. Richland County, 162 M 364, 512 P2d 707 (1973).

67-10-103. Public purpose.

Compiler's Comments

2001 Amendment: Chapter 125 in (1) at end substituted "acquire property for the enumerated purposes under the power of eminent domain as provided in Title 70, chapter 30" for "acquire property for such purposes under the power of eminent domain as and for a public use or necessity"; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

Case Notes

Immunity From Suit: Under the 1889 Montana Constitution, a municipality was immune from suit for injuries resulting from the maintenance or operation of an airport. Barovich v. Miles City, 135 M 394, 340 P2d 819 (1959); Holland v. W. Airlines, Inc., 154 F. Supp. 457 (D.C. Mont. 1957).

Liability Insurance: Under the 1889 Montana Constitution, the fact that the city had obtained a policy of liability insurance did not in itself result in any waiver of sovereign immunity from liability for personal injuries sustained by plaintiff when she slipped and fell on floor of municipal airport owned by the city and leased to defendant airline. Holland v. W. Airlines, Inc., 154 F. Supp. 457 (D.C. Mont. 1957).

Part 2

General Powers of Municipality Relating to Airports

Part Case Notes

Independent Exercise of Eminent Domain Power by Joint Airport Board Member: Plaintiffs argued that 67-10-205(2)(c) mandates that a proceeding for eminent domain may not be brought by a single municipal member of a joint airport board but rather only as a joint action with the other signatories. The Supreme Court found this to be an overly narrow interpretation in light of other statutory authority in Title 67, ch. 10, parts 1 and 2, which empowers municipalities to act either jointly or independently, and under the broad grant of power to cities under Art. XI, sec. 4, Mont. Const. By its terms, 67-10-205(2)(c) requires joint action when an eminent domain proceeding is brought pursuant to the authority of the joint airport board; however, it does not preclude action separate and apart from the board. Lake v. Lake County, 233 M 126, 759 P2d 161, 45 St. Rep. 1354 (1988).

67-10-201. General municipal powers.

Compiler's Comments

2001 Amendment: Chapter 125 in (1) in fourth sentence and in (2) in first sentence inserted references to Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

Case Notes

Question Whether Sufficient Airport Access Provided — Summary Judgment Precluded: Plaintiff filed an action against the city of Kalispell asserting that the city had constructed a fence between plaintiff's aircraft fueling and maintenance business and the airport that unreasonably interfered with plaintiff's use of the public easement and plaintiff's business prospects. The city had installed a 48-foot gate to plaintiff's business, but plaintiff contended that the gate was too small. The District Court noted that the city had authority to fence the airport and granted summary judgment for the city. On appeal, the Supreme Court found that a genuine issue of material fact existed regarding whether the fence and gate provided by the city tortiously restricted or interfered with plaintiff's business and implied easement and whether the city's actions intentionally inflicted severe emotional distress. Summary judgment was therefore inappropriate, and the case was remanded for trial. Talmage v. Kalispell, 2009 MT 434, 354 M 125, 223 P3d 328 (2009).

Damages Recoverable for Diminution in Value of Land Caused by Change in Access: In an action to condemn 20.45 acres of land for the purpose of expanding a municipal airport, landowners appealed the commissioners' assessment to the District Court. Prior to trial, the District Court granted the airport board's motion in limine and excluded evidence on diminution of value of landowners' remaining land due to the abandonment of a county road contained in the condemned parcel, ruling that landowners had no legal interest in the continuance of a county road unless discontinuance of that road deprived them of access to their remaining property. The Supreme Court reversed, ruling that although condemnees cannot recover damages for a reduction in traffic flow caused by discontinuance of a county road, they can recover damages if the change in access has caused a substantial change in value in the condemnees' land and landowners should have been permitted to introduce evidence on this issue. McCone County v. James, 198 M 430, 646 P2d 1209, 39 St. Rep. 1107 (1982).

Necessity of Eminent Domain — Balancing Test: When a flight path easement to insure safe flight would adequately serve public need, it was not necessary for the county to acquire a fee simple title. Silver Bow County v. Hafer, 166 M 330, 532 P2d 691 (1975).

Subterfuge to Circumvent Debt Limitation: When Airport Commission, which was agent of city and county, borrowed funds from the State Aeronautics Commission, the language whereby county's obligation to repay was seemingly limited was a subterfuge to circumvent the debt limitation imposed by law and to avoid the requirement of approval by a majority of the electors of the county because the Airport Commission was itself obligated to pay interest on the loan. Burlington N., Inc. v. Richland County, 162 M 364, 512 P2d 707 (1973).

67-10-202. Creation of board — funding — rules.

Compiler's Comments

2005 Amendment: Chapter 300 in (1) in first sentence near middle, in second sentence at end, and in third sentence near middle after "airport" deleted "or landing field", in first sentence at end substituted "airport. The county, city, or town" for "same and for that purpose", in second sentence near beginning substituted "residents" for "inhabitants", after "subdivision of the state" deleted "for the purpose of conferring upon them", and after "and may confer upon" substituted "the board or body" for "them", and in third sentence near end substituted "fees or charges may" for "same shall"; in (2) near beginning substituted "complying with subsection (1)" for "meeting the charges mentioned", after "when the airport" deleted "or landing field", and near middle after "political subdivisions" substituted "in the joint venture" for "interested"; and made minor changes in style. Amendment effective April 19, 2005.

Attorney General's Opinions

Cause Required for Removal of Member of Airport Authority Commission: Under common law, in the absence of statutory provisions relating to removal, a public officer may be removed from office only for cause and only after notice and an opportunity to be heard. Cause does not include a discretionary exercise of statutory authority, and the mere exercise of the powers of an office does not constitute cause for removal. There are no specific statutes governing the removal of an airport authority commissioner. Thus, an airport authority commissioner may be removed only for cause during the commissioner's term of office, which implies some type of misconduct or neglect of duty. As long as commissioners are exercising powers authorized by law, they are not subject to removal during their terms of office. 49 A.G. Op. 8 (2001).

67-10-204. Joint exercise of powers.

Case Notes

Airport Operation — Accidents — Sovereign Immunity: Under the 1889 Montana Constitution, when city and county leased hangar facilities and designated one of two lessees as airport manager, and the lessees were obligated to maintain only the portion of the airport leased to them, the city and county having retained control over the unleased portions, the airport manager was the agent of the city and county and was not liable for an accident occurring on unleased portion. A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. Barovich v. Miles City, 135 M 394, 340 P2d 819 (1959); Holland v. W. Airlines, Inc., 154 F. Supp. 457 (D.C. Mont. 1957).

67-10-205. Joint airport board.

Compiler's Comments

2001 Amendment: Chapter 125 in (2)(c) in first sentence inserted reference to Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

Case Notes

Independent Exercise of Eminent Domain Power by Joint Airport Board Member: Plaintiffs argued that subsection (2)(c) of this section mandates that a proceeding for eminent domain may not be brought by a single municipal member of a joint airport board but rather only as a joint action with the other signatories. The Supreme Court found this to be an overly narrow interpretation in light of other statutory authority in Title 67, ch. 10, parts 1 and 2, which empowers municipalities to act either jointly or independently, and under the broad grant of power to cities under Art. XI, sec. 4, Mont. Const. By its terms, subsection (2)(c) of this section requires joint action when an eminent domain proceeding is brought pursuant to the authority of the joint airport board; however, it does not preclude action separate and apart from the board. Lake v. Lake County, 233 M 126, 759 P2d 161, 45 St. Rep. 1354 (1988).

Airport Operation — Accidents — Sovereign Immunity: Under the 1889 Montana Constitution, when city and county leased hangar facilities and designated one of two lessees as airport manager, and the lessees were obligated to maintain only the portion of the airport leased to them, the city and county having retained control over the unleased portions, the airport manager was the agent of the city and county and was not liable for an accident occurring on unleased portion. A municipality is immune from suit for injuries resulting from the maintenance or operation of an airport. Barovich v. Miles City, 135 M 394, 340 P2d 819 (1959); Holland v. W. Airlines, Inc., 154 F. Supp. 457 (D.C. Mont. 1957).

67-10-211. Assistance in airport road construction — department of transportation.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

67-10-221. Airport property — acquisition by eminent domain.

Compiler's Comments

2001 Amendment: Chapter 125 at end of first sentence substituted "in Title 70, chapter 30" for "by the laws governing eminent domain of the state of Montana"; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

Case Notes

Damages Recoverable for Diminution in Value of Land Caused by Change in Access: In an action to condemn 20.45 acres of land for the purpose of expanding a municipal airport, landowners appealed the commissioners' assessment to the District Court. Prior to trial, the District Court granted the airport board's motion in limine and excluded evidence on diminution of value of landowners' remaining land due to the abandonment of a county road contained in the condemned parcel, ruling that landowners had no legal interest in the continuance of a county road unless discontinuance of that road deprived them of access to their remaining property. The Supreme Court reversed, ruling that although condemnees cannot recover damages for a reduction in traffic flow caused by discontinuance of a county road, they can recover damages if the change in access has caused a substantial change in value in the condemnees' land and landowners should have been permitted to introduce evidence on this issue. McCone County v. James, 198 M 430, 646 P2d 1209, 39 St. Rep. 1107 (1982).

67-10-231. No limitation on airport hazard zoning.

Compiler's Comments

2005 Amendment: Chapter 300 at end after "hazards by zoning" inserted reference to establishing airport affected area regulations; and made minor changes in style. Amendment effective April 19, 2005.

Part 3
Operation of Airports

67-10-301. Municipal regulation.

Administrative Rules

ARM 18.12.701 Operating rules of Yellowstone Airport.

Attorney General's Opinions

Cause Required for Removal of Member of Airport Authority Commission: Under common law, in the absence of statutory provisions relating to removal, a public officer may be removed from office only for cause and only after notice and an opportunity to be heard. Cause does not include a discretionary exercise of statutory authority, and the mere exercise of the powers of an office does not constitute cause for removal. There are no specific statutes governing the removal of an airport authority commissioner. Thus, an airport authority commissioner may be removed only for cause during the commissioner's term of office, which implies some type of misconduct or neglect of duty. As long as commissioners are exercising powers authorized by law, they are not subject to removal during their terms of office. 49 A.G. Op. 8 (2001).

67-10-302. Granting of operation and use privileges.

Compiler's Comments

1993 Amendment: Chapter 268 in (1) and (3) increased maximum term from 20 years to 40 years; in (2), at end, deleted "and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality"; and made minor changes in style.

Case Notes

Airport Manager as Agent: Where in a lease of hangar facilities at a city and county airport, the parties named one of the lessees as airport manager, it was apparent that the parties had this section in mind and the use of the word "manager" implied that he was to be the agent of the Airport Commission. Barovich v. Miles City, 135 M 394, 340 P2d 819 (1959).

Attorney General's Opinions

Cause Required for Removal of Member of Airport Authority Commission: Under common law, in the absence of statutory provisions relating to removal, a public officer may be removed from office only for cause and only after notice and an opportunity to be heard. Cause does not include a discretionary exercise of statutory authority, and the mere exercise of the powers of an office does not constitute cause for removal. There are no specific statutes governing the removal of an airport authority commissioner. Thus, an airport authority commissioner may be removed only for cause during the commissioner's term of office, which implies some type of misconduct or neglect of duty. As long as commissioners are exercising powers authorized by law, they are not subject to removal during their terms of office. 49 A.G. Op. 8 (2001).

67-10-303. Delegation of authority.

Attorney General's Opinions

Cause Required for Removal of Member of Airport Authority Commission: Under common law, in the absence of statutory provisions relating to removal, a public officer may be removed from office only for cause and only after notice and an opportunity to be heard. Cause does not include a discretionary exercise of statutory authority, and the mere exercise of the powers of an office does not constitute cause for removal. There are no specific statutes governing the removal of an airport authority commissioner. Thus, an airport authority commissioner may be removed only for cause during the commissioner's term of office, which implies some type of misconduct or neglect of duty. As long as commissioners are exercising powers authorized by law, they are not subject to removal during their terms of office. 49 A.G. Op. 8 (2001).

Part 4
Finance

Part Compiler's Comments

Temporary Provision Not Codified: Section 1-805.1, R.C.M. 1947 (en. sec. 1, Ch. 278, L. 1971), was not codified but has not been repealed and is still valid law.

67-10-402. Tax levy.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 300 in (1) near beginning after "operating airports" deleted "landing fields" and near end after "for airports and" deleted "landing fields and for"; in (2) near beginning after "established airport" deleted "landing field"; and in (5) at end deleted last sentence that read: "Due to the uniqueness of the subject matter, the provisions of this section are declared necessary in the interests of the public health and safety." Amendment effective April 19, 2005.

Chapter 453 in (1) near middle after "assess and levy" deleted "in addition to the annual levy for general administrative purposes or the all-purpose mill levy authorized by 7-6-4451"; and made minor changes in style. Amendment effective July 1, 2005.

2001 Amendment: Chapter 574 in (1) at end substituted "mill levy authorized by 7-6-4451, a tax on the taxable value of all taxable property in the county, city, or town for airports and landing fields and for ports" for "levy authorized by 7-6-4451 and 7-6-4452, a tax on the dollar of taxable value of the property of said county, city, or town:

(a) not to exceed 2 mills for airports and landing fields; and

(b) not to exceed 2 mills for ports"; in (2) after "commissioners and the" inserted "city or town"; in (3) at beginning deleted "Property within any political subdivision may not be subject to a tax pursuant to this section at an annual rate in excess of 2 mills for airports, landing fields, or ports unless it is found that"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 at beginning of (1) inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

1985 Amendment: In introductory paragraph of (1), after "landing fields", substituted "and ports under the provisions of this chapter and as provided in Title 7, chapter 14, part 11" for "under the provisions of this chapter" and after "a tax", deleted "of not to exceed 2 mills"; inserted (1)(a) limiting tax levy to 2 mills for airports and landing fields; inserted (1)(b) limiting tax levy to 2 mills for ports; in (2) near beginning, inserted "or port"; in (3) near middle of first sentence, inserted "for airports, landing fields, or ports"; and in (5) in two places, after "airport", inserted "or port".

1981 Amendment: Deleted "no money may be borrowed and" before "no bonds may be issued for such purpose" in (3).

Temporary Construction Provision Not Codified: Section 1-806, R.C.M. 1947 (en. sec. 6, Ch. 108, L. 1929), was not codified but has not been repealed and is still valid law.

Case Notes

Debt Limit: Board of County Commissioners, which overtaxed taxpayers in one year in order to provide a fund for expenses for capital improvements and remodeling of airport, which expenses exceeded $21,000, clearly violated Art. XIII, sec. 5, 1889 Mont. Const., by incurring a liability for over $10,000 without the approval of a majority of the electors of the county; county was not able to argue that "no indebtedness or liability" had been created because the money was already on hand. Extraordinarily high levy created a "reserve fund" to be used for capital improvements which is not allowable due to restriction in this section of reserve funds to improvement of surfaces of runways or ramps. Burlington N., Inc. v. Flathead County, 162 M 371, 512 P2d 710 (1973).

Attorney General's Opinions

Calculation and Expenditure of "Carryforward" Mills Under 2001 Revision to Local Government Property Tax Levy and Budget Provisions: The 2001 revisions to local government property tax levy and budget laws instituted a general approach of deleting numeric limits on the number of mills that a local government could levy for any specific purpose and placed a cap on the number of mills that a local government is allowed to levy through property taxation. The combined effect was to free a local government to dedicate as much of its annual mill levy as it chooses for any lawful governmental purpose, as long as the total millage covered by the cap does not exceed the cap measured by the prior year's property tax assessments. Likewise, the "carryforward" provision in 15-10-420 does not depend on how many mills, if any, that a city chooses to devote to a particular purpose in any year. Instead, the provision allows a city, if it finds itself able to fund its operations without levying the full number of mills allowed, to hold in reserve for future years the authority to levy the difference between the number of mills allowed and the number actually levied. That authority is not calculated on the basis of the amount budgeted or the number of mills needed to fund a particular government function, but rather is calculated with reference to the whole amount raised by property taxes, subject to the statutory exceptions, without reference to how the money might have been spent in the prior year. However, the "carryforward" authority is prospective only and may not be applied to calculations for the 2001 budget year because the authority did not exist prior to July 1, 2001. Thus, "carryforward" mills may be levied in any future year after budget year 2001 and expended by a local government for any lawful purposes that the local government chooses. 49 A.G. Op. 5 (2001).

67-10-403. Liens.

Compiler's Comments

1993 Amendment: Chapter 308 near beginning, after "storage", inserted "service", before "personal property" inserted "aircraft or other", after "furnished by" substituted "an airport, person, or entity or an agent of an airport, person, or entity" for "the municipality or its agents", near middle, before "airport", inserted "aircraft", after "facility" substituted "the airport, person, entity, or agent has a lien" for "owned or operated by the municipality, the municipality shall have liens", and near end, after "enforceable", deleted "by the municipality"; and made minor changes in style.

67-10-404. Airport revenues and sale proceeds.

Case Notes

Use of Airport Funds: City has general budgetary authority in financing construction of city shop complex and has implied power to allocate proportionate share of construction costs among various city departments using the facility. Airport funds could be used for the construction. Greener v. Great Falls, 157 M 376, 485 P2d 932 (1971).

67-10-405. Federal and state money.

Compiler's Comments

Federal Act Repealed: The Federal Airport Act of 1946, referred to in the second paragraph, has been repealed in great part. See 49 U.S.C. § 1101, et seq.

Part 9

Courtesy Cars for Airports

Part Compiler's Comments

Effective Date: Section 6, Ch. 452, L. 2001, provided that this part is effective July 1, 2001.

67-10-901. Purpose.

Compiler's Comments

2021 Amendment: Chapter 469 in (1) after "municipalities" inserted "and third parties" and in (1) after "or taxicabs are not available" inserted "for service at all times". Amendment effective May 12, 2021.

67-10-902. Definitions.

Compiler's Comments

2021 Amendment: Chapter 469 in (2) after "municipality" inserted "or third party" and after "for the purposes" inserted "of". Amendment effective May 12, 2021.

2005 Amendment: Chapter 300 in definition of airport after "means an airport" deleted "and landing field". Amendment effective April 19, 2005.

67-10-903. Use of courtesy cars at airports — department responsibilities.

Compiler's Comments

2021 Amendment: Chapter 469 in (1) after "municipality" inserted "or third party"; in (2) substituted current text for former text that read: "A courtesy car grant may not be given to a municipality if commercial rental cars or taxicabs are available that provide service to local airports"; inserted (3) concerning the preference for purchase of vehicles that are accessible to persons with disabilities; and made minor changes in style. Amendment effective May 12, 2021.

67-10-904. Responsibilities and obligations of municipality and third party.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 74, L. 2023. Amendment effective March 16, 2023.

2021 Amendment: Chapter 469 in (1) in four places substituted "third party" for "sponsor" or "local sponsor", near end of second sentence before "courtesy car program" deleted "municipality's", and in third sentence after "airport manager" inserted "a nonprofit organization exempt from taxation under 26 U.S.C. 501(c)(3)"; in (2) after "municipality" inserted "or third party" and at end inserted "except to facilitate incidental maintenance of the courtesy car"; in (3) near middle of first sentence inserted "awarded"; inserted (4) requiring that a courtesy car must be kept at the awarded airport when not in use and must be available for users who fly into the airport; in (5)(a) near beginning substituted "recipient of the courtesy car grant" for "municipality"; in (5)(b) substituted "courtesy car owner" for "sponsor"; in (6) substituted "third party" for "sponsor";

inserted (7) concerning requirements for distributing grant money to a third party; inserted (8) concerning requirements to comply with federal and state nondiscrimination laws and requirements; and made minor changes in style. Amendment effective May 12, 2021.

CHAPTER 11
AIRPORT AUTHORITIES

Chapter Compiler's Comments

Severability Clause Not Codified: Section 1-927, R.C.M. 1947 (en. sec. 26, Ch. 433, L. 1971), was not codified but has not been repealed and is still valid law.

Part 1
Organization and General Provisions

67-11-102. Municipal airport authority.

Attorney General's Opinions

Cause Required for Removal of Member of Airport Authority Commission: Under common law, in the absence of statutory provisions relating to removal, a public officer may be removed from office only for cause and only after notice and an opportunity to be heard. Cause does not include a discretionary exercise of statutory authority, and the mere exercise of the powers of an office does not constitute cause for removal. There are no specific statutes governing the removal of an airport authority commissioner. Thus, an airport authority commissioner may be removed only for cause during the commissioner's term of office, which implies some type of misconduct or neglect of duty. As long as commissioners are exercising powers authorized by law, they are not subject to removal during their terms of office. 49 A.G. Op. 8 (2001).

67-11-103. Regional airport authority.

Compiler's Comments

2005 Amendment: Chapter 300 in (5) substituted "airport affected area regulations as provided for in this title" for "comprehensive airport zoning regulations as provided for by the laws of this state"; and made minor changes in style. Amendment effective April 19, 2005.

Attorney General's Opinions

Regional Airport Authority Employee Entitled to Credit for Sick and Vacation Leave Earned With Other Public Entity: A regional airport authority is a public entity and, upon satisfaction of relevant statutory criteria, is required to give credit for sick and vacation leave earned by its airport police officers during employment with other public entities. 44 A.G. Op. 27 (1992).

67-11-104. Commissioners.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 77 in (3) at end of second sentence after "qualified" inserted "by law to serve"; and made minor changes in style. Amendment effective October 1, 2009.

67-11-105. Functions — public and governmental.

Attorney General's Opinions

Regional Airport Authority Employee Entitled to Credit for Sick and Vacation Leave Earned With Other Public Entity: A regional airport authority is a public entity and, upon satisfaction of relevant statutory criteria, is required to give credit for sick and vacation leave earned by its airport police officers during employment with other public entities. 44 A.G. Op. 27 (1992).

Part 2
Powers

67-11-201. General powers of authority.

Compiler's Comments

2005 Amendments — Composite Section: Chapter 300 in (4) at beginning substituted "establish airport affected area" for "establish comprehensive airport zoning" and at end substituted "this title" for "the laws of this state". Amendment effective April 19, 2005.

Chapter 574 in (2) inserted reference to alternative project delivery contracts; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 125 in (3) in second sentence inserted reference to Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

1999 Amendment: Chapter 584 in introduction inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

67-11-204. Joint board.

Compiler's Comments

2001 Amendment: Chapter 125 in (2)(c) near beginning inserted reference to Title 70, chapter 30; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

67-11-211. Granting of operation and use privileges.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 358, L. 2023. Amendment effective October 1, 2023.

1993 Amendment: Chapter 268 in (1) and (3) increased maximum term from 30 years to 40 years; in (2), near middle after "service", deleted "and must be established with due regard to the property and improvements used and the expenses of operation to the authority"; and made minor changes in style.

67-11-222. Department control of airport operation and income.

Compiler's Comments

1983 Amendment: Substituted reference to enterprise fund for reference to revolving fund.

67-11-231. Airport property — acquisition by eminent domain.

Compiler's Comments

2001 Amendment: Chapter 125 at end of first sentence substituted "as provided in Title 70, chapter 30" for "in the manner provided by the laws of this state and such other laws that may now or hereafter apply to the state or to political subdivisions of this state in exercising the right of eminent domain"; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

67-11-232. Airport property — disposal.

Compiler's Comments

1993 Amendment: Chapter 279 near middle of second sentence substituted "the adopted rules of the authority, which rules must be approved by the local governing body, for the disposal of county property" for "the laws of this state governing the disposition of other public property"; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 279, L. 1993, provided: "A statement of intent is required for this bill because [section 6] [67-11-232] allows an airport authority to adopt rules for the purpose of disposing of airport property. At a minimum, the rules should address:

(1) appraisal requirements for property to be sold;
(2) terms for sale or lease agreements;
(3) requirements for public auctions;
(4) the procedure to be followed if the property is not sold; and
(5) disposition of sale or lease proceeds."

67-11-241. No limitation on airport hazard zoning.

Compiler's Comments

2005 Amendment: Chapter 300 at end after "hazards by zoning" inserted reference to establishing airport affected area regulations; and made minor changes in style. Amendment effective April 19, 2005.

Part 3
Finance

67-11-301. Municipal tax levy.

Compiler's Comments

2001 Amendment: Chapter 574 in first sentence near beginning after "tax" inserted "requested" and in second sentence after "levy" deleted "permitted by the laws of this state for airport purposes or any lower limit"; and made minor changes in style. Amendment effective July 1, 2001.

1999 Amendment: Chapter 584 in two places inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

67-11-302. County tax levy.

Compiler's Comments

1999 Amendment: Chapter 584 inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

67-11-303. Bonds and obligations.

Compiler's Comments

2021 Amendment: Chapter 503 in (4) at end after "political subdivision" deleted "within the meaning of 15-30-2110(2)(a)". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 68, Ch. 503, L. 2021, was a severability clause.

2001 Amendment: Chapter 574 in (6) near end of first sentence and near middle of second sentence before "levy" inserted "subject to 15-10-420" and near middle of second sentence after "taxes are" deleted "not subject to any limitation of rate or amount applicable to other municipal taxes but are"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 387 in (6) inserted sixth sentence that read: "The special election must be held in conjunction with a regular or primary election"; and made minor changes in style.

1987 Amendment: At end of first sentence of (3) substituted "as provided in 17-5-102" for "at a rate not exceeding the limitation of 17-5-102".

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendments: Chapter 500 substituted "the limitation of 17-5-102" for "10% a year" after "not exceeding" in the first sentence of (3).

Chapter 575 substituted "as provided for municipal general obligation bonds in chapter 7, part 42" for "by [7-7-4227 through 7-7-4234]" and "as provided for county general obligation bonds in chapter 7, part 22" for "[7-7-2229 through 7-7-2236]" near the end of (6).

67-11-304. Reserve fund.

Compiler's Comments

1993 Amendment: Chapter 279 substituted "reserve fund" for "debt service fund and accumulate therein the sum of $5 million together with interest thereon".

1983 Amendment: Substituted "debt service fund" for "sinking fund".

67-11-306. Tax exemption.

Compiler's Comments

1993 Amendment: Chapter 268 near end, after "taxation", inserted "and any other charges"; and made minor changes in style.

Part 4
Extraterritorial Airports

67-11-401. Out-of-state airport jurisdiction — reciprocity.

Compiler's Comments

2001 Amendment: Chapter 125 deleted former (1) that read: "This section may be cited as the "Extraterritorial Airports Section""; in (3)(a) at end substituted "as provided in Title 70, chapter 30" for "in the manner provided by the laws of this state governing condemnation proceedings"; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

67-11-241. No limitation on airport-hazard zoning.

Compiler's Comments

[illegible] to establishing airport affected area regulations; and made minor changes in style. Amendment effective April 19, 2005.

Finance

67-11-301. Municipal tax levy.

Compiler's Comments

[illegible] or any lower limit"; and m[illegible]

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

67-11-302. County tax levy.

Compiler's Comments

1999 Amendment: Chapter 584 inserted reference to 15-10-420; and made minor changes in style. Amendment effective May 10, 1999.

Severability: Section 172, Ch. 584, L. 1999, was a severability clause.

Retroactive Applicability: Section 175, Ch. 584, L. 1999, provided that this section applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

67-11-303. Bonds and obligations.

Compiler's Comments

2021 Amendment: Chapter 503 in (4) at end after "political subdivision" deleted "within the meaning of 15-30-2110(2)(a)". Amendment effective January 1, 2024.

Effective Date — Applicability: Section 69, Ch. 503, L. 2021, provided: "(1) Except as provided in subsection (2), [this act] is effective January 1, 2024, and applies to income tax years beginning after December 31, 2023.

(2) [Sections 14, 31, 32, 54, 59 through 64, 66, 68, and 69] [15-30-2303, 15-32-104, 15-32-106, 50-51-114, 70-9-803, 75-2-103, 75-5-103, 87-2-102, and 87-2-105] and this section are effective January 1, 2022, and apply to income tax years beginning after December 31, 2021."

Severability: Section 65, Ch. 503, L. 2021, was a severability clause.

2001 Amendment: Chapter 574 in (3) near end of first sentence and near middle of second sentence before "levy" inserted "subject to 15-10-420" and near middle of second sentence after "taxes are" deleted "not subject to any limitation of rate or amount applicable to other municipal taxes but are"; and made minor changes in style. Amendment effective July 1, 2001.

1995 Amendment: Chapter 387 in (6) inserted sixth sentence that read: "The special election must be held in conjunction with a regular or primary election"; and made minor changes in style.

1987 Amendment: At end of first sentence of (3) substituted "as provided in 17-5-102" for "at a rate not exceeding the limitation of 17-5-102".

1983 Amendment: Made 1981 amendment permanent. (Amendment was to terminate July 1, 1983—sec. 21, Ch. 500, L. 1981.)

1981 Amendments: Chapter 500 substituted "the limitation of 17-5-102" for "10% a year" after "not exceeding" in the first sentence of (3).

Chapter 575 substituted "as provided for municipal general obligation bonds in chapter 7, part 42" for "by [7-7-4227 through 7-7-4234]" and "as provided for county general obligation bonds in chapter 7, part 22" for "[7-7-2229 through 7-7-2236]" near the end of (6).

67-11-304. Reserve fund.

Compiler's Comments

1993 Amendment: Chapter 279 substituted "reserve fund" for "debt service fund and accumulate therein the sum of $5 million together with interest thereon".

1983 Amendment: Substituted "debt service fund" for "sinking fund".

TITLE 68
RESERVED

TITLE 69
PUBLIC UTILITIES AND CARRIERS

Title Case Notes

DECISIONS UNDER FORMER CHAPTER 11 RELATING TO COMMON CARRIERS

Scant Record of Conviction on Driving Charges Sufficient to Establish Negligence: Plaintiff argued that the issuance of citations and defendant's admission that she was found guilty of driving charges related to the collision established a breach of duty imposed by 69-11-107 (now repealed) and negligence as a matter of law. The Supreme Court found insufficient evidence in the record regarding the citations, actual charges, and subsequent legal proceedings to warrant reversal of the trial court's denial of a motion for judgment notwithstanding the verdict on this point. Nelson v. Flathead Valley Transit, 251 M 269, 824 P2d 263, 49 St. Rep. 58 (1992).

Common Carrier's Duty of Care to Embarking Passengers: When an airline passenger was injured while boarding defendant airline company's airplane and the airline company in turn sued the defendant city that owned the airport, the airline company, as a common carrier, owed a higher duty of care to the passenger than did the city. Rogers v. W. Airlines, 184 M 170, 602 P2d 171, 36 St. Rep. 1974 (1979).

Loss of Cattle in Transit: Under 69-11-421 (now repealed), defendant carrier was clearly liable for the loss of cattle resulting from his ordinary negligence in transport, and Item 45 of the Montana Livestock Tariff No. 1 was invalid in that it conflicted with section 8-812, R.C.M. 1947 (now repealed). Brown v. Webb, 173 M 275, 567 P2d 450 (1977).

Application of Statute:

While a carrier is not an insurer of a passenger's safety, its duty toward a passenger is spelled out in 69-11-107 (now repealed). Risken v. N. Pac. Ry., 137 M 57, 350 P2d 831 (1960).

Although 69-11-107 (now repealed) imposes upon the carrier the duty to exercise "the highest degree of care", it is but declaratory of the common law and does not constitute the carrier an insurer of the passenger's safety. Wilson v. Northland Greyhound Lines, Inc., 166 F. Supp. 667 (D.C. Mont. 1958).

Apportionment of Loss: When a special contract limits the liability of the carrier by excluding acts of God, and it is found that damage to sheep shipped resulted from a concurrence of rainy weather and the negligent care or inspection of the carrier, there must be a finding of what portion of the loss was attributable to the latter cause because liability cannot be predicated upon the rain. Great N. Ry. v. Melton, 193 F2d 729 (9th Cir. 1951).

Consideration: There need not be special consideration for the special contract. There is consideration when a company agrees for $600 to haul the freight on the terms stated, which include the special contract. Great N. Ry. v. Melton, 193 F2d 729 (9th Cir. 1951).

Lien Herein Provided Not Exclusive: The fact that a trucker who could have asserted a carriers' lien under 69-11-410 (now repealed) failed to do so did not preclude his asserting a mechanics' lien (now construction lien) under 71-3-501 (now repealed). Caird Eng'r Works v. Seven-Up Gold Min. Co., 111 M 471, 111 P2d 267 (1941).

Degrees of Negligence: Under the law of this state a difference in degrees of negligence is recognized. Liston v. Reynolds, 69 M 480, 223 P 507 (1923).

Oral Negotiations Merged in Contract: Prior oral negotiations and directions about points at which livestock should be stopped for resting and feeding were merged in the contract of shipment when it and the waybills bore notations stating the points at which stops were to be made. Therefore, parol testimony of directions to make other stops was incompetent as an attempt to vary the terms of the written contract. Cook v. N. Pac. Ry., 61 M 573, 203 P 512 (1921).

Notice of Urgency of Shipment: In order to charge a carrier with special damages arising from delay in the shipment of freight, such as stock feed, notice of the urgency of the shipment must be brought home to the carrier. Sankey v. Chicago, Milwaukee & St. Paul Ry., 60 M 242, 198 P 544 (1921).

Carrier Not Insurer: Section 69-11-107 (now repealed), imposing upon the carrier the duty to exercise toward a passenger for hire the highest degree of care, does not constitute the carrier an insurer of the passenger's safety. Heck v. N. Pac. Ry., 59 M 106, 196 P 521 (1921).

Defective Appliance: The measure of a carrier's responsibility for injuries to a passenger, attributable to a defective appliance, is not that set forth in the statute, unless in the action to enforce the responsibility the statute is expressly invoked. Batch v. Helena Light & Ry., 52 M 517, 159 P 411 (1916).

Determination of Appeal: When a personal injury case against a carrier was tried as though the latter's duty to provide safe conveyance was governed by the common law and without regard to 69-11-201 (now repealed), it will be determined on appeal under the same theory. Batch v. Helena Light & Ry., 52 M 517, 159 P 411 (1916).

Application of Statute: Sections 69-11-302 and 69-11-303 (both now repealed) apply merely in cases of ordinary negligence when the circumstances are not aggravated by fraud, malice, or oppression. Lahood v. Cont. Tel. Co., 52 M 313, 157 P 639 (1916).

Injury Caused by Negligence: Although a telegraph company is not an insurer of the speedy and accurate transmission of a paid message, it is engaged in the performance of a public service and is held to the exercise of ordinary care and diligence. It must therefore respond in damages for any injury caused by its negligence in the premises. Lahood v. Cont. Tel. Co., 52 M 313, 157 P 639 (1916).

Stipulation as to Damages: A stipulation by a telegraph company on one of its blanks that it will not be answerable for damages or statutory penalties if a claim is not made within a specified time is void under 28-2-702, as against public policy, if it was intended as a cloak for fraud or crime. Lahood v. Cont. Tel. Co., 52 M 313, 157 P 639 (1916).

Application of Section:

Section 69-11-404 (now repealed) does not apply if a personal delivery is claimed. If a personal delivery is not claimed and 69-11-404 does apply, its effect is not to relieve from all liability but to change the liability from that of carrier to that of warehouseman. Gary Bros. & Gaffke Co. v. Chicago, Milwaukee & Puget Sound Ry., 49 M 524, 143 P 955 (1914).

Section 69-11-404 (now repealed) is not meant for cases of actual, manual delivery because these need no aid from statute or custom but is meant for those cases in which, by following custom, a delivery may be accomplished short of the actual, manual transfer of the goods. Gary Bros. & Gaffke Co. v. Chicago, Milwaukee & Puget Sound Ry., 49 M 524, 143 P 955 (1914).

Construction of Section: Section 69-11-404 (now repealed) does not define the acts which may constitute delivery in the absence of custom. Gary Bros. & Gaffke Co. v. Chicago, Milwaukee & Puget Sound Ry., 49 M 524, 143 P 955 (1914).

Degrees of Negligence:

As between the owner or manager of exhibitions and places of amusement and the carrier of a passenger for hire, the same measure of duty is not demanded. Only ordinary care, as in the gratuitous carriage of persons, under 69-11-106 (now repealed), is required of the former, while the utmost care is required of the latter. Phillips v. Butte Jockey Club & Fair Ass'n, 46 M 338, 127 P 1011 (1912).

Ordinary care is the measure of duty which the law imposes upon the owners and managers of exhibitions and places of amusement to prevent injury to patrons who have paid for the privileges accorded to them. Thus, the owner of the grandstand at a racecourse is not answerable for an injury to a patron, caused by the latter's tripping on a nail and falling on a broken board while he was descending the stairway, when the owner did not have notice, either actual or implied, of such defects. Phillips v. Butte Jockey Club & Fair Ass'n, 46 M 338, 127 P 1011 (1912).

Traveling Second Class: One traveling on a second-class limited railroad ticket without stopover privileges may, if he does stop over, especially if he has a conductor's check in place of his ticket which informs him of his rights, be lawfully ejected from another train on which he takes passage if he refuses to pay full fare. Sanden v. N. Pac. Ry., 43 M 209, 115 P 408 (1911).

Construction of Statute: Section 69-11-105 (now repealed) gives to the carrier the right, by special contract, to provide against liability in all cases except when it arises from his gross negligence, fraud, or willful wrong. John v. N. Pac. Ry., 42 M 18, 111 P 632 (1910); Nelson v. Great N. Ry., 28 M 297, 72 P 642 (1903). See also Rose v. N. Pac. Ry., 35 M 70, 88 P 767 (1907).

Free Passenger: One riding on a railway pass is not a passenger for reward, but a free passenger. The company is a carrier without reward and is answerable to the passenger for ordinary negligence, without considering any exemption conditions of the pass. John v. N. Pac. Ry., 42 M 18, 111 P 632 (1910).

Free Transportation for Commissioners: Members and employees of the Railroad Commission (now Public Service Commission) should be allowed to ride free only when traveling on official business. John v. N. Pac. Ry., 42 M 18, 111 P 632 (1910).

Passenger Carried Without Reward: A carrier owed a higher degree of diligence to one carried for a reward than to one carried without a reward and was only bound to exercise ordinary care for the safety of a passenger carried without reward. The injury of such a passenger by the happening of an accident only showed ordinary negligence by the carrier and not gross negligence. John v. N. Pac. Ry., 42 M 18, 111 P 632 (1910).

Inadequate Facilities for Transportation: If a common carrier receives property for transportation when he knows, or by the exercise of ordinary care should know, that it is likely to be exposed to injury or loss because of inadequate facilities for its transportation, he is answerable for any loss following the acceptance of the property. Wahle v. Great N. Ry., 41 M 326, 109 P 713 (1910).

Loss of Baggage: A contract made by a railway company with a passenger in the sale of a ticket, which among other recitals contained the provision that, in view of the reduced rate at which it was furnished, the carrier's liability for loss of baggage should be limited to $100, was not void as against public policy. Rose v. N. Pac. Ry., 35 M 70, 88 P 767 (1907).

Declaratory of Common Law: Section 69-11-107 (now repealed) is declaratory of the common law. Taillon v. Mears, 29 M 161, 74 P 421 (1903).

Delay in Transportation: A common carrier cannot by special contract limit its liability for delay in the transportation of property arising from its negligence or from the negligence of its servants. Nelson v. Great N. Ry., 28 M 297, 72 P 642 (1903).

Want of Ordinary Care: The language of 69-11-428 (now repealed) is equivalent to saying that a common carrier shall be liable for damages resulting from delays caused by its want of ordinary care and diligence, that is, for ordinary negligence. This being a legislative declaration as to when the common carrier shall be liable for delay, it cannot be abridged by special contract. It is a legislative limitation upon the previous general power given to contract. Nelson v. Great N. Ry., 28 M 297, 72 P 642 (1903). See Russell v. Chicago, Burlington & Quincy Ry., 37 M 1, 94 P 488 (1908).

CHAPTER 1
STRUCTURE AND ORGANIZATION OF STATE AGENCIES

Part 1
Public Service Commission

Part Attorney General's Opinions

Transition From Pre-1974 Public Service Commission to Commission Established in 1974: Boedecker was elected in 1972 to serve a 6-year term on the Public Service Commission (P.S.C.). In 1974 (Ch. 339, L. 1974), the Legislature abolished the existing three-member P.S.C. and replaced it with a five-member P.S.C., which commenced its duties in January 1975. The Legislature provided that any member whose term had not expired was to continue in office to the end of his term. Boedecker died during the time between the 1974 primary and general elections. The statute under which Boedecker was elected and Ch. 339, L. 1974, both provided for filling of vacancies by Governor appointment. The appointee then holds office until the next general election and until his successor is elected and qualified. Therefore, the office of Public Service Commissioner that became vacant upon Boedecker's death must be placed on the 1974 general election ballot. The successor to the Governor's appointee will take office when elected and qualified and will serve out the unexpired term of Boedecker. 35 A.G. Op. 95 (1974).

Part Law Review Articles

What the Trust? Overcoming Barriers to Renewable Energy Development in Indian Country, Gilbert & Ward, 46 Pub. Land & Resources L. Rev. 132 (2024), https://scholarworks.umt.edu/plrlr/vol46/iss1/9/.

Localizing Energy Independence: How PURPA and Community Power Legislation Can Drive Development of Resilient and Reliable Local Clean Energy Projects, Chandler, 44 Pub. Land & Resources L. Rev. 199 (2021), https://scholarworks.umt.edu/plrlr/vol44/iss1/4/.

Keeping Power in Charge: Federal Hydropower and the Downstream Environment. Benson, 39 Pub. Land & Resources L. Rev. 23 (2018).

Streamlining the Production of Clean Energy: Proposals to Reform the Hydroelectricity Licensing Process, Kavulla & Farkas, 39 Pub. Land & Resources L. Rev. 123 (2018).

Dual Standards or Double Standard: Does a Finding of Public Need for a Utility Automatically Satisfy the "Used and Useful" Requirement?, Foot, 6 Pub. Land L. Rev. 195 (1985).

69-1-102. Creation of public service commission.

Compiler's Comments

Reestablishment: Section 1, Ch. 588, L. 1983, provided: "The public service commission, department of public service regulation, created by 69-1-102, is reestablished for 6 years pursuant to 2-8-122, with existing statutory authority and rules."

Case Notes

Public Service Commission Not Vested With Judicial Powers — No Authority in Negligence Action: An electric service customer filed an action in District Court alleging property damage based on a power company's negligence and negligence per se in terminating the customer's electric service. The District Court dismissed the action, reasoning that the customer did not exhaust administrative remedies before the Public Service Commission (PSC). On appeal, the Supreme Court reversed the dismissal on the grounds that the PSC is not vested with judicial powers and does not have the authority to adjudicate a negligence action seeking damages. Schuster v. NW. Energy Co., 2013 MT 364, 373 Mont. 54, 314 P.3d 650.

Dismissal for Lack of Subject Matter Jurisdiction Proper Upon Failure to Exhaust Administrative Remedies Absent Showing of Futility: Plaintiff filed for declaratory judgment and injunctive relief against state agencies and a subdivision water development company regarding plaintiff's provision of water to subdivisions developed by the company. The District Court dismissed for lack of subject matter jurisdiction, and plaintiff appealed. Generally, before a party can seek declaratory relief in District Court, the party must exhaust its administrative remedies, although courts generally will not require exhaustion of administrative remedies when recourse to an administrative remedy would be futile. However, the mere possibility of an adverse decision does not mean that resort to an administrative agency is futile, nor does the possibility that agencies might render decisions that could in some degree conflict justify bypassing the administrative process. Plaintiff in this case could not demonstrate futility, and seeking to skip the administrative process constituted an unwarranted intrusion into the agencies' regulatory authority. Thus, the District Court did not abuse its discretion by dismissing the action for lack of subject matter jurisdiction when plaintiff did not first exhaust its administrative remedies before seeking judicial review. Mtn. Water Co. v. Dept. of Public Service Regulation, 2005 MT 84, 326 M 416, 110 P3d 20 (2005), following Brisendine v. St., 253 M 361, 833 P2d 1019 (1992), and Art v. Dept. of Labor and Industry, 2002 MT 327, 313 M 197, 60 P3d 958 (2002).

Limiting Phone Company Liability — Directory Listing Errors: Regulation of Montana Public Service Commission limiting the liability of a telephone company arising from errors in or omissions of directory listings to the amount of charges for such of the subscriber's service as is affected during the period covered by the directory in which the error or omission occurs is reasonable and binding on the subscriber. State ex rel. Mtn. States Tel. & Tel. Co. v. District Court, 160 M 443, 503 P2d 526 (1972).

Jurisdiction of Commissioner: District Court's Writ of Prohibition was vacated when it barred Board of Railroad Commissioners, ex officio the Public Service Commission, from performing its duties concerning water company's application to increase rates and charges. State ex rel. Bd. of R.R. Comm'rs v. District Court, 158 M 139, 488 P2d 903 (1968).

Powers of Commission:

An order of the Public Service Commission directing an electric power company furnishing electricity to a small town to install a telephone service for the convenience of its 225 customers was not unlawful or unreasonable. Tobacco River Power Co. v. P.S.C., 109 M 521, 98 P2d 886 (1940).

The Public Service Commission, under its power to regulate a public utility, is clothed with authority not only to fix maximum but also minimum or precise rates. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

The Legislature in enacting the public service commission law intended not only to empower the Commission to regulate charges or fix rates, but also to see to it that reasonable service is rendered by the utility and that its equipment is reasonably adequate. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

The Public Service Commission is a creature of and clothed with only such powers as are clearly conferred upon it by the statute to which it owes its being. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

In the enactment of this law, the Legislature intended to provide a comprehensive and uniform system of regulation and control of public utilities by a specially created tribunal through which the state itself exercises its sovereign power. State ex rel. Billings v. Billings Gas Co., 55 M 102, 173 P 799 (1918).

Franchise Ordinance: An ordinance granting a public utility franchise after the enactment of the public service commission law is not invalid merely for the reason that such act vests exclusive jurisdiction in the Public Service Commission, but is valid until the Commission sees fit to act. Until then, the rate of compensation payable by the company is valid and binding. Baker v. Mont. Petroleum Co., 99 M 465, 44 P2d 735 (1935).

Public Utilities Defined:

When one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use and must submit to control by the public for the common good to the extent of the interest he has thus created. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

An irrigation company organized for the purpose of supplying water for the irrigation of agricultural lands is not a "public utility" within the meaning of the public service commission law, and is therefore not subject to supervision and regulation by the Public Service Commission. State ex rel. Thatcher v. Boyle, 62 M 97, 204 P 378 (1921).

Constitutionality:

Inasmuch as a franchise contract made in 1912 between a city and a gas company must be presumed to have been entered into with knowledge that the state could thereafter enact legislation toward exercising the power of rate regulation reposed in it and thus change the rates fixed by the contract, the public service commission law is not open to attack on the ground that it impairs the obligation of the contract made the year before. State ex rel. Billings v. Billings Gas Co., 55 M 102, 173 P 799 (1918), distinguished in Baker v. Mont. Petroleum Co., 99 M 465, 44 P2d 735 (1935). See also Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930), for discussion of constitutionality of the public service commission law.

The act conferring authority upon the Public Service Commission must be construed in harmony with the theory of self-government in cities and the retention of police power by the state. P.S.C. v. Helena, 52 M 527, 159 P 24 (1916).

Regulations made by the Public Service Commission must be reasonable in order to be valid, and any regulation that imposes upon a city an obligation which is invalid is not reasonable. P.S.C. v. Helena, 52 M 527, 159 P 24 (1916).

This part, creating a Public Service Commission and defining its powers, is constitutional. P.S.C. v. Helena, 52 M 527, 159 P 24 (1916).

69-1-104. Public service commission districts.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 272, L. 2023. Amendment effective April 26, 2023.

2003 Amendment: Chapter 294 in (1) added Cascade and Judith Basin Counties to the first district and removed Glacier, Golden Valley, Musselshell, Pondera, and Prairie Counties from the first district; in (2) added Prairie County to the second district and removed Stillwater and Sweet Grass Counties from the second district; in (3) added Beaverhead, Deer Lodge, Gallatin, Golden Valley, Madison, Musselshell, Park, Silver Bow, Stillwater, and Sweet Grass Counties to the third district and removed Cascade, Judith Basin, Lewis and Clark, and Teton Counties from the third district; in (4) added Lincoln, Mineral, Missoula, and Sanders Counties to the fourth district and removed Beaverhead, Deer Lodge, Gallatin, Madison, Park, and Silver Bow Counties from the fourth district; in (5) added Glacier, Lewis and Clark, Pondera, and Teton Counties to the fifth district and removed Lincoln, Mineral, Missoula, and Sanders Counties from the fifth district; and made minor changes in style. Amendment effective October 1, 2003.

Transition: Section 2, Ch. 294, L. 2003, provided: "For the purposes of the 2004 election, the secretary of state shall declare which district a sitting commissioner represents for any public service commissioner whose district is not up for election and shall use as criteria the residence of the respective commissioner on [the effective date of this act]." Effective October 1, 2003.

Saving Clause: Section 3, Ch. 294, L. 2003, was a saving clause.

69-1-105. Term of office — term limits.

Compiler's Comments

1995 Amendment: Chapter 271 inserted (3) and (4) establishing term limits for Commission members; and made minor changes in style.

Attorney General's Opinions

Term Limits Applicable to Public Service Commission: By the enactment of the 1995 amendments to this section, the Legislature intended to apply the term limit provisions of Art. IV, sec. 8, Mont. Const., to Public Service Commission candidates. The term limit calculation begins with the first full term to which a candidate is elected after October 1, 1995. For Public Service Commissioners serving in January 1995, this is the term beginning in January 1997. 47 A.G. Op. 9 (1997).

69-1-106. Vacancies.

Compiler's Comments

2015 Amendment: Chapter 226 in (1) after "governor" inserted "as provided in this section"; inserted (2), (3), and (4) concerning the process for appointing a commission member if a vacancy exists; and made minor changes in style. Amendment effective April 10, 2015.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Attorney General's Opinions

Transition From Pre-1974 Public Service Commission to Commission Established in 1974: Boedecker was elected in 1972 to serve a 6-year term on the Public Service Commission (P.S.C.). In 1974 (Ch. 339, L. 1974), the Legislature abolished the existing three-member P.S.C. and replaced it with a five-member P.S.C., which commenced its duties in January 1975. The Legislature provided that any member whose term had not expired was to continue in office to the end of his term. Boedecker died during the time between the 1974 primary and general elections. The statute under which Boedecker was elected and Ch. 339, L. 1974, both provided for filling of vacancies by Governor appointment. The appointee then holds office until the next general election and until his successor is elected and qualified. Therefore, the office of Public Service Commissioner that became vacant upon Boedecker's death must be placed on the 1974 general election ballot. The successor to the Governor's appointee will take office when elected and qualified and will serve out the unexpired term of Boedecker. 35 A.G. Op. 95 (1974).

69-1-107. Presiding officer of commission.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Public Office: The chairmanship of the Board of Railroad Commissioners (now Public Service Commission) is not a public office, and quo warranto does not lie to determine right of members to act as chairman. State ex rel. Boyle v. Hall, 53 M 595, 165 P 757 (1917).

69-1-110. Conduct of commission business.

Administrative Rules

Title 38, chapter 2, subchapter 3, ARM Procedural rules — general provisions.
ARM 38.2.601 Definitions.
ARM 38.2.901 Parties.
Title 38, chapter 2, subchapter 12, ARM Pleadings.
ARM 38.2.1501 Motions.
Title 38, chapter 2, subchapter 18, ARM Notice.
Title 38, chapter 2, subchapter 21, ARM Filing of complaints.
Title 38, chapter 2, subchapter 24, ARM Interventions.
Title 38, chapter 2, subchapter 27, ARM Prehearing conferences.
Title 38, chapter 2, subchapter 30, ARM Voluntary settlement.
Title 38, chapter 2, subchapter 33, ARM Discovery procedures.
Title 38, chapter 2, subchapter 36, ARM Presiding officer.
Title 38, chapter 2, subchapter 39, ARM Hearings.
Title 38, chapter 2, subchapter 42, ARM Rules of evidence.
Title 38, chapter 2, subchapter 45, ARM Briefs and proposed findings and conclusions.
Title 38, chapter 2, subchapter 48, ARM Commission decisions and orders — exceptions, rehearings and reconsideration.
Title 38, chapter 2, subchapter 50, ARM Protective orders and protection of confidential information.

69-1-111. Reimbursement for expenses.

Compiler's Comments

2009 Amendments — Composite Section: Chapter 35 at beginning of first sentence after "commission" substituted "and its staff" for "secretary, and such clerks, experts, and persons as may be employed"; and made minor changes in style. Amendment effective October 1, 2009.

Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Free Transportation: Members and employees of the Railroad Commission (now Public Service Commission) should be allowed to ride free only when traveling on official business. John v. N. Pac. Ry., 42 M 18, 111 P 632 (1910).

69-1-112. Prohibition on acceptance of favors from railroads.

Compiler's Comments

2009 Amendment: Chapter 35 in (1) at beginning of first sentence substituted "Public service commissioners or their staff" for "A public service commissioner or the secretary", at end after "commissioners or" substituted "their staff" for "to any clerks or employees of the commission", in second sentence at beginning after "their" substituted "staff" for "secretary, clerks, agents, employees, or experts", and near end after "provided" inserted "in 69-1-111"; in (2) near beginning after "specified" inserted "in 69-1-111", after "gratuity" inserted "referred to in subsection (1)", and after "commissioner" substituted "or the staff" for "secretary, clerk, agent, employee, or expert"; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Traveling on Private Business: When members and employees of the Railroad Commission (now Public Service Commission) are traveling on private business they should pay fare. John v. N. Pac. Ry., 42 M 18, 111 P 632 (1910).

Attorney General's Opinions

Acceptance of Severance Pay by Public Service Commissioner Not Breach of Ethics: Severance pay negotiated as part of a negotiated union contract agreement and supported by consideration, such as surrender of accrued seniority and entitlement to reemployment, does not constitute a gift within the meaning of 2-2-104 nor does the termination of employment and acceptance of severance pay constitute a substantial financial transaction for private business purposes within the meaning of 2-2-121. Therefore, a Public Service Commissioner did not violate the code of ethics for public officials and employees by temporarily reactivating and then terminating his employment with a railroad company in order to become eligible to receive severance pay negotiated between the railroad and the collective bargaining unit to which the Commissioner belonged. Notice to the other Commissioners was adequate to meet the terms of 2-2-121(2)(f). The action did not constitute the kind of private relationship contemplated by the code of ethics that would threaten the integrity of the position because the situation presented no opportunity to use the influence of the official position to further personal gain. 45 A.G. Op. 10 (1993).

69-1-113. Removal or suspension of commissioner.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-1-114. Fees.

Compiler's Comments

2019 Amendments — Composite Section: Chapter 442 in (2) in list of references inserted "69-3-1612(4)"; inserted (4) regarding treatment of fees collected; and made minor changes in style. Amendment effective July 1, 2019.

Chapter 449 in (2) and (3) substituted references to 69-3-1204(6)(b) and 69-3-1207(4)(b) for "69-8-421(10)". Amendment effective July 1, 2020.

Preamble: The preamble attached to Ch. 442, L. 2019, provided: "WHEREAS, customers of Montana's regulated electric utilities have an interest in ensuring that their utilities are providing efficient and cost-effective electric generation; and

WHEREAS, there are alternative financing mechanisms used by 21 other states that will result in lower costs to electric utility customers, and the use of these mechanisms can ensure that the costs of retiring or replacing electric infrastructure or facilities located in the state can be financed in a way that reduces the total amount of costs being included in customer rates; and

WHEREAS, customer costs of alternative financing mechanisms can be minimized by achieving the highest possible credit rating from independent credit rating agencies, which requires special procedures and conditions."

Saving Clause: Section 22, Ch. 442, L. 2019, was a saving clause.

Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 23, Ch. 442, L. 2019, was a severability clause.

Section 18, Ch. 449, L. 2019, was a severability clause.

2007 Amendment: Chapter 491 in (2) and in first and second sentences in (3) substituted "69-8-421(10)" for "69-8-421(7)". Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

2005 Amendment: Chapter 224 in (1) after "be" substituted "reasonable" for "commensurate with the costs incurred in administering the function for which the fee is charged except those fees set by federal statute"; in (2) inserted references to 69-3-204(2) and 69-12-423(2); and made minor changes in style. Amendment effective July 1, 2005.

Saving Clause: Section 3, Ch. 224, L. 2005, was a saving clause.

2003 Amendment: Chapter 509 in (2) at beginning inserted exception clause; inserted (3) requiring fees collected to be deposited in special revenue fund account and used as provided in 69-8-421(7); and made minor changes in style. Amendment effective April 24, 2003.

Statement of Intent: The statement of intent attached to SB 436 (Ch. 588, L. 1983) provided: "A statement of intent is required for Senate Bill 436 because it grants the Public Service Commission authority to charge fees commensurate with costs.

The Legislature intends that the fees be set in an amount sufficient to provide funds to administer the function for which the fee is charged. Fees may not be set so high as to generate revenue in excess of expenses."

69-1-115. Commission recordkeeping and employment of personnel.

Compiler's Comments

Effective Date: This section is effective October 1, 2009.

Part 2
Consumer Committee and Consumer Counsel

Part Compiler's Comments

Severability Clause: Section 10, Ch. 65, L. 1973, was a severability clause.

69-1-222. Annual report.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 96, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.69-1-223. Funding of office of consumer counsel.

Compiler's Comments

1993 Amendment: Chapter 508 in (2)(a) reduced time from "90 days" to "30 days" and after "commission" inserted "and department"; in (3), in first sentence after "increased", inserted exception clause; and made minor changes in style. Amendment effective April 24, 1993.

Retroactive Applicability: Section 5, Ch. 508, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to revenue generated by regulated activity beginning after April 1, 1993."

1987 Amendment: At end of (2)(a) inserted "separately stating gross revenues from sales to other regulated companies for resale".

1983 Amendment: Substituted reference to state special revenue fund for reference to earmarked revenue fund.

Case Notes

Funding of Public Service Commission and Consumer Counsel — Definition of "Regulated Companies" — Payment of Fees by Municipal Utility: The operations of the Public Service Commission (P.S.C.) and the Montana Consumer Counsel (MCC) are not funded through the general fund as are most state government agencies but instead are funded by fees imposed on regulated companies, based on a percentage of the gross operating revenue of the company. Regulated companies are defined as all organizations, corporations, associations, or other public or private entities that are or may become subject to regulation by the P.S.C. or its successor agency. Under 69-7-101 and 69-7-102 (now repealed), the utilities are allowed to raise rates as long as they are not raised to yield more than a 12% increase in total annual revenue. If a rate increase exceeds 12%, the utility must apply to the P.S.C. for the increase. (See 1995 amendment to 69-7-101.) The utility's argument that both P.S.C. and MCC fees are user fees and that regulated companies do not have to pay the fees unless they use P.S.C. or MCC services during a given year would make it possible for a municipal utility to control and avoid imposition of fees except under extraordinary circumstances, which is outside the context of legislative intent. Thus, as a regulated company, the municipal utility of the city of Billings is subject to regulation by the P.S.C. Billings v. Dept. of Revenue, 270 M 307, 891 P2d 1149, 52 St. Rep. 196 (1995).

Attorney General's Opinions

Budget Amendment Not "Other Source": The Department of Revenue failed to apply a carryover balance in the earmarked revenue account (now state special revenue fund, Ch. 277, L. 1983) to the succeeding year. A budget amendment making the balance available to the office of the Consumer Counsel for expenditures is not an "other source" for additional money contemplated by this section. 39 A.G. Op. 59 (1982).

69-1-224. Determination of fee — reporting.

Compiler's Comments

2017 Amendment: Chapter 350 inserted (5) concerning written reports by department to legislative consumer committee. Amendment effective July 1, 2017.

1997 Amendment: Chapter 42 in (3) substituted "subsection (1)" for "69-1-224"; and made minor changes in style. Amendment effective March 12, 1997.

1995 Amendment: Chapter 117 inserted (4) allowing immediate recovery of Consumer Counsel fees; and made minor changes in style. Amendment effective March 10, 1995.

1993 Amendment: Chapter 508 in (1), at beginning, substituted "On or before August 31 of each year" for "Within 30 days following enactment of the legislative appropriation for the office of the consumer counsel"; in (1)(b) substituted "subsection (2)" for "subsection (3)", before "appropriation" substituted "current" for "base", and after "counsel" deleted "for the first year of the appropriation"; inserted (1)(c) relating to adjustment of the percentage multiplier; in (1)(d), after "percentage", deleted "determined in subsections (1)(a) and (b)" and after "paid" deleted "in the first year of the appropriation"; deleted former (2) that read: "(2) On or before May 30 of the first year of the biennium, the department of revenue shall repeat the steps required by subsection (1) and compute the percentage multiplier for the second year, giving notice to the regulated companies"; in (2), after "multiplier", deleted "quarterly"; inserted (2)(d) providing that change in percentage multiplier is effective at beginning of next calendar quarter; and made minor changes in style. Amendment effective April 24, 1993.

Retroactive Applicability: Section 5, Ch. 508, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to revenue generated by regulated activity beginning after April 1, 1993."

1987 Amendment: Near beginning of (3)(a) substituted "shall" for "may"; and in last sentence of (4), after "Money", deleted "in the account".

Attorney General's Opinions

Failure to Deduct Carryover Balance — Not Subject to Appropriation: In determining the amount of the fee, the Department of Revenue failed to deduct the carryover balance from the previous year. This unappropriated balance was not available to the office of Consumer Counsel for expenditure under a budget amendment. Rather, the balance inures to the benefit of the regulated companies in the form of a corresponding lower fee for the succeeding year. 39 A.G. Op. 59 (1982).

69-1-225. Computation and collection of fee in absence of statement — penalty and interest.

Compiler's Comments

1991 Amendments: Chapter 676 deleted former (2) that read: "(2) The department may add to the amount of the fee computed under subsection (1), in addition to any other penalty provided by law, a penalty of 10% thereof plus interest at the rate of 1% per month or fraction of month computed on the total amount of fee and penalty. Interest is computed from the date the fee is due to the date of payment"; deleted former (3) that read: "(3) The department of revenue shall mail to the regulated company a letter setting forth the amount of the fee, penalty, and interest and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter; otherwise a lien may be filed"; and inserted (2) providing for notice, date of payment, interest, and a penalty for delinquency. Amendment effective April 27, 1991.

Chapter 811 in (3), near beginning of first sentence, substituted "notice, pursuant to 15-1-211" for "letter" and at end, after "interest", deleted "and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter, otherwise a lien may be filed" (amendments rendered void by Ch. 676) and inserted (3)(c) relating to review under 15-1-211.

Coordination: Section 19, Ch. 676, L. 1991, was a coordination section that provided that if Senate Bill No. 445 was passed and approved and if it included a section adopting a uniform tax appeal procedure, the bracketed language that constituted subsection (2) of this section was void. Senate Bill No. 445 was passed and approved as Ch. 811, L. 1991.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

69-1-226. Failure to pay fee — penalty and interest — collection of fee.

Compiler's Comments

1991 Amendments: Chapter 676 in (1), at end of first sentence, deleted "and penalty"; and in (2) reduced time of remittance from 15 days to 10 days (rendered void by Ch. 811). Amendment effective April 27, 1991.

Chapter 811 in (2), near beginning of first sentence, substituted "notice, pursuant to 15-1-211" for "letter" and at end, after "interest", deleted "and notifying the company that payment of the full amount of the fee, penalty, and interest must be remitted within 15 days of the regulated company's receipt of the letter, otherwise a warrant for distraint may be filed" and inserted last sentence relating to review under 15-1-211.

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Section 31, Ch. 811, L. 1991, provided: "[This act] applies to requests for refunds received by and the notices of additional tax issued by the department of revenue pursuant to [section 1] [15-1-211] after December 31, 1991."

1981 Amendment: Substituted "otherwise a warrant for distraint may be filed" for "otherwise a lien may be filed" at the end of (2).

69-1-227. Warrant for distraint.

Compiler's Comments

1981 Amendment: Substituted the first sentence allowing warrant for distraint if fee is not paid when due for a procedure whereby the department has a lien on the real property of the regulated company when the department files a copy of the amount due with the county clerk of court; and deleted a provision at the end of the section providing that the lien may be enforced in the same manner as judgment liens are enforced.

69-1-228. Credit for overpayment — interest on overpayment.

Compiler's Comments

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Effective Date: Section 21, Ch. 676, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 27, 1991.

69-1-230. Statute of limitations.

Compiler's Comments

Applicability: Section 20, Ch. 676, L. 1991, provided: "[This act] applies to all returns or statements due on or after July 1, 1991."

Effective Date: Section 21, Ch. 676, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 27, 1991.

Part 4
Funding of Department of Public Service Regulation6

9-1-401. Definitions.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 647, L. 1987, deleted the provision of sec. 7, Ch. 32, Sp. L. June 1986, that terminated 69-1-401 on July 1, 1987.

69-1-402. Funding of department of public service regulation.

Compiler's Comments

2017 Special Session Amendment: Chapter 6 in (1) near middle of first sentence inserted "and subject to legislative fund transfer". Amendment effective December 15, 2017, and terminates June 30, 2019.

Severability: Section 26, Ch. 6, Sp. L. November 2017, was a severability clause.

2005 Amendment: Chapter 224 in (1) in first sentence near middle after "section" inserted "and any other fees, except as provided in 69-1-114(3)"; and made minor changes in style. Amendment effective July 1, 2005.

Saving Clause: Section 3, Ch. 224, L. 2005, was a saving clause.

1993 Amendment: Chapter 508 in (1), at end of first sentence, substituted "an account in the state special revenue fund to the credit of the department" for "the general fund" and deleted former second sentence that read: "All appropriations to the department must be paid from the general fund"; in (2) reduced time period from "90 days" to "30 days"; and in (3), in first sentence after "increased", inserted exception clause. Amendment effective April 24, 1993.

Retroactive Applicability: Section 5, Ch. 508, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to revenue generated by regulated activity beginning after April 1, 1993."

1987 Amendment: In (1) substituted first two sentences regarding general fund deposits and appropriations for former sentence that read: "There is an account in the state special revenue fund to which all fees collected under this section must be deposited and from which all appropriations to the department must be paid."

Termination Provision Repealed: Section 1, Ch. 647, L. 1987, deleted the provision of sec. 7, Ch. 32, Sp. L. June 1986, that terminated 69-1-402 on July 1, 1987.

Case Notes

Funding of Public Service Commission and Consumer Counsel — Definition of "Regulated Companies" — Payment of Fees by Municipal Utility: The operations of the Public Service Commission (P.S.C.) and the Montana Consumer Counsel (MCC) are not funded through the general fund as are most state government agencies but instead are funded by fees imposed on regulated companies, based on a percentage of the gross operating revenue of the company. Regulated companies are defined as all organizations, corporations, associations, or other public or private entities that are or may become subject to regulation by the P.S.C. or its successor agency. Under 69-7-101 and 69-7-102 (now repealed), the utilities are allowed to raise rates as long as they are not raised to yield more than a 12% increase in total annual revenue. If a rate increase exceeds 12%, the utility must apply to the P.S.C. for the increase. (See 1995 amendment to 69-7-101.) The utility's argument that both P.S.C. and MCC fees are user fees and that regulated companies do not have to pay the fees unless they use P.S.C. or MCC services during a given year would make it possible for a municipal utility to control and avoid imposition of fees except under extraordinary circumstances, which is outside the context of legislative intent. Thus, as a regulated company, the municipal utility of the city of Billings is subject to regulation by the P.S.C. Billings v. Dept. of Revenue, 270 M 307, 891 P2d 1149, 52 St. Rep. 196 (1995).

69-1-403. Determination and collection of fee.

Compiler's Comments

1993 Amendment: Chapter 508 in (2), at end after "resale", deleted "to determine the amount of the fee to be paid in the first year of the appropriation"; in (4), in second sentence after "69-1-224(1)", deleted "and (2)"; and made minor changes in style. Amendment effective April 24, 1993.

Retroactive Applicability: Section 5, Ch. 508, L. 1993, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to revenue generated by regulated activity beginning after April 1, 1993."

1987 Amendment: At end of (1) inserted “except that gross revenues from sales to other regulated companies for resale, as calculated by the public service commission, must be excluded from the determination of the total gross operating revenue pursuant to 69-1-224”; and inserted (2) requiring notice of fee by mail to regulated companies.

Termination Provision Repealed: Section 1, Ch. 647, L. 1987, deleted the provision of sec. 7, Ch. 32, Sp. L. June 1986, that terminated 69-1-403 on July 1, 1987.

CHAPTER 2
GENERAL REGULATORY PROVISIONS

Chapter Law Review Articles

The “Fair Value” Test in Montana Public Utility Rate Regulation, Bottomly, 22 Mont. L. Rev. 65 (1960).

Keeping Power in Charge: Federal Hydropower and the Downstream Environment, Benson, 39 Pub. Land & Resources L. Rev. 23 (2018).

Streamlining the Production of Clean Energy: Proposals to Reform the Hydroelectricity Licensing Process, Kavulla & Farkas, 39 Pub. Land & Resources L. Rev. 123 (2018).

The Essential Facilities Doctrine and Public Utilities: Another Layer of Regulation?, Edgar, 29 Idaho L. Rev. 283 (1993).

Money for Nothing: Restructuring Rates to Encourage Conservation, Malecek, 11 Va. Envtl. L.J. 589 (1992).

Part 1
Role of Public Service Commission

Part Case Notes

Failure to Exhaust Administrative Remedies After Public Service Commission Issued Final Order — Appellant’s Failure to Administratively Challenge Compliance With Procedural Statute Insufficient for Futility Exception — Dismissal by Court Based on Procedural Justiciability Rather Than Lack of Subject Matter Jurisdiction — Waiver or Equitable Estoppel Asserted on Appeal for First Time. North Star Dev., LLC v. Mont. Pub. Serv. Comm’n, 2022 MT 103, 408 Mont. 498, 510 P.3d 1232.

Public Service Commission Exempt From Consumer Protection Act: The plain meaning of 30-14-105 is that actions and transactions of the Public Service Commission, acting under its statutory authority, are exempt from the Consumer Protection Act. Rozel Corp. v. Dept. of Public Service Regulation, 226 M 237, 735 P2d 282, 44 St. Rep. 618 (1987).

69-2-101. Adoption of rules for rate cases.

Administrative Rules

Title 38, chapter 2, subchapter 3, ARM Procedural rules — general provisions.

ARM 38.2.601 Definitions.

ARM 38.2.901 Parties.

Title 38, chapter 2, subchapter 12, ARM Pleadings.

ARM 38.2.1501 Motions.

Title 38, chapter 2, subchapter 18, ARM Notice.

Title 38, chapter 2, subchapter 21, ARM Filing of complaints.

Title 38, chapter 2, subchapter 24, ARM Interventions.

Title 38, chapter 2, subchapter 27, ARM Prehearing conferences.

Title 38, chapter 2, subchapter 30, ARM Voluntary settlement.

Title 38, chapter 2, subchapter 33, ARM Discovery procedures.

Title 38, chapter 2, subchapter 36, ARM Presiding officer.

Title 38, chapter 2, subchapter 39, ARM Hearings.

Title 38, chapter 2, subchapter 42, ARM Rules of evidence.

Title 38, chapter 2, subchapter 45, ARM Briefs and proposed findings and conclusions.

Title 38, chapter 2, subchapter 48, ARM Commission decisions and orders — exceptions, rehearings, and reconsideration.

Title 38, chapter 2, subchapter 50, ARM Protective orders and protection of confidential information.

Title 38, chapter 5, subchapter 1, ARM Minimum rate case filing standards for electric, gas and private water utilities.

Title 38, chapter 5, subchapter 6, ARM Optional ratemaking process for electric, gas, water, and sewer utilities.

Case Notes

Failure to Exhaust Administrative Remedies After Public Service Commission Issued Final Order — Appellant's Failure to Administratively Challenge Compliance With Procedural Statute Insufficient for Futility Exception — Dismissal by Court Based on Procedural Justiciability Rather Than Lack of Subject Matter Jurisdiction — Waiver or Equitable Estoppel Asserted on Appeal for First Time. North Star Dev., LLC v. Mont. Pub. Serv. Comm'n, 2022 MT 103, 408 Mont. 498, 510 P.3d 1232.

Jurisdiction Over Municipal Sewage Rates: The Public Service Commission (P.S.C.) has jurisdiction over municipal sewage rates and, accordingly, the issue of fairness of sewage rates is determined by the P.S.C. Gwynn v. Eureka, 178 M 191, 582 P2d 1262 (1978).

Powers of Commission Conferred by Specific Enactment: The Public Service Commission, an administrative agency, has only those powers specifically conferred upon it by the Legislature, and in determining those statutory powers, effect must be given to every word, phrase, clause, or sentence therein if it is possible to do so. Gwynn v. Eureka, 178 M 191, 582 P2d 1262 (1978).

69-2-102. Role of commission when consumer counsel protests.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Failure of Due Process Challenge to Statute as Applied — No Factual Demonstration of How Statute Violated Due Process — District Court Decision Affirmed. Broad Reach Power, LLC v. Dept. of Public Service Regulation, 2022 MT 227, 410 Mont. 450, 520 P.3d 301.

Powers of Commission Conferred by Specific Enactment: The Public Service Commission, an administrative agency, has only those powers specifically conferred upon it by the Legislature, and in determining those statutory powers effect must be given to every word, phrase, clause, or sentence therein if it is possible to do so. Gwynn v. Eureka, 178 M 191, 582 P2d 1262 (1978).

69-2-103. Hearings examiner.

Compiler's Comments

Effective Date: Section 20, Ch. 449, L. 2019, provided: "[This act] is effective July 1, 2020."

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

Part 2
Role of Consumer Counsel

Part Compiler's Comments

Severability Clause: Section 10, Ch. 65, L. 1973, was a severability clause.

69-2-201. Appearance at hearings by counsel.

Case Notes

Trade Secrets — When to Be Disclosed and to Whom — Protectable Property: A telephone utility was required to disclose trade secrets to the Public Service Commission (P.S.C.) to aid in a decision on its rate increase request. The utility was entitled to a protective order preventing access to the secrets by the general public, but the Montana Consumer Counsel and any citizen whose interest related to the ratemaking function of the P.S.C. could have access to the information. Use or disclosure of the trade secrets except for purposes of the ratemaking proceeding was prohibited. Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181, 38 St. Rep. 1479 (1981). Mtn. States and its progeny were overruled to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities in Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

69-2-203. Investigatory powers of counsel.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Trade Secrets — When to Be Disclosed and to Whom — Protectable Property: A telephone utility was required to disclose trade secrets to the Public Service Commission (P.S.C.) to aid in a decision on its rate increase request. The utility was entitled to a protective order preventing access to the secrets by the general public, but the Montana Consumer Counsel and any citizen whose interest related to the ratemaking function of the P.S.C. could have access to the information. Use or disclosure of the trade secrets except for purposes of the ratemaking proceeding was prohibited. Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181, 38 St. Rep. 1479 (1981). Mtn. States and its progeny were overruled to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities in Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

69-2-204. Representation of consuming public.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-2-216. Customer fiscal impact analysis — requirements.

Compiler's Comments

Effective Date: Section 9, Ch. 469, L. 2007, provided that this section is effective on passage and approval. Approved May 8, 2007.

Applicability: Section 10, Ch. 469, L. 2007, provided: "[This act] applies to applications received by the department of environmental quality on or after [the effective date of this act]." Effective May 8, 2007.

69-2-217. Exemptions — definition.

Compiler's Comments

2009 Amendment: Chapter 99 in (1) after "69-8-103" inserted "or their affiliates" and after "69-2-216" inserted language specifying the information which must be filed by the utility or its affiliate; inserted (2) defining "affiliate"; and made minor changes in style. Amendment effective October 1, 2009.

Effective Date: Section 9, Ch. 469, L. 2007, provided that this section is effective on passage and approval. Approved May 8, 2007.

Applicability: Section 10, Ch. 469, L. 2007, provided: "[This act] applies to applications received by the department of environmental quality on or after [the effective date of this act]." Effective May 8, 2007.

CHAPTER 3
REGULATION OF UTILITIES

Chapter Compiler's Comments

Select Committee — Membership: Section 1, Ch. 579, L. 2023, provided for the membership of the select committee on energy resource planning and acquisition. Effective May 18, 2023, and terminates December 31, 2024.

Select Committee — Duties: Section 2, Ch. 579, L. 2023, provided for the duties of the select committee on energy resource planning and acquisition. Effective May 18, 2023, and terminates December 31, 2024.

Preamble: The preamble attached to Ch. 579, L. 2023, provided: "WHEREAS, access to reliable, least-cost power is foundational to the health, safety, and economic well-being of all Montanans; and

WHEREAS, power outages during extreme weather conditions may create devastating economic and human consequences for the citizens of Montana, including the loss of human life; and

WHEREAS, electric consumers in Montana face growing reliability risks and rising energy bills due to overreliance on volatile energy markets and the rapid retirement of on-demand generation throughout Montana and the region; and

WHEREAS, the ability of Montana energy providers to participate in emerging wholesale electricity markets, resource adequacy programs, and other regional coordination efforts is dependent on adequate access to reliable generation resources; and

WHEREAS, the Montana Public Service Commission's oversight of the electricity supply planning and resource acquisition plays a vital role in effectuating the state's energy policy and ensuring access to adequate, reliable power for the citizens of Montana; and

WHEREAS, inefficiency and redundancy in this process impedes deployment of electric supply resources and new technologies needed to secure Montana's energy future."

Chapter Case Notes

Failure of Public Service Commission to Factor Avoided Costs in Setting Reasonable Rate for Utility Purchase of Qualified Facility-Generated Electricity — Augmentation of Record Proper: The District Court reviewed plaintiff's utility rate case and concluded that the rate set by the Public Service Commission (PSC) was unreasonable and ordered that the case be remanded to the PSC to set a new rate that took avoided cost data into consideration. The court also ordered that plaintiff be allowed to augment the record to include updated avoided cost data. The PSC appealed, but the Supreme Court affirmed. The PSC based the avoided cost tariff on outdated data, in violation of its own administrative rules, resulting in a rate that was unlawful and unreasonable. Therefore, remand of the case to the PSC for rate recalculation was proper, and allowing plaintiff to augment the record to include current data was justified. Whitehall Wind, LLC v. Pub. Serv. Comm'n, 2010 MT 2, 355 Mont. 15, 223 P.3d 907.

Access to Public Service Records — Media Required to Exhaust Administrative Remedies Prior to Court Action — Review of Confidentiality Rules Ordered: Several media organizations sought access to power company documents filed with the Public Service Commission. The Commission denied the request on confidentiality grounds, but rather than challenging the confidentiality claims through the Commission's administrative procedures, the organizations filed an action in District Court. The court proceeded to make factual and legal determinations to determine whether the requested documents constituted constitutionally protected trade secrets or proprietary information without the benefit of the Commission developing a record or making threshold determinations on the complex issues. The Supreme Court held that it was improper to bypass the administrative agency and take the issue to District Court without exhausting the Commission's administrative procedures, so the District Court was reversed with orders to remand the case to the Commission for further consideration. However, the Supreme Court also required the Commission to review its administrative rules related to confidentiality challenges because the rules primarily addressed requests for information from competitor utilities and did not necessarily apply to media challenges. Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Public Service Commission Rules Creating Impermissible Presumption of Confidentiality in Trade Secrets: Several media organizations sought access to power company documents filed with the Public Service Commission. Applying its administrative rules, the Commission evaluated the power company's claims of confidentiality against basic trade secret law, found that the company had met the initial burden of establishing trade secrets, and concluded that because the media had presented no evidence or argument to the contrary, the company information was entitled to constitutional protection as a matter of law. The Supreme Court disagreed. To the extent that the Commission's rules relied on mere company representations that the information contained trade secrets, the Commission unconstitutionally shifted the initial burden of proof to the public to challenge the confidentiality claims, creating a presumption of confidentiality that directly conflicted with the public's right to view public records and the Commission's duty to make its records available to the public. The court held that a nonhuman entity seeking protective measures for alleged confidential materials filed with a governmental regulating agency must support its claim with a supporting affidavit making a prima facie showing that the materials constitute property rights that are protected by due process. Further, the showing must be more than conclusory and specific enough for the Commission, any objecting parties, and reviewing authorities to clearly understand the nature and basis of the confidentiality claim. The agency then must review the materials at the time of filing, in accordance with 30-14-402(4)(b) and supporting case law, and make an independent determination whether the materials are in fact property rights entitled to due process protection. To the extent that Commission rules required less, the court directed revision of Commission rules to comport with this holding. Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Finality of Costs Considered Overarching Intent of Electric Utility Industry Restructuring and Customer Choice Act — PSC Denial of System That Would Allow Charging Future Transition Costs Correct Interpretation of Act: As part of the deregulation process pursuant to the Electric Utility Industry Restructuring and Customer Choice Act, the Montana Power Company (MPC) submitted a transition cost recovery plan to the Public Service Commission (PSC) that would have allowed the future recovery of certain transition costs as they became known over a period of 25 to 30 years. The PSC ordered MPC to amend its transition plan to specifically identify and demonstrate all transition costs that it sought to recover and not to rely on a future tracking mechanism. Upon judicial review, the District Court ordered the PSC to allow the tracking system. The Supreme Court was subsequently asked to determine whether the PSC interpretation of the Act was correct. The court held that MPC's proposed cost-tracking method, whereby some, but not all, transition costs would be unknown and therefore subject to the caprice of future events, was entirely inconsistent with the principle of finality and with statutory mandates in the Act placed on the PSC that all costs be determined to be: (1) verifiable; (2) unrecoverable; (3) affirmatively shown; (4) reasonably mitigated; (5) reasonably demonstrable; (6) reduced to a net sum; and (7) reduced to an amount in a final order. The principle of finality was also expressed in 69-8-211 (now repealed), which declared that PSC approval of transition costs, as well as the subsequent collection of those costs through transition charges, was a settlement of all transition costs claimed by a public utility. This finality was the overarching intent of the Act, in that the needs of consumers to effectively plan today takes precedence over precise cost analysis extending for years or even decades into the future. It is the PSC that assumes the role of arbiter in determining and fixing a utility's transition costs, if any, that will be discharged at the consumers' expense. Thus, the PSC's interpretation of the Act was correct, and the District Court's mandate requiring the PSC to allow the use of trackers would require the PSC to bend if not violate the law and could not be sustained. The District Court was reversed, and the PSC order was reinstated. Mont. Power Co. v. Pub. Serv. Comm'n, 2001 MT 102, 305 M 260, 26 P3d 91 (2001).

Judicial Review — Treatment of Gain and Cost of Equity Capital: After receiving a $7,917,936 rate increase from the Public Service Commission (P.S.C.), Montana-Dakota Utilities Company (M.D.U.) requested reconsideration of the P.S.C.'s assignment of a 13.35% rate on return of capital and its order that the gain on reacquired debt be amortized over the remaining life of the indebtedness, the amortized amount to reduce interest expense to M.D.U. The P.S.C. denied reconsideration. On appeal, the District Court held that the P.S.C. correctly authorized the 13.35% rate return on equity capital but that its treatment of gain constituted a confiscation without due process. After appeal by both the P.S.C. and M.D.U., the Supreme Court held that the P.S.C.'s assignment of a 13.35% rate on return of equity capital was not arbitrary or capricious. However, the Supreme Court reversed the District Court, ruling that the P.S.C.'s order to amortize the gain on reacquired debt over the remaining life of the indebtedness was not confiscatory to either M.D.U. or its shareholders. Mont.-Dak. Util. Co. v. Dept. of Public Service Regulation, 223 M 191, 725 P2d 548, 43 St. Rep. 1648 (1986).

Standing of Attorney General to Appeal Public Service Commission Order — Appeal Untimely: The Montana Power Company (M.P.C.) applied to the Public Service Commission (P.S.C.) for a rate increase of over $96.3 million. The P.S.C. granted only $4.1 million and denied completely M.P.C.'s request to recover costs associated with Colstrip Unit 3. The M.P.C. appealed to District Court for review under 2-4-701. The judge reversed the P.S.C. order. The Attorney General filed notice of appeal. More than 60 days after the judge's order was entered, the P.S.C. also filed notice of appeal. The M.P.C. filed a motion to dismiss the appeal of the Attorney General for lack of standing and the appeal of the P.S.C. as untimely. The Supreme Court granted the motion, holding that the Attorney General had no standing to represent the state on appeal since it was not an aggrieved party or a party to the proceedings before the District Court. Further, in his official capacity, the Attorney General may not appeal a decision that is within the discretion of the P.S.C. as a party to the action. The appeal of the P.S.C. was untimely, although within 7 days of the notice of appeal filed by the Attorney General. Since the latter appeal was invalid, the P.S.C. appeal would have to fall within the 60-day rule. Mont. Power Co. v. Dept. of Public Service Regulation, 218 M 471, 709 P2d 995, 42 St. Rep. 1750 (1985).

Scope of Review of Public Service Commission Order: The Public Service Commission (P.S.C.) adopted a marginal cost method rate structure in determining how the increased rates were to be allocated to residential, business, irrigation, and industrial users. That order was reviewed by the District Court, which reversed the orders of the P.S.C. On appeal, the Supreme Court reversed the District Court and reinstated the P.S.C. rate structure. The District Court substituted its own judgment for that of the P.S.C. While the District Court may disagree with the opinion of the experts the P.S.C. chose to follow, it is beyond the scope of review to reverse the P.S.C. on this ground. State ex rel. Dept. of Public Service Regulation v. Mont. Irrigators, Inc., 209 M 375, 680 P2d 963, 41 St. Rep. 768 (1984).

Judicial Power of Public Service Commission: The Public Service Commission is a creature of statute. It has no inherent common-law powers. Its powers are to be ascertained by reference to the statute creating it, and any reasonable doubt as to the existence of the grant of a particular power will be resolved against the existence of the power. While statutes give the P.S.C. full power of supervision, regulation, and control of utilities, the Legislature has provided that its powers do not include judicial powers. Statutes do not confer upon the P.S.C. the power to restrain or enjoin the creation of a utility holding company during a P.S.C. investigation. Adequate remedies are provided in the court system. Mont. Power Co. v. P.S.C., 206 M 359, 671 P2d 604, 40 St. Rep. 1712 (1983).

Public Service Commission — Power to Issue Summary Injunction-Type Order: The Public Service Commission issued an order prohibiting Montana Power from proceeding with a proposed corporate reorganization until the P.S.C. could investigate the reorganization. The order was issued without notice or hearing. Section 69-3-110 shows the clear legislative intent that the Commission use the court system to seek enforcement by injunction, as distinguished from issuing the injunction-type order on its own part. Summary issuance of an injunction-type order without notice or hearing should be limited to situations where the public risk to be avoided outweighs the limitations placed on the constitutional rights of the parties. In this case the Commission has advanced no justification for its disregard of the due process rights of Montana Power. Mont. Power Co. v. P.S.C., 206 M 359, 671 P2d 604, 40 St. Rep. 1712 (1983).

Extra Capacity Factor in Allocating Cost of Service: The Public Service Commission's (P.S.C.) decision to reject the city's proposed extra capacity factor, which was based upon a contract provision between the city and an adjoining water district in allocating cost of services to the water district, was upheld by the Supreme Court. The P.S.C. had substantial evidence before it in determining the extra capacity factor to be assigned to the district, and the decision, which was based on actual water use and comparisons from large water consumers similar in extent of demand to the water district, was not clearly erroneous. Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

Commission Lacking Standing to Sue: Court held that a "party in interest being dissatisfied with an order of the commission" means a party outside the decisionmaking process and does not include a Commissioner who exercised legislative and quasi-judicial powers in arriving at the decision itself. A Commissioner's personal interest in seeing his view upheld is insufficient to give him standing to sue merely because he wears a "second hat" as a natural gas consumer because chaos would result if any dissenting member of a state board or agency had standing to appeal from any board or agency decision contrary to his own view. McTaggart v. P.S.C. & Mont. Power Co., 168 M 155, 541 P2d 778 (1975).

Civil Rules: The Montana Rules of Civil Procedure were not applicable to proceeding under Title 69, chapter 3, part 4 (now repealed), being excepted by Rule 81. P.S.C. v. District Court, 162 M 225, 511 P2d 334 (1973).

Jurisdiction: When neither the parties nor the facts are the same in two cases to set aside orders of Public Service Commission, and no effort to consolidate the two cases was ever made, the court in one case was not deprived of jurisdiction to enter judgment on theory that the other court had first obtained jurisdiction of the appeal. Cascade County Consumers Ass'n v. P.S.C., 144 M 169, 394 P2d 856 (1964).

Burden of Proof:

In order to overcome the statutory presumption that all rates established by the Public Service Commission are prima facie lawful, the attacking party must present clear and convincing proof showing manifest error. Mtn. States Tel. & Tel. Co. v. P.S.C., 135 M 170, 338 P2d 1044 (1959).

When the company's proof showed only a conflict of fact between the company and the Commission on the rate base and rate of return and did not otherwise show wherein the rates were confiscatory, it failed to carry the burden of proof and an injunction was properly denied. Mtn. States Tel. & Tel. Co. v. P.S.C., 135 M 170, 338 P2d 1044 (1959).

Grounds for Injunction: Bare assertions that the Public Service Commission's findings are unreasonable, unlawful, and confiscatory will not, without more, be sufficient to invoke the court's jurisdiction for an injunction. Mtn. States Tel. & Tel. Co. v. P.S.C., 135 M 170, 338 P2d 1044 (1959).

Scope of Review — Findings Supported by Evidence: On review, if the Public Service Commission's order and findings therein are supported by evidence and credible proof, the courts will sustain it. State ex rel. Olsen v. P.S.C., 131 M 272, 309 P2d 1035 (1957).

Demurrer: Section 69-3-402 (now repealed) requires the Public Service Commission and other parties defendant to file their answer to the complaint within 20 days but does not preclude the filing of a demurrer (demurrer abolished by former Rule 7(c), M.R.Civ.P. (now superseded), and 25-31-503 (25-31-503 now repealed)). There is no reason why the Commission may not properly demur upon grounds which raise only questions of law that are preliminary to a consideration of the case on the merits. As to the contention that this results in the delay of the trial, it is sufficient to say that it is proper for the court to extend the time for answering for a reasonable time after disposition of the demurrer. State ex rel. Olsen v. P.S.C., 129 M 106, 283 P2d 594 (1955).

Determining Venue in Action on Public Service Commission Order: In an action on an order entered by the Public Service Commission, it is not the mere making of the order but the place where it is put into operation that determines where the cause of action arises. St. v. Dept. of Public Service Regulation, 181 M 225, 593 P2d 34, 36 St. Rep. 646 (1979); see also Montana-Dakota Util. Co. v. P.S.C., 111 M 78, 107 P2d 533 (1940).

Transmission of Evidence From Court to Commission: Under Title 69, chapter 3, part 4 (now repealed), in an action to enjoin the Commission from enforcing an order reducing electric power rates, when the court admits evidence of changes in the utility's property since the date of the Commission's order and time of trial, it must, before rendering judgment, furnish the Commission with the transcript of the evidence, and it is thereupon the duty of the Commission to consider such evidence. Tobacco River Power Co. v. P.S.C., 109 M 521, 98 P2d 886 (1940).

Chapter Law Review Articles

Regulation of Interconnected Electrical Utilities: Some Jurisdictional Considerations, Lopach, 37 Mont. L. Rev. 1 (1976).

Keeping Power in Charge: Federal Hydropower and the Downstream Environment, Benson, 39 Pub. Land & Resources L. Rev. 23 (2018).

Streamlining the Production of Clean Energy: Proposals to Reform the Hydroelectricity Licensing Process, Kavulla & Farkas, 39 Pub. Land & Resources L. Rev. 123 (2018).

Federal and State Regulation of Tribal Utilities, Kirkwood, 7 Nat. Resources & Env't 27-9 (1993).

Part 1

Role of Commission and Power of Eminent Domain

Part Case Notes

Failure to Exhaust Administrative Remedies After Public Service Commission Issued Final Order — Appellant's Failure to Administratively Challenge Compliance With Procedural Statute Insufficient for Futility Exception — Dismissal by Court Based on Procedural Justiciability Rather Than Lack of Subject Matter Jurisdiction — Waiver or Equitable Estoppel Asserted on Appeal for First Time. North Star Dev., LLC v. Mont. Pub. Serv. Comm'n, 2022 MT 103, 408 Mont. 498, 510 P.3d 1232.

Interference by Public Service Commission With Contract Between a Public Utility and Its Customer: The Public Service Commission (P.S.C.) has authority to modify or supersede a contract between a public utility and its customer if the contract poses an immediate threat to the utility's ability to serve or if the contract adversely affects the utility's rate structure. Otherwise the P.S.C. does not have the authority to exercise the judicial functions of interpreting or enforcing such a contract. Billings v. P.S.C., 193 M 358, 631 P2d 1295, 38 St. Rep. 1162 (1981).

69-3-101. Meaning of term "public utility".

Compiler's Comments

2011 Amendment: Chapter 214 in (1)(e) after "towns" deleted "and villages"; inserted (2)(c) regarding municipal systems; and made minor changes in style. Amendment effective October 1, 2011.

Saving Clause: Section 13, Ch. 214, L. 2011, was a saving clause.

Severability: Section 14, Ch. 214, L. 2011, was a severability clause.

1985 Amendments: Chapter 195 inserted (2)(c) expanding exemption from definition of public utility to include person exempt under 69-3-111.

Chapter 546 in (1)(f) substituted "regulated telecommunications" for "telegraph or telephone".

1983 Amendment: Inserted (2) describing services not included in the definition of public utility; made section permanent.

Regulation of Rates by County Water and Sewer Districts — Coordinate Legislation: Section 1, Ch. 374, L. 1983, provided: "Regulation of rates by county water and county sewer districts. (1) A county water district or a county sewer district formed under the provisions of Title 7, chapter 13, part 22 or 23, may impose, as it considers proper, rates, charges, and classifications for utility services to the residents of the district and other persons served by its utility system.

(2) In exercising its regulatory authority a county water or a county sewer district is granted the same authority and is bound by the same procedures and limitations as a municipality regulating a utility under the provisions of this chapter."

Section 4, Ch. 374, L. 1983, provided: "Coordination instruction. If Senate bill 436, introduced in the 48th Legislature, is passed and approved containing, as amendatory language in section 5 or any other section amending 69-3-101, an exclusion of county or consolidated city and county water or sewer districts as established under Title 7, chapter 13, parts 22 and 23, from the definition of public utility, then this act is void."

Senate Bill 436 was passed and approved and became Ch. 588, L. 1983. Chapter 374, L. 1983, is therefore void.

1981 Amendment: Inserted "except as provided in chapter 7" at the beginning of water and sewage exemption.

Administrative Rules

Title 38, chapter 5, subchapter 4, ARM Radio common carriers.

Case Notes

City as Public Utility: A city acting in its proprietary capacity as an operator of water, sewer, and lighting facilities is a public utility. St. v. Helena, 193 M 441, 632 P2d 332, 38 St. Rep. 1283 (1981).

Jurisdiction Over Municipal Sewage Rates: The Public Service Commission (P.S.C.) has jurisdiction over municipal sewage rates and, accordingly, the issue of fairness of sewage rates is determined by the P.S.C. Gwynn v. Eureka, 178 M 191, 582 P2d 1262 (1978).

Limited Membership Association Not Public Utility: Defendant association was not public utility where only members were allowed to use water system furnished by association and members used system on nonprofit cost-sharing basis and were bound by its rules and regulations. Lockwood Water Users Ass'n v. Anderson, 168 M 303, 542 P2d 1217 (1975).

Water for Business Fire Protection: Water for business fire protection was a "business use" within this section, so a city supplying water for that purpose was a public utility as defined by this section. Polson v. P.S.C., 155 M 464, 473 P2d 508 (1970).

Water — Clothed With Public Interest: In an action to enjoin the inhabitants of a town from further use of a ditch that they had tapped for domestic uses over a period of years, considerable argument was made that plaintiffs were a public utility under this section and therefore subject to jurisdiction of Public Service Commission. However, the Commission was not a party to the action, and the court did not pass on the point but did hold that property (including water) may be clothed with a public interest, depending upon the extent and character of the use, making it a public consequence and affecting the community at large. Sherlock v. Greaves, 106 M 206, 76 P2d 87 (1938).

Property Devoted to Use in Public Interest: When one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use and must submit to control by the public for the common good to the extent of the interest he has thus created. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

Foreign Corporation Piping Gas Into State: A foreign corporation that was licensed to do business in Montana and that conveyed natural gas by pipeline from a neighboring state into this state and furnished it to a domestic corporation whose entire capital stock it owned (with the exception of 5 of 2,500 shares), for distribution of gas to domestic corporation's customers, was a public utility within the meaning of this section. As such it was subject to the jurisdiction of the Public Service Commission of Montana and therefore required to furnish the Commission annual reports of its operations. Gallatin Natural Gas Co. v. P.S.C., 79 M 269, 256 P 373 (1927).

Irrigation Company: An irrigation company organized for the purpose of supplying water for the irrigation of agricultural lands is not a "public utility" within the meaning of this act and is therefore not subject to supervision and regulation by the Public Service Commission. State ex rel. Thatcher v. Boyle, 62 M 97, 204 P 378 (1921).

City Water Business: A city engaging in the water business is a public utility. P.S.C. v. Helena, 52 M 527, 159 P 54 (1916).

P.S.C. Jurisdiction Limited as Against City: It was the intention of the Legislature to go no further than to provide that, within the limited sphere of its jurisdiction, the Public Service Commission may make reasonable regulations that the city must heed, and to that extent only is the authority of the city superseded. It was not intended to take from the city the active management of its water plant, or the authority to appoint the proper officers and employees to operate it, or to interfere with such officers in the proper discharge of their duties. P.S.C. v. Helena, 52 M 527, 159 P 54 (1916).

Attorney General's Opinions

Authority for Creation of Public Benefit Nonprofit Corporation to Operate Electric and Natural Gas Utility Business: The Montana Nonprofit Corporation Act, Title 35, ch. 2, allows the creation of a public benefit nonprofit corporation and an interlocal agreement creating a corporation as the nonprofit corporation's sole member to operate an electric and natural gas utility. The authority created by interlocal agreement between self-governing municipalities may exercise only those powers that any of the municipalities might exercise. 51 A.G. Op. 5 (2005). See also 48 A.G. Op. 14 (2000).

69-3-102. Supervision and regulation of public utilities.

Administrative Rules

ARM 38.5.3730 Annual reports.
ARM 38.5.3732 Market data filing requirements.

Case Notes

Interconnection Costs Distinguished From Network Upgrade Costs — Commission Erred in Assigning All Network Upgrade Costs to Qualifying Facilities. CED Wheatland Wind, LLC v. Dept. of Public Service Regulation, 2022 MT 87, 408 Mont. 268, 509 P.3d 19.

Public Service Commission Not Vested With Judicial Powers — No Authority in Negligence Action: An electric service customer filed an action in District Court alleging property damage based on a power company's negligence and negligence per se in terminating the customer's electric service. The District Court dismissed the action, reasoning that the customer did not exhaust administrative remedies before the Public Service Commission (PSC). On appeal, the Supreme Court reversed the dismissal on the grounds that the PSC is not vested with judicial powers and does not have the authority to adjudicate a negligence action seeking damages. Schuster v. NW. Energy Co., 2013 MT 364, 373 Mont. 54, 314 P.3d 650.

Judicial Power of Public Service Commission: The Public Service Commission is a creature of statute. It has no inherent common-law powers. Its powers are to be ascertained by reference to the statute creating it, and any reasonable doubt as to the existence of the grant of a particular power will be resolved against the existence of the power. While statutes give the P.S.C. full power of supervision, regulation, and control of utilities, the Legislature has provided that its powers do not include judicial powers. Statutes do not confer upon the P.S.C. the power to restrain or enjoin the creation of a utility holding company during a P.S.C. investigation. Adequate remedies are provided in the court system. Mont. Power Co. v. P.S.C., 206 M 359, 671 P2d 604, 40 St. Rep. 1712 (1983).

Commission's Authority to Declare Telephone Service Inadequate: The Public Service Commission had authority under this section and 69-3-201 to issue an order, after a hearing, that telephone service provided by telephone company was not reasonably adequate. Intermountain Tel. & Power Co. v. Dept. of Public Service Regulation, 201 M 74, 651 P2d 1015, 39 St. Rep. 1962 (1982).

Trade Secrets — When to Be Disclosed and to Whom — Protectable Property: A telephone utility was required to disclose trade secrets to the Public Service Commission (P.S.C.) to aid in a decision on its rate increase request. The utility was entitled to a protective order preventing access to the secrets by the general public, but the Montana Consumer Counsel and any citizen whose interest related to the ratemaking function of the P.S.C. could have access to the information. Use or disclosure of the trade secrets except for purposes of the ratemaking proceeding was prohibited. Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181, 38 St. Rep. 1479 (1981). Mtn. States and its progeny were overruled to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities in Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Rate Increases by Public Service Commission — Private Contract Not Invalidated: A 1963 contract between the city of Billings and the County Water District of Billings Heights is valid and binding on the parties despite the increase in size of the service area of the County Water District and despite the city's contention that rate increases previously granted by the Public Service Commission (P.S.C.) had the effect of nullifying the contract. When the P.S.C. exercises its jurisdiction over rates charged by a utility, the rate provisions are superseded but the remainder of the contract provisions remain in effect. Billings v. P.S.C., 193 M 358, 631 P2d 1295, 38 St. Rep. 1162 (1981).

No Authority to Require Independent Audit: The enforcement authority of the Public Service Commission under 69-3-106, 69-3-109, 69-3-202, and 69-3-203 does not include the power to order a private utility to employ an independent accounting firm to audit utility's costs. In re Mont. Power Co., 180 M 385, 590 P2d 1140 (1979).

Jurisdiction Over Municipal Sewage Rates: The Public Service Commission (P.S.C.) has jurisdiction over municipal sewage rates and, accordingly, the issue of fairness of sewage rates is determined by the P.S.C. Gwynn v. Eureka, 178 M 191, 582 P2d 1262 (1978).

Statutory Expansion of Jurisdiction: When statutes are enacted by the Legislature that expand previously enacted statutes by broadening the jurisdiction of an administrative agency, the statutes are to be construed in relation to one another and, for construction purposes, should be considered as forming one consistent body of law. Gwynn v. Eureka, 178 M 191, 582 P2d 1262 (1978).

69-3-103. General powers and rulemaking authority of commission.

Administrative Rules

Title 38, chapter 2, subchapter 3, ARM Procedural rules — general provisions.
ARM 38.2.601 Definitions.
ARM 38.2.901 Parties.
Title 38, chapter 2, subchapter 12, ARM Pleadings.
ARM 38.2.1501 Motions.
Title 38, chapter 2, subchapter 18, ARM Notice.
Title 38, chapter 2, subchapter 21, ARM Filing of complaints.
Title 38, chapter 2, subchapter 24, ARM Interventions.
Title 38, chapter 2, subchapter 27, ARM Prehearing conferences.
Title 38, chapter 2, subchapter 30, ARM Voluntary settlement.
Title 38, chapter 2, subchapter 33, ARM Discovery procedures.
Title 38, chapter 2, subchapter 36, ARM Presiding officer.
Title 38, chapter 2, subchapter 39, ARM Hearings.
Title 38, chapter 2, subchapter 42, ARM Rules of evidence.
Title 38, chapter 2, subchapter 45, ARM Briefs and proposed findings and conclusions.
Title 38, chapter 2, subchapter 48, ARM Commission decisions and orders — exceptions, rehearings and reconsideration.
Title 38, chapter 5, subchapter 1, ARM Minimum rate case filing standards for electric, gas and private water utilities.
Title 38, chapter 5, subchapter 4, ARM Radio common carriers.
Title 38, chapter 5, subchapter 5, ARM Interim utility rate increases.
Title 38, chapter 5, subchapter 9, ARM Billing errors.
Title 38, chapter 5, subchapter 10, ARM Service requirements.
Title 38, chapter 5, subchapter 12, ARM Standby charges.
Title 38, chapter 5, subchapter 14, ARM Termination of gas and electric service.
Title 38, chapter 5, subchapter 15, ARM Rate information to be provided by electric utilities.
Title 38, chapter 5, subchapter 16, ARM Master meters in new buildings.
Title 38, chapter 5, subchapter 17, ARM Automatic adjustment clauses.
Title 38, chapter 5, subchapter 19, ARM Cogeneration and small power production.
Title 38, chapter 5, subchapter 20, ARM Least cost planning — electric utilities.
Title 38, chapter 5, subchapter 21, ARM Service standards — electric utilities.
Title 38, chapter 5, subchapter 22, ARM Pipeline safety.
Title 38, chapter 5, subchapter 24, ARM Utility charges for raising or cutting wires or moving poles to accommodate relocation of structures.
Title 38, chapter 5, subchapter 25, ARM Privately owned water utilities.
Title 38, chapter 5, subchapter 26, ARM Additional utility requirements.
Title 38, chapter 5, subchapter 27, ARM Montana Telecommunications Act.
Title 38, chapter 5, subchapter 29, ARM Guidelines for calculating amount of contribution in aid of construction to be collected from utility customer.

Title 38, chapter 5, subchapter 32, ARM Eligible telecommunications carriers and lifeline/linkup.

Title 38, chapter 5, subchapter 33, ARM Telecommunications service standards.

Title 38, chapter 5, subchapter 37, ARM Interexchange carrier regulatory requirements.

Title 38, chapter 5, subchapter 38, ARM Unauthorized change of provider.

Title 38, chapter 5, subchapter 39, ARM Unauthorized product or service charges on telephone bills.

Title 38, chapter 5, subchapter 40, ARM Interconnection.

Title 38, chapter 5, subchapter 41, ARM IntraLATA equal access implementation.

Title 38, chapter 5, subchapter 82, ARM Default electric supplier procurement guidelines.

Title 38, chapter 5, subchapter 86, ARM Energy utility service standards.

Title 38, chapter 6, subchapter 2, ARM Gas energy conservation plans.

Title 38, chapter 6, subchapter 3, ARM Accounting of gas and electric utilities for acceptable conservation expenditures.

Title 38, chapter 8, subchapter 1, ARM Information requirements for electric utilities.

Case Notes

Failure to Exhaust Administrative Remedies After Public Service Commission Issued Final Order — Appellant's Failure to Administratively Challenge Compliance With Procedural Statute Insufficient for Futility Exception — Dismissal by Court Based on Procedural Justiciability Rather Than Lack of Subject Matter Jurisdiction — Waiver or Equitable Estoppel Asserted on Appeal for First Time. North Star Dev., LLC v. Mont. Pub. Serv. Comm'n, 2022 MT 103, 408 Mont. 498, 510 P.3d 1232.

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Public Service Commission Not Vested With Judicial Powers — Standing Under Statute Alone: In considering whether taxpayers had standing to file a complaint against NorthWestern Energy, the Supreme Court noted that the Public Service Commission is an administrative agency and is not vested with judicial powers. Therefore, its standing requirements are governed by statute and not by traditional case-or-controversy requirements. Williamson v. Pub. Serv. Comm'n, 2012 MT 32, 364 Mont. 128, 272 P.3d 71.

Access to Public Service Records — Media Required to Exhaust Administrative Remedies Prior to Court Action — Review of Confidentiality Rules Ordered: Several media organizations sought access to power company documents filed with the Public Service Commission. The Commission denied the request on confidentiality grounds, but rather than challenging the confidentiality claims through the Commission's administrative procedures, the organizations filed an action in District Court. The court proceeded to make factual and legal determinations to determine whether the requested documents constituted constitutionally protected trade secrets or proprietary information without the benefit of the Commission developing a record or making threshold determinations on the complex issues. The Supreme Court held that it was improper to bypass the administrative agency and take the issue to District Court without exhausting the Commission's administrative procedures, so the District Court was reversed with orders to remand the case to the Commission for further consideration. However, the Supreme Court also required the Commission to review its administrative rules related to confidentiality challenges because the rules primarily addressed requests for information from competitor utilities and did not necessarily apply to media challenges. Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Public Service Commission Rules Creating Impermissible Presumption of Confidentiality in Trade Secrets: Several media organizations sought access to power company documents filed with the Public Service Commission. Applying its administrative rules, the Commission evaluated the power company's claims of confidentiality against basic trade secret law, found that the company had met the initial burden of establishing trade secrets, and concluded that because the media had presented no evidence or argument to the contrary, the company information was entitled to constitutional protection as a matter of law. The Supreme Court disagreed. To the extent that the Commission's rules relied on mere company representations that the information contained trade secrets, the Commission unconstitutionally shifted the initial burden of proof to the public to challenge the confidentiality claims, creating a presumption of confidentiality that directly conflicted with the public's right to view public records and the Commission's duty to make its records available to the public. The court held that a nonhuman entity seeking protective measures for alleged confidential materials filed with a governmental regulating agency must support its claim with a supporting affidavit making a prima facie showing that the materials constitute property rights that are protected by due process. Further, the showing must be more than conclusory and specific enough for the Commission, any objecting parties, and reviewing authorities to clearly understand the nature and basis of the confidentiality claim. The agency then must review the materials at the time of filing, in accordance with 30-14-402(4)(b) and supporting case law, and make an independent determination whether the materials are in fact property rights entitled to due process protection. To the extent that Commission rules required less, the court directed revision of Commission rules to comport with this holding. Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Finding of Perpetual Contractual Obligation Invalid: A contract between the city of Billings and an adjoining county water district does not, as the District Court found, bind the parties to a perpetual obligation until the consent of both parties to terminate the contract is obtained. The Supreme Court found that the life of the contract is indefinite, not perpetual, and may be terminated by the Public Service Commission if the Commission finds such action necessary and within its jurisdiction over rates and service. Billings v. P.S.C., 193 M 358, 631 P2d 1295, 38 St. Rep. 1162 (1981).

Interference by Public Service Commission With Contract Between a Public Utility and Its Customer: The Public Service Commission (P.S.C.) has authority to modify or supersede a contract between a public utility and its customer if the contract poses an immediate threat to the utility's ability to serve or if the contract adversely affects the utility's rate structure. Otherwise the P.S.C. does not have the authority to exercise the judicial functions of interpreting or enforcing such a contract. Billings v. P.S.C., 193 M 358, 631 P2d 1295, 38 St. Rep. 1162 (1981).

No Immediate Threat to Ability to Serve Found: City's claim that its ability to serve as a utility was immediately threatened was not supported by its argument and testimony that its customer's service area expansion would cause the city to face a severe water shortage. This is so given the fact that the city was engaged in an extensive building program to improve its water service capabilities. Moreover, the city failed to prove by substantial evidence the existence of an immediate threat to its service ability when it argued that a contract provision between the city and its customer imposed an unreasonable burden on the city to maintain at its own expense all water mains and pumping facilities sufficient to meet the demands of the customer. This failure of proof is due primarily to the fact that no figures of actual increase in customer usage were provided. Billings v. P.S.C., 193 M 358, 631 P2d 1295, 38 St. Rep. 1162 (1981).

Rate Increases by Public Service Commission — Private Contract Not Invalidated: A 1963 contract between the city of Billings and the County Water District of Billings Heights is valid and binding on the parties despite the increase in size of the service area of the County Water District and despite the city's contention that rate increases previously granted by the Public Service Commission (P.S.C.) had the effect of nullifying the contract. When the P.S.C. exercises its jurisdiction over rates charged by a utility, the rate provisions are superseded but the remainder of the contract provisions remain in effect. Billings v. P.S.C., 193 M 358, 631 P2d 1295, 38 St. Rep. 1162 (1981).

No Authority to Require Independent Audit: The enforcement authority of the Public Service Commission under 69-3-106, 69-3-109, 69-3-202, and 69-3-203 does not include the power to order a private utility to employ an independent accounting firm to audit utility's costs. In re Mont. Power Co., 180 M 385, 590 P2d 1140 (1979).

Statutory Expansion of Jurisdiction: When statutes are enacted by the Legislature that expand previously enacted statutes by broadening the jurisdiction of an administrative agency, the statutes are to be construed in relation to one another and, for construction purposes, and should be considered as forming one consistent body of law. Gwynn v. Eureka, 178 M 191, 582 P2d 1262 (1978).

Automatic Rate Increase Hearings: The Public Service Commission authorization of automatic adjustment of electric company rates for increases or decreases in price of fuel was a fair and equitable exercise of the supervisory and regulatory powers of the Commission. Mont. Consumer Counsel v. P.S.C., 168 M 180, 541 P2d 770 (1975).

Rate Increase Hearings: When an electric company applied for an increase in utility rates to offset the increase in price of fuel in 1974, the Public Service Commission was correct in refusing to expand its hearing into a full-scale examination of the general rate structure and rate of return because the Commission had held full-scale hearings in 1972. Mont. Consumer Counsel v. P.S.C., 168 M 180, 541 P2d 770 (1975).

"Minihearings" Limited to Specific Proper Considerations: The Public Service Commission is not required to hold a full-scale hearing and examination of all revenue and expense accounts of a company to determine whether proposed rates and charges are just and reasonable where company only seeks to "pass through" to its customers increases in cost of purchased gas and royalty expense, as the Commission is not required to exercise more of its powers than it determines appropriate. Mont. Consumer Counsel, Brazier v. P.S.C. & Mont. Power Co., 168 M 177, 541 P2d 769 (1975).

Informal Hearing: Fundamentals of a fair hearing, required by Art. III, sec. 27, 1889 Mont. Const. (now Art. II, sec. 17, Mont. Const.), were denied parties opposing rate increase when a hearing was held by the Public Service Commission without the presence of the opponents and when the testimony of that hearing was not spread on the record. Cascade County Consumers Ass'n v. P.S.C., 144 M 169, 394 P2d 856 (1964).

Posthearing Audit: When an audit had been requested in a utility rate increase case by opponents of the increase, both sides were given ample time to present evidence and cross-examine witnesses, opponents were permitted to go into utility books with expert witnesses, and the Public Service Commission hired independent rate experts, opponents were not denied a full and fair hearing because of a posthearing audit made by Commission employees. Cascade County Consumers Ass'n v. P.S.C., 144 M 169, 394 P2d 856 (1964).

Commission Not to Adjudicate Water Rights: The District Court issued a Writ of Prohibition restraining the Public Service Commission from entertaining a complaint of farmers that a hydroelectric company, by storing water for use in its operations incident to generating electricity for public use, was depriving them of water for irrigation purposes. The Supreme Court held, on application for Writ of Supervisory Control to annul the Writ, that the farmers were asking in effect for an adjudication of water rights, a judicial function belonging to the court, which under this section the Commission is precluded from exercising. State ex rel. P.S.C. v. District Court, 107 M 240, 84 P2d 335 (1938).

Legislature Not to Exercise Judicial Function Through Commission: Under Art. IV, sec. 1, 1889 Mont. Const. (now Art. III, sec. 1, Mont. Const.), prohibiting any one of the three departments of the state government from exercising any of the powers properly belonging to either of the others, the Legislature cannot, through the medium of the Public Service Commission, exercise judicial powers. State ex rel. P.S.C. v. District Court, 107 M 240, 84 P2d 335 (1938).

69-3-105. Access to commission records and reports — protective order.

Compiler's Comments

2005 Amendment: Chapter 144 in (1) after "public" substituted "during regular business hours, as defined in 2-16-117" for "at reasonable times, subject to the exception that when the commission considers it necessary, in the interest of the public, it may withhold from the public any facts or information in its possession for a period of not more than 90 days after the acquisition of the facts or information"; and in (2) after "30-14-402" inserted "or other information that must be protected under law, as". Amendment effective October 1, 2005.

1987 Amendment: At beginning of (1) inserted exception clause; and inserted (2) authorizing Commission to issue protective order when necessary to preserve trade secrets.

Administrative Rules

Title 38, chapter 2, subchapter 50, ARM Protective orders and protection of confidential information.

ARM 38.5.1001 Rates, charges and service requirements of public utilities.

Case Notes

No Constitutional Right to Privacy for Nonhuman Entities — Protection of Trade Secrets Under Other Constitutional and Statutory Schemes: Montana's constitutional individual privacy exception to the public's right to know is limited to natural human individuals only and does not apply to nonhuman entities such as corporations. However, nothing in Art. II, sec. 9, Mont.

Const., requires disclosure of trade secrets and other confidential proprietary information when that data is protected from disclosure elsewhere in the state or federal constitution or by statute. Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003), overruling Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181 (1981), and its progeny to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities.

Trade Secrets — When to Be Disclosed and to Whom — Protectable Property: A telephone utility was required to disclose trade secrets to the Public Service Commission (P.S.C.) to aid in a decision on its rate increase request. The utility was entitled to a protective order preventing access to the secrets by the general public, but the Montana Consumer Counsel and any citizen whose interest related to the ratemaking function of the P.S.C. could have access to the information. Use or disclosure of the trade secrets except for purposes of the ratemaking proceeding was prohibited. (See 1987 amendment.) Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181, 38 St. Rep. 1479 (1981). Mtn. States and its progeny were overruled to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities in Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

69-3-106. Supervision of management of public utilities.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

Title 38, chapter 6, subchapter 2, ARM Gas energy conservation plans.

Case Notes

Public Service Commission Authorized to Obtain Information From Utilities in Any Manner Necessary to Perform Agency Duties: The statutory duty of the Public Service Commission to investigate utilities may not be hindered by limiting the Commission's ability to obtain information in a specific manner. Qwest Corp. v. Dept. of Public Service Regulation, 2007 MT 350, 340 M 309, 174 P3d 496 (2007), following Mont. Human Rights Div. v. Billings, 199 M 434, 649 P2d 1283 (1982).

City's Managerial Authority Not Hampered by Reporting Requirements: The requirement that the city of Billings establish an account to show activity regarding funds granted for recurring annual capital improvements does not run contrary to the provisions of the city's bond ordinance or the provisions of the Municipal Revenue Bond Act of 1939. The maintenance of such an account is a legitimate means by which the Public Service Commission can stay abreast of activities over which it has supervisory and regulatory authority. Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

Trade Secrets — When to Be Disclosed and to Whom — Protectable Property: A telephone utility was required to disclose trade secrets to the Public Service Commission (P.S.C.) to aid in a decision on its rate increase request. The utility was entitled to a protective order preventing access to the secrets by the general public, but the Montana Consumer Counsel and any citizen whose interest related to the ratemaking function of the P.S.C. could have access to the information. Use or disclosure of the trade secrets except for purposes of the ratemaking proceeding was prohibited. Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181, 38 St. Rep. 1479 (1981). Mtn. States and its progeny were overruled to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities in Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

No Authority to Require Independent Audit: The enforcement authority of the Public Service Commission under 69-3-106, 69-3-109, 69-3-202, and 69-3-203 does not include the power to order a private utility to employ an independent accounting firm to audit the utility's costs. In re Mont. Power Co., 180 M 385, 590 P2d 1140 (1979).

69-3-107. Investigation and reports of accidents.

Compiler's Comments

1999 Amendment: Chapter 81 deleted second sentence of (2) that read: "For any other accident occurring in a public utility's operation and resulting in injury, a public utility shall submit a written report to the commission within the 20 days after the occurrence of the accident"; and made minor changes in style. Amendment effective March 16, 1999.

69-3-108. Standards for and examinations of products and services.

Compiler's Comments

1993 Amendment: Chapter 117 in (2) substituted "establish reasonable standards" for "prescribe reasonable regulations"; inserted (6) requiring establishment of standards and fees by administrative rule or ordered tariff provision; and made minor changes in style.

Administrative Rules

Title 38, chapter 5, subchapter 21, ARM Service standards — electric utilities.
ARM 38.6.201 Gas energy conservation plans.
ARM 38.6.202 Gas energy waste curtailment — order to show cause.

69-3-109. Ascertaining property values.

Compiler's Comments

1995 Amendment: Chapter 373 in third sentence, near middle after "property", inserted "except that the commission may include all or some of an acquisition adjustment for certain property purchased by a public utility in the purchasing utility's rate base if the transfer of the property to the purchasing utility is in the public interest"; and made minor changes in style. Amendment effective April 12, 1995.

Case Notes

Standing of Attorney General to Appeal P.S.C. Order — P.S.C. Appeal Untimely: The Montana Power Company (M.P.C.) applied to the Public Service Commission (P.S.C.) for a rate increase of over $96.3 million. The P.S.C. granted only $4.1 million and denied completely M.P.C.'s request to recover costs associated with Colstrip Unit 3. The M.P.C. appealed to District Court for review under 2-4-701. The judge reversed the P.S.C. order. The Attorney General filed notice of appeal. More than 60 days after the judge's order was entered, the P.S.C. also filed notice of appeal. The M.P.C. filed a motion to dismiss the appeal of the Attorney General for lack of standing and the appeal of the P.S.C. as untimely. The Supreme Court granted the motion, holding that the Attorney General had no standing to represent the state on appeal since it was not an aggrieved party or a party to the proceedings before the District Court. Further, in his official capacity, the Attorney General could not appeal a decision that was within the discretion of the P.S.C. as a party to the action. The appeal of the P.S.C. was untimely, although within 7 days of the notice of appeal filed by the Attorney General. Since the latter appeal was invalid, the P.S.C. appeal would have to fall within the 60-day rule. Mont. Power Co. v. Dept. of Public Service Regulation, 218 M 471, 709 P2d 995, 42 St. Rep. 1750 (1985).

Siting Act Not Implied Repeal of "Used and Useful" for Ratemaking: In 1973, Montana Power Company (M.P.C.) filed an application for a certificate of environmental compatibility and public need for Colstrip Units 3 and 4 under the Montana Major Facility Siting Act. In granting the certificate, the Board of Natural Resources and Conservation (now Department of Environmental Quality) found that there was a need for the energy which would be produced and that the units would serve the public interest, convenience, and necessity. After Unit 3 was completed, M.P.C. filed an application with the Public Service Commission (P.S.C.) to increase electric rates to reflect Unit 3 in its rate base. At the rate hearing, the P.S.C. took evidence regarding whether Unit 3 was "used and useful". M.P.C. moved to strike this testimony, contending the P.S.C. was precluded from considering this by the certificate of need issued under the Siting Act. M.P.C. filed an application for original jurisdiction and declaratory judgment or other appropriate relief with the Supreme Court. The P.S.C. later concluded Unit 3 was not used and useful and could not be included in the rate base. The Supreme Court found that while the Siting Act includes factors which can be associated with the used and useful concept of utility regulation, the primary purposes of the Siting Act are to ensure minimal environmental, natural resource, and social impacts. The need determination is related primarily to environmental protection rather than rate base treatment for the facility. Once the facility is constructed, the P.S.C. has jurisdiction to determine whether the facility is actually used and useful and whether the facility's output is required by the ratepayers. The Siting Act and the utility regulation statutes are reconcilable. The Siting Act did not impliedly repeal the P.S.C.'s authority to determine whether a facility is used and useful for ratemaking. Mont. Power Co. v. P.S.C., 214 M 82, 692 P2d 432, 41 St. Rep. 2332 (1984).

Siting Act Decision Not Estoppel for P.S.C. Ratemaking Decision: In 1973, Montana Power Co. (M.P.C.) filed an application for a certificate of environmental compatibility and public need for Colstrip Units 3 and 4 under the Montana Major Facility Siting Act. In granting the certificate, the Board of Natural Resources and Conservation (now Department of Environmental Quality) found that there was a need for the energy which would be produced and that the units would serve the public interest, convenience, and necessity. After Unit 3 was completed, M.P.C. filed an application with the Public Service Commission (P.S.C.) to increase electric rates to reflect Unit 3 in its rate base. At the rate hearing, the P.S.C. took evidence regarding whether Unit 3 was "used and useful". M.P.C. moved to strike this testimony, contending the P.S.C. was precluded from considering this by the certificate of need issued under the Siting Act. M.P.C. filed an application for original jurisdiction and declaratory judgment or other appropriate relief with the Supreme Court. The P.S.C. later concluded Unit 3 was not used and useful and could not be included in the rate base. M.P.C. argued that the P.S.C. was collaterally estopped from considering whether Unit 3 was "used and useful". The court held that the need issue determined in the siting process was not identical to the used and useful issue, therefore collateral estoppel was not applicable. The M.P.C. also argued that because of the certificate of need, the state was promissorily estopped from excluding Unit 3 from the rate base. M.P.C. contended that issuance of a certificate of need under the Siting Act established a contractual relationship between the state and M.P.C. The court held that issuance of a certificate by a governmental authority to engage in conduct that would be improper without a certificate does not create a contractual relationship between the state and the licensee. Neither the Siting Act nor the certificate of need contemplates a promise that a facility will be included in a utility's rate base. Promissory estoppel was also inapplicable. Mont. Power Co. v. P.S.C., 214 M 82, 692 P2d 432, 41 St. Rep. 2332 (1984).

No Authority to Require Independent Audit: The enforcement authority of the Public Service Commission under 69-3-106, 69-3-109, 69-3-202, and 69-3-203 does not include the power to order a private utility to employ an independent accounting firm to audit the utility's costs. In re Mont. Power Co., 180 M 385, 590 P2d 1140 (1979).

Rate Base Determination: Under this section the Public Service Commission is obligated to eliminate from the rate base all utility costs in excess of original cost. In its use of the term "revaluation", the Legislature clearly contemplated the possibility that later Public Service Commissions, under appropriate circumstances, might modify or alter the property valuations made by earlier Commissions. In re Mont. Power Co., 180 M 385, 590 P2d 1140 (1979).

Constitutionality of "Pass Through" Cost: Commission disallowance of "pass through" costs to extent confiscatory is a violation of the constitutional prohibition against taking property without due process of law. State ex rel. Mont. Power Co. v. Dept. of Public Service Regulation, 169 M 99, 548 P2d 136 (1975).

Leaseholds: The value of gas leases was properly included in the rate base for a power company seeking an increased natural gas rate when there was ample testimony about the leaseholds being used, and the evidence was useful to support the Public Service Commission. Cascade County Consumers Ass'n v. P.S.C., 144 M 169, 394 P2d 856 (1964).

Fair Value: Although the statute does not establish a formula for arriving at fair value, it does require such value to be found and used as a base in fixing rates. The reasonableness and justness of the rates must be related to this finding of fair value. State ex rel. Olsen v. P.S.C., 131 M 272, 309 P2d 1035 (1957).

Investigation by Commission: The provision of this section authorizing the Public Service Commission to make an investigation is permissive only, and it is not mandatory that the Commission make a separate investigation. State ex rel. Olsen v. P.S.C., 131 M 104, 308 P2d 633 (1957).

Method of Ascertaining Value — Reproduction Cost: The Public Service Commission did not err in fixing the value of the plant when they considered the reproduction cost new less depreciation, the original cost less depreciation, and the assessed value of taxable property. State ex rel. Olsen v. P.S.C., 131 M 104, 308 P2d 633 (1957).

Commission Not to Fix Rates So Low as to Take Property: The Public Service Commission, in regulating rates, should under this section ascertain the present fair value of the utility. Rates, as well as the return on the utility's investment for services rendered, must be reasonable. The Commission cannot under the law fix rates so low as to result in a taking of property without just compensation to the owner. No particular method is required but it must be done under proper legal procedure and restrictions. Tobacco River Power Co. v. P.S.C., 109 M 521, 98 P2d 886 (1940).

Value of Property at Time of Trial — Proper: In arriving at the value of the utility's property, the cost of reproduction less depreciation is usually regarded as one of the most important factors, if not the dominant factor. In an action to enjoin the Public Service Commission from enforcing an order reducing rates, the court properly admitted evidence of that character and determined the question of value as of the date of trial rather than upon that of the order made 2 years earlier because a number of changes had taken place in the interval. Tobacco River Power Co. v. P.S.C., 109 M 521, 98 P2d 886 (1940).

69-3-110. Enforcement of public utility law.

Case Notes

Public Service Commission Not Vested With Judicial Powers — No Authority in Negligence Action: An electric service customer filed an action in District Court alleging property damage based on a power company's negligence and negligence per se in terminating the customer's electric service. The District Court dismissed the action, reasoning that the customer did not exhaust administrative remedies before the Public Service Commission (PSC). On appeal, the Supreme Court reversed the dismissal on the grounds that the PSC is not vested with judicial powers and does not have the authority to adjudicate a negligence action seeking damages. Schuster v. NW. Energy Co., 2013 MT 364, 373 Mont. 54, 314 P.3d 650.

Standing of Attorney General to Appeal P.S.C. Order — P.S.C. Appeal Untimely: The Montana Power Company (M.P.C.) applied to the Public Service Commission (P.S.C.) for a rate increase of over $96.3 million. The P.S.C. granted only $4.1 million and denied completely M.P.C.'s request to recover costs associated with Colstrip Unit 3. The M.P.C. appealed to District Court for review under 2-4-701. The judge reversed the P.S.C. order. The Attorney General filed notice of appeal. More than 60 days after the judge's order was entered, the P.S.C. also filed notice of appeal. The M.P.C. filed a motion to dismiss the appeal of the Attorney General for lack of standing and the appeal of the P.S.C. as untimely. The Supreme Court granted the motion, holding that the Attorney General had no standing to represent the state on appeal since it was not an aggrieved party or a party to the proceedings before the District Court. Further, in his official capacity, the Attorney General could not appeal a decision that was within the discretion of the P.S.C. as a party to the action. The appeal of the P.S.C. was untimely, although within 7 days of the notice of appeal filed by the Attorney General. Since the latter appeal was invalid, the P.S.C. appeal would have to fall within the 60-day rule. Mont. Power Co. v. Dept. of Public Service Regulation, 218 M 471, 709 P2d 995, 42 St. Rep. 1750 (1985).

Public Service Commission — Power to Issue Summary Injunction-Type Order: The Public Service Commission issued an order prohibiting Montana Power from proceeding with a proposed corporate reorganization until the P.S.C. could investigate the reorganization. The order was issued without notice or hearing. Section 69-3-110 shows the clear legislative intent that the Commission use the court system to seek enforcement by injunction, as distinguished from issuing the injunction-type order on its own part. Summary issuance of an injunction-type order without notice or hearing should be limited to situations where the public risk to be avoided outweighs the limitations placed on the constitutional rights of the parties. In this case the Commission has advanced no justification for its disregard of the due process rights of Montana Power. Mont. Power Co. v. P.S.C., 206 M 359, 671 P2d 604, 40 St. Rep. 1712 (1983).

Operation and Effect: In view of the provisions of this section and 69-3-401 (now repealed), that the rates fixed by the Public Service Commission for a public utility shall remain in full force and effect pending final determination by the court of a proceeding calling them in question, and the provision of this section specifically authorizing mandamus proceedings to control obedience to the orders issued, the fact that a proceeding questioning the legality of the rates is pending in court does not bar the Commission from applying for a Writ of Mandate to compel obedience to its order pendente lite. State ex rel. P.S.C. v. Great N. Util. Co., 86 M 442, 284 P 772 (1930).

Power to Fix Minimum or Precise Rates: The Public Service Commission, under its power to regulate a public utility, is clothed with authority not only to fix maximum but also minimum or precise rates. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

Reasonable Service and Equipment: The Legislature in enacting the public service commission law intended not only to empower the Commission to regulate charges or fix rates, but also to see to it that reasonable service is rendered by the utility and that its equipment is reasonably adequate. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

Orders Prima Facie Lawful:

The orders of the Public Service Commission are by this section made prima facie lawful until changed or modified. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

Rates fixed by the Public Service Commission for a public utility furnishing hot-water heat in a city are prima facie lawful, can be attacked in court on the sole ground that they are unlawful or unreasonable, and must be deemed reasonable and just until final determination by the courts, the burden of proof resting upon the party attacking the order of the Commission. Billings Util. Co. v. P.S.C., 62 M 21, 203 P 366 (1921).

Power Over Rates Existing Prior to Enactment: The law creating the Public Service Commission confers upon the Commission the power, within the lawful exercise of its authority, to change the rates, tolls, and charges in public utility contracts, even though they existed prior to the passage of the law. Billings v. P.S.C., 67 M 29, 214 P 608 (1923).

Power of State:

A municipality and a party to whom it grants a franchise to construct and operate a public heating plant enter into the contract with the knowledge that while a municipality may contract respecting rates, the state may at any time thereafter in furtherance of the public welfare exercise its inherent power of rate regulation and control. Billings v. P.S.C., 67 M 29, 214 P 608 (1923), distinguished in Baker v. Mont. Petroleum Co., 99 M 465, 44 P2d 735 (1935).

The establishment of a rate is a legislative and not a judicial act, and the power of the courts is circumscribed and restrained so far as interference with determinations reached within the scope of legislative authority is concerned. Billings Util. Co. v. P.S.C., 62 M 21, 203 P 366 (1921).

69-3-111. Persons with interest in property leased or to be sold to public utility — exemption.

Compiler's Comments

2011 Amendment: Chapter 19 in (3) at end substituted "Energy Policy Act of 2005" for "Public Utility Holding Company Act of 1935"; and made minor changes in style. Amendment effective October 1, 2011.

Case Notes

Public Service Commission Authorized to Obtain Information From Utilities in Any Manner Necessary to Perform Agency Duties: The statutory duty of the Public Service Commission to investigate utilities may not be hindered by limiting the Commission's ability to obtain information in a specific manner. Qwest Corp. v. Dept. of Public Service Regulation, 2007 MT 350, 340 M 309, 174 P3d 496 (2007), following Mont. Human Rights Div. v. Billings, 199 M 434, 649 P2d 1283 (1982).

69-3-112. Evaluation of coal or other boiler fuel costs.

Compiler's Comments

Effective Date: Section 4, Ch. 166, L. 1995, provided that this section is effective on passage and approval. Approved March 17, 1995.

69-3-113. Power of eminent domain.

Compiler's Comments

Effective Date: Section 5, Ch. 321, L. 2011, provided: "[This act] is effective on passage and approval." Chapter 321, L. 2011, was enacted into law without the Governor's signature on May 9, 2011.

Part 2
Requirements for Public Utilities

69-3-201. Utilities to provide adequate service at reasonable charges.

Compiler's Comments

1985 Amendment: Near beginning of section, after "water", substituted "or regulated telecommunications" for "telegraph, or telephone".

Administrative Rules

Title 38, chapter 5, subchapter 33, ARM Telecommunications service standards.

Title 38, chapter 5, subchapter 40, ARM Interconnection.

Title 38, chapter 5, subchapter 86, ARM Energy utility service standards.

Case Notes

Public Service Investigation Not Subject to Judicial Review: The Public Service Commission (PSC) issued two orders directing plaintiff telecommunications company to submit information regarding plaintiff's rates as part of an investigation concerning whether revenue earned by plaintiff was in excess of plaintiff's authorized rate of return. For various reasons, plaintiff declined to provide the information and requested that the PSC reconsider its orders, but the PSC denied the request for reconsideration, so plaintiff petitioned for judicial review under 2-4-701. The same day, the PSC filed a complaint in District Court seeking to compel plaintiff's compliance and requesting fines and penalties against plaintiff for failure to comply with PSC orders. The court held that the PSC orders unlawfully imposed a rate case filing requirement on plaintiff that violated state law and the PSC's own administrative rules. The PSC appealed, and the Supreme Court considered whether the PSC investigation was subject to judicial review. Plaintiff's justification for seeking intermediate review under 2-4-701 was that if plaintiff did not challenge the lawfulness of the PSC orders, then plaintiff would eventually suffer harm. However, judicial review under 2-4-701 is not justified when the only allegation of harm is speculation that further agency action may take place and, if it takes place, that it may have legal consequences. Courts may intervene in an agency process only when a specific final agency action has an actual or immediately threatened effect. Here, there was no final PSC action, only an investigation, and when an agency has not adjudicated the issues raised on appeal, there is no final agency action upon which a District Court can assume jurisdiction. Thus, the PSC investigation was not subject to judicial review, and the District Court was reversed. Qwest Corp. v. Dept. of Public Service Regulation, 2007 MT 350, 340 M 309, 174 P3d 496 (2007), following Marble v. St., 2000 MT 240, 301 M 373, 9 P3d 617 (2000). See also Lujan v. Nat'l Wildlife Fed'n, 497 US 871 (1990).

When Agency Decision Ripe for Judicial Review: The Public Service Commission (PSC) issued two orders directing plaintiff telecommunications company to submit information regarding plaintiff's rates as part of an investigation concerning whether revenue earned by plaintiff was in excess of plaintiff's authorized rate of return. For various reasons, plaintiff declined to provide the information and requested that the PSC reconsider its orders, but the PSC denied the request for reconsideration, so plaintiff petitioned for judicial review under 2-4-701. The same day, the PSC filed a complaint in District Court seeking to compel plaintiff's compliance and requesting fines and penalties against plaintiff for failure to comply with PSC orders. The court determined that the issues were ripe for judicial review. The PSC appealed, and the Supreme Court considered whether the PSC's actions were in fact ripe for judicial review. To determine ripeness, the court applied the criteria in Ohio Forestry Ass'n v. Sierra Club, 523 US 726 (1998), noting that a reviewing court must consider whether: (1) delayed review would cause hardship to the plaintiffs; (2) judicial intervention would inappropriately interfere with further administrative action; and (3) the courts would benefit from further factual development of the issues presented. In this case, the court decided that the PSC decision was not ripe for judicial review. First, judicial review of a preliminary step that has no binding legal consequences is not available even when the initiation of proceedings is serious and may have severe consequences, and because there were no irremediable adverse consequences that flowed from the PSC investigation, delayed judicial review would not cause a hardship for plaintiff. Second, judicial intervention would have inappropriately interfered with further PSC administrative action and frustrated the PSC's ability to review the information and decide the best course of action. Third, because the PSC had only initiated an investigation, the District Court reviewed issues upon which the PSC had not yet taken action, and because there was no specific factual record, further factual development of the issues would have benefited the courts. The District Court was reversed. Qwest Corp. v. Dept. of Public Service Regulation, 2007 MT 350, 340 M 309, 174 P3d 496 (2007).

Erroneous Conclusion Regarding Accord and Agreement to Pay Contested Utility Bill — Judgment Improper: The Missoula Electric Cooperative, Inc. (Co-op), agreed to reconnect St. John's electric service if she entered a written agreement to pay a disputed balance in monthly installments. After the agreement was signed, the Co-op altered the document by adding the words "Accord and Satisfaction". The District Court found that although St. John had agreed to make payments solely to restore electric service to her house, she had nevertheless agreed to "settle" the dispute, and having only partially complied with the settlement agreement, the court entered judgment against St. John for the remaining amount. On appeal, the Supreme Court noted that St. John had a basis for disputing the Co-op billing and that agreeing to make payments to restore power to her residence did not amount to an agreement to settle the dispute. As the record and findings of fact indicated, there was no settlement agreement and the trial court's judgment in favor of the Co-op was in error. The case was remanded to address the merits of St. John's billing dispute and her claim for negligent infliction of emotional distress. St. John v. Missoula Elec. Co-op, Inc., 282 M 315, 938 P2d 586, 54 St. Rep. 361 (1997).

Failure to Provide Electricity to Farmer With Three Years of Unpaid Bills: Farmer's contract with electric company for irrigation pump electricity provided that no electricity would be provided if past due balances were unpaid. During a severe 1985 drought, company refused electricity because of unpaid balances totaling $3,737.50 for 1982 through 1984. Farmer's crops failed for lack of water, and farmer sued company for damages. Summary judgment for company on the claim was affirmed. Company had no duty to provide water in view of the unpaid balances. The contractual instrument between farmer and company was modified by a "member service policy" that provided that company may allow installment payment in special circumstances. The court held that the member service policy applied only to residential electricity contracts and that it was not unreasonable to refuse the electricity for the irrigation pumps, particularly because farmer, at times, had the money to pay his balances but chose not to and instead gambled that he would not need to irrigate in 1985. Farmer's allegation that he had $1,914.90 in capital credits was not considered because there was no evidence that farmer offered the credits as part payment or that farmer and company discussed the credits. Ballenger v. N. Lights, Inc., 249 M 327, 815 P2d 1156, 48 St. Rep. 767 (1991).

Commission's Authority to Declare Telephone Service Inadequate: The Public Service Commission had authority under this section and 69-3-102 to issue an order, after a hearing, that telephone service provided by telephone company was not reasonably adequate. Intermountain Tel. & Power Co. v. Dept. of Public Service Regulation, 201 M 74, 651 P2d 1015, 39 St. Rep. 1962 (1982).

Insufficient Evidentiary Basis for Determining Reasonableness of Utility Expense: On an appeal from an order of the Public Service Commission (P.S.C.), the Supreme Court held that the P.S.C. improperly applied a rate of return method, as opposed to a free marketplace comparison, in ascertaining the reasonableness of a utility's expense in purchasing coal from a wholly owned subsidiary. The Supreme Court stated the P.S.C. must have sufficient evidence before it to determine if a particular rate of return is fair and just for the subsidiary as compared to other coal companies and, further, if the rate of return of the utility may also be applied to the subsidiary coal company. While the P.S.C. does have the right to choose the method followed, the Supreme Court did not find a factual reason for the summary rejection of the marketplace cost of coal approach. Montana-Dakota Util. Co. v. Bollinger, 193 M 508, 632 P2d 1086, 38 St. Rep. 1221 (1981).

Jurisdiction of Public Service Commission Over Water Service Area of a Utility: The Public Service Commission (P.S.C.) has no authority to determine water service area boundaries of an incorporated city, nor may the P.S.C. assume jurisdiction over the expansion of an adjoining county water district. Under 7-13-2341 control over the size of the county water district is expressly vested in the board of directors and the electors. The statute does not mention a requirement of P.S.C. approval before land may be added to a county water district. As an administrative agency, the P.S.C. may not assume jurisdiction over the expansion of the district boundaries without express delegation of authority by the Legislature. It should be noted, however, that the P.S.C. has authority under 69-3-201 to determine on a case-by-case basis whether adequate service is provided at reasonable rates to customers who are within the service area. Billings v. P.S.C., 193 M 358, 631 P2d 1295, 38 St. Rep. 1162 (1981).

Definition of "Public Utility" — Denial of Service: Voluntary nonprofit corporation organized for purpose of supplying water to members, when service is rendered only to members who share operation costs, was not a "public utility", and services can be denied a member who breaches conditions of agreement to provide water. Lockwood Water Users Ass'n v. Anderson, 168 M 303, 542 P2d 121 (1975).

Exempt Association Not Required to Furnish Service: A voluntary nonprofit corporation organized for the purpose of supplying water to its members is not a public utility and can enjoin a trailer court member from placing additional trailers in the court in violation of an agreement. The agreement specified that no more than 60 mobile home sites were to be serviced, as the association confined its services to members of its own group and does not serve or hold itself out as willing to serve the public and therefore is not considered a public utility. Because the association is not a public utility, it is not subject to the jurisdiction or regulation of the Public Service Commission, and its contracts with its members are enforceable. Lockwood Water Users Ass'n v. Anderson, 168 M 303, 542 P2d 121 (1975).

Denial of Service: A public utility is not permitted under this section to deny service on grounds that its facilities are in poor condition. Polson v. P.S.C., 155 M 464, 473 P2d 508 (1970).

Charge for Tapping Water Mains: A flat-rate charge by the city for the "service" of tapping water mains located entirely within the public right-of-way, based on an average cost experience over a period of years yielding no overall profit to the city, is reasonable and valid under this section. Leischner v. Knight, 135 M 109, 337 P2d 359 (1959).

69-3-202. Records of public utilities.

Administrative Rules

Title 38, chapter 6, subchapter 2, ARM Gas energy conservation plans.

Case Notes

City's Managerial Authority Not Hampered by Reporting Requirements: The requirement that the city of Billings establish an account to show activity regarding funds granted for recurring annual capital improvements does not run contrary to the provisions of the city's bond ordinance or the provisions of the Municipal Revenue Bond Act of 1939. The maintenance of such an account is a legitimate means by which the Public Service Commission can stay abreast of activities over which it has supervisory and regulatory authority. Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

No Authority to Require Independent Audit: The enforcement authority of the Public Service Commission under 69-3-106, 69-3-109, 69-3-202, and 69-3-203 does not include the power to order a private utility to employ an independent accounting firm to audit the utility's costs. In re Mont. Power Co., 180 M 385, 590 P2d 1140 (1979).

69-3-203. Annual report to commission.

Compiler's Comments

1995 Amendment: Chapter 82 in (1) substituted "not later than October 31" for "not later than the first following September 15" and substituted "not later than April 30 if the accounts are closed" for "not later than March 15 of the first following year when such accounts are closed"; and made minor changes in style. Amendment effective March 6, 1995.

Administrative Rules

ARM 38.6.201 Gas energy conservation plans.

ARM 38.6.202 Gas energy waste curtailment — order to show cause.

Case Notes

Public Service Commission Authorized to Obtain Information From Utilities in Any Manner Necessary to Perform Agency Duties: The statutory duty of the Public Service Commission to investigate utilities may not be hindered by limiting the Commission's ability to obtain information in a specific manner. Qwest Corp. v. Dept. of Public Service Regulation, 2007 MT 350, 340 M 309, 174 P3d 496 (2007), following Mont. Human Rights Div. v. Billings, 199 M 434, 649 P2d 1283 (1982).

Public Service Investigation Not Subject to Judicial Review: The Public Service Commission (PSC) issued two orders directing plaintiff telecommunications company to submit information regarding plaintiff's rates as part of an investigation concerning whether revenue earned by plaintiff was in excess of plaintiff's authorized rate of return. For various reasons, plaintiff declined to provide the information and requested that the PSC reconsider its orders, but the PSC denied the request for reconsideration, so plaintiff petitioned for judicial review under 2-4-701. The same day, the PSC filed a complaint in District Court seeking to compel plaintiff's compliance and requesting fines and penalties against plaintiff for failure to comply with PSC orders. The court held that the PSC orders unlawfully imposed a rate case filing requirement on plaintiff that violated state law and the PSC's own administrative rules. The PSC appealed, and the Supreme Court considered whether the PSC investigation was subject to judicial review. Plaintiff's justification for seeking intermediate review under 2-4-701 was that if plaintiff did not challenge the lawfulness of the PSC orders, then plaintiff would eventually suffer harm. However, judicial review under 2-4-701 is not justified when the only allegation of harm is speculation that further agency action may take place and, if it takes place, that it may have legal consequences. Courts may intervene in an agency process only when a specific final agency action has an actual or immediately threatened effect. Here, there was no final PSC action, only an investigation, and when an agency has not adjudicated the issues raised on appeal, there is no final agency action upon which a District Court can assume jurisdiction. Thus, the PSC investigation was not subject to judicial review, and the District Court was reversed. Qwest Corp. v. Dept. of Public Service Regulation, 2007 MT 350, 340 M 309, 174 P3d 496 (2007), following Marble v. St., 2000 MT 240, 301 M 373, 9 P3d 617 (2000). See also Lujan v. Nat'l Wildlife Fed'n, 497 US 871 (1990).

When Agency Decision Ripe for Judicial Review: The Public Service Commission (PSC) issued two orders directing plaintiff telecommunications company to submit information regarding plaintiff's rates as part of an investigation concerning whether revenue earned by plaintiff was in excess of plaintiff's authorized rate of return. For various reasons, plaintiff declined to provide the information and requested that the PSC reconsider its orders, but the PSC denied the request for reconsideration, so plaintiff petitioned for judicial review under 2-4-701. The same day, the PSC filed a complaint in District Court seeking to compel plaintiff's compliance and requesting fines and penalties against plaintiff for failure to comply with PSC orders. The court determined that the issues were ripe for judicial review. The PSC appealed, and the Supreme Court considered whether the PSC's actions were in fact ripe for judicial review. To determine ripeness, the court applied the criteria in Ohio Forestry Ass'n v. Sierra Club, 523 US 726 (1998), noting that a reviewing court must consider whether: (1) delayed review would cause hardship to the plaintiffs; (2) judicial intervention would inappropriately interfere with further administrative action; and (3) the courts would benefit from further factual development of the issues presented. In this case, the court decided that the PSC decision was not ripe for judicial review. First, judicial review of a preliminary step that has no binding legal consequences is not available even when the initiation of proceedings is serious and may have severe consequences, and because there were no irremediable adverse consequences that flowed from the PSC investigation, delayed judicial review would not cause a hardship for plaintiff. Second, judicial intervention would have inappropriately interfered with further PSC administrative action and frustrated the PSC's ability to review the information and decide the best course of action. Third, because the PSC had only initiated an investigation, the District Court reviewed issues upon which the PSC had not yet taken action, and because there was no specific factual record, further factual development of the issues would have benefited the courts. The District Court was reversed. Qwest Corp. v. Dept. of Public Service Regulation, 2007 MT 350, 340 M 309, 174 P3d 496 (2007).

No Authority to Require Independent Audit: The enforcement authority of the Public Service Commission under 69-3-106, 69-3-109, 69-3-202, and 69-3-203 does not include the power to order a private utility to employ an independent accounting firm to audit the utility's costs. In re Mont. Power Co., 180 M 385, 590 P2d 1140 (1979).

69-3-204. Fees to be charged by commission.

Compiler's Comments

1983 Amendment: In (1), after "commission" changed "shall" to "may", after "supplements" deleted "of these and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in its office, unless" and inserted "not", and after "charge" deleted "under the following schedule:

(a) filing annual reports each..............$5.00;
(b) filing rate schedules, each............$2.00;
(c) classification for public utilities, each...........$1.50;
(d) for blank forms of annual reports for utilities..........cost".

Administrative Rules

Title 38, chapter 5, subchapter 26, ARM Additional utility requirements.

69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 421, L. 2023. Amendment effective July 1, 2023.

2005 Amendment: Chapter 124 in (1) at end of first sentence increased maximum fine from $25,000 to $100,000 and near end of second sentence increased maximum fine from $500,000 to $1 million. Amendment effective October 1, 2005.

1993 Amendment: Chapter 189 in (1), at end of first sentence, increased maximum fine from $1,000 to $25,000 and in second sentence increased maximum fine from $200,000 to $500,000; and made minor changes in style. Amendment effective March 25, 1993.

1985 Amendment: In (1) at beginning, substituted "Any person" for "Every firm, person, corporation, or association", near middle of first sentence, after "regulation", deleted "of the commission" and inserted "or provision adopted under the Natural Gas Pipeline Safety Act of 1968, as amended, which applies to areas the commission has authority to enforce", and inserted last sentence setting maximum fine; inserted (2) listing factors to be considered in determining amount of penalty for violation of natural gas pipeline safety regulations; in (3) deleted second sentence that read: "Each day in which a violation of a safety regulation persists shall be deemed a separate offense and be subject to the penalty herein prescribed"; and inserted (4) authorizing Commission to prescribe rules to administer penalties for violation of natural gas pipeline safety regulations.

Statement of Intent: The statement of intent attached to Ch. 170, L. 1985, provided: "A statement of intent is required for this bill because it grants the public service commission the authority to promulgate rules to administer 69-3-207. The public service commission is annually certified by the U.S. department of transportation to enforce the Natural Gas Pipeline Safety Act in Montana. The commission must adopt the department of transportation rules concerning the act and has done so through incorporation by reference.

The legislature intends to provide clear statutory authority for the public service commission to assess fines against any person for violations of the Natural Gas Pipeline Safety Act."

Administrative Rules

Title 38, chapter 5, subchapter 22, ARM Pipeline safety.

69-3-208. Effect of failure by utility to cooperate with commission.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-3-209. Violations of public utility laws or orders.

Case Notes

Public Service Commission Not Vested With Judicial Powers — No Authority in Negligence Action: An electric service customer filed an action in District Court alleging property damage based on a power company's negligence and negligence per se in terminating the customer's electric service. The District Court dismissed the action, reasoning that the customer did not exhaust administrative remedies before the Public Service Commission (PSC). On appeal, the Supreme Court reversed the dismissal on the grounds that the PSC is not vested with judicial powers and does not have the authority to adjudicate a negligence action seeking damages. Schuster v. NW. Energy Co., 2013 MT 364, 373 Mont. 54, 314 P.3d 650.

69-3-221. Public utility errors in billing customers.

Compiler's Comments

Statement of Intent: The statement of intent attached to Ch. 587, L. 1985, provided: "A statement of intent is required for this bill because it grants the public service commission the authority to promulgate rules to implement this section, if necessary. The utility service billing errors described in subsections (2)(a) and (2)(b) may take many forms, as each type of utility service provided is billed in a manner peculiar to the particular service, e.g., telephone versus electrical billing. Given this utility billing diversity, the legislature finds it necessary to allow the public service commission rulemaking authority to allow the commission to address unanticipated billing error problems."

69-3-222. Utility disclosure required — definition.

Compiler's Comments

Severability: Section 4, Ch. 391, L. 2013, was a severability clause.

Saving Clause: Section 5, Ch. 391, L. 2013, was a saving clause.

Effective Date: Section 6, Ch. 391, L. 2013, provided: "[This act] is effective on passage and approval." Chapter 391, L. 2013, was enacted into law without the governor's signature on May 5, 2013.

Applicability: Section 7, Ch. 391, L. 2013, provided: "[This act] applies to damage to property that occurs on or after [the effective date of this act]." Effective May 5, 2013.

69-3-223. Utility — liability.

Compiler's Comments

Severability: Section 4, Ch. 391, L. 2013, was a severability clause.

Saving Clause: Section 5, Ch. 391, L. 2013, was a saving clause.

Effective Date: Section 6, Ch. 391, L. 2013, provided: "[This act] is effective on passage and approval." Chapter 391, L. 2013, was enacted into law without the governor's signature on May 5, 2013.

Applicability: Section 7, Ch. 391, L. 2013, provided: "[This act] applies to damage to property that occurs on or after [the effective date of this act]." Effective May 5, 2013.

69-3-225. Overbilling of regulated telecommunications tariff charges — statute of limitations for recovery.

Compiler's Comments

Applicability: Section 4, Ch. 490, L. 2021, provided: "[This act] applies to bills presented to a customer after [the effective date of this act]." Effective October 1, 2021.

Effective Date: This section is effective October 1, 2021.

Saving Clause: Section 3, Ch. 490, L. 2021, was a saving clause.

Part 3
Ratemaking Procedures

Part Administrative Rules

Title 38, chapter 5, subchapter 4, ARM Radio common carriers.

Part Case Notes

Allocation of Cost of Service Benefits to Resident Taxpayers: In allocating cost of service benefits between the city of Billings and an adjoining water district, the Public Service Commission's (P.S.C.) order, which requires the city and district to effect the passing on of the cost of service benefit to city residents receiving water from the district, is valid. While the city contends that the determinative factor in deciding who receives the cost of service benefit is not whether the party is a city taxpayer but whether the party is a city water customer, the Supreme Court disagrees. It does not matter that the municipal utility is paid for completely by generated revenue and not through tax dollars; all city residents who are taxpayers are entitled to a cost of service benefit. Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

Extra Capacity Factor in Allocating Cost of Service: The Public Service Commission's (P.S.C.) decision to reject the city's proposed extra capacity factor, which was based upon a contract provision between the city and an adjoining water district in allocating cost of services to the water district, was upheld by the Supreme Court. The P.S.C. had substantial evidence before it in determining the extra capacity factor to be assigned to the district, and the decision, which was based on actual water use and comparisons from large water consumers similar in extent of demand to the water district, was not clearly erroneous. Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

Normalization of Test-Year Data in Rate Determination: The Public Service Commission (P.S.C.) has no statutory duty to normalize test-year data; it is within the P.S.C.'s discretion to determine when normalization is necessary, and the Supreme Court will not substitute its judgment for that of the P.S.C. on appeal. The P.S.C. had sufficient evidence upon which to reach a determination. The P.S.C. did not act unreasonably, nor did it establish a rate that was so low as to be confiscatory. Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

Past Loss Rule Applied to Public Utilities: The Public Service Commission (P.S.C.) is not required to consider the past losses suffered by a municipally owned utility as part of the rate base for establishing a new rate. This is so despite respondent's contention that as a municipal utility it has no profit margin to fall back on and therefore its losses should be amortized by a future rate increase. The "no loss rule" is not restricted to private investment utilities. Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

Public Service Commission Not Subject to City Bond Ordinance Mandate: There is no directive either statutory or judicial that requires the Public Service Commission (P.S.C.), to strictly comply with city bond ordinance mandates. Such ordinances are not binding upon the P.S.C., and the P.S.C. in no way acts as an insurer for municipal bond issuances. Therefore, the P.S.C. properly acted within its realm of discretion in determining the city's necessary bond debt service requirements and in setting rates accordingly. Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

Public Service Commission Jurisdiction Over Municipally Owned Utility: The ratesetting authority of a municipality under the Municipal Revenue Bond Act of 1939 does not preclude Public Service Commission (P.S.C.) jurisdiction over municipally owned utilities. Municipalities do establish rates for their services as required by 7-7-4404 and 7-7-4424 when municipalities comply with the P.S.C. reporting requirements set forth in 69-3-301 and 69-3-302. The regulatory authority of the P.S.C. does not diminish a municipality's ability to establish an initial rate schedule, and nothing in the Municipal Revenue Bond Act precludes a review of such rate determinations. The Legislature intended such a review process by the very creation of such a regulatory and supervisory body. Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

Rate Determination Based on Average Year Rate Base and Test-Year Calculation: Use by the Public Service Commission (P.S.C.) of test-year calculation and average year rate base in reviewing and determining utilities rates is a correct and proper method of valuation. Thus, the contention by the city of Billings that the P.S.C. erred in its rate determination by refusing to accept projections of future operating and maintenance expenses cannot stand. It was acceptable that the P.S.C. used known financial data supplied by the city of Billings and then either added or subtracted known normalized changes and adjustments in arriving at a test-year calculation. Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

Equity Investment of Parent Corporation Properly Considered — "Double Leverage" Adjustment Upheld: When the plaintiff petitioned for an annual rate increase of $11.83 million but was granted an increase of only $3,097,000 by the defendants, based upon the defendants' application of a "double leverage" adjustment used to determine the plaintiff subsidiary's cost of capital, the District Court did not err in affirming the rate increase granted by the defendants, as the defendants' order was based upon substantial evidence and was not inconsistent with itself. The District Court found that the double leverage adjustment simply established the true cost of that portion of the plaintiff subsidiary's equity attributable to financing by its parent corporation. The holding was properly applied to all of the retained earnings of the parent corporation in the plaintiff for, given the pattern of ownership of the plaintiff by the parent corporation, those earnings are part of the equity investment by the parent corporation. Mtn. States Tel. & Tel. Co. v. Dept. of Public Service Regulation, 191 M 331, 624 P2d 481, 38 St. Rep. 165 (1981).

69-3-301. Schedule of rates, tolls, and charges.

Administrative Rules

ARM 38.5.1001 Rates, charges and service requirements of public utilities.
Title 38, chapter 5, subchapter 12, ARM Standby charges.
ARM 38.5.2526 Definitions.
ARM 38.5.2527 Simplified regulatory treatment options.
ARM 38.5.2528 Standard rate tariff.
ARM 38.5.2529 Operating ratio methodology.
ARM 38.5.2530 Purchased water cost pass-through option.
ARM 38.5.2531 Reserve account.
ARM 38.5.2532 Ratebase treatment of subdivision-related water or sewer utility assets — presumption of recovery.
ARM 38.5.2601 Rate tariff filing.

Case Notes

Trade Secrets — When to Be Disclosed and to Whom — Protectable Property: A telephone utility was required to disclose trade secrets to the Public Service Commission (P.S.C.) to aid in a decision on its rate increase request. The utility was entitled to a protective order preventing access to the secrets by the general public, but the Montana Consumer Counsel and any citizen whose interest related to the ratemaking function of the P.S.C. could have access to the information. Use or disclosure of the trade secrets except for purposes of the ratemaking proceeding was prohibited. Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181, 38 St. Rep. 1479 (1981). Mtn. States and its progeny were overruled to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities in Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Temporary Rate Increase — Determination of Amount: When the Public Service Commission allowed a temporary gas rate increase equivalent to 6/11ths of the amount requested, based on the Commission's calculations that such an amount would be adequate to meet increased costs if the petitioner breached certain "take or pay" contracts, it acted in excess of its authority because the effect of the order was to force the petitioner to break its contracts, incur legal liability on that account, diminish its earnings, and deprive consumers of supply. State ex rel. Mont. Power Co. v. Dept. of Public Service Regulation, P.S.C., 169 M 99, 548 P2d 136 (1975).

Automatic Rate Increase: The Public Service Commission authorization of automatic adjustment of electric company rates for increases or decreases in price of fuel was a fair and equitable exercise of supervisory and regulatory powers of Commission. Mont. Consumer Counsel v. P.S.C., 168 M 180, 541 P2d 770 (1975).

Scope of Rate Increase Hearings Not to Be Expanded: When an electric company applied for increase in utility rates to offset increase in price of fuel in 1974, the Public Service Commission was correct in refusing to expand the hearing into a full-scale examination of general rate structure and rate of return because the Commission had held full-scale hearings in 1972. Mont. Consumer Counsel v. P.S.C., 168 M 180, 541 P2d 770 (1975).

Judicial Review of Minimum Rates:

Order fixing utility's minimum rate so high as to repel patronage and destroy utility's investment may be judicially annulled. Great N. Util. Co. v. P.S.C., 52 F2d 802 (9th Cir. 1931).

Public Service Commission order fixing minimum gas rates was held unreasonable when utility sought to lower rates for purpose of self-preservation on account of joint occupancy with rival utility of a field which could support only one. Great N. Util. Co. v. P.S.C., 52 F2d 802 (9th Cir. 1931).

Commission Empowered to Fix Not Only Maximum but Also Minimum or Precise Rates: The Public Service Commission, under its power to regulate a public utility, is clothed with authority not only to fix maximum but also minimum or precise rates. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930). See also Great N. Util. Co. v. P.S.C., 52 F2d 802 (9th Cir. 1931).

Public Utility Not to Change Schedule of Rates Without Concurrence of Commission: Under the rule that when one must secure leave from someone to entitle him to exercise a right, the irresistible implication is that a discretion is lodged in the other to refuse to grant it if in his judgment it is improper or unwise to give the required consent. The contention of a company engaged in furnishing gas to the inhabitants of a city, that after the filing of the initial schedule of rates with the Public Service Commission the company may change the schedule by the mere filing of a new one and giving the notice required and that the new schedule becomes effective without the act of concurrence on the part of the Commission, may not be sustained. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

69-3-302. Changes in schedules.

Compiler's Comments

2003 Amendment: Chapter 570 in (1) at beginning of first sentence inserted exception clause; in (2) near beginning of first sentence after "contrary" substituted "other than rate adjustments made pursuant to 69-3-308" for "and notwithstanding the existence of and authorization for the office of consumer counsel"; and made minor changes in style. Amendment effective May 5, 2003.

1987 Amendment: In (1), near middle, inserted "or by operation of 69-3-907(1)" and made minor change in phraseology.

1983 Amendment: In (1), inserted second sentence authorizing utility to waive time period if 9 months expires before Commission approves schedule; in (2), at end of first sentence inserted ", unless the utility waives the 9-month time period", in second sentence after "plus interest at" changed "the rate of 10% per year" to "a per-annum rate determined by the commission", and inserted last sentence prohibiting Commission from setting interest rate of investor-owned utility in excess of the cost of last equity capital; and inserted (3) authorizing Commission to prescribe rules necessary to administer rate schedule changes.

Statement of Intent: The statement of intent attached to SB 305 (Ch. 367, L. 1983) read: "A statement of intent is required for this bill because it gives the Public Service Commission rulemaking authority. Section 1 [amending 69-3-302] provides for elimination of the statutorily prescribed 10% annual interest rate, and grants the Commission discretion to determine an annual interest rate to be assessed on a utility's revenues that are subject to rebate. In adopting rules relating to the determination of the interest rate, the Commission might, for example, consider such factors as the size of the utility involved, the number of consumers served by the utility, the utility's cost of capital, the amount of the revenues subject to rebate and the length of the time period in which revenues were overcollected. Rules drawn should reflect the manner in which the Commission would consider the factors to arrive at an appropriate rate of interest under the circumstances.

The rules may also address a procedure for waiving the nine month automatic schedule effective date, and a procedure for rebating amounts to consumers where necessary."

Administrative Rules

ARM 38.5.2601 Rate tariff filing.

Case Notes

Judicial Review — Treatment of Gain and Cost of Equity Capital: After receiving a $7,917,936 rate increase from the Public Service Commission (P.S.C.), Montana-Dakota Utilities Company (M.D.U.) requested reconsideration of the P.S.C.'s assignment of a 13.35% rate on return of capital and its order that the gain on reacquired debt be amortized over the remaining life of the indebtedness, the amortized amount to reduce interest expense to M.D.U. The P.S.C. denied reconsideration. On appeal, the District Court held that the P.S.C. correctly authorized the 13.35% rate return on equity capital but that its treatment of gain constituted a confiscation without due process. After appeal by both the P.S.C. and M.D.U., the Supreme Court held that the P.S.C.'s assignment of a 13.35% rate on return of equity capital was not arbitrary or capricious. However, the Supreme Court reversed the District Court, ruling that the P.S.C.'s order to amortize the gain on reacquired debt over the remaining life of the indebtedness was not confiscatory to either M.D.U. or its shareholders. Mont.-Dak. Util. Co. v. Dept. of Public Service Regulation, 223 M 191, 725 P2d 548, 43 St. Rep. 1648 (1986).

Trade Secrets — When to Be Disclosed and to Whom — Protectable Property: A telephone utility was required to disclose trade secrets to the Public Service Commission (P.S.C.) to aid in a decision on its rate increase request. The utility was entitled to a protective order preventing access to the secrets by the general public, but the Montana Consumer Counsel and any citizen whose interest related to the ratemaking function of the P.S.C. could have access to the information. Use or disclosure of the trade secrets except for purposes of the ratemaking proceeding was prohibited. Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181, 38 St. Rep. 1479 (1981). Mtn. States and its progeny were overruled to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities in Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Temporary Rate Increase — Determination of Amount: When the Public Service Commission allowed a temporary gas rate increase equivalent to 6/11ths of the amount requested, based on the Commission's calculations that such an amount would be adequate to meet increased costs if the petitioner breached certain "take or pay" contracts, it acted in excess of its authority because the effect of the order was to force the petitioner to break its contracts, incur legal liability on that account, diminish its earnings, and deprive consumers of supply. State ex rel. Mont. Power Co. v. Dept. of Public Service Regulation, P.S.C., 169 M 99, 548 P2d 136 (1975).

Automatic Rate Increase Hearings: The Public Service Commission authorization of automatic adjustment of electric company rates for increases or decreases in price of fuel was a fair and equitable exercise of the supervisory and regulatory powers of Commission. Mont. Consumer Counsel v. P.S.C., 168 M 180, 541 P2d 770 (1975).

Rate Increase Hearings: When an electric company applied for an increase in utility rates to offset an increase in the price of fuel in 1974, the Public Service Commission was correct in refusing to expand the hearing into a full-scale examination of the general rate structure and rate of return because the Commission had held full-scale hearings in 1972. Mont. Consumer Counsel v. P.S.C., 168 M 180, 541 P2d 770 (1975).

Judicial Review of Minimum Rates:

An order fixing a utility's minimum rate so high as to repel patronage and destroy utility's investment may be judicially annulled. Great N. Util. Co. v. P.S.C., 52 F2d 802 (9th Cir. 1931).

Public Service Commission order fixing minimum gas rates was held unreasonable when a utility sought to lower rates for purpose of self-preservation because of joint occupancy with a rival utility of a field that could support only one. Great N. Util. Co. v. P.S.C., 52 F2d 802 (9th Cir. 1931).

Commission Empowered to Fix Not Only Maximum but Also Minimum or Precise Rates: The Public Service Commission, under its power to regulate a public utility, is clothed with authority not only to fix maximum but also minimum or precise rates. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930). See also Great N. Util. Co. v. P.S.C., 52 F2d 802 (9th Cir. 1931).

Public Utility Not to Change Schedule of Rates Without Concurrence of Commission: Under the rule that when one must secure leave from someone to entitle him to exercise a right, the irresistible implication is that a discretion is lodged in the other to refuse to grant it if in his judgment it is improper or unwise to give the required consent. The contention of a company engaged in furnishing gas to the inhabitants of a city, that after the filing of the initial schedule of rates with the Public Service Commission the company may change the schedule by the mere filing of a new one and giving the notice required and that the new schedule becomes effective without the act of concurrence on the part of the Commission, may not be sustained. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

69-3-303. Notice and hearing on proposed change.

Compiler's Comments

2003 Amendment: Chapter 570 in (1) at beginning of first sentence inserted exception clause; and made minor changes in style. Amendment effective May 5, 2003.

Case Notes

Temporary Increase Pending Hearing — Constitutionality: A temporary increase pending a hearing is constitutional as interests of consumers are protected by allowing each increase subject to rebate if evidence shows that a public utility is obtaining more than authorized. State ex rel. Mont. Power Co. v. Dept. of Public Service Regulation, 169 M 99, 548 P2d 136 (1975).

Due Process: When the Public Service Commission gave notice of hearing on an electric company's application for increased prices to offset increases in its cost, by sending news releases to radio, television, and newspapers, and when the Consumer Counsel participated in all proceedings throughout, the public was afforded reasonable opportunity to participate prior to final decision of Commission. No person was deprived of the right to examine documents or observe deliberations, and no person was deprived of property without due process of law. Mont. Consumer Counsel v. P.S.C., 168 M 180, 541 P2d 770 (1975).

Scope of Rate Increase Hearings Not to Be Expanded: When an electric company applied for an increase in utility rates to offset an increase in the price of fuel in 1974, the Public Service Commission was correct in refusing to expand the hearing into a full-scale examination of general rate structure and rate of return because the Commission had held full-scale hearings in 1972. Mont. Consumer Counsel v. P.S.C., 168 M 180, 541 P2d 770 (1975).

"Minihearings" Limited to Specific Proper Considerations: The Public Service Commission is not required to hold a full-scale hearing and examination of all revenue and expense accounts of a company to determine whether proposed rates and charges are just and reasonable when a company only seeks to "pass through" to its customers increases in cost of purchased gas and royalty expense, because the Commission is not required to exercise more of its powers than it determines appropriate. Mont. Consumer Counsel v. P.S.C., 168 M 177, 541 P2d 769 (1975).

Jurisdiction: The Department of Public Service Regulation may hold hearings concerning rate increases for utilities even though no increase could be made at the time because of federal wage and price freeze. State ex rel. Dept. of Public Service Regulation v. District Court, 158 M 88, 488 P2d 1147 (1971).

69-3-304. Temporary approval of rate increases or decreases.

Compiler's Comments

1983 Amendment: In first sentence, after "increases" inserted "or decreases"; in second sentence after "commission" changed "shall" to "may"; inserted third and fourth sentences authorizing Commission to order consumer surcharge for the amount not collected retroactive to date of temporary rate approval if final decision is to disapprove rate decrease and requiring Commission to order payment of interest on rebate or surcharge; and in last sentence after "increase" inserted "or decrease" and after "shall be" inserted "based upon consistent standards appropriate for the nature of the case pending and shall be".

Administrative Rules

Title 38, chapter 5, subchapter 5, ARM Interim utility rate increases.
ARM 38.5.2601 Rate tariff filing.

Case Notes

Request for Temporary Rate Reduction Properly Denied by District Court: The Public Service Commission (PSC) dismissed the petitioners' complaint and on appeal the Supreme Court sent the case back to the District Court, directing that court to remand the matter to the PSC for further consideration. The District Court denied the petitioners' request for a temporary rate reduction on remand as being premature. The District Court stated that if the PSC, in its discretion, allowed the petitioners to amend their complaint, then the petitioners could take up their request for an immediate rate reduction with the PSC. Williamson v. Pub. Serv. Comm'n, 2012 MT 299, 367 Mont. 379, 291 P.3d 1116.

Temporary Increase Pending Hearing — Constitutionality: A temporary increase pending a hearing is constitutional as interests of consumers are protected by allowing each increase subject to rebate if evidence shows that a public utility is obtaining more than authorized. State ex rel. Mont. Power Co. v. Dept. of Public Service Regulation, 169 M 99, 548 P2d 136 (1975).

69-3-305. Deviations from scheduled rates, tolls, and charges.

Compiler's Comments

2007 Amendment: Chapter 103 at beginning of (1) inserted exception clause; in (5)(a) in second sentence after "services" deleted "other than basic local exchange access" and deleted last three sentences that read: "Promotional offerings for basic local exchange access to end users and packaged services that include basic local exchange access to end users require advance approval of the commission. The commission shall approve, deny, or upon a showing of good cause set for hearing an application for a promotional discount within 30 days of the filing of the application. If the commission has not acted on the application within the permitted time period, the application is considered granted"; and made minor changes in style. Amendment effective March 30, 2007.

1997 Amendment: Chapter 349 in (5)(a), in first sentence near middle after "time", substituted "rebates, price reductions, or waivers of charges" for "either rebates or reductions or waivers of installation charges", in second sentence, near beginning after "pricing", substituted "for services other than local exchange access to end users does not" for "of services that remain fully tariffed", deleted former third sentence that read: "A promotional offering may not combine monopoly services with competitive services unless authorized by the Commission", and inserted third through sixth sentences providing a procedure for approval of promotional offerings by the Commission; and made minor changes in style. Amendment effective April 22, 1997.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

1993 Amendments: Chapter 207 near middle of (4) inserted "unless authorized by the commission"; and made minor changes in style. Amendment effective March 29, 1993.

Chapter 535 inserted (5)(b) authorizing certain public utilities to provide grants and loans; in (5)(c), in first sentence after "trials", inserted "and grants and subsidized loans", in second sentence, after "activity", inserted "or grant or subsidized loan program", and in third sentence, after "activities", inserted "and grant and subsidized loan programs"; and made minor changes in style. Amendment effective July 1, 1995.

1991 Amendment: Inserted (4) allowing profitsharing, rebates, and promotional pricing and offerings and granting the Commission discretion in determining whether particular sales activities are unfairly discriminatory or not cost-effective; and made minor changes in style. Amendment effective March 27, 1991.

Preamble: The preamble attached to Ch. 210, L. 1991, provided: "WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority."

1991 Statement of Intent: The statement of intent attached to Ch. 210, L. 1991, provided: "A statement of intent is necessary for this bill because [section 8] [69-3-310] grants the public service commission general rulemaking authority and [section 6] [69-3-305] grants the commission authority to adopt rules relating to the appropriate scope of promotions, rebates, and market trials. The legislature intends that if rules are adopted by the commission, the rules should permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services."

Severability: Section 9, Ch. 210, L. 1991, was a severability clause.

1983 Amendment: In (1)(a) after "for any" inserted "utility"; inserted (3) authorizing Commission to order public utilities to pay rate, toll, or charge violation refunds, including interest; rewrote the first sentence of (4) (without changing the meaning), which read: "Any violation of the provisions of this section shall subject the violator to the penalty prescribed in 69-3-206."

Case Notes

Existing Contracts:

The last sentence in this section refers to the preceding sentence and means that until changed by the Public Service Commission the rates, tolls, and charges were to remain as fixed in existing contracts even though such contracts granted rebates, concessions, and special privileges and that, pending change by the Commission, the public utility was protected from prosecution. Overruling decision in Helena Light & Ry. v. N. Pac. Ry., 57 M 93, 186 P2d 702 (1920), insofar as it conflicts with the above holding. Billings v. P.S.C., 67 M 29, 214 P 608 (1923).

Because this section exempts from the operation of the law all "existing contracts" and does not exclude from the provisions of the exempting clause renewals or extensions of such contracts, the renewal or extension of the contract involved in this case was not unlawful. Helena Light & Ry. v. N. Pac. Ry., 57 M 93, 186 P 702 (1920), overruled on another point in Billings v. P.S.C., 67 M 29, 214 P 608 (1923).

Subsection (4) of this section refers to subsection (1), forbidding rebates, concessions, etc., and was not intended to except from the operation of the act rate contracts made between cities and public utilities prior to its passage. State ex rel. Billings v. Billings Gas Co., 55 M 102, 173 P 799 (1918).

69-3-306. Classification of service.

Compiler's Comments

2017 Amendment: Chapter 248 in (1) at beginning inserted exception clause; in (2) after "block rate structure" inserted "or a structure appropriate to customer-generators"; inserted (3) pertaining to classification of service for customer-generators; and made minor changes in style. Amendment effective May 3, 2017.

1985 Amendment: Inserted (2) requiring Commission to prescribe declining block rate structure for electric service when cost justified.

Administrative Rules

Title 38, chapter 5, subchapter 11, ARM Customer deposit for guarantee payment.

ARM 38.6.201 Gas energy conservation plans.

ARM 38.6.202 Gas energy waste curtailment — order to show cause.

69-3-307. Treatment of advertisement costs and contributions.

Compiler's Comments

1997 Amendment: Chapter 472 near middle of third sentence substituted "persons with disabilities" for "the handicapped"; and made minor changes in style.

1989 Amendment: At end inserted "or to promote increased use of regulated communications services"; and made minor changes in phraseology.

69-3-308. Disclosure of taxes and fees paid by customers of public utility — automatic rate adjustment and tracking for taxes and fees.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 14 in (2)(a)(i) at beginning deleted brackets around exception clause. Amendment effective October 1, 2021.

Chapter 322 in (2)(e) at end substituted "Title 2, chapter 4, part 7" for "69-3-401 through 69-3-405". Amendment effective April 30, 2021.

Termination Provision — Code Commissioner Correction: Sec. 41, Ch. 3, L. 2019, terminated the bracketed exception clause in (2)(a)(i) that references 15-72-601 because 15-72-601 was set to terminate June 30, 2019. However, because sec. 14, Ch. 356, L. 2019, repealed the termination date for 15-72-601, the code commissioner did not terminate the exception clause but kept the language and inserted brackets to indicate the language should not be removed.

2017 Amendment — Code Commissioner Correction: Chapter 387 in (2)(a)(i) at beginning inserted exception clause. Amendment effective May 15, 2017.

Section 21(3), Ch. 387, L. 2017, provided that 15-72-601 terminates June 30, 2019. However, the chapter did not concurrently terminate the reference to 15-72-601 in subsection (2) of this section. Pursuant to sec. 24, Ch. 275, L. 2017, the code commissioner inserted brackets around inserted language and inserted parenthetical language to clarify that the reference to 15-72-601 terminates on the date that 15-72-601 terminates.

Code Commissioner Note: Chapter 387, L. 2017, was not signed and approved until May 18, 2017.

Effective Date: Section 5, Ch. 570, L. 2003, provided: "[This act] is effective on passage and approval." Approved May 5, 2003.

69-3-310. Rulemaking authority.

Compiler's Comments

Preamble: The preamble attached to Ch. 210, L. 1991, provided: "WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority."

1991 Statement of Intent: The statement of intent attached to Ch. 210, L. 1991, provided: "A statement of intent is necessary for this bill because [section 8] [69-3-310] grants the public service commission general rulemaking authority and [section 6] [69-3-305] grants the commission authority to adopt rules relating to the appropriate scope of promotions, rebates, and market trials. The legislature intends that if rules are adopted by the commission, the rules should permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services."

Severability: Section 9, Ch. 210, L. 1991, was a severability clause.

Effective Date: Section 11, Ch. 210, L. 1991, provided: "[This act] is effective on passage and approval." Approved March 27, 1991.

69-3-321. Complaints against public utility — hearing.

Compiler's Comments

1985 Amendment: In (1)(b) near middle, after "power", inserted "or regulated telecommunications service", and after "therewith", deleted "or the conveyance of any telegraph or telephone message or any service in connection therewith".

Administrative Rules

Title 38, chapter 2, subchapter 21, ARM Filing of complaints.

Case Notes

Parties Not Members of Special Lighting District — Not Directly Affected by Use of Non-LED Lights — No Standing to File Complaint with Public Service Commission: Four Montana taxpayers filed a complaint with the Public Service Commission (PSC) against NorthWestern Energy over ownership overcharges and its refusal to use LED streetlights. NorthWestern filed a motion to dismiss, claiming that the taxpayers lacked standing because they were not "directly affected" pursuant to 69-3-321 since none were members of a special lighting district. The PSC dismissed the complaint and the taxpayers appealed to District Court. After the District Court affirmed the decision, the taxpayers appealed to the Supreme Court, which agreed that the taxpayers were not directly affected by NorthWestern's actions. Moreover, the Supreme Court rejected the taxpayers' theories that they had standing based on either the constitutional right to a "clean and healthy environment" or on their status as general taxpayers. Williamson v. Pub. Serv. Comm'n, 2012 MT 32, 364 Mont. 128, 272 P.3d 71.

Public Service Commission Not Vested With Judicial Powers — Standing Under Statute Alone: In considering whether taxpayers had standing to file a complaint against NorthWestern Energy, the Supreme Court noted that the Public Service Commission is an administrative agency and is not vested with judicial powers. Therefore, its standing requirements are governed by statute and not by traditional case-or-controversy requirements. Williamson v. Pub. Serv. Comm'n, 2012 MT 32, 364 Mont. 128, 272 P.3d 71.

"Minihearings" Limited to Specific Proper Considerations: The Public Service Commission is not required to hold a full-scale hearing and examination of all revenue and expense accounts of a company to determine whether proposed rates and charges are just and reasonable when a company only seeks to "pass through" to its customers increases in cost of purchased gas and royalty expense, because the Commission is not required to exercise more of its powers than it determines appropriate. Mont. Consumer Counsel v. P.S.C., 168 M 177, 541 P2d 769 (1975).

69-3-323. Complaint by public utility.

Administrative Rules

Title 38, chapter 2, subchapter 21, ARM Filing of complaints.

Case Notes

Operation and Effect: When the Public Service Commission refuses to give its consent to a change of schedule of rates filed by a public utility, under this section the utility may make complaint and thereupon a hearing must be held and an order made, the effect of which must be just and reasonable. Great N. Util. Co. v. P.S.C., 88 M 180, 293 P 294 (1930).

69-3-324. Initiation of action by commission itself.

Case Notes

Authority of Commission: The Public Service Commission may exercise its powers under this section against city serving as public utility, even though interfering thereby with city's control of its water department. Polson v. P.S.C., 155 M 464, 473 P2d 508 (1970).

69-3-325. Notice of hearing.

Case Notes

Due Process: When the Public Service Commission gave notice of hearing on an electric company's application for increased prices to offset increases in its cost, by sending news releases to radio, television, and newspapers, and when the Consumer Counsel participated in all proceedings throughout, the public was afforded reasonable opportunity to participate prior to final decision of Commission. No person was deprived of right to examine documents or observe deliberations, and no person was deprived of property without due process of law. Mont. Consumer Counsel v. P.S.C., 168 M 180, 541 P2d 770 (1975).

"Minihearings" Limited to Specific Proper Considerations: The Public Service Commission is not required to hold a full-scale hearing and examination of all revenue and expense accounts of a company to determine whether proposed rates and charges are just and reasonable when a company only seeks to "pass through" to its customers increases in cost of purchased gas and royalty expense, because the Commission is not required to exercise more of its powers than it determines appropriate. Mont. Consumer Counsel v. P.S.C., 168 M 177, 541 P2d 769 (1975).

69-3-326. Conduct of hearing.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

"Minihearings" Limited to Specific Proper Considerations: The Public Service Commission is not required to hold a full-scale hearing and examination of all revenue and expense accounts of a company to determine whether proposed rates and charges are just and reasonable when the company only seeks to "pass through" to its customers increases in cost of purchased gas and royalty expense, because the Commission is not required to exercise more of its powers than it determines appropriate. Mont. Consumer Counsel v. P.S.C., 168 M 177, 541 P2d 769 (1975).

69-3-327. Subpoena of witnesses.

Compiler's Comments

2009 Amendment: Chapter 35 in first sentence near beginning after "commission or" substituted "its staff" for "any member or the secretary thereof"; and made minor changes in style. Amendment effective October 1, 2009.

69-3-329. Immunity for witnesses.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-3-330. Decision by commission.

Compiler's Comments

2021 Amendment: Chapter 322 inserted (5) regarding petitioning for judicial review pursuant to the Montana Administrative Procedure Act; and made minor changes in style. Amendment effective April 30, 2021.

1983 Amendment: In (1), after "joint rates" substituted "are" for "shall be"; after "the commission" substituted "may" for "shall have the power to"; near end of (1) after "schedules as" substituted "are" for "shall be"; inserted (2) authorizing Commission to order refunds or credits if it determines utility has unlawfully collected rates, tolls, or charges; at beginning of (3) after "If" substituted "the commission finds" for "it shall in like manner be found"; near middle of (3) after "chapter or" deleted "if it be found"; after "inadequate or" deleted "that"; after "the commission" substituted "may" for "shall have power to"; after "therefor" deleted "such"; near end of (3) after "thereto as" substituted "is" for "may be".

Case Notes

Repricing Amount of Expense Recoverable by Utility for Purchase of Firm Power: It was proper for the Public Service Commission to reprice, for ratemaking purposes, the amount of expense a utility could recover from its Montana ratepayers for the purchase of firm power. The Commission found that 77% of the more expensive firm power could have been generated at existing facilities, as evidenced by the utility's own records showing that subsequent to the purchase, the utility backed down production at its existing plants, decreased its use of less expensive purchased power, and increased its unregulated off-system sales to other utilities. Mont.-Dak. Util. Co. v. Dept. of Public Service Regulation, 243 M 492, 795 P2d 473, 47 St. Rep. 1351 (1990).

"Rate of Return" Analysis Method of Determining Coal Expense: The Public Service Commission (PSC) adopted the "rate of return on equity" method in determining the amount of a utility's coal expense that could be passed through to Montana ratepayers by reducing coal expenses used by the utility in setting rates for electric service. Although imperfect, the method was supported by substantial credible evidence and conformed to the PSC's power to adopt any nonarbitrary method it chooses. Mont.-Dak. Util. Co. v. Dept. of Public Service Regulation, 231 M 118, 752 P2d 155, 45 St. Rep. 477 (1988).

Methodology of Determination Substantiated by Record — Failure to Object in Administrative Proceeding: The Public Service Commission (P.S.C.) did not commit error in the application of the "rate of return" methodology, rather than the "market value" methodology, in determining the reasonableness of contract cost for the purchase of coal by the Montana Power Company (MPC) from a wholly-owned subsidiary. While the Supreme Court stated a preference for the "market value" methodology in Montana-Dakota Util. Co. v. Bollinger, 193 M 508, 632 P2d 1086 (1981), the court did not prohibit the P.S.C. from using a different methodology if the evidence warrants its use. In this case, the evidence introduced by the P.S.C. was not challenged by MPC. Rather, MPC seeks to do so for the first time on appeal. Limited review of the administrative record is appropriate, and that record supports the findings of the Commission. Mont. Power Co. v. Dept. of Public Service Regulation, 204 M 224, 665 P2d 1121, 40 St. Rep. 805 (1983).

Jurisdiction of the Public Service Commission Over County Water Districts: County water districts are not subject exclusively to the control and ratemaking power of their own boards of directors, and therefore the Public Service Commission (P.S.C.) does have jurisdiction and authority to order the Billings Heights Water District to enter into a stipulation with the city of Billings. Nothing in 7-13-2201 through 7-13-2348 expressly precludes the review and regulatory process of the P.S.C. pursuant to Title 69. Here, the board of directors was only intended to displace the County Commissioners' authority with regard to water and sewer functions. The board of directors is empowered to establish rates; however, such rates are subject to review and alteration by the P.S.C. if unjust, unreasonable, or discriminatory. "Surely the Legislature had in mind the provisions of Title 69 . . . when it enacted legislation giving rise to county water districts." Helena v. Dept. of Public Service Regulation, 194 M 173, 634 P2d 192, 38 St. Rep. 1560 (1981).

Jurisdiction of City and Public Service Commission Overlapping: Although under the Municipal Revenue Bond Act, the petitioner (city of Billings) has the power to prescribe fees for the services, facilities, and commodities furnished by a project financed pursuant to the Act, this authority is not exclusive. The rates which the city sets are subject to modification by the Public Service Commission when such rates are unjust or unreasonable. Billings v. P.S.C., 193 M 358, 631 P2d 1295, 38 St. Rep. 1162 (1981).

Authority of Commission: The Public Service Commission may exercise its powers under this section against city serving as public utility, even though interfering thereby with city's control of its water department. Polson v. P.S.C., 155 M 464, 473 P2d 508 (1970).

69-3-331. Cost tracking and recovery.

Compiler's Comments

2021 Amendment: Chapter 54 in (1) in middle before "a public utility" inserted "electricity supply costs for"; deleted former (1)(a) that read: "(a) identical treatment of public utilities subject to chapter 8 or this chapter"; and made minor changes in style. Amendment effective March 9, 2021.

Effective Date: Section 3, Ch. 316, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 7, 2019.

69-3-332. Digital asset mining ratemaking.

Compiler's Comments

Effective Date: Section 7, Ch. 344, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 2, 2023.

Preamble: The preamble attached to Ch. 344, L. 2023, provided: "WHEREAS, digital asset mining provides positive economic value for individuals and companies throughout the United States; and

WHEREAS, digital asset mining has often faced difficulty with regulations at the state and local level; and

WHEREAS, the State of Montana wants to protect the right of individuals and businesses to mine digital assets and create legal certainty for the digital asset mining industry; and

WHEREAS, digital asset mining has the potential to stabilize the grid and provide revenue for infrastructure upgrades statewide."

Part 6
Small Power Production Facilities

Part Compiler's Comments

Saving Clause: Section 2, Ch. 284, L. 2003, was a saving clause.

Applicability: Section 4, Ch. 284, L. 2003, provided: "[This act] applies to a petition filed with the commission on or after [the effective date of this act]." Effective on occurrence of contingency—sec. 3, Ch. 284, L. 2003.

Interim Study Bill: Chapter 436, L. 1981 (SB 139), was introduced at the request of the Environmental Quality Council, as a result of a study conducted by the EQC and the National Conference of State Legislatures. See 1980 report available from EQC.

Part Case Notes

Commission Acted Within Statutory Authority in Fixing Avoided Costs Using Proxy Model — Calculation of Ancillary Service Deductions Upheld. CED Wheatland Wind, LLC v. Dept. of Public Service Regulation, 2022 MT 87, 408 Mont. 268, 509 P.3d 19.

Interconnection Costs Distinguished From Network Upgrade Costs — Commission Erred in Assigning All Network Upgrade Costs to Qualifying Facilities. CED Wheatland Wind, LLC v. Dept. of Public Service Regulation, 2022 MT 87, 408 Mont. 268, 509 P.3d 19.

69-3-601. Definitions.

Compiler's Comments

1983 Amendment: Inserted (4)(b) expanding qualifying small power production facility definition to include facility that produces electricity and thermal energy through cogeneration.

69-3-602. Generation and sale of electricity by qualifying small power production facility.

Compiler's Comments

1983 Amendment: In (1) and (2), inserted references to 69-3-601(4)(b).

Administrative Rules

Title 38, chapter 5, subchapter 19, ARM Cogeneration and small power production.

Case Notes

Legally Enforceable Obligation Under PURPA — PSC Arbitrary and Capricious: The applicant had been negotiating the terms of a power purchase agreement with an electric utility to sell energy generated by a proposed solar energy project. However, after several delays in finalizing the agreement, the applicant filed a petition with the Public Service Commission (PSC). The PSC subsequently issued an order that modified the agreed-on terms of the purchase agreement. The applicant then appealed the order to the District Court, which reversed the PSC order. On appeal, the Supreme Court affirmed, ruling that the PSC's actions were contrary to federal and state law. The Supreme Court held that the applicant had a legally enforceable obligation under the federal Public Utility Regulatory Policies Act of 1978, and therefore it should not have lost the benefit of agreement on contract terms by petitioning the PSC. MTSUN, LLC v. Dept. of Public Service Regulation, 2020 MT 238, 401 Mont. 324, 472 P.3d 1154.

No Enforceable Obligation — Utility Not Required to Commit to Purchase Electricity Without Further Development — Substantial Evidence to Support P.S.C.'s Findings: The plaintiff, a small power production company, attempted to negotiate a contract with a public utility for the sale of electricity. After the parties were unable to reach an agreement, the plaintiff petitioned the Public Service Commission (P.S.C.) to set a long-term avoided cost rate for the future sale of electricity pursuant to Title 69, ch. 3, part 6. After a remand to the P.S.C. on a variety of issues in Whitehall Wind, LLC v. Pub. Serv. Comm'n, 2010 MT 2, 355 Mont. 15, 223 P.3d 907, the P.S.C. concluded that the plaintiff had not incurred a legally enforceable obligation, which it defined as an absolute, unconditional commitment to deliver energy, capacity, or energy and capacity. On appeal, the District Court reversed the P.S.C. and determined that the utility's refusal to negotiate created a legally enforceable obligation, but the Supreme Court reversed the District Court and reinstated the P.S.C.'s order. In upholding the P.S.C., the Supreme Court applied the standard of review in 2-4-704 and held that there was substantial evidence in the record to support the P.S.C.'s findings, including the fact that the plaintiff had yet to conduct avian studies, obtain permits, and gain site control over the proposed project. In essence, the plaintiff sought to have P.S.C. establish a long-term avoided cost rate in order to determine the financial viability of the project before it incurred an obligation to proceed. Whitehall Wind, LLC v. Pub. Serv. Comm'n., 2015 MT 119, 379 Mont. 119, 347 P.3d 1273 (Whitehall Wind II). However, see MTSUN, LLC v. Dept. of Public Service Regulation, 2020 MT 238, 401 Mont. 324, 472 P.3d 1154, in which the Supreme Court determined that the Whitehall Wind II test as applied in the case was unlawful under the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a-3(a).

69-3-603. Required sale of electricity under rates and conditions prescribed by commission.

Compiler's Comments

2015 Amendment: Chapter 234 in (2)(a) inserted "in accordance with subsection (2)(b)"; inserted (2)(b) regarding request to establish or revise rate schedules and commission issuance of order; and made minor changes in style. Amendment effective April 10, 2015.

Retroactive Applicability: Section 3, Ch. 234, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to requests to establish or revise rate schedules filed on or after January 1, 2015."

2011 Amendment: Chapter 69 in (1) at beginning inserted exception clause; in (2) in second sentence increased 120 days to 180 days; inserted (3) prohibiting petition by facility or utility for rate or term different from rate schedule and allowing for filing of complaint by facility; and made minor changes in style. Amendment effective March 25, 2011.

Saving Clause: Section 2, Ch. 69, L. 2011, was a saving clause.

Severability: Section 3, Ch. 69, L. 2011, was a severability clause.

Applicability: Section 5, Ch. 69, L. 2011, provided: "[This act] applies to contracts executed on or after [the effective date of this act]." Effective March 25, 2011.

Administrative Rules

Title 38, chapter 5, subchapter 19, ARM Cogeneration and small power production.

Case Notes

Legally Enforceable Obligation Under PURPA — PSC Arbitrary and Capricious: The applicant had been negotiating the terms of a power purchase agreement with an electric utility to sell energy generated by a proposed solar energy project. However, after several delays in finalizing the agreement, the applicant filed a petition with the Public Service Commission (PSC). The PSC subsequently issued an order that modified the agreed-on terms of the purchase agreement. The applicant then appealed the order to the District Court, which reversed the PSC order. On appeal, the Supreme Court affirmed, ruling that the PSC's actions were contrary to federal and state law. The Supreme Court held that the applicant had a legally enforceable obligation under the federal Public Utility Regulatory Policies Act of 1978, and therefore it should not have lost the benefit of agreement on contract terms by petitioning the PSC. MTSUN, LLC v. Dept. of Public Service Regulation, 2020 MT 238, 401 Mont. 324, 472 P.3d 1154.

Energy and Capacity Costs Fundamentally Part of Same Equation — Arbitrary for PSC to Distinguish Between Avoided Capacity and Avoided Energy Costs: To set an avoided-rate cost, the Public Service Commission (PSC) must compensate a qualifying facility for all avoided costs. This includes consideration of both capacity costs and energy costs, which are fundamentally two parts of the same equation and must be considered together when calculating avoided costs. The PSC acted arbitrarily and against federal and state law when it calculated avoided-capacity costs and avoided-energy costs using two different resources, the second of which would not come online for 6 more years after the first resource. Vote Solar v. Dept. of Public Service Regulation, 2020 MT 213A, 401 Mont. 85, 473 P.3d 963.

New Methodology for Capacity Contribution — Public Service Commission Must Consider All Relevant Factors: While the Public Service Commission (PSC) may adopt new methodology to calculate capacity contribution, it must do so by considering all relevant factors and adequately explaining its interpretation of the methodology. When the PSC applied the novel Southwestern Power Pool (SPP) methodology for the first time, it acted contrary to the plain language of the SPP criteria and failed to articulate a satisfactory explanation for its actions. The interpretation and application of the SPP methodology were therefore arbitrary and unreasonable. Vote Solar v. Dept. of Public Service Regulation, 2020 MT 213A, 401 Mont. 85, 473 P.3d 963.

PSC Must Consider Carbon Dioxide Emissions Cost When Calculating Avoided Costs: In establishing standard rates for solar qualifying facilities with a nameplate capacity of 3 megawatts or less, the Public Service Commission (PSC) declined to include a carbon emission adjustment when calculating its avoided-cost estimates. While acknowledging that other recent avoided-cost estimates had included these emissions, the PSC argued that its exclusion in the present case was appropriate because of the speculative nature of carbon dioxide emission prices and because the incoming presidential administration in 2016 was hostile to carbon dioxide emissions regulation. The Supreme Court disagreed, holding that the record evidence did not support this exclusion. Noting that avoided-cost rates for other qualifying facilities included carbon costs in the formula, the Supreme Court held it was unlawful for the PSC to exclude carbon costs from consideration in this instance. Vote Solar v. Dept. of Public Service Regulation, 2020 MT 213A, 401 Mont. 85, 473 P.3d 963.

Public Service Commission Clearly Erroneous in Setting 15-Year Contract Length Maximum for Qualifying Facilities: When the Public Service Commission (PSC) adopted a 15-year maximum contract length for contracts with qualifying facilities, it did so arbitrarily and unreasonably. The PSC based its decision almost entirely on a 2014 North Carolina Utilities Commission decision, despite rejecting out-of-state decisions as a consideration when setting the avoided-cost rate and without any intimate knowledge of qualifying facility development policies in North Carolina or other states. The PSC also failed to explain why 15 years was feasible in balancing a need with certainty regarding return on investment, especially when considering that Northwestern Energy's own resources hold contracts of 25 years or longer. While 15-year contracts are not per se unreasonable, the PSC clearly erred when it failed to consider whether the shortened contract lengths in conjunction with greatly reduced standard-offer rates for certain qualifying facilities would still encourage and enhance qualifying facility development as required by federal and state law. Vote Solar v. Dept. of Public Service Regulation, 2020 MT 213A, 401 Mont. 85, 473 P.3d 963, distinguished in CED Wheatland Wind, LLC v. Dept. of Public Service Regulation, 2022 MT 87, 408 Mont. 268, 509 P.3d 19.

No Enforceable Obligation — Utility Not Required to Commit to Purchase Electricity Without Further Development — Substantial Evidence to Support P.S.C.'s Findings: The plaintiff, a small power production company, attempted to negotiate a contract with a public utility for the sale of electricity. After the parties were unable to reach an agreement, the plaintiff petitioned the Public Service Commission (P.S.C.) to set a long-term avoided cost rate for the future sale of electricity pursuant to Title 69, ch. 3, part 6. After a remand to the P.S.C. on a variety of issues in Whitehall Wind, LLC v. Pub. Serv. Comm'n, 2010 MT 2, 355 Mont. 15, 223 P.3d 907, the P.S.C. concluded that the plaintiff had not incurred a legally enforceable obligation, which it defined as an absolute, unconditional commitment to deliver energy, capacity, or energy and capacity. On appeal, the District Court reversed the P.S.C. and determined that the utility's refusal to negotiate created a legally enforceable obligation, but the Supreme Court reversed the District Court and reinstated the P.S.C.'s order. In upholding the P.S.C., the Supreme Court applied the standard of review in 2-4-704 and held that there was substantial evidence in the record to support the P.S.C.'s findings, including the fact that the plaintiff had yet to conduct avian studies, obtain permits, and gain site control over the proposed project. In essence, the plaintiff sought to have P.S.C. establish a long-term avoided cost rate in order to determine the financial viability of the project before it incurred an obligation to proceed. Whitehall Wind, LLC v. Pub. Serv. Comm'n., 2015 MT 119, 379 Mont. 119, 347 P.3d 1273 (Whitehall Wind II). However, see MTSUN, LLC v. Dept. of Public Service Regulation, 2020 MT 238, 401 Mont. 324, 472 P.3d 1154, in which the Supreme Court determined that the Whitehall Wind II test as applied in the case was unlawful under the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a-3(a).

69-3-604. Standards for determination of rates and conditions.

Compiler's Comments

2021 Amendment: Chapter 300 inserted (5) concerning when avoided cost rates may include a bonus or adder; and made minor changes in style. Amendment effective April 28, 2021.

Applicability: Section 4, Ch. 300, L. 2021, provided: "[This act] does not apply to applications pending before the commission on or before [the effective date of this act]." Effective April 28, 2021.

2011 Amendment: Chapter 60 in (4) near beginning after "commission" substituted "shall set these rates using the avoided cost over the term of the contract" for "may set these rates by use of any of the following methods:

(a) the avoided cost over the term of the contract;

(b) the cost of production for the qualifying small power production facility plus a just and reasonable return; or

(c) any other method that will promote the development of qualifying small power production facilities"; and made minor changes in style. Amendment effective March 25, 2011.

Saving Clause: Section 2, Ch. 60, L. 2011, was a saving clause.

Applicability: Section 4, Ch. 60, L. 2011, provided: "[This act] applies to contracts presented to the public service commission on or after [the effective date of this act]." Effective March 25, 2011.

1983 Amendment: Inserted (5) authorizing Commission to adopt rules defining criteria for qualifying small power production facilities.

Statement of Intent: The statement of intent attached to Ch. 232, L. 1983, which added subsection (5) to this section, provided: "A statement of intent is necessary for this bill because it grants additional rulemaking authority to the Public Service Commission. The legislature intends that the commission adopt rules further defining criteria for qualifying small power production facilities, including cost effectiveness and other standards. These rules should reflect the addition of cogeneration facilities as qualifying small power production facilities."

Case Notes

Legally Enforceable Obligation Under PURPA — PSC Arbitrary and Capricious: The applicant had been negotiating the terms of a power purchase agreement with an electric utility to sell energy generated by a proposed solar energy project. However, after several delays in finalizing the agreement, the applicant filed a petition with the Public Service Commission (PSC). The PSC subsequently issued an order that modified the agreed-on terms of the purchase agreement. The applicant then appealed the order to the District Court, which reversed the PSC order. On appeal, the Supreme Court affirmed, ruling that the PSC's actions were contrary to federal and state law. The Supreme Court held that the applicant had a legally enforceable obligation under the federal Public Utility Regulatory Policies Act of 1978, and therefore it should not have lost the benefit of agreement on contract terms by petitioning the PSC. MTSUN, LLC v. Dept. of Public Service Regulation, 2020 MT 238, 401 Mont. 324, 472 P.3d 1154.

Energy and Capacity Costs Fundamentally Part of Same Equation — Arbitrary for PSC to Distinguish Between Avoided Capacity and Avoided Energy Costs: To set an avoided-rate cost, the Public Service Commission (PSC) must compensate a qualifying facility for all avoided costs. This includes consideration of both capacity costs and energy costs, which are fundamentally two parts of the same equation and must be considered together when calculating avoided costs. The PSC acted arbitrarily and against federal and state law when it calculated avoided-capacity costs and avoided-energy costs using two different resources, the second of which would not come online for 6 more years after the first resource. Vote Solar v. Dept. of Public Service Regulation, 2020 MT 213A, 401 Mont. 85, 473 P.3d 963.

New Methodology for Capacity Contribution — Public Service Commission Must Consider All Relevant Factors: While the Public Service Commission (PSC) may adopt new methodology to calculate capacity contribution, it must do so by considering all relevant factors and adequately explaining its interpretation of the methodology. When the PSC applied the novel Southwestern Power Pool (SPP) methodology for the first time, it acted contrary to the plain language of the SPP criteria and failed to articulate a satisfactory explanation for its actions. The interpretation and application of the SPP methodology were therefore arbitrary and unreasonable. Vote Solar v. Dept. of Public Service Regulation, 2020 MT 213A, 401 Mont. 85, 473 P.3d 963.

PSC Must Consider Carbon Dioxide Emissions Cost When Calculating Avoided Costs: In establishing standard rates for solar qualifying facilities with a nameplate capacity of 3 megawatts or less, the Public Service Commission (PSC) declined to include a carbon emission adjustment when calculating its avoided-cost estimates. While acknowledging that other recent avoided-cost estimates had included these emissions, the PSC argued that its exclusion in the present case was appropriate because of the speculative nature of carbon dioxide emission prices and because the incoming presidential administration in 2016 was hostile to carbon dioxide emissions regulation. The Supreme Court disagreed, holding that the record evidence did not support this exclusion. Noting that avoided-cost rates for other qualifying facilities included carbon costs in the formula, the Supreme Court held it was unlawful for the PSC to exclude carbon costs from consideration in this instance. Vote Solar v. Dept. of Public Service Regulation, 2020 MT 213A, 401 Mont. 85, 473 P.3d 963.

Public Service Commission Clearly Erroneous in Setting 15-Year Contract Length Maximum for Qualifying Facilities: When the Public Service Commission (PSC) adopted a 15-year maximum contract length for contracts with qualifying facilities, it did so arbitrarily and unreasonably. The PSC based its decision almost entirely on a 2014 North Carolina Utilities Commission decision, despite rejecting out-of-state decisions as a consideration when setting the avoided-cost rate and without any intimate knowledge of qualifying facility development policies in North Carolina or other states. The PSC also failed to explain why 15 years was feasible in balancing a need with certainty regarding return on investment, especially when considering that Northwestern Energy's own resources hold contracts of 25 years or longer. While 15-year contracts are not per se unreasonable, the PSC clearly erred when it failed to consider whether the shortened contract lengths in conjunction with greatly reduced standard-offer rates for certain qualifying facilities would still encourage and enhance qualifying facility development as required by federal and state law. Vote Solar v. Dept. of Public Service Regulation, 2020 MT 213A, 401 Mont. 85, 473 P.3d 963, distinguished in CED Wheatland Wind, LLC v. Dept. of Public Service Regulation, 2022 MT 87, 408 Mont. 268, 509 P.3d 19.

No Enforceable Obligation — Utility Not Required to Commit to Purchase Electricity Without Further Development — Substantial Evidence to Support P.S.C.'s Findings: The plaintiff, a small power production company, attempted to negotiate a contract with a public utility for the sale of electricity. After the parties were unable to reach an agreement, the plaintiff petitioned the Public Service Commission (P.S.C.) to set a long-term avoided cost rate for the future sale of electricity pursuant to Title 69, ch. 3, part 6. After a remand to the P.S.C. on a variety of issues in Whitehall Wind, LLC v. Pub. Serv. Comm'n, 2010 MT 2, 355 Mont. 15, 223 P.3d 907, the P.S.C. concluded that the plaintiff had not incurred a legally enforceable obligation, which it defined as an absolute, unconditional commitment to deliver energy, capacity, or energy and capacity. On appeal, the District Court reversed the P.S.C. and determined that the utility's refusal to negotiate created a legally enforceable obligation, but the Supreme Court reversed the District Court and reinstated the P.S.C.'s order. In upholding the P.S.C., the Supreme Court applied the standard of review in 2-4-704 and held that there was substantial evidence in the record to support the P.S.C.'s findings, including the fact that the plaintiff had yet to conduct avian studies, obtain permits, and gain site control over the proposed project. In essence, the plaintiff sought to have P.S.C. establish a long-term avoided cost rate in order to determine the financial viability of the project before it incurred an obligation to proceed. Whitehall Wind, LLC v. Pub. Serv. Comm'n., 2015 MT 119, 379 Mont. 119, 347 P.3d 1273 (Whitehall Wind II). However, see MTSUN, LLC v. Dept. of Public Service Regulation, 2020 MT 238, 401 Mont. 324, 472 P.3d 1154, in which the Supreme Court determined that the Whitehall Wind II test as applied in the case was unlawful under the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 824a-3(a).

Failure of Public Service Commission to Factor Avoided Costs in Setting Reasonable Rate for Utility Purchase of Qualified Facility-Generated Electricity — Augmentation of Record Proper: The District Court reviewed plaintiff's utility rate case and concluded that the rate set by the Public Service Commission (PSC) was unreasonable and ordered that the case be remanded to the PSC to set a new rate that took avoided cost data into consideration. The court also ordered that plaintiff be allowed to augment the record to include updated avoided cost data. The PSC appealed, but the Supreme Court affirmed. The PSC based the avoided cost tariff on outdated data, in violation of its own administrative rules, resulting in a rate that was unlawful and unreasonable. Therefore, remand of the case to the PSC for rate recalculation was proper, and allowing plaintiff to augment the record to include current data was justified. Whitehall Wind, LLC v. Pub. Serv. Comm'n, 2010 MT 2, 355 Mont. 15, 223 P.3d 907.

Part 7
Conservation Purchases or Investments by Utilities

69-3-701. Definitions.

Compiler's Comments

1993 Amendment: Chapter 157 deleted former definition of avoided costs that read: ""Avoided costs" means the incremental costs, as determined by the commission, to an electric or natural gas utility of energy or capacity, or both, which, but for the purchase of conservation, the utility would generate or supply itself or purchase from another source" and deleted former definition of residential building that read: ""Residential building" means a building used for residential occupancy that:

(a) has a system for heating, cooling, or both, that uses a fuel supplied by the utility; and

(b) contains at least one but not more than four separately or centrally heated dwelling units or contains more than four separately heated or cooled or both heated and cooled units." Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 157, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [69-3-1204] grants the public service commission rulemaking authority to adopt guidelines for an electric or natural gas utility to follow in compiling an integrated least-cost resource plan. It is the intent of the legislature that the rules not apply to rural electric cooperatives. It is also the intent of the legislature that the rules preserve the "used and useful" ratemaking standard. The rules are not intended to allow the commission to preapprove any resource use proposed in a plan. [Section 5] [69-3-1205] does not require coordination between the commission and the department of natural resources and conservation regarding their respective planning requirements. However, it is the intent of the legislature that the department and other state agencies share with the commission their expertise on environmental impacts of a utility's planned resource acquisitions. [Section 6] [69-3-1206] addresses commission rate treatment. The commission may include costs resulting from an integrated least-cost resource plan in a utility's rates."

1987 Amendment: Deleted former (4)(a) that read: "(a) was fully constructed and habitable as of October 1, 1983".

69-3-702. Eligible conservation.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 535, L. 2023. Amendment effective May 18, 2023.

2019 Amendment: Chapter 449 at end inserted "and in accordance with 69-3-1209". Amendment effective July 1, 2020.

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

1993 Amendment: Chapter 157 at end substituted "provided for in 69-3-1206" for "made to replace, upgrade, or enhance building shells, space heating or cooling equipment, or refrigeration equipment that was installed and in operation in the existing residential building at least 3 years before the conservation purchases or investments are made and if they are determined by the commission to cost no more than the utility's avoided costs". Amendment effective July 1, 1993.

1993 Statement of Intent: The statement of intent attached to Ch. 157, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [69-3-1204] grants the public service commission rulemaking authority to adopt guidelines for an electric or natural gas utility to follow in compiling an integrated least-cost resource plan. It is the intent of the legislature that the rules not apply to rural electric cooperatives. It is also the intent of the legislature that the rules preserve the "used and useful" ratemaking standard. The rules are not intended to allow the commission to preapprove any resource use proposed in a plan. [Section 5] [69-3-1205] does not require coordination between the commission and the department of natural resources and conservation regarding their respective planning requirements. However, it is the intent of the legislature that the department and other state agencies share with the commission their expertise on environmental impacts of a utility's planned resource acquisitions. [Section 6] [69-3-1206] addresses commission rate treatment. The commission may include costs resulting from an integrated least-cost resource plan in a utility's rates."

1987 Amendment: Near end of section, after "residential building", substituted "at least 3 years before the conservation purchases or investments are made" for "as of October 1, 1983", deleted 50% limit on avoided costs, and made minor changes in phraseology.

69-3-703. Utility investment in or purchase of conservation — approval by commission.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-3-711. Criteria for allowable conservation and demand-side management programs — onsite audits.

Compiler's Comments

2019 Amendment: Chapter 449 in (1) substituted "may be placed" for "will be placed" and at end after "rate base under this part" inserted reference to demand-side management programs; and made minor changes in style. Amendment effective July 1, 2020.

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

69-3-712. Commission to include conservation and demand-side management programs in rate base — rate of return.

Compiler's Comments

2019 Amendment: Chapter 449 in (1) substituted "may include" for "shall include", inserted "and demand-side management programs", and near end inserted "and 69-3-1201 through 69-3-1209"; and made minor changes in style. Amendment effective July 1, 2020.

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

Statement of Intent: The statement of intent attached to SB 456 (Ch. 610, L. 1983) provided: "A statement of intent is necessary for this bill because it directs the Public Service Commission to adopt rules governing the installation of cost-effective conservation measures and the reflection of those measures in a utility's rate base. The commission must approve criteria and standards for:

(1) allowable cost-effective conservation measures;
(2) on-site energy audits;
(3) conservation corresponding to end-use of energy that a utility provides;
(4) inspections;
(5) inclusion of conservation in a utility's rate base;
(6) other procedures necessary to implement this act.

In adopting cost effectiveness and engineering criteria, the commission is directed to consult with the Department of Natural Resources and Conservation and with Montana's representatives to the Northwest Power Council.

It is not the intent of the legislature to allow grants from the Bonneville Power Administration for purposes of conservation to be placed in the rate base."

69-3-714. Criteria for allowable advanced conductor programs.

Compiler's Comments

Effective Date: Section 4, Ch. 535, L. 2023, provided: "[This act] is effective on passage and approval." Approved May 18, 2023.

Part 8

Montana Telecommunications Act

69-3-801. Short title.

Administrative Rules

Title 38, chapter 5, subchapter 37, ARM Interexchange carrier regulatory requirements.

69-3-802. Purpose.

Compiler's Comments

1991 Amendment: At end of third sentence inserted "and it is further the purpose of this part to clarify that the commission has authority to implement alternative forms of regulation for providers of regulated telecommunications services". Amendment effective March 27, 1991.

Preamble: The preamble attached to Ch. 210, L. 1991, provided: "WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority."

1991 Statement of Intent: The statement of intent attached to Ch. 210, L. 1991, provided: "A statement of intent is necessary for this bill because [section 8] [69-3-310] grants the public service commission general rulemaking authority and [section 6] [69-3-305] grants the commission authority to adopt rules relating to the appropriate scope of promotions, rebates, and market trials. The legislature intends that if rules are adopted by the commission, the rules should permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services."

Severability: Section 9, Ch. 210, L. 1991, was a severability clause.

69-3-803. Definitions.

Compiler's Comments

2003 Amendment: Chapter 423 inserted definitions of commercial mobile radio service, local telecommunications, nonlocal telecommunications, originating carrier, terminating carrier, transit traffic, and transiting carrier; in definition of regulated telecommunications service at beginning of (b) inserted exception clause; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 4, Ch. 423, L. 2003, was a saving clause.

Severability: Section 5, Ch. 423, L. 2003, was a severability clause.

1997 Amendment: Chapter 349 inserted definitions of eligible telecommunications carrier, fund, incumbent local exchange carrier, retail revenue, rural telephone company, telecommunications, and telecommunications carrier or carrier; deleted definition of resale of telecommunications service (see 1997 Session Law for former text); in (b) of definition of regulated telecommunications service, after "private telecommunications service", deleted "resale of telecommunications service"; and made minor changes in style. Amendment effective April 22, 1997.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

69-3-805. Registration of telecommunications providers.

Compiler's Comments

1997 Amendment: Chapter 349 in (1), near beginning before "telecommunications", deleted "regulated"; in (1)(a) inserted "telephone number"; deleted former (1)(b), (1)(c), and (1)(d) that read: "a narrative description of the regulated telecommunications service to be offered and the geographic area and markets to be served;

(c) initial tariffs for the regulated telecommunications service;

(d) such other information as the commission may require to accomplish the purpose of this chapter"; inserted (1)(b) through (1)(g) expanding list of specific information to be included on notice filed with Commission; in (2) substituted "The commission may waive any of the requirements set forth in subsection (1)" for "The provision of any regulated telecommunications service does not subject the provider thereof to regulation of any other telecommunications services otherwise exempt under this chapter"; inserted (3) requiring a provider to file with the Commission certain information that could adversely affect the provider's ability to provide communications services; and made minor changes in style. Amendment effective April 22, 1997.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

69-3-806. Prohibition against cross-subsidization.

Compiler's Comments

1997 Amendment: Chapter 349 deleted (2) that read: "(2) Nothing in this section is to be construed to effect the regulatory treatment of revenues, expenses, and investment for telephone directory services currently authorized under this title"; and made minor changes in style. Amendment effective April 22, 1997.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

69-3-807. Regulation of rates and charges.

Compiler's Comments

1997 Amendment: Chapter 349 in (1), at beginning, deleted "As to telecommunications service that is provided under regulation" and in first sentence, after "provision of", inserted "regulated telecommunications"; deleted (6) that read: "(6) All providers of comparable regulated telecommunications services within a market area must be subject to the same standards of regulation. For purposes of this section, regulated telecommunications services are comparable to the extent alternative providers can make functionally equivalent substitutes or substitute services readily available"; and made minor changes in style. Amendment effective April 22, 1997.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

1991 Amendment: In (2) inserted second sentence regarding provision of a price list for detariffed service; deleted former (2)(c) that read: "(c) detariff rates but require notice of price changes to the commission and subscribers"; in (3), at beginning, inserted exception clause; substituted (4) regarding establishment of rates and price ranges only after certain findings have been made and prohibiting detariffing of certain access and services for former (4) that read: "(4) Nothing in this section shall authorize the application of subsection (2) to any services for which there are no alternative providers of such services"; inserted (5) requiring averaging of service rates; and made minor changes in style. Amendment effective March 27, 1991.

Preamble: The preamble attached to Ch. 210, L. 1991, provided: "WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority."

1991 Statement of Intent: The statement of intent attached to Ch. 210, L. 1991, provided: "A statement of intent is necessary for this bill because [section 8] [69-3-310] grants the public service commission general rulemaking authority and [section 6] [69-3-305] grants the commission authority to adopt rules relating to the appropriate scope of promotions, rebates, and market trials. The legislature intends that if rules are adopted by the commission, the rules should permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services."

Severability: Section 9, Ch. 210, L. 1991, was a severability clause.

69-3-808. Forbearance of rate regulation to facilitate competition.

Compiler's Comments

1991 Amendment: In (3), in first sentence, increased from 10 to 15 the number of days allowed the Commission for approval or denial of an application, at end, after "application", deleted "except that the commission may by order defer action for an additional 5-day period", and inserted fourth sentence regarding presumption of competition; in (5), after "tariffs", inserted "or price lists" and after "on file" substituted "with" for "approved by"; in (6), near beginning of second sentence after "Thereafter", inserted "for the term of the contract", near end, after "tariffs", inserted "or price lists", and after "on file" substituted "with" for "approved by"; and made minor changes in style. Amendment effective March 27, 1991.

Preamble: The preamble attached to Ch. 210, L. 1991, provided: "WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority."

1991 Statement of Intent: The statement of intent attached to Ch. 210, L. 1991, provided: "A statement of intent is necessary for this bill because [section 8] [69-3-310] grants the public service commission general rulemaking authority and [section 6] [69-3-305] grants the commission authority to adopt rules relating to the appropriate scope of promotions, rebates, and market trials. The legislature intends that if rules are adopted by the commission, the rules should permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services."

Severability: Section 9, Ch. 210, L. 1991, was a severability clause.

69-3-809. Alternative forms of regulation.

Compiler's Comments

2011 Amendment: Chapter 263 deleted former (4) that read: "(4) A proposed order modifying the plan submitted by a provider of regulated telecommunications service may not be final until 60 days after issuance. During that 60-day period, the provider may withdraw its petition for alternative regulation or the consumer counsel may object to the proposed order. If a petition for alternative regulation is withdrawn or the consumer counsel objects to the proposed order, the provider:

(a) remains subject to the same regulation that applied when the petition was filed; and

(b) may petition the commission to be regulated under a revised alternative plan"; and made minor changes in style. Amendment effective April 21, 2011.

Preamble: The preamble attached to Ch. 210, L. 1991, provided: "WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority."

1991 Statement of Intent: The statement of intent attached to Ch. 210, L. 1991, provided: "A statement of intent is necessary for this bill because [section 8] [69-3-310] grants the public service commission general rulemaking authority and [section 6] [69-3-305] grants the commission authority to adopt rules relating to the appropriate scope of promotions, rebates, and market trials. The legislature intends that if rules are adopted by the commission, the rules should permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services."

Severability: Section 9, Ch. 210, L. 1991, was a severability clause.

Effective Date: Section 11, Ch. 210, L. 1991, provided: "[This act] is effective on passage and approval." Approved March 27, 1991.

69-3-810. New service — withdrawal of services.

Compiler's Comments

Preamble: The preamble attached to Ch. 210, L. 1991, provided: "WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority."

1991 Statement of Intent: The statement of intent attached to Ch. 210, L. 1991, provided: "A statement of intent is necessary for this bill because [section 8] [69-3-310] grants the public service commission general rulemaking authority and [section 6] [69-3-305] grants the commission authority to adopt rules relating to the appropriate scope of promotions, rebates, and market trials. The legislature intends that if rules are adopted by the commission, the rules should permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services."

Severability: Section 9, Ch. 210, L. 1991, was a severability clause.

Effective Date: Section 11, Ch. 210, L. 1991, provided: "[This act] is effective on passage and approval." Approved March 27, 1991.

69-3-811. Costs for services provided — jurisdiction over complaints.

Compiler's Comments

Preamble: The preamble attached to Ch. 210, L. 1991, provided: "WHEREAS, the Montana Telecommunications Act, which recognizes and encourages competition in the telecommunications industry to the extent consistent with maintaining universal telephone service, was intended to serve as a bridge between a regulated telecommunications industry and a fully competitive market environment; and

WHEREAS, rapid technological and market changes within the telecommunications industry have prompted regulators nationwide to reexamine traditional regulation and adopt alternative regulatory systems; and

WHEREAS, although the intent of the Montana Telecommunications Act was to allow substantial flexibility to the Public Service Commission, the extent of the Commission's authority to implement alternative forms of regulation is uncertain and enactment of this legislation will clarify the Public Service Commission's authority."

1991 Statement of Intent: The statement of intent attached to Ch. 210, L. 1991, provided: "A statement of intent is necessary for this bill because [section 8] [69-3-310] grants the public service commission general rulemaking authority and [section 6] [69-3-305] grants the commission authority to adopt rules relating to the appropriate scope of promotions, rebates, and market trials. The legislature intends that if rules are adopted by the commission, the rules should permit reasonable flexibility to providers of regulated telecommunications services in the marketing of their services."

Severability: Section 9, Ch. 210, L. 1991, was a severability clause.

Effective Date: Section 11, Ch. 210, L. 1991, provided: "[This act] is effective on passage and approval." Approved March 27, 1991.

69-3-815. Nondiscriminatory intercarrier compensation — billing records — enforcement — rulemaking.

Compiler's Comments

Saving Clause: Section 4, Ch. 423, L. 2003, was a saving clause.

Severability: Section 5, Ch. 423, L. 2003, was a severability clause.

Effective Date: Section 6, Ch. 423, L. 2003, provided: "[This act] is effective July 1, 2003."

Administrative Rules

Title 38, chapter 5, subchapter 31, ARM Intercarrier compensation.

69-3-822. Rulemaking authority.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 577 (Ch. 546, L. 1985) provided: "As stated in the purpose section of this act, it is the intent of the legislature to maintain universal availability of basic telecommunications service at affordable rates. At the same time, the legislature desires to make available to the general public the rapid advances in telecommunications technology brought about by competition. It is the intent of this act to provide the regulatory flexibility necessary to allow a transition to a competitive market environment in the telecommunications industry.

Under prior law there was no mechanism that would allow telecommunications utilities to respond to competitive situations. It is the intent of the legislature that the public service commission now have the authority to permit flexible pricing in those instances where it will promote healthy competition. For example, if two telecommunications utilities are effectively competing to provide long distance service to a market, the commission may allow those companies to change their rates without commission approval in response to competition. Depending upon the circumstances, the commission may detariff rates for the competitive services or allow the telecommunications utilities to operate within permissible price ranges or implement some other form of regulation that is less restrictive than total rate regulation.

The legislature intends that the commission retain the power to protect ratepayer interests by totally regulating the rates for telecommunications services that are provided on a monopoly basis. It is intended that the commission be authorized to examine each service and market to determine when market conditions rather than total rate regulation can be relied upon to assure that adequate service will be provided at reasonable rates.

It is further intended that the commission have authority to take those actions necessary to assure that revenues from regulated telecommunications services are not used to subsidize nonregulated operations.

It is intended that the commission have authority to adopt rules, if needed, to develop standards for evaluating market conditions and criteria for determining that detariffing or rate flexibility is appropriate. The commission may also implement, by rule if necessary, such reporting requirements as are required to permit a proper allocation of common or joint costs and investments."

Administrative Rules

Title 38, chapter 5, subchapter 27, ARM Rules regarding Montana Telecommunications Act.

Title 38, chapter 5, subchapter 28, ARM Minimum rate case filing requirements for telephone utilities.

Title 38, chapter 5, subchapter 32, ARM Eligible telecommunications carriers and lifeline/linkup.

ARM 38.5.3730 Annual reports.

ARM 38.5.3732 Market data filing requirements.

Title 38, chapter 5, subchapter 41, ARM IntraLATA equal access implementation.

69-3-829. Expedited complaint proceeding — commission authority.

Compiler's Comments

Effective Date: Section 5, Ch. 310, L. 2003, provided that this section is effective on passage and approval. Approved April 14, 2003.

69-3-830. Expedited complaint proceeding — procedure.

Compiler's Comments

Effective Date: Section 5, Ch. 310, L. 2003, provided that this section is effective on passage and approval. Approved April 14, 2003.

69-3-831. Interconnection — construction and effect.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-832. Interconnection — jurisdiction.

Compiler's Comments

2003 Amendment: Chapter 310 inserted reference to sections 69-3-829 and 69-3-830. Amendment effective April 14, 2003.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-833. Rulemaking authority.

Compiler's Comments

1997 Statement of Intent: The statement of intent attached to Ch. 349, L. 1997, provided: "A statement of intent is required for this bill is required because rulemaking authority is granted to the public service commission.

[Section 3] [69-3-833] authorizes the public service commission to adopt procedural rules relating to mediation and arbitration for interconnection proceedings.

Under the interim universal access provisions of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed], the public service commission is to establish surcharge rates as provided in [section 25] [69-3-860, now repealed]. The surcharge rates must take into account different cost structures among telecommunications carriers, particularly the wireless and CATV industry. The retail revenue for these providers should be based on an equitable, per access line, revenue equivalent. The commission shall also set the surcharge rate to produce the amount of revenue necessary to fund the program. The formulation should consider any overlapping federal discounts. The commission should appoint an oversight group, consisting of users and industry participants, to meet quarterly with the commission to review revenue, discounts, and the administration of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed]. The public service commission shall also establish a method for paying discount reimbursements in accordance with [section 25] [69-3-860, now repealed]. The public service commission shall cooperate with the department of revenue in determining rates, administering offsets against any surcharges, and other matters necessary for the administration of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed].

The department of revenue shall administer the collection of the surcharge by rule. Because of the limited duration of the program, it is contemplated that the rules and administration be minimal, flexible, and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the implementation of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed].

Under [section 13] [69-3-843], the public service commission shall administer a contract with a third party that will manage the universal service fund for telecommunications services on a daily basis. The third party is responsible for the collection of contributions to the fund. The third party is also responsible for setting the amount of contribution based on total retail revenue of telecommunications carriers operating in Montana. The public service commission shall adopt procedural rules for the collection of the contributions. The public service commission shall also adopt rules allowing the third party to assess late fees and interest on late payments of contributions. The rules must set interest rates and penalties for late payments.

[Section 14] [69-3-844] authorizes the public service commission to adopt procedural rules relating to the collection of contributions to the universal service fund.

[Section 14] [69-3-844] authorizes the public service commission to adopt rules for the assessment of late fees and interest on contributions to the fund.

[Section 15] [69-3-845] requires the public service commission to adopt rules establishing affordability benchmarks for local service.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-834. Duty to interconnect.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-835. Voluntary negotiation of interconnection agreements.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-836. Mediation of interconnection agreements.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-837. Arbitration of interconnection issues.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-838. Approval of arbitration decision.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-839. Approval of interconnection agreements.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-840. Determination of eligible carrier status — universal service support.

Compiler's Comments

2003 Amendment: Chapter 187 in (2) near middle of second sentence after "communications commission" substituted "and the commission, after taking into account recommendations of a federal-state joint board instituted under 47 U.S.C. 410(c), establish" for "establishes"; in (5) near middle of first sentence after "eligible" inserted "telecommunications"; and made minor changes in style. Amendment effective March 31, 2003.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-841. Universal service policies.

Compiler's Comments

Termination Provision Repealed: Section 5, Ch. 430, L. 2001, repealed sec. 6, Ch. 187, L. 1999, which terminated this section December 31, 2001. Effective April 30, 2001.

Extension of Termination Date: Section 4, Ch. 187, L. 1999, amended sec. 41, Ch. 349, L. 1997, by extending the termination date imposed by Ch. 349 to December 31, 2001. Effective March 26, 1999.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Termination: Section 41, Ch. 349, L. 1997, provided that this section terminates December 31, 1999.

69-3-842. Universal service fund established — purpose.

Compiler's Comments

2001 Amendment: Chapter 430 in (1) at beginning of first sentence substituted "Upon petition for good cause by a telecommunications carrier or the consumer counsel or on the commission's own motion, the commission shall investigate the need for" for "Pursuant to a determination of need, the commission shall establish and administer" and inserted second sentence requiring investigation to take into account the evolving nature of universal service and changes in support systems; in (2) inserted first sentence requiring commission to establish state universal service fund upon determination that fund is necessary to promote policy and is consistent with public interest; inserted (5) defining interexchange services; and made minor changes in style. Amendment effective April 30, 2001.

Termination Provision Repealed: Section 5, Ch. 430, L. 2001, repealed sec. 6, Ch. 187, L. 1999, which terminated this section December 31, 2001. Effective April 30, 2001.

Extension of Termination Date: Section 4, Ch. 187, L. 1999, amended sec. 41, Ch. 349, L. 1997, by extending the termination date imposed by Ch. 349 to December 31, 2001. Effective March 26, 1999.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Termination: Section 41, Ch. 349, L. 1997, provided that this section terminates December 31, 1999.

69-3-843. Fund administrator — commission rulemaking authority.

Compiler's Comments

2001 Amendment: Chapter 430 in (1) after "selected" inserted "by the commission"; in (2) at end of last sentence substituted "may not be for a period greater than 3 years" for "must expire December 31, 2001"; in (3) substituted language authorizing adoption of rules for administration of fund for former language that read: "The fiscal agent shall provide monthly reports of fund activities to the commission and shall provide audits annually by a certified public accountant in a manner determined by and under the direction of the commission"; and deleted former (4) that read: "(4) The fund financial accounts of the fiscal agent must be available at reasonable times to any telecommunications carrier in the state and to the public. The commission may investigate the accounts and practices of the fiscal agent and enter orders concerning the accounts and practices." Amendment effective April 30, 2001.

Termination Provision Repealed: Section 5, Ch. 430, L. 2001, repealed sec. 6, Ch. 187, L. 1999, which terminated this section December 31, 2001. Effective April 30, 2001.

1999 Amendment: Chapter 187 at end of (2) and (4) substituted "2001" for "1999"; in (3) substituted "monthly reports" for "quarterly reports"; and made minor changes in style. Amendment effective March 26, 1999.

Extension of Termination Date: Section 4, Ch. 187, L. 1999, amended sec. 41, Ch. 349, L. 1997, by extending the termination date imposed by Ch. 349 to December 31, 2001. Effective March 26, 1999.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Termination: Section 41, Ch. 349, L. 1997, provided that this section terminates December 31, 1999.

69-3-844. Contributions to fund.

Compiler's Comments

2001 Amendment: Chapter 430 in (1) in first sentence substituted "quarterly basis" for "monthly basis" and substituted "January 1 to December 31 calendar year" for "July 1 to June 30 fiscal year" and substituted language in second and third sentences regarding determination of contributions based on percentage of total intrastate retail revenue of registered carriers and requiring contributions to be determined on percentage basis if high-cost mechanisms of federal program are eliminated for former language that read: "Initial contributions to the fund may only be collected for the 2-month period prior to the effective date of distributions from the fund and must be calculated as follows:

(a) determine the total retail revenue for all telecommunications carriers for the immediately preceding calendar year;

(b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant to 69-3-845;

(c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce an amount equal to the fund total calculated in subsection (1)(b);

(d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund shortfalls or excesses in the previous fiscal year, including uncollectibles, new providers seeking support, cost of administration, and auditing; and

(e) send notice of the current uniform percentage and appropriate remittance forms to each telecommunications carrier at least 2 months prior to the effective date of the application of the percentage"; in (2) in first sentence after "adopt" deleted "procedural" and at end of second sentence inserted "and the prevailing party in an action is entitled to the recovery of costs and attorney fees incurred in that action"; inserted (3) requiring funds received by eligible carrier from state high-cost fund to be used for providing, maintaining, and upgrading facilities and services; and made minor changes in style. Amendment effective April 30, 2001.

Termination Provision Repealed: Section 5, Ch. 430, L. 2001, repealed sec. 6, Ch. 187, L. 1999, which terminated this section December 31, 2001. Effective April 30, 2001.

1999 Amendment: Chapter 187 in (1) in first sentence substituted "monthly basis" for "quarterly basis"; and at end of (1)(d) after "year" inserted "including uncollectibles, new providers seeking support, cost of administration, and auditing". Amendment effective March 26, 1999.

Extension of Termination Date: Section 4, Ch. 187, L. 1999, amended sec. 41, Ch. 349, L. 1997, by extending the termination date imposed by Ch. 349 to December 31, 2001. Effective March 26, 1999.

1997 Statement of Intent: The statement of intent attached to Ch. 349, L. 1997, provided: "A statement of intent is required for this bill because rulemaking authority is granted to the public service commission.

[Section 3] [69-3-833] authorizes the public service commission to adopt procedural rules relating to mediation and arbitration for interconnection proceedings.

Under the interim universal access provisions of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed], the public service commission is to establish surcharge rates as provided in [section 25] [69-3-860, now repealed]. The surcharge rates must take into account different cost structures among telecommunications carriers, particularly the wireless and CATV industry. The retail revenue for these providers should be based on an equitable, per access line, revenue equivalent. The commission shall also set the surcharge rate to produce the amount of revenue necessary to fund the program. The formulation should consider any overlapping federal discounts. The commission should appoint an oversight group, consisting of users and industry participants, to meet quarterly with the commission to review revenue, discounts, and the administration of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed]. The public service commission shall also establish a method for paying discount reimbursements in accordance with [section 25] [69-3-860, now repealed]. The public service commission shall cooperate with the department of revenue in determining rates, administering offsets against any surcharges, and other matters necessary for the administration of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed].

The department of revenue shall administer the collection of the surcharge by rule. Because of the limited duration of the program, it is contemplated that the rules and administration be minimal, flexible, and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the implementation of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed].

Under [section 13] [69-3-843], the public service commission shall administer a contract with a third party that will manage the universal service fund for telecommunications services on a daily basis. The third party is responsible for the collection of contributions to the fund. The third party is also responsible for setting the amount of contribution based on total retail revenue of telecommunications carriers operating in Montana. The public service commission shall adopt procedural rules for the collection of the contributions. The public service commission shall also adopt rules allowing the third party to assess late fees and interest on late payments of contributions. The rules must set interest rates and penalties for late payments.

[Section 14] [69-3-844] authorizes the public service commission to adopt procedural rules relating to the collection of contributions to the universal service fund. [Section 14] [69-3-844] authorizes the public service commission to adopt rules for the assessment of late fees and interest on contributions to the fund.

[Section 15] [69-3-845] requires the public service commission to adopt rules establishing affordability benchmarks for local service."

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Termination: Section 41, Ch. 349, L. 1997, provided that this section terminates December 31, 1999.

69-3-845. Payments from fund — costs.

Compiler's Comments

2001 Amendment: Chapter 430 in (1) at beginning deleted "Subject to the requirements of this section" and substituted "quarterly basis" for "monthly basis"; in (2) substituted reference to 69-3-842(2) for reference to 69-3-842(1); deleted former (3) through (7) that read: "(3) Distributions must be calculated for the designated support areas established by the commission. In the case of an area served by a rural telephone company, the term "designated support area" means the rural telephone company's Montana service area unless the rural telephone company voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone company's designated support area must be an area designated by the commission, which may be smaller than a wire center. The term designated support area for all other telecommunications carriers means a geographic area as established by the commission, which must be smaller than a wire center.

(4) Support for the services listed in 69-3-842(1) must be calculated as the difference between the costs determined in each designated support area and the affordability benchmark in that support area. The commission shall adopt rules to determine affordability benchmarks.

(5) Except as provided in subsection (6), for rural telephone companies and other eligible telecommunications carriers offering services in a designated support area served by a rural telephone company, the average cost for each line must be calculated and submitted, based on the preceding calendar year, to the fiscal agent as follows:

(a) If an additional eligible telecommunications carrier has not been designated pursuant to 69-3-840(3), the rural telephone company's total unseparated loop cost, as defined by federal separation rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport costs, and customer operations costs assigned to the telecommunications services set forth in 69-3-842(1), which must be calculated using the methodology set forth in federal communications commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(b) Upon the designation of an additional eligible telecommunications carrier pursuant to 69-3-840(3) in a designated support area served by a rural telephone company, the additional eligible telecommunications carrier has access to the fund on the same basis as the rural telephone company. Upon the designation of the additional eligible telecommunications carrier, both the carrier and the rural telephone company must receive distributions from the fund based upon the rural telephone company's average cost for each line disaggregated to geographic areas smaller than a wire center. The support for each line for each geographic area must be based upon the rural telephone company's costs, as determined in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the commission.

(6) Except as provided in subsection (5)(b), for companies that are not rural telephone companies and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each line in designated support areas must be calculated based on the cost proxy model adopted by the commission. This total per-line cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(7) In determining any proxy mechanism under this section, the commission shall use a model that:

(a) targets support to a geographic area smaller than a wire center;

(b) uses acceptable outside plant design and costing principles;

(c) uses reasonable switch design and costing principles;

(d) includes a reasonable share of the joint and common costs of the telecommunications carrier;

(e) meets standards for documenting model logic and the sources of cost data input; and

(f) meets reasonableness tests to ensure that model outputs are representative of costs that can be reasonably expected in the construction of a network and that the network is capable of providing telecommunications services that meet the telecommunications services quality standards of the commission and federal regulators"; and made minor changes in style. Amendment effective April 30, 2001.

Termination Provision Repealed: Section 5, Ch. 430, L. 2001, repealed sec. 6, Ch. 187, L. 1999, which terminated this section December 31, 2001. Effective April 30, 2001.

1999 Amendment: Chapter 187 in (1) after "made" inserted "from collected contributions". Amendment effective March 26, 1999.

Extension of Termination Date: Section 4, Ch. 187, L. 1999, amended sec. 41, Ch. 349, L. 1997, by extending the termination date imposed by Ch. 349 to December 31, 2001. Effective March 26, 1999.

1997 Statement of Intent: The statement of intent attached to Ch. 349, L. 1997, provided: "A statement of intent is required for this bill because rulemaking authority is granted to the public service commission.

[Section 3] [69-3-833] authorizes the public service commission to adopt procedural rules relating to mediation and arbitration for interconnection proceedings.

Under the interim universal access provisions of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed], the public service commission is to establish surcharge rates as provided in [section 25] [69-3-860, now repealed]. The surcharge rates must take into account different cost structures among telecommunications carriers, particularly the wireless and CATV industry. The retail revenue for these providers should be based on an equitable, per access line, revenue equivalent. The commission shall also set the surcharge rate to produce the amount of revenue necessary to fund the program. The formulation should consider any overlapping federal discounts. The commission should appoint an oversight group, consisting of users and industry participants, to meet quarterly with the commission to review revenue, discounts, and the administration of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed]. The public service commission shall also establish a method for paying discount reimbursements in accordance with [section 25] [69-3-860, now repealed]. The public service commission shall cooperate with the department of revenue in determining rates, administering offsets against any surcharges, and other matters necessary for the administration of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed].

The department of revenue shall administer the collection of the surcharge by rule. Because of the limited duration of the program, it is contemplated that the rules and administration be minimal, flexible, and as unobtrusive as possible while ensuring that there are sufficient administrative powers to enable the implementation of [sections 20 through 26] [69-3-856 through 69-3-861, all now repealed].

Under [section 13] [69-3-843], the public service commission shall administer a contract with a third party that will manage the universal service fund for telecommunications services on a daily basis. The third party is responsible for the collection of contributions to the fund. The third party is also responsible for setting the amount of contribution based on total retail revenue of telecommunications carriers operating in Montana. The public service commission shall adopt procedural rules for the collection of the contributions. The public service commission shall also adopt rules allowing the third party to assess late fees and interest on late payments of contributions. The rules must set interest rates and penalties for late payments.

[Section 14] [69-3-844] authorizes the public service commission to adopt procedural rules relating to the collection of contributions to the universal service fund.

[Section 14] [69-3-844] authorizes the public service commission to adopt rules for the assessment of late fees and interest on contributions to the fund.

[Section 15] [69-3-845] requires the public service commission to adopt rules establishing affordability benchmarks for local service."

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

Termination: Section 41, Ch. 349, L. 1997, provided that this section terminates December 31, 1999.

69-3-846. Discounts for schools, libraries, and health care providers.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-847. Wholesale pricing standards.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-848. Pricing of individual network elements.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-849. Prohibited subsidies.

Compiler's Comments

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

Effective Date: Section 40, Ch. 349, L. 1997, provided that this section is effective on passage and approval. Approved April 22, 1997.

69-3-870. Performance assurance state special revenue account — statutory appropriation.

Compiler's Comments

Effective Date: Section 4, Ch. 43, L. 2003, provided that this section is effective on passage and approval. Approved February 26, 2003.

Part 9
Rate Regulation of Small Telecommunications Providers

69-3-901. Definitions.

Compiler's Comments

1999 Amendment: Chapter 154 in definition of small telecommunications provider increased subscribers from 5,000 to 12,000. Amendment effective October 1, 1999.

69-3-903. Notice of rate increase or decrease.

Compiler's Comments

1999 Amendment: Chapter 154 in (1) in two places after "increase" inserted "or decrease"; in (2)(b) at end after "increased" inserted "or decreased". Amendment effective October 1, 1999.

69-3-904. Commission review and determination of rate increases or decreases.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 16, Ch. 166, L. 2023. Amendment effective October 1, 2023.

1999 Amendment: Chapter 154 in (1) and (1)(c) after "increase" inserted "or decrease". Amendment effective October 1, 1999.

69-3-906. Petition for review of proposed rate increase or decrease.

Compiler's Comments

1999 Amendment: Chapter 154 in both sentences after "increase" inserted "or decrease". Amendment effective October 1, 1999.

69-3-907. Proposed increase or decrease effective unless requisite petitions received by commission.

Compiler's Comments

1999 Amendment: Chapter 154 throughout section after "increase" inserted "or decrease"; and at end of (3) after "increased" inserted "decreased". Amendment effective October 1, 1999.

69-3-910. Regulatory flexibility upon petition by small telecommunications provider.

Compiler's Comments

Effective Date: This section is effective October 1, 1999.

Part 10
Telephone Low-Income Assistance Program

69-3-1001. Creation of program — amount of assistance.

Compiler's Comments

1997 Amendment: Chapter 349 in (2), at beginning, substituted "The commission shall set the discount" for "This discount" and after "service" substituted "that is at least $3.50 a month for each eligible subscriber but not more than the amount that is the difference between the otherwise applicable current rate for local exchange service and the rate as it was on April 22, 1997" for "is the greater of:

(a) $2 a month for each eligible subscriber; or

(b) the amount necessary to obtain the matching waiver available under applicable orders and regulations of the federal communications commission". Amendment effective April 22, 1997.

Severability: Section 39, Ch. 349, L. 1997, was a severability clause.

1987 Statement of Intent: The statement of intent attached to Ch. 391, L. 1987, provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the public service commission and the department of social and rehabilitation services [department of public health and human services]. It is the intent of the legislature that the low income telephone assistance program be narrowly targeted to the low income individuals identified in the bill and be administered in the most cost-effective way. Any rules of the public service commission promulgated under this act must be narrowly written to meet requirements for matching federal assistance."

Severability: Section 9, Ch. 391, L. 1987, was a severability section.

69-3-1002. Eligibility — rules.

Compiler's Comments

1995 Amendment: Chapter 546 near end of (1) substituted "department of public health and human services" for "department of social and rehabilitation services"; and made minor changes in style. Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

69-3-1006. Federal requirements.

Compiler's Comments

1995 Amendment: Chapter 546 substituted "department of public health and human services" for "department of social and rehabilitation services". Amendment effective July 1, 1995.

Saving Clause: Section 571, Ch. 546, L. 1995, was a saving clause.

Part 11
Intrastate Consumer Protection

Part Compiler's Comments

Effective Date: This part is effective October 1, 1999.

Part 12
Integrated Least-Cost Resource Planning and Acquisition Act

Part Compiler's Comments

1993 Statement of Intent: The statement of intent attached to Ch. 157, L. 1993, provided: "A statement of intent is required for this bill because [section 4] [69-3-1204] grants the public service commission rulemaking authority to adopt guidelines for an electric or natural gas utility to follow in compiling an integrated least-cost resource plan. It is the intent of the legislature that the rules not apply to rural electric cooperatives. It is also the intent of the legislature that the rules preserve the "used and useful" ratemaking standard. The rules are not intended to allow the commission to preapprove any resource use proposed in a plan. [Section 5] [69-3-1205] does not require coordination between the commission and the department of natural resources and conservation regarding their respective planning requirements. However, it is the intent of the legislature that the department and other state agencies share with the commission their expertise on environmental impacts of a utility's planned resource acquisitions. [Section 6] [69-3-1206] addresses commission rate treatment. The commission may include costs resulting from an integrated least-cost resource plan in a utility's rates."

Effective Date: Section 12, Ch. 157, L. 1993, provided: "[This act] [69-3-1201 through 69-3-1206] is effective July 1, 1993."

69-3-1202. Policy — planning.

Compiler's Comments

2019 Amendment: Chapter 449 in (1) after "the state" substituted "requires" for "encourages"; in (1)(b) after "acquire resources" inserted "using a competitive solicitation process and"; in (2)(b) in two places substituted "commission shall" for "commission may" and substituted "long-range plans every 3 years" for "periodic long-range plans"; and made minor changes in style. Amendment effective July 1, 2020.

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

69-3-1203. Definitions.

Compiler's Comments

2019 Amendment: Chapter 449 inserted definitions of demand-side management programs, energy conservation, energy efficiency, and planning period; and made minor changes in style. Amendment effective July 1, 2020.

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

69-3-1204. Integrated least-cost plan.

Compiler's Comments

2019 Amendment: Chapter 449 in (1) after "commission" substituted "shall" for "may", near middle after "file a plan" inserted "every 3 years", and at end inserted "and in accordance with this part"; in (1)(b) after "rules" substituted "must" for "may"; in (2)(a)(i) at end inserted "and including demand-side management programs in accordance with 69-3-1209"; inserted (2)(a)(ii) through (2)(a)(vi) concerning additional provisions for what a plan must contain; inserted (2)(b) regarding inputs on which the utility relied to develop information; inserted (5) and (6) outlining the commission's duties regarding a plan; and made minor changes in style. Amendment effective July 1, 2020.

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

1995 Amendment: Chapter 418 in (4) substituted "department of environmental quality" for "department of natural resources and conservation". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

69-3-1205. Public comment — public meetings.

Compiler's Comments

2019 Amendment: Chapter 449 inserted (1) requiring a public utility to hold at least two public meetings prior to submitting a plan; in (2) at beginning inserted "After a plan is submitted" and substituted "two public meetings" for "a public meeting"; in (3)(a) after "review a plan" inserted "submitted to the commission"; in (4) after "comment on a" inserted "submitted"; and made minor changes in style. Amendment effective July 1, 2020.

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

2003 Amendment: Chapter 217 in (2)(b) near middle after "certificate of" substituted "compliance" for "environmental compatibility and public need". Amendment effective April 3, 2003.

Saving Clause: Section 19, Ch. 217, L. 2003, was a saving clause.

Severability: Section 20, Ch. 217, L. 2003, was a severability clause.

1995 Amendment: Chapter 418 in (2) substituted "department of environmental quality" for "department of natural resources and conservation". Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15-131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

69-3-1206. Rate treatment.

Compiler's Comments

2021 Amendment: Chapter 300 inserted (3) concerning when the commission may approve a bonus or adder. Amendment effective April 28, 2021.

Applicability: Section 4, Ch. 300, L. 2021, provided: "[This act] does not apply to applications pending before the commission on or before [the effective date of this act]." Effective April 28, 2021.

2019 Amendment: Chapter 449 inserted (1)(b) concerning demand-side management programs; in (1)(d) at end deleted "including but not limited to:

(i) planning costs;

(ii) portfolio development costs; and

(iii) all or a portion of abandonment costs"; inserted (1)(e) concerning the costs of complying with a competitive solicitation process; in (2) after "commission" substituted "may adopt" for "shall adopt"; and made minor changes in style. Amendment effective July 1, 2020.

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

69-3-1207. Competitive solicitation process — Montana consumer counsel role.

Compiler's Comments

Effective Date: Section 20, Ch. 449, L. 2019, provided: "[This act] is effective July 1, 2020."

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

69-3-1208. Resource planning — advisory committee.

Compiler's Comments

Effective Date: Section 20, Ch. 449, L. 2019, provided: "[This act] is effective July 1, 2020."

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

69-3-1209. Electric utility demand-side management programs.

Compiler's Comments

2021 Amendment: Chapter 11 in (2) substituted "69-3-701 through 69-3-712" for "69-3-701 through 69-3-713". Amendment effective October 1, 2021.

Effective Date: Section 20, Ch. 449, L. 2019, provided: "[This act] is effective July 1, 2020."

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.

Severability: Section 18, Ch. 449, L. 2019, was a severability clause.

Part 13

Change in Customer's Telecommunications Carrier

Part Compiler's Comments

1997 Statement of Intent: The statement of intent attached to Ch. 325, L. 1997, provided: "A statement of intent is required for this bill because [section 4] [69-3-1304] grants rulemaking authority to the public service commission for the purposes of preventing and punishing unauthorized changes in a customer's choice of a telecommunications service provider."

Effective Date: Section 8, Ch. 325, L. 1997, provided "[This act] [69-3-1301 through 69-3-1305] is effective on passage and approval." Approved April 21, 1997.

Part Administrative Rules

Title 38, chapter 5, subchapter 38, ARM Unauthorized change of provider.

Title 38, chapter 5, subchapter 39, ARM Unauthorized product or service charges on telephone bills.

69-3-1301. Purpose.

Compiler's Comments

2003 Amendment: Chapter 249 near beginning after "including" substituted "entities" for "carriers". Amendment effective April 8, 2003.

1999 Amendment: Chapter 244 at end inserted provision prohibiting charges for unrequested or unprovided products or services from being placed on customer's bill. Amendment effective October 1, 1999.

69-3-1302. Definitions.

Compiler's Comments

2007 Amendment: Chapter 325 in definition of local exchange company substituted current definition for former text that read: "has the meaning as provided in 53-19-302". Amendment effective April 28, 2007.

2003 Amendments — Composite Section: Chapter 150 deleted definition of commission that read: ""Commission" means the public service commission provided for in 2-15-2602"; inserted definition of electronic signature; and made minor changes in style. Amendment effective March 26, 2003.

Chapter 249 inserted definitions of billing agent, billing aggregator, and service provider; in definition of customer at end inserted "or who has been billed charges on a telephone bill for the services or products of another entity"; in definition of telecommunications carrier in second sentence in two places substituted reference to an entity for reference to a person; and made minor changes in style. Amendment effective April 8, 2003.

69-3-1303. Prohibition — exceptions.

Compiler's Comments

2003 Amendments — Composite Section: Chapter 150 in (1)(a) after "obtained" substituted "the customer's written or electronic signature on a form" for "from the customer a document signed by the customer"; inserted (1)(d) providing that a carrier may not request a change in a customer's primary interexchange carrier or local exchange company unless the change in carrier is the result of a sale or transfer of a subscriber base from one carrier to another and the carrier that has acquired the subscriber base has notified the commission and customers affected by the change; at beginning of (2)(a) after "must" substituted "include the written or electronic signature of the customer" for "be signed by the customer"; in (3)(a) near middle after "obtained" substituted "the customer's written or electronic signature on a form" for "a document signed by the customer" (amendment rendered void by Ch. 249 amendment); in (4)(a) at beginning after "must" substituted "include the written or electronic signature of the customer" for "be signed by the customer"; and made minor changes in style. Amendment effective March 26, 2003.

Chapter 249 deleted former (3) through (6) that read: "(3) A telecommunications carrier or other entity may not initiate charges to be placed on a customer's telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:

(a) by written authorization, in which the telecommunications provider or other entity has obtained a document signed by the customer containing a clear and conspicuous disclosure of the customer's authorization or order of the product or service; or

(b) by verbal authorization, in which the telecommunications carrier or other entity has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.

(4) The documentation provided for in subsections (3)(a) and (3)(b):

(a) must be signed by the customer responsible for paying the charges on the telecommunications bill; and

(b) may not be a part of a sweepstakes, contest, or similar promotional program.

(5) A customer is not liable for any charges submitted for billing on the local exchange company's telephone bill by another carrier or entity for products or services that the customer did not authorize or that were not provided to the customer.

(6) The provisions of subsections (3), (4), and (5) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service." Amendment effective April 8, 2003.

1999 Amendment: Chapter 244 in (1) substituted "may not request a change in a customer's primary interexchange carrier" for "may not honor a request by any person other than a customer to change the customer's primary interexchange carriers"; inserted (3) prohibiting initiation of charges on bill without customer request; inserted (4) requiring documentation to be signed by customer and not be part of promotional program; inserted (5) providing customer is not liable for unauthorized or unprovided products or services; and inserted (6) exempting from subsections (3), (4), and (5) transactions between customer and customer's selected providers. Amendment effective October 1, 1999.

69-3-1305. Unauthorized change in telecommunications carrier — liability — penalty for violation.

Compiler's Comments

2003 Amendment: Chapter 249 in (2) near beginning inserted "or any other entity", after "69-3-1303 or" deleted "initiates charges to be billed on a customer's telephone bill for services or products not provided to or authorized by the customer", inserted "this section", and near end inserted "upon conviction"; in (3)(a) near beginning substituted "any entity" for "a person", near middle after "carrier" deleted "or has initiated charges to be billed on a customer's telephone bill for services or products not provided or authorized", and near middle after "change" deleted "or charge"; in (3)(b) in introductory clause near beginning substituted "an entity" for "a person", near middle after "carriers" deleted "or initiated charges to be billed on a customer's telephone bill for services or products not provided or authorized", and at end inserted "take any of the following actions"; in (3)(b)(i) near end substituted "entity" for "person"; inserted (3)(b)(ii) through (3)(b)(v) relating to prohibiting a billing aggregator or billing agent from billing certain charges, revocation of the registration of a service provider or billing aggregator, limiting the prohibitions under subsection (3)(b) to a specific period of time, and allowing withdrawal of a subsection (3)(b) prohibition; inserted (4) requiring the commission to provide adequate time for a billing agent prohibited from billing on behalf of a carrier or other entity to terminate a contract with that carrier or other entity; and made minor changes in style. Amendment effective April 8, 2003.

1999 Amendment: Chapter 244 near middle of (2) after "69-3-1303" inserted reference to initiation of charges for services or products not provided to or authorized by customer; inserted (3) authorizing commission to impose civil fine for unauthorized changes or charges and authorizing secretary of state to revoke repeat violator's right to transact business in this state; in (4) inserted reference to injunctive relief; and made minor changes in style. Amendment effective October 1, 1999.

69-3-1308. Prohibitions on charges on bill — exceptions.

Compiler's Comments

Effective Date: Section 12, Ch. 249, L. 2003, provided that this section is effective April 8, 2003.

69-3-1309. Liability for unauthorized charges on telephone bill — penalty for violation.

Compiler's Comments

Effective Date: Section 12, Ch. 249, L. 2003, provided that this section is effective April 8, 2003.

69-3-1310. Misrepresentation concerning product or service — violations — complaints.

Compiler's Comments

Effective Date: Section 12, Ch. 249, L. 2003, provided that this section is effective April 8, 2003.

69-3-1311. Registration requirements — prohibitions — revocation.

Compiler's Comments

Effective Date: Section 12, Ch. 249, L. 2003, provided that this section is effective April 8, 2003.

69-3-1315. Submission of list of entities served by billing aggregator required.

Compiler's Comments

Effective Date: Section 12, Ch. 249, L. 2003, provided that this section is effective April 8, 2003.

69-3-1316. Notice to attorney general.

Compiler's Comments

Effective Date: Section 12, Ch. 249, L. 2003, provided that this section is effective April 8, 2003.

Part 14

Natural Gas Utility Restructuring and Customer Choice Act

Part Compiler's Comments

1997 Statement of Intent: The statement of intent attached to Ch. 506, L. 1997, provided: "A statement of intent is required because this bill provides the public service commission with rulemaking authority."

Saving Clause: Section 10(1), Ch. 506, L. 1997, was a saving clause.

Retroactive Applicability: Section 10(2), Ch. 506, L. 1997, provided: "[This act] [69-3-1401 through 69-3-1409, now repealed] applies retroactively, within the meaning of 1-2-109, to restructuring filings filed with the public service commission after June 1, 1996."

Severability: Section 11, Ch. 506, L. 1997, was a severability clause.

Effective Date: Section 14, Ch. 506, L. 1997, provided: "[This act] [69-3-1401 through 69-3-1409, now repealed] is effective on passage and approval." Approved May 2, 1997.

Part Administrative Rules

Title 38, chapter 5, subchapter 60, ARM Electric and natural gas utility restructuring — consumer information and protection.

Title 38, chapter 5, subchapter 70, ARM Natural gas utility restructuring — provider conduct, supplier licensing, and universal system benefits program.

69-3-1402. Definitions.

Compiler's Comments

2009 Amendment: Chapter 127 inserted definitions of natural gas production and gathering assets cost of service and natural gas production and gathering resources; and made minor changes in style. Amendment effective April 1, 2009.

Applicability: Section 9, Ch. 127, L. 2009, provided: "[This act] applies to applications received by the public service commission after March 31, 2010."

2007 Amendment: Chapter 174 in definition of universal system benefits programs near middle inserted "low-income energy bill discounts" and near end after "weatherization, and" inserted "emergency"; and made minor changes in style. Amendment effective April 10, 2007.

69-3-1404. Functional separation — code of conduct — emergency services — customer protection.

Compiler's Comments

2009 Amendment: Chapter 127 in (1) at beginning inserted exception clause and in (1)(a) in two places after "gathering" inserted "resources"; and made minor changes in style. Amendment effective April 1, 2009.

Applicability: Section 9, Ch. 127, L. 2009, provided: "[This act] applies to applications received by the public service commission after March 31, 2010."

69-3-1408. Universal system benefits programs — establishing nonbypassable rate — exemption.

Compiler's Comments

2015 Amendment: Chapter 19 in (1), (2), and (3) inserted exception clause; inserted (4) concerning exempt natural gas utilities; and made minor changes in style. Amendment effective February 17, 2015.

Saving Clause: Section 2, Ch. 19, L. 2015, was a saving clause.

Retroactive Applicability: Section 4, Ch. 19, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2015."

2007 Amendment: Chapter 174 in (1) near middle after "approval" inserted "and subject to ongoing commission oversight and direction" and at end deleted "that considers existing universal system benefits programs in the state"; in (2) inserted second sentence concerning establishing charge through tracking procedure, in third sentence near beginning after "assessing" substituted "the charge" for "those rates", and in fourth sentence near beginning following "charge" inserted "beginning January 1, 2007", near middle after "utility's" inserted "minimum", and at end inserted "for the previous year"; inserted (3) concerning natural gas utility filing annual report; deleted former (3) that read: "(3) On or before July 1, 2002, the commission shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for universal system benefits programs. The determination should focus specifically on the existence of markets to provide for any of the universal system benefits programs or on whether other means for funding those universal system benefits programs have developed. These recommendations may also address how future reevaluations will be provided, if necessary"; and made minor changes in style. Amendment effective April 10, 2007.

69-3-1413. Statement of purpose.

Compiler's Comments

Effective Date: Section 8, Ch. 127, L. 2009, provided that this section is effective on passage and approval. Approved April 1, 2009.

Applicability: Section 9, Ch. 127, L. 2009, provided: "[This act] applies to applications received by the public service commission after March 31, 2010."

69-3-1414. Acquisition of rate-based facilities.

Compiler's Comments

Effective Date: Section 8, Ch. 127, L. 2009, provided that this section is effective on passage and approval. Approved April 1, 2009.

Applicability: Section 9, Ch. 127, L. 2009, provided: "[This act] applies to applications received by the public service commission after March 31, 2010."

69-3-1415. Application and approval of natural gas production and gathering resources.

Compiler's Comments

Effective Date: Section 8, Ch. 127, L. 2009, provided that this section is effective on passage and approval. Approved April 1, 2009.

Applicability: Section 9, Ch. 127, L. 2009, provided: "[This act] applies to applications received by the public service commission after March 31, 2010."

Administrative Rules

ARM 38.5.7101 Minimum filing requirements for restructured gas utility applications for approval of natural gas production or gathering resources.

69-3-1416. Use of natural gas production and gathering resources.

Compiler's Comments

Effective Date: Section 8, Ch. 127, L. 2009, provided that this section is effective on passage and approval. Approved April 1, 2009.

Applicability: Section 9, Ch. 127, L. 2009, provided: "[This act] applies to applications received by the public service commission after March 31, 2010."

Part 15
Material Affiliate Transactions

Part Compiler's Comments

Effective Date: Section 5, Ch. 220, L. 2005, provided that this part is effective on passage and approval. Approved April 15, 2005.

Part 16
Montana Energy Impact Assistance Act

Part Compiler's Comments

Effective Date: Section 24, Ch. 442, L. 2019, provided that this part is effective July 1, 2019.

Preamble: The preamble attached to Ch. 442, L. 2019, provided: "WHEREAS, customers of Montana's regulated electric utilities have an interest in ensuring that their utilities are providing efficient and cost-effective electric generation; and

WHEREAS, there are alternative financing mechanisms used by 21 other states that will result in lower costs to electric utility customers, and the use of these mechanisms can ensure that the costs of retiring or replacing electric infrastructure or facilities located in the state can be financed in a way that reduces the total amount of costs being included in customer rates; and

WHEREAS, customer costs of alternative financing mechanisms can be minimized by achieving the highest possible credit rating from independent credit rating agencies, which requires special procedures and conditions."

Saving Clause: Section 22, Ch. 442, L. 2019, was a saving clause.

Severability: Section 23, Ch. 442, L. 2019, was a severability clause.

CHAPTER 4
UTILITY LINES AND FACILITIES

Chapter Case Notes

Telephone Companies — Right to Compete: Private telephone companies are free to compete at any time in Montana, and telephone cooperatives may compete when no reasonably adequate service is available. Intermountain Tel. & Power Co. v. Dept. of Public Service Regulation, 201 M 74, 651 P2d 1015, 39 St. Rep. 1962 (1982).

Chapter Law Review Articles

The Montana Major Facility Siting Act, Carter, 45 Mont. L. Rev. 113 (Winter 1984).

Regulation of Interconnected Electrical Utilities: Some Jurisdictional Considerations, Lopach, 37 Mont. L. Rev. 1 (1976).

Part 1
General Provisions

69-4-101. Use of public right-of-way for utility lines and facilities.

Case Notes

Forest Land — Power Transmission Not Within Scope of Highway Right-of-Way — State Law Not Applicable: A subdivision that installed a powerline under a road on national forest property without U.S. Forest Service approval could not rely on a county permit that authorized the installation. The scope of a grant of federal land is a question of federal law, and in some instances it may be determined as a matter of federal law that the United States has impliedly adopted and assented to a state rule of construction as to its conveyances. However, by the time of the 1901 road grant Congress had adopted a federal rule that power transmission is not within the scope of an R.S. 2477, 43 U.S.C. 932, highway right-of-way and had excluded any implied borrowing of state law on this point. U.S. v. Gates of the Mountains Lakeshore Homes, Inc., 732

F2d 1411 (9th Cir. 1984). See also Richter v. Rose, 1998 MT 165, 289 Mont. 379, 962 P.2d 583, regarding the method of acceptance of an easement pursuant to R.S. 2477.

Public Utility Lines Through Reservation: A public utility has a right to maintain its buried telephone cable in the right-of-way of a highway across an Indian reservation land not because of the power of the state but because of the congressional adoption of state law as the measure of the federal grant to build roads across reservation lands and to delineate the usage of such roads. U.S. v. Mtn. States Tel. & Tel. Co., 434 F. Supp. 625, 34 St. Rep. 832 (D.C. Mont. 1977).

Electric Lines: An electric cooperative could not enjoin a competing power company from extending powerlines to residents previously served by the cooperative on the basis that it acquired certain rights to serve customers after having set out on an expensive program of erection and operation of distribution lines to the customers in question. Yellowstone Valley Elec. Co-op, Inc. v. Mont. Power Co., 150 M 519, 437 P2d 5 (1968) (decided before enactment of the Territorial Integrity Act of 1971).

Operation and Effect:

This section is not subject to construction that it forbids electric powerlines unless they are necessary. Yellowstone Valley Elec. Co-op, Inc. v. Mont. Power Co., 150 M 519, 437 P2d 5 (1968).

A telephone company is not a trespasser on a highway, nor is it negligent per se in maintaining a guy wire on a portion of it not intended for travel. This section gives such company the right to construct its lines along the highways provided the traveling public is not endangered or inconvenienced thereby. Howard v. Flathead Independent Tel. Co., 49 M 197, 141 P 153 (1914).

69-4-102. Underground power lines in new service areas.

Administrative Rules

ARM 38.5.1002 Undergrounding of electric distribution lines in new subdivisions.

69-4-103. Authorization to remove vegetation or other materials from utility right-of-way — notice — prohibition.

Compiler's Comments

Effective Date: Section 3, Ch. 74, L. 2009, provided that this section is effective July 1, 2009.

Part 2

Construction Standards for Utility Lines and Facilities

Part Compiler's Comments

Severability: Section 5, Ch. 516, L. 1979, was a severability clause.

69-4-201. Application of national electrical safety code.

Compiler's Comments

1993 Amendment: Chapter 212 inserted (2) requiring Commission to adopt electrical safety rules; and made minor changes in style.

1993 Statement of Intent: The statement of intent attached to Ch. 212, L. 1993, provided: "A statement of intent is needed for this bill because [section 1] [69-4-201] authorizes the public service commission to adopt rules to implement and enforce Title 69, chapter 4, part 2, and to adopt by rule revised editions of the national electrical safety code. The legislature intends that the commission adopt revisions of the safety code. The commission may adopt procedural rules that it considers necessary or appropriate to implement and enforce Title 69, chapter 4, part 2."

1989 Amendment: Inserted last sentence establishing due care defense in negligence claim upon proof of compliance with applicable safety code standards.

Administrative Rules

ARM 38.5.1010 Incorporation by reference of National Electrical Safety Code.

Title 38, chapter 5, subchapter 21, ARM Service standards — electric utilities.

Case Notes

Exclusion of Expert Testimony — Insufficient Factual Grounds and Testimony Directed to Question of Law: Plaintiffs contended that they attempted to introduce evidence of the applicability of the National Electrical Code (NEC) and the National Electrical Safety Code (NESC) through testimony of an expert and that it was error for the trial court to deny a jury instruction regarding the NEC and NESC. However, the instruction was properly denied because there were insufficient factual grounds to establish the relevancy of the NEC and NESC and because the expert's testimony was directed to a question of law. Harwood v. Glacier Elec. Co-op, Inc., 285 M 481, 949 P2d 651, 54 St. Rep. 1257 (1997).

Duty of Care Not Established by Statutory Compliance: Bare compliance with a statute, such as this section, does not necessarily establish due care. If the circumstances are such that a danger exists beyond the minimum that this section was designed to meet, the jury may be informed that a defendant is negligent for not doing more. Martel v. Mont. Power Co., 231 M 96, 752 P2d 140, 45 St. Rep. 460 (1988).

Violation of Maintenance and Design Standards — Negligence Per Se: Violations of maintenance and design standards intended to protect the public are negligence per se. Martel v. Mont. Power Co., 231 M 96, 752 P2d 140, 45 St. Rep. 460 (1988).

Jury Instruction — Breadth of Statutory Incorporation by Reference: Section 69-4-201 specifically incorporates only the construction standards of the National Electrical Safety Code rather than the code in its entirety. In the absence of specific statutory incorporation, the provisions of the National Electrical Safety Code can only furnish evidence of a standard of care to be considered in determining negligence. Therefore, the District Court's refusal to instruct the jury that violation of any provision of the National Electrical Safety Code constitutes negligence per se was proper. Barmeyer v. Mont. Power Co., 202 M 185, 657 P2d 594, 40 St. Rep. 23 (1983), overruled in Martel v. Mont. Power Co., 231 M 96, 752 P2d 140, 45 St. Rep. 460 (1988).

69-4-203. Scope of law.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 3
Underground Conversion of Utilities

69-4-304. Exclusion for high-voltage transmission lines.

Compiler's Comments

2001 Amendment: Chapter 7 near middle substituted "electrical energy" for "electric energy"; and made minor changes in style. Amendment effective October 1, 2001.

69-4-311. Authorization to create special improvement districts.

Compiler's Comments

1993 Amendment: Chapter 250 in first sentence of (1) inserted reference to Title 7, chapter 12, part 21, and in second sentence inserted reference to Title 7, chapter 12, parts 41 and 42; and made minor changes in style. Amendment effective July 1, 1993.

69-4-312. Procedure to initiate creation of district — resolution for feasibility study.

Compiler's Comments

1993 Amendment: Chapter 250 inserted third sentence of (2) requiring receipt of the report prior to passage of a resolution of intention to create a special improvement district; and made minor changes in style. Amendment effective July 1, 1993.

69-4-353. Conversion of facilities on public property — notice to landowners.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1983 Amendment: In (2), after "landowner" inserted "and purchaser of property under contract for deed".

69-4-355. Procedure upon failure to effect conversion on private property.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Part 4
Relocation of Overhead Utility Lines

Part Case Notes

Use of Water — Public Use — Eminent Domain: Title 69, ch. 4, part 4, allows a landowner to cause a utility to relocate an overhead utility line for the purpose of installing an improved irrigation system. The use of water in the irrigation of farmland is a public use for which the right of eminent domain will lie. McTaggart v. Mont. Power Co., 184 M 329, 602 P2d 992, 36 St. Rep. 2079 (1979).

69-4-404. Costs of relocation.

Compiler's Comments

1993 Amendment: Chapter 141 after "paid" deleted "50% by the utility and 50%" and deleted former second sentence that read: "However, if the person petitioning for the order fails for any reason to install the agricultural improvement within 2 years following the date relocation is completed, he must reimburse the owner of the line the full cost of relocation, and the court has continuing jurisdiction over the parties for the purpose of ordering such reimbursement"; and made minor changes in style.

Case Notes

Unconstitutional: Section 69-4-404 is unconstitutional (see 1993 amendment) because it is a taking without just compensation. The relocation of the powerline comes at the insistence of the landowner, and it is he who must bear the full cost of relocation. McTaggart v. Mont. Power Co., 184 M 329, 602 P2d 992, 36 St. Rep. 2079 (1979).

Part 5
Excavations Near Underground Facilities

Part Case Notes

Right of Third Party to Use Water and Sewer Lines Under Condominium Property — Indicia of Ownership Determinative: Big Sky Camper Village, Inc., filed a declaration that submitted Tract I-A to the Unit Ownership Act and allowed Big Sky Camper Village, Inc., to expand the number of condominium units in its development within 10 years. Hidden Village, Inc. (HVI), the successor in interest of Big Sky Camper Village, sought to construct improvements on property adjacent to the Big Sky Hidden Village Condominium and to use the existing water and sewer lines for the new improvements. The owners' association, Big Sky Hidden Village Owners Association, brought an action to prevent development without its permission, claiming that the water and sewer lines sought to be used by HVI were the common property of the Association for the exclusive use of the Association and could not be used without permission of the Association. However, the Supreme Court found that the water and sewer lines were constructed and maintained by third parties, a water delivery company and a water and sewer district, and that the Association asserted ownership but provided no evidence of indicia of ownership. For these reasons, the Supreme Court held that the Association could not interfere with or control the hookup and servicing of HVI on the water and sewer lines used by the members of the Association. Big Sky Hidden Village Owners Ass'n, Inc. v. Hidden Village, Inc., 276 M 268, 915 P2d 845, 53 St. Rep. 379 (1996).

Denial of Recovery for Previous Expenditures by Utilities Not Denial of Just Compensation: The Mountain Water Company (MWC) sought an increase in utility rates to cover previous expenditures that it had been compelled to provide for its customers under 69-4-511 (now repealed), seeking recovery through a 2-year amortization. The Public Service Commission (PSC) authorized recovery through rates of annual and prospective expenses, but denied recovery of previous expenditures. On appeal, the District Court held that PSC's refusal to allow recovery of back expenses failed to justly compensate MWC for the taking of its property under 69-4-511 (now repealed). The rule set out in Galveston Elec. Co. v. Galveston, 258 US 388, 66 L Ed 678, 42 S Ct 351 (1922), is that a utility may not set its rates so as to amortize past deficits, and the rule applies to a private as well as to a municipal utility. MWC was aware of the passage of 69-4-511 (now repealed) and could have applied for coverage of the utility costs prospectively, but failed to do so. The District Court erred in concluding that MWC was not justly compensated by PSC's denial of retroactive recovery. Mtn. Water Co. v. Dept. of Public Service Regulation, 254 M 76, 835 P2d 4, 49 St. Rep. 632 (1992).

Equal Protection Not Violated by Exclusion of Publicly Owned Water Service Providers: Section 69-4-511 (now repealed) does not violate the federal equal protection clause by applying to privately owned and not publicly owned water service providers. The statute's distinction is rationally related to legitimate government purposes. Heightened scrutiny, under the theory that a statute not implicating a suspect class violates equal protection if it serves no legitimate government purpose or if impermissible animus toward an unpopular group prompted the statute's enactment, is not necessary. There is a legitimate government purpose, and the record does not support the claim that the Senator sponsoring the bill, the Legislature, or both had an impermissible animus toward privately owned providers, even though the Senator had had difficulties over whether he or the privately owned provider of water to his home should pay for certain repairs to his waterline. In addition, privately owned water service providers are neither members of a suspect class nor a politically unpopular group. Mtn. Water Co. v Mont. Dept. of Public Service Regulation, 919 F2d 593 (1990).

No Taking of Private Property for Public Use Without Just Compensation: Although the provision in 69-4-511 (now repealed) that a privately owned water service provider must reimburse a customer for certain costs of maintaining that part of the customer's waterline (which the customer owns) that is between the customer's property boundary and the main waterline effects a taking of the provider's property (that is, its funds), the taking does not violate the federal fifth amendment because it is for a public use and with just compensation. Because the Legislature could have rationally conceived it would enhance service line maintenance, 69-4-511 (now repealed) effects a taking for a public use, even if 69-4-511 (now repealed) proves ineffective in achieving that purpose. Moreover, 69-4-511 (now repealed) may serve the additional public purpose of redistributing the cost of service line maintenance among all of the utility's customers from which the utility can recoup the costs. Because the utility can recoup its costs through a general rate increase, it is justly compensated for the taking. Mtn. Water Co. v. Mont. Dept. of Public Service Regulation, 919 F2d 593 (1990).

69-4-501. Definitions.

Compiler's Comments

2017 Amendment: Chapter 326 inserted definitions of agricultural locate request, civil penalty, council, damage, department, designated service area, engineering locate request, event, jurisdictional pipeline, notification center, notify, outgoing locate request, positive response, property owner, request for a locate, third party, and underground facility owner; in definition of business day near beginning inserted "beginning at midnight and ending 24 hours later" and inserted (b) concerning business days that are on Saturday or Sunday; in definition of emergency excavation after "response to an emergency locate" inserted "request"; substituted "emergency locate request" for "emergency locate" as defined term and after "means a" inserted "request for a"; in definition of excavation inserted (b)(ii) through (b)(iv) concerning plowing, gardening, and landscaping; in definition of incident in (a) substituted "notwithstanding 69-4-529(6), unless the underground facility is owned by the excavator, a violation of the provisions of 69-4-502 or 69-4-503" for "a violation of the provisions of 69-4-503(1)" and at end deleted "or the property of a third party or in bodily injury or death to any person other than the excavator" and inserted (b) concerning violations of 69-4-503(3) by underground facility owner; deleted definition of incident history that read: ""Incident history" means the total number of incidents experienced by an excavator in the 5 years preceding the most recent incident. The incident history must be used to determine damage fees for violation of 69-4-503(1)"; deleted definition that read: ""One-call notification center" means a service through which a person may request a locating and marking of underground facilities"; in definition of underground facility inserted (b)(ii) and (b)(iii) concerning privately owned water and sewer lines and underground facilities used solely to furnish services or commodities to real property; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

2005 Amendment: Chapter 544 inserted definitions of incident and incident history; in definition of underground facility inserted (b) excluding certain underground water systems; and made minor changes in style. Amendment effective October 1, 2005.

2001 Amendment: Chapter 7 in definition of underground facility near end of first sentence substituted "electrical energy" for "electric energy". Amendment effective October 1, 2001.

1997 Amendment: Chapter 179 in definition of business day, after "Sunday", substituted "New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day" for "or a legal local, state, or federal holiday"; substituted definition of emergency excavation for definition of emergency that read: ""Emergency" means:

(a) any condition that constitutes a clear and present danger to life or property; or

(b) a customer outage"; inserted definitions of emergency locate, excavator, and locate; in definition of locatable underground facility, before "field-marked", inserted "field-located and"; in definition of one-call notification center, before "marking", inserted "locating and"; and made minor changes in style.

1991 Amendment: Inserted definitions of business day, emergency, identified but unlocatable underground facility, locatable underground facility, mark, one-call notification center, and reasonably accurate; substituted definition of excavation for former definition that read: ""Excavation" shall mean and include any ditch, trench, cut, hole, or change in grade"; in definition of person, after "partnership", inserted "firm", after "corporation" inserted "association, municipality, governmental unit, department, or agency", and after "includes" substituted "any trustee, receiver, assignee, or a personal representative thereof" for "the employer of an individual"; in definition of underground facility, near beginning, substituted "facility" for "item of personal property" and after "communications" inserted "cablevision, fiber optics"; and made minor changes in style.

69-4-502. Information to be sought before excavation — notification — exceptions.

Compiler's Comments

2017 Amendment: Chapter 326 in (1)(a) near middle after "an underground facility from each" substituted "underground facility owner having the right to bury underground facilities that is a member of a notification center" for "public utility, municipal corporation, underground facility owner, or other person having the right to bury underground facilities that is a member of a one-call notification center"; inserted (1)(b) concerning information on possible location of underground facilities; in (2)(e) at beginning substituted "An underground facility owner" for "A public utility, municipal corporation, underground facility owner, or other person having the right to bury underground facilities"; in (3) substituted current text for former (2) that read: "(2)(a) A public utility, municipal corporation, underground facility owner, or person having the right to bury underground facilities must be a member of a one-call notification center covering the service area in which the entity or person has underground facilities.

(b) Subsection (2)(a) does not apply to an owner or occupant of real property where underground facilities are buried if the facilities are used solely to furnish services or commodities to that property and no part of the facilities is located in a public street, alley, or right-of-way dedicated to the public use"; inserted (4) concerning underground annual fees and information to be provided by notification center to department; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

1997 Amendment: Chapter 179 in (1)(a), near beginning after "subsection (1)(b)", substituted "an excavator" for "a person", after "excavation" deleted "in a public street, alley, right-of-way dedicated to the public use, or utility easement", after "corporation" inserted "underground facility owner", and at end substituted "that is a member of a one-call notification center pursuant to subsection (2)(a)" for "within the public street, alley, right-of-way, or utility easement"; in (1)(b)(iv), after "regarding", substituted "facility" for "utility"; in (1)(b)(v), after "corporation", inserted "underground facility owner" and after "facilities" deleted "within the public street, alley, right-of-way, or utility easement"; deleted former (2) that read: "(2) Every public utility, municipal corporation, or other person having the right to bury underground facilities shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained unless a one-call notification center is available"; adjusted subsection references; and made minor changes in style.

1993 Amendment: Chapter 393 at beginning of (1)(a) inserted exception clause; inserted (1)(b) authorizing a registered land surveyor or supervised person to hand dig for shallow survey monuments 12 inches or less below road surface of highway or at public street intersection and providing for liability for damages during survey; and made minor changes in style.

1991 Amendment: At end of (2) inserted "unless a one-call notification center is available"; and inserted (3) requiring one-call notification center membership and providing an exception.

69-4-503. Notification — locating and marking.

Compiler's Comments

2017 Amendment: Chapter 326 in (1), (3), (3)(c), and (6) before "notification center" deleted "one-call"; in (1) inserted second sentence regarding notifications limited to excavation work intended to commence within 10 days; inserted (2) concerning excavator providing adequate information to underground facility owners; in (3)(a) substituted "except as provided in subsection (3)(b) and in accordance with subsection (5), locate and mark" for "provide the locates and mark"; inserted (3)(b) concerning a locate and marking within 5 business days; in (3)(c) substituted "respond as soon as practicable" for "respond immediately"; in (4)(a) near middle after "locates and marks the" inserted "location of"; in (4)(b) substituted current text for "If excavation has not occurred within 30 days of the locate and mark, the excavator shall request that the facility be relocated and remarked before excavating unless other arrangements have been made with the underground facility owner. The excavator is responsible for costs associated with relocating and remarking a facility that is not excavated within 30 days of the locate and mark"; inserted (4)(c) concerning excavator's responsibility for costs and dispute burden of proof; in (5) substituted current third, fourth, and fifth sentences for former text that read: "An excavator may not excavate until all known facilities have been located and marked. An excavator is not responsible for damages to an underground facility that cannot be located by its owner. Once the facilities are located and marked by the facility owner, the excavator is responsible for maintaining the markings"; deleted former (5) that read: "(5) Upon receipt of notice from the excavator, the facility owner shall respond within 2 business days by locating and marking the facility or by notifying the excavator that locating and marking is unnecessary. An excavator may not begin excavating before the locating and marking is complete or before the excavator is notified that locating and marking is unnecessary"; in (6) deleted former first sentence that read: ""An excavator shall locate and mark the area to be excavated if requested by the facility owner or the owner's representative" and in second sentence near end before "facility owner" inserted "underground"; in (7) before "facility owner" inserted "underground"; inserted (8) concerning the act of obtaining information not excusing excavator from certain responsibilities or liabilities; inserted (9) concerning locate requests that have not been buried or placed in area encompassed by the locate; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

1997 Amendment: Chapter 179 in (1), at beginning, deleted "At least 2 but not more than 10 business days", at end deleted "of the scheduled commencement of the excavation", and deleted second sentence that read: "If a one-call notification center service is not available, notice must be provided individually to the owners of underground facilities within the area of the proposed excavation"; inserted (2) and (3) regarding facility owner obligations upon being notified of a proposed excavation; in (4), in first sentence after "surface", inserted "locating and", in third sentence, at end before "marked", inserted "located and", inserted fourth sentence regarding excavator responsibility for damages, and in fifth sentence, after "facilities are", inserted "located and"; in (5), in first sentence after "days by", inserted "locating and" and after "facility" inserted "or by notifying the excavator that locating and marking is unnecessary" and in second sentence, after " before the" inserted "locating and" and after "notified that" inserted "locating and"; in (6) substituted first sentence regarding location and marking by an excavator upon request for former sentence that read: "A facility owner may request the excavator to mark the area to be excavated" and in second sentence, after "discovers an", substituted "underground facility that has not been located and marked" for "unmarked underground facility"; inserted (7) regarding liability of a facility owner for accuracy of a locate; and made minor changes in style.

1991 Amendment: Substituted (1) regarding notification for former (1) that read: "(1) Any person seeking information concerning the location of any underground facility must do so by request in person, in writing, or by telephone"; and substituted (2) through (4) relating to marking and notification for former (2) that read: "(2) The person from whom such information is sought must record the nature and the date of the request and advise the person seeking the information of the location of any underground facility in writing, if so requested, or by marking the location with stakes or paint or by other clearly identifiable markings. The person providing the information must respond no later than the end of the normal business hours of the second full business day following the date of receipt of the request, Saturdays, Sundays, and holidays excluded".

1983 Amendment: In (1), substituted "request in person, in writing, or by telephone" for "request in writing"; and in (2), substituted the language after "information is sought must" and before "no later than the end of the normal business hours" for "acknowledge in writing receipt of such request and must provide such information in writing".

69-4-504. Information to be part of architects' and engineers' plans.

Compiler's Comments

2017 Amendment: Chapter 326 in (1) near end substituted "shall provide engineering locate requests" for "shall provide locates, if requested"; in (2) at end substituted "69-4-502 when excavating" for "69-4-502(1)"; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

1997 Amendment: Chapter 179 in (1), at end of second sentence, substituted "make available all records showing the locations of underground facilities and shall provide locates, if requested, pursuant to 69-4-503" for "provide substantially the same information as required by 69-4-503"; and made minor changes in style.

1991 Amendment: In (1) inserted second sentence requiring provision of information by owners of underground facilities; and made minor change in style.

1983 Amendment: In (1), substituted "engineers designing projects requiring excavation" for "engineers designing or requiring excavating" and after "shall obtain information", substituted "from the owners of" for "as to".

Severability Clause: Section 9, Ch. 180, L. 1971, was a severability clause.

69-4-508. Emergency location and excavation.

Compiler's Comments

2017 Amendment: Chapter 326 in (1) in first sentence before "notification center" deleted "one-call"; and in (2) substituted "Making an emergency locate request or an emergency excavation that is not an emergency locate request" for "Requesting an emergency locate or an emergency excavation that is not an emergency locate". Amendment effective July 1, 2017.

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-512. Judicial review.

Compiler's Comments

2017 Amendment: Chapter 326 in (1) substituted "subject to repair costs" for "subject to repair charges and damage fees described in 69-4-505"; inserted (2) concerning right of excavator or owner to have civil penalty reviewed; and made minor changes in style. Amendment effective July 1, 2017.

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

Effective Date: This section is effective October 1, 2005.

69-4-520. Underground facility protection advisory council.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-521. Duties of council.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-522. Duties of department — rulemaking.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-523. Tort liability for underground facility damage.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-524. Underground facilities damage — excavator civil penalties.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-525. Underground facilities damage — underground facility owner civil penalties.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-526. Civil penalty — mediation — contested case hearing — procedures.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-527. Underground facility protection account — statutory appropriation.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-528. Notification center grants.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-529. Incident reports — notification of damage — fines.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

69-4-530. Collection of penalties, fines, and fees.

Compiler's Comments

Effective Date: Section 24, Ch. 326, L. 2017, provided: "[This act] is effective July 1, 2017."

Applicability: Section 25, Ch. 326, L. 2017, provided: "[This act] applies to incidents and events occurring on or after October 1, 2017."

Saving Clause: Section 22, Ch. 326, L. 2017, was a saving clause.

Severability: Section 23, Ch. 326, L. 2017, was a severability clause.

Part 6
Movement of Structures

Part Compiler's Comments

Preamble: The preamble to Ch. 442, L. 1983, provided: "WHEREAS, Title 69, chapter 4, part 6, MCA, provides for a procedure for moving houses and other structures under and through existing electrical powerlines, telegraph cables, and guy wires, requiring notice to the owner of the lines, cables, or wires; and

WHEREAS, section 69-4-603, MCA, provides that the necessary and reasonable expenses of cutting or raising the lines, cables, or wires are generally to be borne by their owners; and

WHEREAS, the total payment for such services is an unreasonable and unfair burden to place on utilities and utility ratepayers, who cannot participate in decisions to move structures that require interference with lines, cables, and wires; and

WHEREAS, it is in the best interests of all electric, telephone, or cable television ratepayers in Montana that the necessary and reasonable expenses associated with movement of structures requiring wires, cables, or poles to be moved or raised pursuant to sections 69-4-601 through 69-4-604, MCA, be shared equally by the person, firm, or corporation owning the structure and the person, firm, or corporation owning or operating the wires, cables, or poles required to be moved; and

WHEREAS, a public purpose will be served by requiring that the person, firm, or corporation owning a structure under these statutes pay 50% of the necessary and reasonable expenses of raising or cutting wires and cables or moving poles to accomplish such move."

Part Administrative Rules

Title 38, chapter 5, subchapter 24, ARM Utility charges for raising or cutting wires or moving poles to accommodate relocation of structures.

69-4-602. Notice of move — cost estimate.

Compiler's Comments

2003 Amendment: Chapter 359 in (1) near middle substituted "owning or controlling the wires, cables, or poles affected by the movement of a structure, at both the person's, firm's, or corporation's principal office" for "owning or operating the wires or poles, at their principal office"; in (2) in two places inserted references to "cables", near beginning substituted "total cost of all work related to cutting" for "cost of cutting", and near middle inserted "including travel time"; inserted (3) and (4) relating to total cost and development of a cost schedule; and made minor changes in style. Amendment effective April 17, 2003.

1983 Amendment: Substituted language concerning notice procedure required for moving structure for former text, which read: "The person, firm, or corporation moving any house, building, derrick, or other structure shall give to the person, firm, or corporation owning or operating such wire or poles, at their nearest office and also at their principal office within the state, not less than 3 days' written notice of the time and place, when and where the removal of said poles or the cutting, raising, moving, or otherwise interfering with said poles or wires will be necessary."

Case Notes

Moving or Raising Utility Wires — Police Power, Not Eminent Domain: Under 69-4-603, a utility was required (prior to the 1983 amendment requiring a sharing of the costs) to move or raise utility wires so that oversized objects could be moved through public streets. The statute was determined to be an exercise of police power rather than sounding in eminent domain. Therefore, due process requirements of the 14th amendment may be met without compensation. Four factors were cited in the determination that the statute exercises police power: (1) public safety is concerned; (2) a public benefit is conferred; (3) a reasonable and necessary public use is allowed; and (4) the public's right to use the highways is recognized under the statute. Yellowstone Valley Elec. Co-op v. Ostermiller, 187 M 8, 608 P2d 491, 37 St. Rep. 536 (1980).

69-4-603. Procedure to accomplish move — payment of cost.

Compiler's Comments

2003 Amendment: Chapter 359 in (1) near beginning after "area in which" substituted "wires, cables, or poles" for "utility poles or wires" and in two places inserted references to cables; deleted former (2) and (3) that read: "(2) The necessary and reasonable expense of raising or cutting the wires or of moving the poles for utilities subject to the jurisdiction of the public service commission must be fixed and determined by the public service commission on the average cost per line or pole for time and materials expended. These costs and expenses must be reviewed biennially. Except as provided in subsections (4) and (5), the necessary and reasonable expense of raising or cutting the wires or of moving the poles must be shared equally by the person, firm, or corporation owning the structure and the person, firm, or corporation owning or operating the wires, cables, or poles required to be moved.

(3) The rates and charges of rural cooperative electric utilities, rural cooperative telephone utilities, and other persons who occupy and use utility or cooperative poles may not exceed the charges established by the public service commission for utilities subject to its jurisdiction. The charges assessed by utilities, other than utilities subject to the jurisdiction of the public service commission, must be apportioned as provided in subsection (2)"; in (2)(a) near beginning substituted "the necessary and actual costs" for "to facilitate the movement of a house, building, derrick, or other structure, the necessary and reasonable costs" and at end substituted "movement of a house, building, derrick, other structure, or prefabricated structure that is intended to be moved from the place of fabrication, storage facility, or dealer's lot, determined in accordance with the schedule filed under 69-4-602, must be paid by the mover" for "movement must be paid by the owner of:

(i) a prefabricated structure that is intended to be moved from the place of fabrication; or

(ii) the sixth and each subsequent structure that exceeds 25 feet in height while being moved and that is to be moved from a single site. When structures are moved in a group or in a continuous caravan formation and when only a single line cut or movement is necessary, the move must count as only a single-structure move for purposes of this subsection (4)(a)(ii). For the purposes of this subsection (4)(a)(ii), a single site includes but is not limited to a development complex, housing complex, military base, or institutional complex. The whole of an incorporated municipality is not a single site as the term is used in this subsection"; in (2)(b) near beginning substituted "actual" for "reasonable" and at end substituted "determined in accordance with the schedule filed under 69-4-602, must be shared equally by the mover and the owner of the wires, cables, or poles if the structure is owned by a person for occupancy or use by that person" for "by a person for occupancy by that person must be shared equally as provided in subsection (2)"; at beginning of (3) substituted "A mover may not raise, cut, or in any way interfere with wires, cables, or poles" for "A person, firm, or corporation who owns or moves a house, building, derrick, or other structure may not raise, cut, or in any way interfere with any poles or wires" and in two places inserted references to cables; deleted former (5)(b) and (5)(c) that read: "(b) When the person who owns or controls the poles or wires refuses to raise or cut the wires or move the poles, the person, firm, or corporation who owns or moves the house, building, derrick, or other structure shall ensure that only competent and experienced workers raise or cut the wires or move the poles.

(c) The following procedure must be followed:

(i) The necessary and reasonable expense incurred by the owner or mover of the house, building, derrick, or other structure as a result of raising or cutting the wires or moving the poles must be paid by the owners of the poles or wires handled.

(ii) The work of raising or cutting the wires or moving the poles must be done in a careful manner.

(iii) The poles and wires must be promptly replaced and any damage to the poles or wires must be promptly repaired"; inserted (4) through (7) relating to prepayment and time for payment; and made minor changes in style. Amendment effective April 17, 2003.

1995 Amendment: Chapter 551 in (1), at beginning, substituted "In order to accomplish moving a house, building, derrick, or other structure through an area in which utility poles or wires impede the movement, it is" for "It shall then be" and substituted "and who has received the" for "after service of"; in (2), in second sentence after "and expenses", deleted "must be determined at a hearing to be held within 180 days of October 1, 1983, and"; in (3) inserted "other than utilities subject to the jurisdiction of the public service commission"; in (4)(a) substituted "Except as provided in subsection (4)(b), to facilitate the movement of a house, building, derrick, or other structure" for "Owners of prefabricated structures built with the intention of moving shall pay" and after "movement" inserted "must be paid by the owner of"; inserted (4)(a)(i) and (4)(a)(ii) specifying owners of certain structures liable for moving costs; inserted (4)(b) regarding moving costs of a residential structure; in (5)(a) substituted "person, firm, or corporation who owns or controls" for "persons or authorities owning or having control of"; in (5)(b) inserted "When the person who owns or controls the poles or wires refuses to raise or cut the wires or move the poles, the person, firm, or corporation who owns or moves the house, building, derrick, or other structure shall ensure that" and after "experienced" substituted "workers raise or cut the wires or move the poles" for "workmen or linemen shall be employed in such work, and in such case"; inserted (5)(c) containing introductory clause regarding procedure; in (5)(c)(i) inserted "incurred by the owner or mover of the house, building, derrick, or other structure as a result of raising or cutting the wires or moving the poles" and after "owners of the poles" substituted "or" for "and"; in (5)(c)(ii) substituted "of raising or cutting the wires or moving the poles must" for "shall"; and made minor changes in style.

1983 Amendment: Near end of (1), after "facilitate" substituted "moving" for "removing"; inserted (2) through (4) relating to payment of necessary and reasonable expenses of raising or cutting wires or of moving or removing utility or cooperative poles; near beginning of (5) after "corporation" inserted "owning or"; near end of (5) after "wires handled" deleted "provided, however, that any person, firm, or corporation engaged in moving such structure within the limits of any city or town shall pay all necessary and reasonable expense of raising or cutting such wires or removing such poles".

Statement of Intent: The statement of intent attached to Ch. 442, L. 1983, provided: "A statement of intent is required for SB 84 because in subsection (2) of section 2 it amends 69-4-603 to give the Public Service Commission the authority to determine the average cost of raising or cutting wires or cables or of moving poles. It is the intention of the legislature that the Public Service Commission hold a hearing within 180 days after the effective date of SB 84 to discover the reasonable and necessary costs of those operations, after which the commission shall establish by rule the average costs, which shall remain in effect until modified by the commission after a subsequent biennial review."

Administrative Rules

Title 38, chapter 5, subchapter 24, ARM Utility charges for raising or cutting wires or moving poles to accommodate relocation of structures.

Case Notes

Moving or Raising Utility Wires — Police Power, Not Eminent Domain: Under 69-4-603, a utility was required (prior to the 1983 amendment requiring a sharing of the costs) to move or raise utility wires so that oversized objects could be moved through public streets. The statute was determined to be an exercise of police power rather than sounding in eminent domain. Therefore, due process requirements of the 14th amendment may be met without compensation. Four factors were cited in the determination that the statute exercises police power: (1) public safety is concerned; (2) a public benefit is conferred; (3) a reasonable and necessary public use is allowed; and (4) the public's right to use the highways is recognized under the statute. Yellowstone Valley Elec. Co-op v. Ostermiller, 187 M 8, 608 P2d 491, 37 St. Rep. 536 (1980).

Utility to Bear Cost of Raising or Moving Wires — Statute Assessing Cost Against Mover Unconstitutional: The Supreme Court (prior to the 1983 amendment providing for a sharing of the expenses) let stand a District Court ruling that it was unconstitutional to require any firm, person, or corporation engaged in the moving of a house, building, derrick, or other structure to pay all necessary and reasonable expenses of raising or cutting wires or removing poles. Yellowstone Valley Elec. Co-op v. Ostermiller, 187 M 8, 608 P2d 491, 37 St. Rep. 536 (1980).

Part 10

Requirements for Use of Advanced Metering Devices

69-4-1001. Definitions.

Compiler's Comments

2021 Amendment: Chapter 546 substituted advanced metering gateway device for advanced metering device as defined term and in definition near beginning after "means any" deleted "electric utility meter"; inserted new definition of advanced metering device or advanced meter; and made minor changes in style. Amendment effective May 14, 2021.

Effective Date: Section 6, Ch. 179, L. 2019, provided: "[This act] is effective on passage and approval." Approved April 18, 2019.

Preamble: The preamble attached to Ch. 179, L. 2019, provided: "WHEREAS, Montanans have a right to privacy as guaranteed by the Montana Constitution; and

WHEREAS, advanced metering devices can present issues of privacy."

69-4-1002. Meter security — data disclosure.

Compiler's Comments

Effective Date: Section 6, Ch. 179, L. 2019, provided: "[This act] is effective on passage and approval." Approved April 18, 2019.

Preamble: The preamble attached to Ch. 179, L. 2019, provided: "WHEREAS, Montanans have a right to privacy as guaranteed by the Montana Constitution; and

WHEREAS, advanced metering devices can present issues of privacy."

69-4-1003. Advanced metering devices — notice required.

Compiler's Comments

Effective Date: Section 6, Ch. 179, L. 2019, provided: "[This act] is effective on passage and approval." Approved April 18, 2019.

Preamble: The preamble attached to Ch. 179, L. 2019, provided: "WHEREAS, Montanans have a right to privacy as guaranteed by the Montana Constitution; and

WHEREAS, advanced metering devices can present issues of privacy."

69-4-1004. Opt-out program— public service commission responsibilities — rulemaking.

Compiler's Comments

2021 Amendment: Chapter 546 in (1) at beginning substituted "July 1, 2022" for "July 1, 2020" and at end substituted "advanced meters or advanced metering gateway devices, or both" for "advanced metering devices"; in (2) at end inserted "and advanced metering gateway devices"; in (3) at end substituted "advanced metering device or advanced metering gateway device installation" for "advanced metering installation"; and made minor changes in style. Amendment effective May 14, 2021.

Effective Date: Section 6, Ch. 179, L. 2019, provided: "[This act] is effective on passage and approval." Approved April 18, 2019.

Preamble: The preamble attached to Ch. 179, L. 2019, provided: "WHEREAS, Montanans have a right to privacy as guaranteed by the Montana Constitution; and

WHEREAS, advanced metering devices can present issues of privacy."

69-4-1005. Advanced metering gateway device opt-in provisions — rulemaking.

Compiler's Comments

Effective Date: Section 5, Ch. 546, L. 2021, provided: "[This act] is effective on passage and approval." Approved May 14, 2021.

Part 11
Liability for Bypassing or Tampering With Meter

69-4-1103. Liability for bypass or tampering.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

CHAPTER 5
POWER AND ENERGY COMPANIES

Chapter Law Review Articles

Regulation of Interconnected Electrical Utilities: Some Jurisdictional Considerations, Lopach, 37 Mont. L. Rev. 1 (1976).

Keeping Power in Charge: Federal Hydropower and the Downstream Environment, Benson, 39 Pub. Land & Resources L. Rev. 23 (2018).

Part 1
Territorial Integrity for Electric Suppliers

69-5-101. Short title.

Compiler's Comments

1997 Amendment: Chapter 505 at end deleted "of 1971"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

69-5-102. Definitions.

Compiler's Comments

2011 Amendment: Chapter 120 inserted definitions of distribution facilities, distribution service, distribution utility, electricity supplier, electricity supply service, and service territory; and made minor changes in style. Amendment effective April 1, 2011.

2007 Amendment: Chapter 231 inserted definitions of cost, large customer, regulated utility, subdivision, and vector; deleted definition of electric cooperative that read: ""Electric cooperative" means a rural electric cooperative organized under Title 35, chapter 18, or a foreign corporation admitted thereunder to do business in Montana"; deleted definition of electric utility that read: ""Electric utility" means a person, firm, or corporation other than an electric cooperative that provides electric service facilities to the public"; in definition of line at end substituted "material that is used to convey electrical energy and that is normally energized between 2,400 volts phase to ground and 14,400 volts phase to ground" for "electric supply conductor"; in definition of premises in five places after reference to structure inserted reference to irrigation pump; in definition of utility at end inserted "or their successors or assignees"; and made minor changes in style. Amendment effective April 23, 2007.

Saving Clause: Section 7, Ch. 231, L. 2007, was a saving clause.

Applicability: Section 10, Ch. 231, L. 2007, provided: "[This act] does not apply to any pending litigation filed under the Territorial Integrity Act on or before [the effective date of this act]." Effective April 23, 2007.

1997 Amendment: Chapter 505 inserted definition of agreement; deleted definition of commercial premises that read: ""Commercial premises" means the premises where the business of selling, warehousing, or distributing a commodity or other business activity is carried on or professional or other services are rendered"; substituted definition of electric facilities provider for ""Electric supplier" means any electrical utility and any electric cooperative"; inserted definition of electric service facilities; in definition of electric utility, near end after "service", inserted "facilities"; deleted definition of industrial premises that read: ""Industrial premises" means the premises where an industrial activity is carried on, including but not limited to the operation of factories, mills, machine shops, mines, oil wells, refineries, pumping, cleaning and dyeing works, creameries, canneries, stockyards, feedlots, military installations, or other extractive, fabricating, or processing activities"; in definition of line inserted "supply" and at end deleted "operating at a nominal voltage level of 34,500 volts or less, measured phase-to-phase"; in definition of premises, near beginning, substituted "electric service facilities are provided" for "electricity is being" and substituted "installed" for "furnished"; inserted definition of utility; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

69-5-104. Supply service prohibited — continuation of electric service facilities to existing consumers.

Compiler's Comments

2011 Amendment: Chapter 19 near beginning substituted "electric facilities provider" for "electric service facilities provider". Amendment effective October 1, 2011.

Effective Date: Section 5, Ch. 120, L. 2011, provided that subsection (1) of this section is effective on passage and approval. Approved April 1, 2011.

1997 Amendment: Chapter 505 substituted "electric service facilities provider" for "electric supplier", substituted "provide electric service facilities to" for "serve", and at end substituted "May 2, 1997" for "February 1, 1971"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

69-5-105. Service to new consumers.

Compiler's Comments

2007 Amendment: Chapter 231 in (1) at beginning substituted "Except as provided in 69-5-106 and 69-5-113" for "Subject to this part", near middle after "premises" inserted "and that has the capacity to serve the premises", and at end after "1997" deleted "which creates a rebuttable presumption that the nearest line is the least-cost electric service facility to the new customer" and deleted former second sentence that read: "However, a customer or another electric facilities provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost"; in (2) after "shortest" substituted "vector" for "straight line" and after "from the" substituted "line" for "conductor"; deleted former (3) that read: "(3) If the electric facilities providers are unable to reach agreement as to which electric facilities provider can provide electric service facilities at least cost, an independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its lines to the consumer at the least cost. The cost of those engineering services must be paid equally by the electric facilities providers involved"; and made minor changes in style. Amendment effective April 23, 2007.

Saving Clause: Section 7, Ch. 231, L. 2007, was a saving clause.

Applicability: Section 10, Ch. 231, L. 2007, provided: "[This act] does not apply to any pending litigation filed under the Territorial Integrity Act on or before [the effective date of this act]." Effective April 23, 2007.

1997 Amendment: Chapter 505 in (1), in first sentence near beginning, substituted "this part" for "69-5-106", substituted "electric facilities provider" for "electric supplier", substituted "shall provide electric service facilities to the" for "shall serve", and substituted "May 2, 1997, which creates a rebuttable presumption that the nearest line is the least-cost electric service facility to the new customer. However, a customer or another electric facilities provider may rebut the presumption, and another electric facilities provider may provide the electric service facilities if it can do so at less cost" for "February 1, 1971"; in (2) deleted second sentence that read: "Construction power for premises to be constructed shall be supplied by the electric supplier having the right to serve the completed premises"; inserted (3) concerning use of independent consultant engineer; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

Case Notes

Right to Serve New Consumer — "Line Nearest the Premises" — Nearest Line Having Capacity to Serve Without Upgrades: Each of two utilities asserted it had the right to provide three-phase Wye power to a new seed washing plant. The plaintiff had a distribution line that could service the plant without modification and was located 1.3 miles from the plant. The defendant had a utility line that could provide the required type of power and was located over 6 miles away; however, it had a distribution line located only 300 feet from the plant that, if modified with substantial upgrades, could provide the power needed to run the plant. The District Court concluded that under the Montana Territorial Integrity Act, the plaintiff had priority because it had the line closest to the plant that could provide power to it without upgrades to the line. On appeal, the Supreme Court affirmed, agreeing that even though the defendant had provided some power to the plant during its construction, its actions did not entitle the defendant to priority under the Act. Sheridan Electric v. Montana-Dakota Util. Co., 2014 MT 332, 377 Mont. 296, 340 P.3d 529.

Priority to Serve New Industrial Customer: The closest supplier as determined under this section is entitled to statutory priority to serve a new industrial customer provided it meets the provisions of 69-5-106. (See 1997 amendment.) Montana-Dakota Util. Co. v. Lower Yellowstone Elec., 178 M 427, 585 P2d 626 (1978).

69-5-106. Electric service facilities to large customers.

Compiler's Comments

2007 Amendment: Chapter 231 at beginning of first sentence substituted "A regulated utility electric facilities provider" for "An electric utility", after "facilities to" substituted "the premises of a large customer if the regulated utility electric facilities provider" for "any premises if the estimated connected load for full operation at the premises will be 400 kilowatts or larger within 2 years from the date of initial service and if the electric utility", near middle after "extend its" inserted "electric service", after "premises" inserted "of a large customer", and at end after "cost" substituted "than other electric facilities providers" for "to the electric utility than the electric cooperative cost", in second sentence after "determined by" inserted "mutual" and at end before "customer" inserted "large", and deleted former third sentence that read: "The fact that the actual connected load after 2 years from the date of initial service is less than 400 kilowatts does not affect the right of the electric facilities provider initially providing electric service facilities to continue to provide electric service facilities to the premises"; deleted former (2) that read: "(2) An independent consultant engineer agreeable to both electric facilities providers or, in the event of failure of the electric facilities providers to agree on a consultant engineer, an independent consultant engineer selected by the district court having jurisdiction, as provided in 69-5-110, shall determine which electric facilities provider can extend its facilities at the least cost to the utility. The cost of those engineering services must be paid equally by the electric facilities providers involved"; and made minor changes in style. Amendment effective April 23, 2007.

Saving Clause: Section 7, Ch. 231, L. 2007, was a saving clause.

Applicability: Section 10, Ch. 231, L. 2007, provided: "[This act] does not apply to any pending litigation filed under the Territorial Integrity Act on or before [the effective date of this act]." Effective April 23, 2007.

1997 Amendment: Chapter 505 in (1), in two places, and in (2), in four places, substituted reference to electric facilities providers for reference to electric supplier; in (1), in first sentence near beginning after "furnish electric service", inserted "facilities", after "to any" deleted "industrial or commercial", after "connected load for full" deleted "plant", after "utility can extend its" substituted "facilities" for "lines", and near end, after "electric utility", deleted "or the industrial or commercial customer" and in third sentence substituted "providing electric service facilities to continue to provide electric service facilities" for "providing service to continue service"; in (2), near end of first sentence, substituted "facilities" for "lines to the consumer" and after "at the least cost" inserted "to the utility"; deleted (3) that read: "(3) No premises other than another such commercial or industrial premises shall be served from a line constructed under this section"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

Case Notes

"Premises" to Be Property Line — Not First Building on Property: ZooMontana is a nonprofit corporation formed to build and operate a zoo west of Billings. ZooMontana requested that Montana Power Company (MPC) supply power for the first building (an education building) built on the property. The District Court found and the Supreme Court affirmed that the premises for this purpose is the property line of the property and not the education building and that because the cost of extension is greater to MPC than to the Yellowstone Valley Electric Cooperative, Inc., the Cooperative is entitled to provide the electric power. Yellowstone Valley Elec. Co-op, Inc. v. Mont. Power Co., 251 M 91, 822 P2d 102, 48 St. Rep. 1068 (1991).

Priority to Serve New Industrial Customer: The closest supplier as determined under 69-5-105 is entitled to statutory priority to serve a new industrial customer provided it meets the provisions of this section. (See 1997 amendment to 69-5-105.) Montana-Dakota Util. Co. v. Lower Yellowstone Elec., 178 M 427, 585 P2d 626 (1978).

69-5-107. Customer-owned facilities.

Compiler's Comments

1997 Amendment: Chapter 505 substituted current text concerning electrical service facilities for customer's own use for "Nothing in 69-5-103 through 69-5-106 shall restrict the right of an electric supplier to furnish electric service to any property owned by the electric supplier." Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

Case Notes

Meaning of "Any Property": It was reversible error for the District Court to limit the meaning of the term "any property", as used in this section, to commercial or industrial property, for the term's meaning is not ambiguous and is plain and certain. By 1-1-205, the word "property" means real and personal property wherever used in this Code. Therefore, the power company and not the electric cooperative had the right to provide electrical services to a housing subdivision being developed by the power company. (See 1997 amendment.) Tongue River Elec. Co-op, Inc. v. Mont. Power Co., 195 M 511, 636 P2d 862, 38 St. Rep. 2032 (1981).

69-5-108. Agreements between electric facilities providers.

Compiler's Comments

1997 Amendment: Chapter 505 substituted current text concerning agreement identifying geographical area for exclusive service for "Notwithstanding the provisions of 69-5-103 through 69-5-109, an electric supplier may furnish electric service to any consumer at any premises being served by another electric supplier upon written agreement of the affected electric suppliers or at premises that another electric supplier has the right to serve pursuant to this part, upon written agreement of the affected electric suppliers." Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

1995 Amendment: Chapter 167 substituted "69-5-109" for "69-5-107"; and made minor changes in style.

Case Notes

Electric Lines: An electric cooperative could not enjoin a competing power company from extending powerlines to residents previously served by the cooperative on the basis that it acquired certain rights to serve customers after having set out on an expensive program of erection and operation of distribution lines to the customers in question. Yellowstone Valley Elec. Co-op, Inc. v. Mont. Power Co., 150 M 519, 437 P2d 5 (1968) (decided before enactment of Territorial Integrity Act of 1971).

69-5-109. Special provisions for annexed areas.

Compiler's Comments

1997 Amendment: Chapter 505 substituted current text concerning agreements dividing annexed and planning zone areas into exclusive service territories for "With respect to service in areas which are annexed to incorporated municipalities having a population in excess of 3,500 persons, electric suppliers have rights and are subject to restrictions as follows:

(1) Every electric supplier has the right to serve all premises being served by it on the date of annexation.

(2) An electric cooperative does not have the right to serve any premises initially requiring service on or after the date of annexation. The restriction stated in this subsection does not apply to incorporated municipalities in which 95% or more of the premises were served by an electric cooperative on February 1, 1971." Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

69-5-110. Jurisdiction of district courts over disputes.

Compiler's Comments

2007 Amendment: Chapter 231 near middle after "premises" inserted "vectors"; and made minor changes in style. Amendment effective April 23, 2007.

Saving Clause: Section 7, Ch. 231, L. 2007, was a saving clause.

Applicability: Section 10, Ch. 231, L. 2007, provided: "[This act] does not apply to any pending litigation filed under the Territorial Integrity Act on or before [the effective date of this act]." Effective April 23, 2007.

1997 Amendment: Chapter 505 near end substituted "electric facilities providers" for "electric suppliers"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

69-5-111. Judicial remedies.

Compiler's Comments

1997 Amendment: Chapter 505 in (1), in two places, substituted "electric facilities provider" for "electric supplier"; in (2), in first sentence, substituted "that an electric facilities provider is in violation of this part" for "therefor"; and made minor changes in style. Amendment effective May 2, 1997.

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

69-5-113. Service to new subdivisions.

Compiler's Comments

Effective Date: Section 9, Ch. 231, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 23, 2007.

Saving Clause: Section 7, Ch. 231, L. 2007, was a saving clause.

Applicability: Section 10, Ch. 231, L. 2007, provided: "[This act] does not apply to any pending litigation filed under the Territorial Integrity Act on or before [the effective date of this act]." Effective April 23, 2007.

69-5-114. Review by independent consultant.

Compiler's Comments

Effective Date: Section 9, Ch. 231, L. 2007, provided: "[This act] is effective on passage and approval." Approved April 23, 2007.

Saving Clause: Section 7, Ch. 231, L. 2007, was a saving clause.

Applicability: Section 10, Ch. 231, L. 2007, provided: "[This act] does not apply to any pending litigation filed under the Territorial Integrity Act on or before [the effective date of this act]." Effective April 23, 2007.

69-5-121. Definitions.

Compiler's Comments

2021 Amendment: Chapter 542 in definition of small customer substituted "means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts" for "has the meaning provided in 69-3-2003". Amendment effective May 14, 2021.

Retroactive Applicability: Section 12, Ch. 542, L. 2021, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to any application pending or commenced before the public service commission prior to [the effective date of this act]." Effective May 14, 2021.

Saving Clause: Section 7, Ch. 542, L. 2021, was a saving clause.

Severability: Section 8, Ch. 542, L. 2021, was a severability clause.

2017 Amendment: Chapter 440 in introductory clause inserted "69-5-123"; inserted definitions of added structure, commercial structure, and contractor; in definition of electric utility inserted (b) concerning a utility qualifying as a rural electric cooperative; in definition of extension after "residential" inserted "commercial, or added"; and made minor changes in style. Amendment effective May 22, 2017.

Applicability: Section 6, Ch. 440, L. 2017, provided: "[This act] applies to extensions occurring on or after [the effective date of this act]." Effective May 22, 2017.

Effective Date: Section 4, Ch. 248, L. 2011, provided that this section is effective on passage and approval. Approved April 21, 2011.

Applicability: Section 5, Ch. 248, L. 2011, provided: "[This act] applies to extensions occurring on or after [the effective date of this act]." Effective April 21, 2011.

69-5-122. Residential utility line extension — refund.

Compiler's Comments

2017 Amendment: Chapter 440 in (1) in two places and (2) after "electric utility" inserted "as defined in 69-5-121(4)(a)"; in (2) and (3) after "extension" inserted "to a residential structure"; inserted (4)(c) regarding not hiring a contractor; and made minor changes in style. Amendment effective May 22, 2017.

Applicability: Section 6, Ch. 440, L. 2017, provided: "[This act] applies to extensions occurring on or after [the effective date of this act]." Effective May 22, 2017.

Effective Date: Section 4, Ch. 248, L. 2011, provided that this section is effective on passage and approval. Approved April 21, 2011.

Applicability: Section 5, Ch. 248, L. 2011, provided: "[This act] applies to extensions occurring on or after [the effective date of this act]." Effective April 21, 2011.

69-5-123. Review and selection of contractor.

Compiler's Comments

2019 Amendment: Chapter 3 in (1)(b) substituted "an electric utility" for "a public utility". Amendment effective October 1, 2019.

Effective Date: Section 5, Ch. 440, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 22, 2017.

Applicability: Section 6, Ch. 440, L. 2017, provided: "[This act] applies to extensions occurring on or after [the effective date of this act]." Effective May 22, 2017.

Part 2
Right of First Refusal

Part Compiler's Comments

Effective Date: Section 4, Ch. 161, L. 2017, provided: "[This act] is effective on passage and approval." Approved April 6, 2017.

CHAPTER 7
MUNICIPAL UTILITIES

Chapter Case Notes

No Prohibition Against Utility Regulation by Municipality: Appellants argued that the restriction in 7-1-111(5), which prohibits a local government unit from establishing a rate or price otherwise determined by a state agency, preempted the city of Billings from assessing new utility fees in the form of system development fees for funding the expansion of water and sewer facilities. However, under this chapter, municipal utility rates are not determined by a state agency; rather, unless the rates result in an increase in total revenue of 12% in any 1 year, the exclusive authority to regulate, establish, and change municipal utility rates rests with the city. Lechner v. Billings, 244 M 195, 797 P2d 191, 47 St. Rep. 1512 (1990).

Chapter Attorney General's Opinions

Authority of City-County Government to Acquire and Operate Electric and Natural Gas Utilities: A consolidated government with self-government powers, such as the city and county of Butte-Silver Bow, has the authority to acquire and operate electric and natural gas utilities both within and outside the boundaries of the local government unit. The Attorney General determined that Butte-Silver Bow was specifically authorized to do so after considering the local government's charter, constitutional ramifications, and whether the exercise of that authority was prohibited by local government law or other statutes applicable to self-government units and was consistent with state provisions in areas affirmatively subjected to state control, as described in 7-1-113. 48 A.G. Op. 14 (2000). See also State ex rel. Swart v. Molitor, 190 M 515, 621 P2d 1100 (1981), D&F Sanitation Serv. v. Billings, 219 M 437, 713 P2d 977 (1986), and Lechner v. Billings, 244 M 195, 797 P2d 191 (1990).

Part 1
Regulation of Rates by Municipality

69-7-101. Municipal utilities — regulation by municipality.

Compiler's Comments

1995 Amendment: Chapter 288 at end deleted "and, except as provided in 69-7-102, they may not be raised to yield more than a 12% increase in total annual revenues or, in the case of mandated federal and state capital improvements, the increase may not exceed amounts necessary to meet the requirements of bond indentures or loan agreements required to finance the local government's share of the mandated improvements. Annual revenues must be computed on any consecutive 12-month period for purposes of this chapter"; and made minor changes in style.

1983 Amendment: Inserted last sentence requiring annual revenues to be computed on any consecutive 12-month period; and made section permanent.

Case Notes

Grant of Preliminary Injunction — Prima Facie Showing of Violation of Constitutional and Contract Rights: A 1963 contract between the city of Billings and the Billings Heights County Water District fixed water rate charges and limited any subsequent rate increase charged the district unless the same percentage increase was applied to all city water users. Needing to raise additional revenue, in 1993, the city raised average water rates by 9.2% and the district rates by 32%. The district relied on the contract and increased its payments by 9.2%. In 1994, the city initiated an action to recover from the district the difference between the 1993 rate and the rate that the district paid from that time. In 1996, the city raised rates again, resulting in a 123% increase to the district and no such dramatic increase to any other city water customer. The district applied for a preliminary injunction to prevent the city from imposing the 1996 rate until the 1994 action had been addressed, but the application was denied and the district appealed. The Supreme Court found that the district made: (1) a sufficient showing that application of this section, granting the city control over utility rates, substantially impaired the district's rights under the 1963 contract; and (2) a prima facie case that application of this section violated its rights under contract clauses of the U.S. and Montana Constitutions. Without ruling on the merits of the case, the court held that the district was thus entitled to the temporary injunction. Billings v. County Water District of Billings Heights, 281 M 219, 935 P2d 246, 54 St. Rep. 144 (1997).

Funding of Public Service Commission and Consumer Counsel — Definition of "Regulated Companies" — Payment of Fees by Municipal Utility: The operations of the Public Service

Commission (P.S.C.) and the Montana Consumer Counsel (MCC) are not funded through the general fund as are most state government agencies but instead are funded by fees imposed on regulated companies, based on a percentage of the gross operating revenue of the company. Regulated companies are defined as all organizations, corporations, associations, or other public or private entities that are or may become subject to regulation by the P.S.C. or its successor agency. Under 69-7-102 (now repealed) and this section, the utilities are allowed to raise rates as long as they are not raised to yield more than a 12% increase in total annual revenue. If a rate increase exceeds 12%, the utility must apply to the P.S.C. for the increase. (See 1995 amendment to this section.) The utility's argument that both P.S.C. and MCC fees are user fees and that regulated companies do not have to pay the fees unless they use P.S.C. or MCC services during a given year would make it possible for a municipal utility to control and avoid imposition of fees except under extraordinary circumstances, which is outside the context of legislative intent. Thus, as a regulated company, the municipal utility of the city of Billings is subject to regulation by the P.S.C. Billings v. Dept. of Revenue, 270 M 307, 891 P2d 1149, 52 St. Rep. 196 (1995).

69-7-111. Municipal rate hearing required — notice.

Compiler's Comments

2013 Amendment: Chapter 187 in (1) inserted "and subsection (6)"; inserted (6) describing requirements for a municipality to provide notice of a hearing to be held by a regional authority; inserted (7) making a municipality subject to hearing requirements if a regional authority is not required to hold a public hearing; and made minor changes in style. Amendment effective October 1, 2013.

1993 Amendment: Chapter 507 in (1), near beginning, inserted "75-5-516".

1991 Amendment: In (1), at beginning, inserted exception clause.

1983 Amendment: In (3)(b), in second sentence after "The notice" deleted "shall accompany the bill for services of that utility and"; and in third sentence after "average" deleted "monthly"; and made section permanent.

69-7-112. Conduct of municipal rate hearing.

Compiler's Comments

2009 Amendment: Chapter 342 in (2) deleted former third sentence that read: "A copy of each revised rate schedule shall be filed with the public service commission upon final decision"; and made minor changes in style. Amendment effective April 24, 2009.

1983 Amendment: Made section permanent.

69-7-113. Appeals.

Compiler's Comments

1983 Amendment: Made section permanent.

Part 2
Operation of Utilities

69-7-201. Rules for operation of municipal utility.

Compiler's Comments

1983 Amendment: Made section permanent.

Case Notes

City Resolution Allowing Implied Consent to Annexation Upon Continued Use of Utility Services Affirmed: The city of Whitefish adopted a municipal resolution requiring that property owners consent to annexation in order to continue to receive city utility services and allowing the city to imply consent to annexation from property owners that continued to receive the services after they received notice requiring them to disconnect from the utilities. Property owners contended that the resolution was invalid, but the District Court held the resolution valid, and the Supreme Court affirmed. The Attorney General held in 46 A.G. Op. 12 (1995), that a municipality may establish a rule requiring consent to annexation as a condition for continued receipt of services, and that opinion is in accord with this section. Further, the utility rule in this case put the burden on the property owner to arrange to disconnect from services if protesting annexation, so once proper notice was given, under 7-2-4710 and 28-2-503 the city's procedure to imply consent was a proper method to determine if a property owner wished to continue to receive city services or to protest annexation. Gregg v. Whitefish City Council, 2004 MT 262, 323 M 109, 99 P3d 151 (2004).

Setting of Municipal Utility Rates Not Subjected to State Control: The setting of rates and charges for municipal utilities has not been affirmatively subjected to state control within the meaning of 7-1-113. The enforcement of standards or requirements and the power to establish administrative rules in the area of municipal ratemaking are not vested in any state agency or officer. Rather, this section requires the municipal utility, with the concurrence of the municipal governing body, to adopt rules for operating the utility. Lechner v. Billings, 244 M 195, 797 P2d 191, 47 St. Rep. 1512 (1990).

Attorney General's Opinions

Authority of City-County Government to Acquire and Operate Electric and Natural Gas Utilities: A consolidated government with self-government powers, such as the city and county of Butte-Silver Bow, has the authority to acquire and operate electric and natural gas utilities both within and outside the boundaries of the local government unit. The Attorney General determined that Butte-Silver Bow was specifically authorized to do so after considering the local government's charter, constitutional ramifications, and whether the exercise of that authority was prohibited by local government law or other statutes applicable to self-government units and was consistent with state provisions in areas affirmatively subjected to state control, as described in 7-1-113. 48 A.G. Op. 14 (2000). See also State ex rel. Swart v. Molitor, 190 M 515, 621 P2d 1100 (1981), D&F Sanitation Serv. v. Billings, 219 M 437, 713 P2d 977 (1986), and Lechner v. Billings, 244 M 195, 797 P2d 191 (1990).

Municipality Authorized to Assess Charge for Providing Water Service to Fire Hydrants Owned by Rural Improvement District: When a rural improvement district requests that a municipal water utility provide water service to fire hydrants owned by the district, the municipality is authorized to provide that service and to assess a charge for it. 45 A.G. Op. 4 (1993).

No Lien for Nonpayment of Water Bill: A city or town may not file a lien against a landowner's property due to a tenant's failure to pay for water service contracted for and used by the tenant. Discontinuance of service is the only statutory remedy provided for nonpayment of water charges. When a power is conferred upon a municipality and the mode in which it is to exercise that power is prescribed, such mode must be pursued. 40 A.G. Op. 7 (1983).

CHAPTER 8
ELECTRIC UTILITY INDUSTRY GENERATION REINTEGRATION

Chapter Compiler's Comments

Saving Clause: Section 47, Ch. 505, L. 1997, was a saving clause.

Severability: Section 48, Ch. 505, L. 1997, was a severability clause.

Effective Date: Section 50, Ch. 505, L. 1997, provided: "[This act] is effective on passage and approval." Approved May 2, 1997.

Chapter Case Notes

Access to Public Service Records — Media Required to Exhaust Administrative Remedies Prior to Court Action — Review of Confidentiality Rules Ordered: Several media organizations sought access to power company documents filed with the Public Service Commission. The Commission denied the request on confidentiality grounds, but rather than challenging the confidentiality claims through the Commission's administrative procedures, the organizations filed an action in District Court. The court proceeded to make factual and legal determinations to determine whether the requested documents constituted constitutionally protected trade secrets or proprietary information without the benefit of the Commission developing a record or making threshold determinations on the complex issues. The Supreme Court held that it was improper to bypass the administrative agency and take the issue to District Court without exhausting the Commission's administrative procedures, so the District Court was reversed with orders to remand the case to the Commission for further consideration. However, the Supreme Court also required the Commission to review its administrative rules related to confidentiality challenges because the rules primarily addressed requests for information from competitor utilities and did not necessarily apply to media challenges. Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

No Constitutional Right to Privacy for Nonhuman Entities — Protection of Trade Secrets Under Other Constitutional and Statutory Schemes: Montana's constitutional individual privacy exception to the public's right to know is limited to natural human individuals only and does not apply to nonhuman entities such as corporations. However, nothing in Art. II, sec. 9, Mont. Const., requires disclosure of trade secrets and other confidential proprietary information when that data is protected from disclosure elsewhere in the state or federal constitution or by statute. Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003), overruling Mtn. States Tel. & Tel. v. Dept. of Public Service Regulation, 194 M 277, 634 P2d 181 (1981), and its progeny to the extent that those decisions relied on the constitutional balancing test of the right to individual privacy against the public's right to examine documents or observe governmental deliberations as a basis of protecting trade secrets and other confidential proprietary information of nonhuman entities.

Public Service Commission Rules Creating Impermissible Presumption of Confidentiality in Trade Secrets: Several media organizations sought access to power company documents filed with the Public Service Commission. Applying its administrative rules, the Commission evaluated the power company's claims of confidentiality against basic trade secret law, found that the company had met the initial burden of establishing trade secrets, and concluded that because the media had presented no evidence or argument to the contrary, the company information was entitled to constitutional protection as a matter of law. The Supreme Court disagreed. To the extent that the Commission's rules relied on mere company representations that the information contained trade secrets, the Commission unconstitutionally shifted the initial burden of proof to the public to challenge the confidentiality claims, creating a presumption of confidentiality that directly conflicted with the public's right to view public records and the Commission's duty to make its records available to the public. The court held that a nonhuman entity seeking protective measures for alleged confidential materials filed with a governmental regulating agency must support its claim with a supporting affidavit making a prima facie showing that the materials constitute property rights that are protected by due process. Further, the showing must be more than conclusory and specific enough for the Commission, any objecting parties, and reviewing authorities to clearly understand the nature and basis of the confidentiality claim. The agency then must review the materials at the time of filing, in accordance with 30-14-402(4)(b) and supporting case law, and make an independent determination whether the materials are in fact property rights entitled to due process protection. To the extent that Commission rules required less, the court directed revision of Commission rules to comport with this holding. Great Falls Tribune v. Mont. Pub. Serv. Comm'n, 2003 MT 359, 319 M 38, 82 P3d 876 (2003).

Erroneous Determination That Public Service Commission Interpretation of Electric Utility Deregulation Act Unconstitutional Taking — Issue Not Ripe for Adjudication Given Speculation Regarding Utility's Future Loss: As part of the deregulation process, the Montana Power Company (MPC) submitted a transition cost recovery plan to the Public Service Commission (PSC). Foreseeing imminent uncertainty in the costs of electricity, MPC proposed that a current estimation of some transition costs be deferred, or tracked, for as long as 25 to 30 years, so that a more accurate figure of those costs could be determined in the future. Thus, with regard to certain assets, MPC in essence offered no estimation of any transition costs, proposing instead that those costs be determined and recovered at a later time. The PSC determined that a tracking system that would adjust transition costs in the future as the costs occurred, rather than reaching a current estimated fixed sum, was not consistent with Title 69, ch. 8, and that in order for the MPC plan to be approved, transition costs must be reduced to a fixed net amount. The PSC ordered MPC to amend its transition plan to specifically identify and demonstrate all transition costs that it sought to recover, and not to rely on a future tracking mechanism. MPC sought judicial review, arguing that the PSC improperly precluded the use of trackers in its plan, and requested that the District Court reverse the PSC's decision and permanently enjoin the PSC from enforcing its interpretation. The court reasoned that the PSC's interpretation had great potential for unconstitutionally depriving MPC or Montana consumers of property, and ordered the PSC to allow the tracking system. The PSC appealed. The Supreme Court found that MPC's claim to an unconstitutional taking at the hands of the PSC's ruling on the proposed tracking mechanism was as hypothetical and speculative as the future of electricity costs in Montana. The PSC action had yet to deprive MPC of any property, and the court refused to interpret the law and enjoin state action to preserve a property interest that did not, and might not ever, exist. The very likely potential of an unconstitutional taking was distinguishable from the imminent and very real violations of constitutional rights and remedies at risk in past cases in which the Supreme Court has held that a taking occurred, such as Yurkovich v. Indus. Accident Bd., 132 M 77, 314 P2d 866 (1957), and its progeny, holding that the District Court erred in finding that the PSC's interpretation produced a taking that prejudiced MPC's substantial rights. Mont. Power Co. v. Pub. Serv. Comm'n, 2001 MT 102, 305 M 260, 26 P3d 91 (2001).

Finality of Costs Considered Overarching Intent of Electric Utility Industry Restructuring and Customer Choice Act — PSC Denial of System That Would Allow Charging Future Transition

Costs Correct Interpretation of Act: As part of the deregulation process pursuant to the Electric Utility Industry Restructuring and Customer Choice Act, the Montana Power Company (MPC) submitted a transition cost recovery plan to the Public Service Commission (PSC) that would have allowed the future recovery of certain transition costs as they became known over a period of 25 to 30 years. The PSC ordered MPC to amend its transition plan to specifically identify and demonstrate all transition costs that it sought to recover and not to rely on a future tracking mechanism. Upon judicial review, the District Court ordered the PSC to allow the tracking system. The Supreme Court was subsequently asked to determine whether the PSC interpretation of the Act was correct. The court held that MPC's proposed cost-tracking method, whereby some, but not all, transition costs would be unknown and therefore subject to the caprice of future events, was entirely inconsistent with the principle of finality and with statutory mandates in the Act placed on the PSC that all costs be determined to be: (1) verifiable; (2) unrecoverable; (3) affirmatively shown; (4) reasonably mitigated; (5) reasonably demonstrable; (6) reduced to a net sum; and (7) reduced to an amount in a final order. The principle of finality was also expressed in 69-8-211 (now repealed), which declared that PSC approval of transition costs, as well as the subsequent collection of those costs through transition charges, was a settlement of all transition costs claimed by a public utility. This finality was the overarching intent of the Act, in that the needs of consumers to effectively plan today takes precedence over precise cost analysis extending for years or even decades into the future. It is the PSC that assumes the role of arbiter in determining and fixing a utility's transition costs, if any, that will be discharged at the consumers' expense. Thus, the PSC's interpretation of the Act was correct, and the District Court's mandate requiring the PSC to allow the use of trackers would require the PSC to bend if not violate the law and could not be sustained. The District Court was reversed, and the PSC order was reinstated. Mont. Power Co. v. Pub. Serv. Comm'n, 2001 MT 102, 305 M 260, 26 P3d 91 (2001).

Part 1
General Provisions

69-8-101. Short title.

Compiler's Comments

2007 Amendment: Chapter 491 substituted "Generation Reintegration Act" for "Restructuring and Customer Choice Act". Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

69-8-103. Definitions.

Compiler's Comments

2007 Amendment: Chapter 491 deleted definition of aggregator or market aggregator that read: ""Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electrical energy, and takes title to electrical energy as an intermediary for sale to retail customers"; deleted definition of broker or marketer that read: ""Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy"; inserted definition of carbon offset provider; deleted definition of customer or consumer that read: ""Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load"; inserted definition of cost-effective carbon offsets; deleted definition of default supplier that read: ""Default supplier" means a distribution services provider of a utility that has restructured in accordance with this chapter"; deleted definition of default supply service that read: ""Default supply service" means the provision of electricity supply by a default supplier"; substituted definition of distribution facilities for former definition that read: ""Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider"; deleted definition of distribution services provider that read: ""Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public"; deleted definition of electricity supplier that read: ""Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana"; in definition of electricity supply costs after "actual costs" substituted "incurred in providing electricity supply service through power purchase agreements, demand-side management, and energy efficiency programs" for "of providing default supply service", deleted former (e) that read: "(e) demand-side management and energy efficiency costs", deleted former (g) that read: "(g) billing costs", and in (g) after "management" deleted "of default electricity supply costs" and at end after "and provision of" substituted "power purchase agreements" for "default supply and related services"; inserted definition of electricity supply resource; inserted definition of electricity supply service; deleted definition of functionally separate that read: ""Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations"; inserted definition of generation assets cost of service; in definition of net metering system in (d) substituted "utility's" for "distribution services provider's"; deleted definition of pilot program that read: ""Pilot program" means an experimental program using a select set of small customers to assess the potential for developing and offering customer choice of electricity supply to small customers in the future"; in definition of public utility near beginning substituted "has the meaning of a public utility" for "means any electric utility"; deleted definition of small customer that read: ""Small customer" means a residential customer or a commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 50 kilowatts or a new residential or commercial customer with an estimated average monthly demand of less than 50 kilowatts of a public utility that has restructured pursuant to Title 35, chapter 19, or this chapter"; inserted definition of retail customer; deleted definition of transition period that read: ""Transition period" means the period ending July 1, 2027"; in definition of transmission facilities at end inserted "and that are controlled or operated by a utility"; deleted definition of transmission services provider that read: ""Transmission services provider" means an entity controlling or operating transmission facilities"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

2003 Amendment: Chapter 565 in definition of default supplier after "provider" substituted "of a utility that has restructured in accordance with this chapter" for "or a person that has received a default supplier license from the commission"; inserted definition of default supply service; inserted definition of electricity supply costs; in definition of pilot program after "means" substituted "an experimental program using a select set of small customers to assess the potential for developing" for "a program using a representative sample of residential and small commercial customers to assist in developing" and after "supply" substituted "to small customers in the future" for "for all residential and commercial customers"; in definition of small customer before "commercial" deleted "small", in two places after "less than" substituted "50 kilowatts" for "100 kilowatts", after "new" inserted "residential or", and after "utility" substituted "that has restructured" for "distribution services provider that has opened access on its distribution system"; in definition of transition costs in (b)(ii) after "contracts" inserted "executed before May 2, 1997"; in definition of transition period substituted "2027" for "2007"; in definition of transmission services provider after "means" substituted "an entity" for "a person"; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 22, Ch. 565, L. 2003, was a saving clause.

Severability: Section 23, Ch. 565, L. 2003, was a severability clause.

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

2001 Amendments — Composite Section: Chapter 7 in two places in definition of aggregator, in two places in definition of broker or marketer, and in introductory clause in definition of net metering system substituted "electrical energy" for "electric energy"; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 584 in definition of transition period substituted "period ending July 1, 2007" for "period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier"; and made minor changes in style. Amendment effective May 5, 2001.

1999 Amendments — Composite Section: Chapter 323 inserted definitions of customer-generator, net metering, and net metering system; and made minor changes in style. Amendment effective July 1, 1999.

Chapter 575 inserted definitions of default supplier and small customer; and made minor changes in style. Amendment effective May 5, 1999.

Chapter 580 in definition of distribution services provider substituted "utility owning" for "person controlling or operating"; inserted definitions of interested person, large customer, and qualifying load; and made minor changes in style. Amendment effective May 10, 1999.

Preamble: The preamble attached to Ch. 575, L. 1999, provided: "WHEREAS, residential and small commercial customers of investor-owned distribution utilities in Montana need access to reliable electricity supply at equitable prices; and

WHEREAS, the aggregation of residential and small commercial customers that do not have access to competitive electricity suppliers at equitable prices provides them with market power to secure electricity at the least cost; and

WHEREAS, allowing one or more default suppliers to aggregate residential and small commercial customers to purchase electricity maximizes economies of scale, increases administrative efficiency, and provides maximum benefits to all small electricity customers; and

WHEREAS, wholesale competition in electricity markets may be facilitated by allowing entities to compete for the opportunity to provide electricity supply to those residential and small commercial customers on an aggregated basis; and

WHEREAS, the formation of nonprofit electricity buying cooperatives enhances the chances of securing for small customers the greatest amount of electricity at the least cost from the federal power system; and

WHEREAS, the state of Montana desires that its residents have access to the benefits of competitive retail electricity markets and federal Power Marketing Administration electricity; and

WHEREAS, federal Power Marketing Administration power or benefits should be distributed as widely and equitably as possible among small customers of open-access public utilities in the state of Montana in a manner that promotes efficient development and operation of the competitive retail electricity markets; and

WHEREAS, the state of Montana benefits by enacting legislation this session that maximizes the chances of an electricity buying cooperative being able to purchase power for small customers from the Bonneville Power Administration at preferential rates for the subscription period that begins in 2001."

Applicability: Section 6, Ch. 323, L. 1999, provided that this section does not apply to corporations organized under Title 35, chapter 18.

Severability: Section 34, Ch. 575, L. 1999, was a severability clause.

Saving Clause: Section 35, Ch. 575, L. 1999, was a saving clause.

Case Notes

Finality of Costs Considered Overarching Intent of Electric Utility Industry Restructuring and Customer Choice Act — PSC Denial of System That Would Allow Charging Future Transition Costs Correct Interpretation of Act: As part of the deregulation process pursuant to the Electric Utility Industry Restructuring and Customer Choice Act, the Montana Power Company (MPC) submitted a transition cost recovery plan to the Public Service Commission (PSC) that would have allowed the future recovery of certain transition costs as they became known over a period of 25 to 30 years. The PSC ordered MPC to amend its transition plan to specifically identify and demonstrate all transition costs that it sought to recover and not to rely on a future tracking mechanism. Upon judicial review, the District Court ordered the PSC to allow the tracking system. The Supreme Court was subsequently asked to determine whether the PSC interpretation of the Act was correct. The court held that MPC's proposed cost-tracking method, whereby some, but not all, transition costs would be unknown and therefore subject to the caprice of future events, was entirely inconsistent with the principle of finality and with statutory mandates in the Act placed on the PSC that all costs be determined to be: (1) verifiable; (2) unrecoverable; (3) affirmatively shown; (4) reasonably mitigated; (5) reasonably demonstrable; (6) reduced to a net sum; and (7) reduced to an amount in a final order. The principle of finality was also expressed in 69-8-211 (now repealed), which declared that PSC approval of transition costs, as well as the subsequent collection of those costs through transition charges, was a settlement of all transition costs claimed by a public utility. This finality was the overarching intent of the Act, in that the needs of consumers to effectively plan today takes precedence over precise cost analysis extending for years or even decades into the future. It is the PSC that assumes the role of arbiter in determining and fixing a utility's transition costs, if any, that will be discharged at the consumers' expense. Thus, the PSC's interpretation of the Act was correct, and the District Court's mandate requiring the PSC to allow the use of trackers would require the PSC to bend if not violate the law and could not be sustained. The District Court was reversed, and the PSC order was reinstated. Mont. Power Co. v. Pub. Serv. Comm'n, 2001 MT 102, 305 M 260, 26 P3d 91 (2001).

Part 2
Public Utilities

69-8-201. Public utility — customer electricity supply service options and requirements — exemption.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 251, L. 2023. Amendment effective April 25, 2023.

2007 Amendment: Chapter 491 deleted former (1), (2), and (3) that read: "(1) Before July 1, 2027, all public utility customers of a public utility that has restructured in accordance with this chapter must have the opportunity to choose an electricity supplier other than the default supplier.

(2) (a) A small customer of a public utility that has restructured in accordance with this chapter:

(i) must receive default supply services from the default supplier as provided in this chapter; and

(ii) may purchase electricity supply services through a commission-approved small customer electricity supply program as provided in this section.

(b) A small customer receiving electricity from a licensed supplier prior to July 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier.

(c) Customers that represent separately metered services with an estimated average monthly demand of less than 50 kilowatts related to the same individual customer referred to in subsection (3) or (4) may be combined with the respective eligible customer load or loads.

(3) (a) Subject to subsection (3)(b), a customer of a public utility that has restructured in accordance with this chapter and that has an individual load with an average monthly demand of less than 5,000 kilowatts but greater than or equal to 50 kilowatts may choose an electricity supplier.

(b) The total average monthly billing demand for all customers that choose an electricity supplier pursuant to subsection (3)(a) in each calendar year may not exceed 20,000 kilowatts.

(c) A customer referred to in subsection (3)(a) receiving electricity from a licensed supplier prior to July 1, 2003, may continue to receive electricity supply from a supplier other than the default supplier"; in (1)(a) near beginning after "subsections" substituted "(1)(b) and (1)(c), a retail customer" for "(4)(b) through (4)(e), a customer of a utility that has restructured in accordance with this chapter and" and at end after "5,000 kilowatts" substituted "and that is not purchasing electricity supply service from a public utility on October 1, 2007, may not purchase electricity supply service from a public utility" for "shall purchase its entire electricity supply from the competitive marketplace"; deleted former (4)(b) that read: "(b) A customer referred to in subsection (4)(a) that is receiving its electricity supply from the competitive marketplace may make a one-time election to enter into a permanent power supply contract with the default supplier for service on or after July 1, 2004. These contracts must include the applicable provisions established by the commission pursuant to subsection (5). This election must be submitted to the commission in writing no later than December 31, 2003"; in (1)(b) substituted text allowing new retail customer to request and requiring public utility to provide electricity supply service for former text that read: "A new customer with an estimated average monthly demand of greater than or equal to 5,000 kilowatts may enter into a power supply contract with the default supplier in order to receive default supply service. The new customer's election of an electricity supplier must be submitted in writing to the commission at least 90 days before delivery of electricity. These contracts must include the applicable provisions established by the commission pursuant to subsection (5)"; deleted former (4)(d) that read: "(d) A customer referred to in subsection (4)(a) that was receiving electricity from the default supplier on July 1, 2003, may continue to receive electricity from the default supplier"; inserted (1)(c) concerning regulation of electricity supply service by commission; deleted former (4)(e) that read: "(e) A customer referred to in subsection (4)(a) that is a public agency, as defined in 18-1-101, may enter into a power supply contract with the default supplier for default supply service for all or part of the public agency's load. These contracts must include the applicable provisions established by the commission pursuant to subsection (5)"; deleted former (5), (6), (7), and (8) that read: "(5) The commission shall adopt rules and establish rates and fees to enable customers to have reasonable opportunities to choose an electricity supplier or to receive default supply service in accordance with subsections (2) through (4), while providing protection for small customers from higher or more unstable default supply service rates than would otherwise result if these choices were not offered.

(6) An electricity supplier licensed by the commission to offer electricity supply service to small customers may petition the commission for the opportunity to provide electricity to small customers. The total average monthly demand for all customers referred to in subsection (2)(a) in each calendar year that receive service from an electricity supplier that is not the default supplier may not exceed 10,000 kilowatts. The commission shall ensure that electricity supply service provided pursuant to this subsection is consistent with the requirements in subsection (5) and the provision of default supply service pursuant to this chapter.

(7) Based on an analysis of the sources of costs of providing default supply service, the commission may:

(a) establish different categories of default supply service customers to assist with the implementation of this section;

(b) allocate default supply costs; and

(c) develop default supply rates.

(8) (a) Except as provided in subsection (8)(b), a customer receiving default supply service may not resell the electricity.

(b) A default supplier may implement demand reduction programs that reward customers for reducing demand under terms established by the commission"; inserted (2) concerning retail customers purchasing or not purchasing electricity from public utility on October 1, 2007; inserted (3) regarding customer's rights and obligations; in (4)(a) inserted reference to subsection (4)(b) and at end after "Columbia River" substituted exemption from requirements of chapter for "may defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory"; in (4)(b) near middle inserted "before October 1, 2007" and substituted "it is subject to the requirements of this chapter with respect to the service area of" for "it shall assume responsibility only for the applicable transition plan of"; deleted former (10) that read: "(10) Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

2003 Amendment: Chapter 565 substituted (1) through (8) regarding a public utility's transition to provide customer choice, including options, requirements, and waivers, for former (1) and (2) that read: "(1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) All customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Before July 1, 2007, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those small customers of a public utility that are not being served by a competitive electricity supplier"; inserted (9)(b) concerning responsibility of successor in interest; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 22, Ch. 565, L. 2003, was a saving clause.

Severability: Section 23, Ch. 565, L. 2003, was a severability clause.

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

2001 Amendments — Composite Section: Chapter 175 at beginning of (1)(a) deleted "On or before July 1, 1998"; at end of (4) deleted "except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006"; deleted former (4)(b) that read: "(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004"; and made minor changes in style. Amendment effective March 30, 2001.

Chapter 584 in (1)(a) at beginning deleted "On or before July 1, 1998"; in (1)(b) at beginning substituted "Before July 1, 2007" for "Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002"; deleted former (2) that read: "(2) (a) Except as provided for in subsection (4), the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

(i) implementation would not be administratively feasible;

(ii) implementation would materially affect the reliability of the electric system; or

(iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market"; in (2) deleted former second sentence that read: "The transition advisory committee shall review and address the need for continued default supply service and make recommendation to the 57th legislature"; in (4) after "territory" deleted exception clause that read: "except that the public utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006"; deleted former (4)(b) that read: "(b) petition the commission to delay the public utility's transition plan filing until July 1, 2004"; and made minor changes in style. Amendment effective May 5, 2001.

1999 Amendment: Chapter 575 inserted (3) requiring designation of a public utility to provide regulated default service and requiring the transition advisory committee to review the need for continued default supply service and make legislative recommendations; and made minor changes in style. Amendment effective May 5, 1999.

Preamble: The preamble attached to Ch. 575, L. 1999, provided: "WHEREAS, residential and small commercial customers of investor-owned distribution utilities in Montana need access to reliable electricity supply at equitable prices; and

WHEREAS, the aggregation of residential and small commercial customers that do not have access to competitive electricity suppliers at equitable prices provides them with market power to secure electricity at the least cost; and

WHEREAS, allowing one or more default suppliers to aggregate residential and small commercial customers to purchase electricity maximizes economies of scale, increases administrative efficiency, and provides maximum benefits to all small electricity customers; and

WHEREAS, wholesale competition in electricity markets may be facilitated by allowing entities to compete for the opportunity to provide electricity supply to those residential and small commercial customers on an aggregated basis; and

WHEREAS, the formation of nonprofit electricity buying cooperatives enhances the chances of securing for small customers the greatest amount of electricity at the least cost from the federal power system; and

WHEREAS, the state of Montana desires that its residents have access to the benefits of competitive retail electricity markets and federal Power Marketing Administration electricity; and

WHEREAS, federal Power Marketing Administration power or benefits should be distributed as widely and equitably as possible among small customers of open-access public utilities in the state of Montana in a manner that promotes efficient development and operation of the competitive retail electricity markets; and

WHEREAS, the state of Montana benefits by enacting legislation this session that maximizes the chances of an electricity buying cooperative being able to purchase power for small customers from the Bonneville Power Administration at preferential rates for the subscription period that begins in 2001."

Severability: Section 34, Ch. 575, L. 1999, was a severability clause.

Saving Clause: Section 35, Ch. 575, L. 1999, was a saving clause.

Case Notes

Interpretation of Term "Customer": The term "customer", as used in this section, means an entity or person, rather than an individual meter. Great Falls v. Dept. of Public Service Regulation, 2011 MT 144, 361 Mont. 69, 254 P.3d 595.

Erroneous Determination That Public Service Commission Interpretation of Electric Utility Deregulation Act Unconstitutional Taking — Issue Not Ripe for Adjudication Given Speculation Regarding Utility's Future Loss: As part of the deregulation process, the Montana Power Company (MPC) submitted a transition cost recovery plan to the Public Service Commission (PSC). Foreseeing imminent uncertainty in the costs of electricity, MPC proposed that a current estimation of some transition costs be deferred, or tracked, for as long as 25 to 30 years, so that a more accurate figure of those costs could be determined in the future. Thus, with regard to certain assets, MPC in essence offered no estimation of any transition costs, proposing instead that those costs be determined and recovered at a later time. The PSC determined that a tracking system that would adjust transition costs in the future as the costs occurred, rather than reaching a current estimated fixed sum, was not consistent with Title 69, ch. 8, and that in order for the MPC plan to be approved, transition costs must be reduced to a fixed net amount. The PSC ordered MPC to amend its transition plan to specifically identify and demonstrate all transition costs that it sought to recover, and not to rely on a future tracking mechanism. MPC sought judicial review, arguing that the PSC improperly precluded the use of trackers in its plan, and requested that the District Court reverse the PSC's decision and permanently enjoin the PSC from enforcing its interpretation. The court reasoned that the PSC's interpretation had great potential for unconstitutionally depriving MPC or Montana consumers of property, and ordered the PSC to allow the tracking system. The PSC appealed. The Supreme Court found that MPC's claim to an unconstitutional taking at the hands of the PSC's ruling on the proposed tracking mechanism was as hypothetical and speculative as the future of electricity costs in Montana. The PSC action had yet to deprive MPC of any property, and the court refused to interpret the law and enjoin state action to preserve a property interest that did not, and might not ever, exist. The very likely potential of an unconstitutional taking was distinguishable from the imminent and very real violations of constitutional rights and remedies at risk in past cases in which the Supreme Court has held that a taking occurred, such as Yurkovich v. Indus. Accident Bd., 132 M 77, 314 P2d 866 (1957), and its progeny, holding that the District Court erred in finding that the PSC's interpretation produced a taking that prejudiced MPC's substantial rights. Mont. Power Co. v. Pub. Serv. Comm'n, 2001 MT 102, 305 M 260, 26 P3d 91 (2001).

69-8-210. Public utilities — cost tracking — environmentally preferred resources.

Compiler's Comments

2017 Amendment: Chapter 359 in (1) substituted current text for former text that read: "The commission shall establish an electricity cost recovery mechanism that allows a public utility to fully recover prudently incurred electricity supply costs, subject to the provisions of 69-8-419, 69-8-420, and commission rules. The commission may include other utility costs and expenses in the cost recovery mechanism if it determines that including additional costs and expenses is reasonable and in the public interest. The cost recovery mechanism must provide for prospective rate adjustments for cost differences resulting from cost changes, load changes, and the time value of money on the differences." Amendment effective July 1, 2017.

2007 Amendment: Chapter 491 deleted former (1) that read: "(1) A public utility's distribution services provider shall provide default supply service"; in (1) in first sentence near middle substituted "public utility" for "default supplier" and at end inserted "and commission rules" and inserted second sentence concerning inclusion of other utility costs; deleted former (3) that read: "(3) The commission may direct a default supplier to offer its customers multiple default supply service options if the commission determines that those options are in the public interest and are consistent with the provisions of 69-8-104 and 69-8-201"; in (2) in first sentence after "may require" substituted "a public utility" for "pursuant to subsection (3), a default supplier"; deleted former (5) and (6) that read: "(5) (a) Subject to subsection (5)(b), the commission shall, in reviewing the procurement of electricity supply by the default supplier, take into account the statewide economic benefits that are associated with the electricity supply procurement for the default supply stakeholders. The default supply stakeholders include the default supplier, customers of the default supplier, and the public.

(b) The consideration of economic benefits is secondary to the consideration of the costs and benefits to the consumer and other criteria established by law.

(6) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

2003 Amendments — Composite Section: Chapter 509 substituted language in (1) through (4) regarding commission's responsibilities and authority to provide for service or direct default supply service supplier for former (1) through (3) that read: "(1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term of not more than 3 years; or

(b) purchase electricity from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered"; and made minor changes in style. Amendment effective April 24, 2003.

Chapter 600 in (3) and (3)(a) substituted reference to default supplier for reference to distribution services provider (amendment rendered void by Ch. 509 amendment); inserted (5) concerning consideration of statewide economic benefits; and made minor changes in style. Amendment effective May 9, 2003.

The amendments to this section made by Ch. 565, L. 2003, were rendered void by sec. 7, Ch. 509, L. 2003, a coordination section.

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

Case Notes

Energy Supply Costs Imprudently Incurred — Denial of Reimbursement: The Public Service Commission determined that nearly $1.5 million in energy supply costs were incurred imprudently by the petitioner, an energy supplier, and disallowed the petitioner from seeking reimbursement from ratepayers. The Commission concluded that the petitioner had failed to appropriately plan for and operate a "first-of-its-kind facility" when it failed to investigate whether it could obtain outage insurance for the facility and the facility later experienced a power outage for several days. The petitioner appealed the Commission's ruling to the District Court, which affirmed the Commission. The petitioner then appealed to the Supreme Court, which also affirmed the Commission, ruling that the petitioner had acted imprudently when it did not seek insurance to cover outage costs for the facility and that it was therefore not entitled to seek reimbursement for those costs from ratepayers. Northwestern Corp. v. Dept. of Public Service Regulation, 2016 MT 239, 385 Mont. 33, 380 P.3d 787.

69-8-215. Ratepayer and shareholder protection.

Compiler's Comments

Saving Clause: Section 22, Ch. 565, L. 2003, was a saving clause.

Severability: Section 23, Ch. 565, L. 2003, was a severability clause.

Effective Date: Section 4, Ch. 472, L. 2003, provided that this section is effective on passage and approval. Approved April 23, 2003.

Retroactive Applicability: Section 5, Ch. 472, L. 2003, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to cases filed but in which a judgment has not been entered on [the effective date of this act]." Effective April 23, 2003.

Part 3
Cooperative Utilities

69-8-311. Cooperative utility — electricity supply service — exemption.

Compiler's Comments

2007 Amendment: Chapter 491 substituted (1) regarding requiring local governing body to establish price for electricity supply service for former (1) that read: "(1) Within 1 year after May 2, 1997, a cooperative utility may file a notice with the commission that the cooperative utility does not intend to open the cooperative utility's distribution facilities to electricity suppliers and does not intend to adopt a transition plan"; in (2) near middle after "cooperative utility" deleted "filing notice under this section"; deleted former (2) that read: "(2) A cooperative utility filing a notice under this section:

(a) may elect later to adopt a transition plan in accordance with this chapter; and

(b) may not use a public utility's distribution facilities unless preexisting contracts exist"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

Part 4
Public Utilities, Cooperative Utilities, and Electricity Suppliers

69-8-402. Universal system benefits programs.

Compiler's Comments

2021 Amendment: See 2021 Session Law for amendment made by sec. 97, Ch. 261, L. 2021. Amendment effective April 20, 2021.

2017 Amendment: Chapter 275 reoutlined (2); and made minor changes in style. Amendment effective October 1, 2017.

2015 Amendments — Composite Section: Chapter 252 in (2) at beginning inserted exception clause; in (5)(a) in two places before "utility's" inserted "cooperative"; inserted (5)(b) concerning minimum annual funding requirement for a public utility; in (8)(a) at beginning inserted exception clause; inserted (11) providing exemption under certain circumstances; and made minor changes in style. Amendment effective April 17, 2015.

Chapter 393 in (2)(f) after "the utility" inserted "or large customer"; inserted (8)(a)(iv) regarding inclusion of names of large customers; inserted (8)(b)(ii) regarding review of annual universal system benefits reports; in (10)(a) inserted second sentence requiring a report to be filed even if reimbursement is for prior year's project and in last sentence after "Prior approval by" deleted "the department of revenue or"; and made minor changes in style. Amendment effective May 4, 2015.

The amendments made to this section by sec. 1, Ch. 252, L. 2015, and sec. 1, Ch. 20, L. 2015, were rendered void by sec. 3, Ch. 252, L. 2015, a coordination section.

Saving Clause: Section 2, Ch. 20, L. 2015, was a saving clause.

Retroactive Applicability: Section 5, Ch. 252, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to universal system benefits activities beginning on or after January 1, 2015."

Applicability: Section 4, Ch. 393, L. 2015, provided: "[This act] applies to annual reports filed with the department of revenue and the energy and telecommunications interim committee on or after March 1, 2016."

2009 Amendment: Chapter 55 in (2) deleted former third sentence that read: "These universal system benefits charge rates must remain in effect through December 31, 2009"; inserted (8)(b) requiring review of the universal system benefits programs; and made minor changes in style. Amendment effective March 25, 2009.

2007 Amendment: Chapter 491 in (2)(c) and (2)(d) near beginning substituted "utility" for "distribution services provider"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

2005 Amendment: Chapter 256 in (2) at end increased the time that the rates are in effect from 2005 to 2009. Amendment effective April 15, 2005.

2003 Amendments — Composite Section: Chapter 290 in (2) at end of third sentence extended the period that universal system benefits must remain in effect from until July 1, 2003, to through December 31, 2005. Amendment effective April 11, 2003.

Chapter 565 in (1) at end after "assistance" deleted "during the transition period and into the future"; in (2) at beginning of third sentence deleted "Except as provided in subsection (7)" and at end substituted "in effect through December 31, 2005" for "in effect until July 1, 2003"; in (8) at end of first sentence substituted "and the energy and telecommunications interim committee provided for in 5-5-230" for "and the transition advisory committee provided for in 69-8-501" and at end of second and third sentences substituted "and the energy and telecommunications interim committee" for "and the transition advisory committee"; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 22, Ch. 565, L. 2003, was a saving clause.

Severability: Section 23, Ch. 565, L. 2003, was a severability clause.

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

2001 Amendment: Chapter 188 in (2)(b) in first sentence near middle after "including those" inserted "amortized or nonamortized"; and in (8)(a)(ii)(B) near beginning after "those" inserted "amortized or nonamortized". Amendment effective April 3, 2001.

Retroactive Applicability: Section 3, Ch. 188, L. 2001, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to those amortized or nonamortized portions of a utility's expenditures claimed in a universal system benefits programs reporting period, for the purchase of power that is for the acquisition or support of internal programs that qualify as universal system benefits programs, made either prior to or after January 1, 1999, for which payments continue beyond January 1, 1999."

1999 Amendment: Chapter 580 throughout section before "customer's" inserted "large"; in first sentence in (2) substituted "initial" for "annual", inserted second sentence requiring commission and cooperative to establish respective rates on annualized basis for 1999, and at beginning of third sentence substituted "Except" for "Unless modified" and after "subsection (7)" substituted "these universal system benefits charge rates must remain" for "this funding level remains"; inserted second sentence in (2)(b) requiring that department review claimed credits of utilities and large customers; in (2)(c) substituted "utility's distribution services provider" for "utility"; inserted (2)(d) requiring customer's distribution services provider to collect universal system benefits funds minus allowable credits; in (2)(f) and (5)(b) after "fund" inserted "established in 69-8-412"; in (5)(b) after "universal" inserted "low-income"; in (7)(a) inserted "large" and after "customer" deleted "with loads greater than 1,000 kilowatts"; in (7)(a)(i) after "charge" inserted "with respect to the large customer's qualifying load"; in (7)(a)(i)(B) inserted "total" and after "credits" inserted "with respect to that qualifying load"; in first sentence in (8) inserted "the department of revenue", inserted third sentence requiring cooperative utility office to prepare and submit annual summary report, and in fourth sentence inserted "of a public utility or of the statewide cooperative utility office"; inserted (9) requiring utility or large customer filing for credit to develop and maintain documentation to support credit claim; inserted (10) regarding submission of annual summary report, requirement for report, and procedure for credit approval or disallowance; and made minor changes in style. Amendment effective May 10, 1999.

69-8-403. Commission rulemaking authority.

Compiler's Comments

2007 Amendment: Chapter 491 deleted former (1), (2), (3), (4), (5), (6), and (7) that read: "(1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission, distribution, and default supply services within the state of Montana, as provided in this chapter.

(2) The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

(3) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(4) The commission shall establish just and reasonable rates through established ratemaking principles for public utility default supply, distribution, and transmission services and shall regulate these services. The commission may approve rates and charges for those services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(5) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(6) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(7) (a) After July 1, 2010, the commission shall continuously monitor whether or not workable competition has developed for small customers.

(b) If the commission determines that workable competition has developed for small customers after July 1, 2010, the commission shall provide a report to the legislature that includes recommendations for legislative implementation of customer choice for small customers"; deleted former (9) that read: "(9) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter"; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

2003 Amendment: Chapter 565 in (1) after "distribution" inserted "and default supply"; and at end after "chapter" deleted "and may not regulate the price of electricity supply except as electricity supply may be procured as provided in this section:

(a) by one or more default suppliers for those customers not being served by a competitive supplier; or

(b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division"; deleted former (2) that read: "(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates"; (4) in first sentence after "utility" inserted "default supply" and in second sentence after "charges" substituted "for those services" for "for electricity distribution and transmission services"; inserted (7) requiring commission after July 1, 2010, to monitor whether workable competition has developed for small customers and to provide report to legislature for implementation of customer choice; deleted former (8) through (10) that read: "(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.

(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.

(10) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains"; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 22, Ch. 565, L. 2003, was a saving clause.

Severability: Section 23, Ch. 565, L. 2003, was a severability clause.

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

1999 Amendment: Chapter 575 in (1) at end of introductory clause after "procured" inserted "as provided in this section"; in (1)(a) at beginning substituted "one or more default suppliers for those customers not being served by a competitive supplier" for "during the transition period"; in (1)(b) at end of first sentence substituted "are not being served by a competitive electricity supplier as provided by commission rules" for "have not chosen an electricity supplier or for those customers that have not yet been assigned an electricity supplier"; deleted former (2) that read: "(2) If the transition period is extended for certain customers because the commission finds that workable competition in the electricity supply market does not exist, then the commission shall continue to regulate the provision of electricity supply by distribution services providers in accordance with 69-8-210"; inserted (8) requiring licensure of default suppliers; inserted (9) requiring promulgation of rules; inserted (10) regarding a default supplier's obligation to serve; and made minor changes in style. Amendment effective May 5, 1999.

Preamble: The preamble attached to Ch. 575, L. 1999, provided: "WHEREAS, residential and small commercial customers of investor-owned distribution utilities in Montana need access to reliable electricity supply at equitable prices; and

WHEREAS, the aggregation of residential and small commercial customers that do not have access to competitive electricity suppliers at equitable prices provides them with market power to secure electricity at the least cost; and

WHEREAS, allowing one or more default suppliers to aggregate residential and small commercial customers to purchase electricity maximizes economies of scale, increases administrative efficiency, and provides maximum benefits to all small electricity customers; and

WHEREAS, wholesale competition in electricity markets may be facilitated by allowing entities to compete for the opportunity to provide electricity supply to those residential and small commercial customers on an aggregated basis; and

WHEREAS, the formation of nonprofit electricity buying cooperatives enhances the chances of securing for small customers the greatest amount of electricity at the least cost from the federal power system; and

WHEREAS, the state of Montana desires that its residents have access to the benefits of competitive retail electricity markets and federal Power Marketing Administration electricity; and

WHEREAS, federal Power Marketing Administration power or benefits should be distributed as widely and equitably as possible among small customers of open-access public utilities in the state of Montana in a manner that promotes efficient development and operation of the competitive retail electricity markets; and

WHEREAS, the state of Montana benefits by enacting legislation this session that maximizes the chances of an electricity buying cooperative being able to purchase power for small customers from the Bonneville Power Administration at preferential rates for the subscription period that begins in 2001."

Severability: Section 34, Ch. 575, L. 1999, was a severability clause.

Saving Clause: Section 35, Ch. 575, L. 1999, was a saving clause.

1997 Statement of Intent: The statement of intent attached to Ch. 505, L. 1997, provided: "A statement of intent is required because this bill provides the public service commission with rulemaking authority."

Administrative Rules

Title 38, chapter 5, subchapter 82, ARM Default electric supplier procurement guidelines.

Case Notes

Finality of Costs Considered Overarching Intent of Electric Utility Industry Restructuring and Customer Choice Act — PSC Denial of System That Would Allow Charging Future Transition Costs Correct Interpretation of Act: As part of the deregulation process pursuant to the Electric Utility Industry Restructuring and Customer Choice Act, the Montana Power Company (MPC) submitted a transition cost recovery plan to the Public Service Commission (PSC) that would have allowed the future recovery of certain transition costs as they became known over a period of 25 to 30 years. The PSC ordered MPC to amend its transition plan to specifically identify and demonstrate all transition costs that it sought to recover and not to rely on a future tracking mechanism. Upon judicial review, the District Court ordered the PSC to allow the tracking system. The Supreme Court was subsequently asked to determine whether the PSC interpretation of the Act was correct. The court held that MPC's proposed cost-tracking method, whereby some, but not all, transition costs would be unknown and therefore subject to the caprice of future events, was entirely inconsistent with the principle of finality and with statutory mandates in the Act placed on the PSC that all costs be determined to be: (1) verifiable; (2) unrecoverable; (3) affirmatively shown; (4) reasonably mitigated; (5) reasonably demonstrable; (6) reduced to a net sum; and (7) reduced to an amount in a final order. The principle of finality was also expressed in 69-8-211 (now repealed), which declared that PSC approval of transition costs, as well as the subsequent collection of those costs through transition charges, was a settlement of all transition costs claimed by a public utility. This finality was the overarching intent of the Act, in that the needs of consumers to effectively plan today takes precedence over precise cost analysis extending for years or even decades into the future. It is the PSC that assumes the role of arbiter in determining and fixing a utility's transition costs, if any, that will be discharged at the consumers' expense. Thus, the PSC's interpretation of the Act was correct, and the District Court's mandate requiring the PSC to allow the use of trackers would require the PSC to bend if not violate the law and could not be sustained. The District Court was reversed, and the PSC order was reinstated. Mont. Power Co. v. Pub. Serv. Comm'n, 2001 MT 102, 305 M 260, 26 P3d 91 (2001).

69-8-411. Nondiscriminatory access.

Compiler's Comments

2011 Amendment: Chapter 120 in (2) inserted exception clause. Amendment effective April 1, 2011.

2007 Amendment: Chapter 491 substituted (1), (2), and (3) concerning access to transmission and other facilities and concerning tariffs for former text that read: "Except as provided in 69-8-311, all electricity suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable opportunity to compete. A distribution services provider or the distribution services provider's affiliates may not use another distribution services provider's facilities in the state of Montana to sell electricity to customers in the state of Montana unless the first distribution services provider or the distribution services provider's affiliates offer comparable and nondiscriminatory access to the distribution services provider's distribution facilities within the state of Montana." Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

1999 Amendment: Chapter 580 in second sentence at end inserted "within the state of Montana"; and made minor changes in style. Amendment effective May 10, 1999.

69-8-412. Funds established — fund administrators designated — purpose of funds — department rulemaking authority to administer funds.

Compiler's Comments

2017 Amendment: Chapter 275 in (1) substituted "69-8-402(2)(g)" for "69-8-402(2)(f)". Amendment effective October 1, 2017.

2015 Amendment: Chapter 252 in (1) substituted "(5)(d)" for "(5)(b)". Amendment effective April 17, 2015.

Retroactive Applicability: Section 5, Ch. 252, L. 2015, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to universal system benefits activities beginning on or after January 1, 2015."

2003 Amendment: Chapter 180 inserted (3) requiring the expenditure of money in universal system benefits programs in the utility service territory from which the money was received; in (4) at end of first sentence substituted "assessment of identified funding needs in the utility service territory from which the money was received" for "statewide funding assessment that identifies funding needs in universal system benefits programs", inserted second sentence concerning assessing funding needs, and in last sentence after "assessment must" inserted "also"; and made minor changes in style. Amendment effective March 31, 2003.

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

Effective Date: Section 9, Ch. 580, L. 1999, provided that this section is effective on passage and approval. Approved May 10, 1999.

69-8-413. Department rulemaking authority.

Compiler's Comments

Effective Date: Section 9, Ch. 580, L. 1999, provided that this section is effective on passage and approval. Approved May 10, 1999.

69-8-414. Universal system benefits programs credit review process — penalties.

Compiler's Comments

2015 Amendment: Chapter 393 inserted (1)(b), (1)(c), and (1)(d) regarding penalties for failure to file reports; and made minor changes in style. Amendment effective May 4, 2015.

Applicability: Section 4, Ch. 393, L. 2015, provided: "[This act] applies to annual reports filed with the department of revenue and the energy and telecommunications interim committee on or after March 1, 2016."

2001 Amendment Rejected: The amendments made by Ch. 577, L. 2001 (House Bill No. 474), were removed from this section because House Bill No. 474 was rejected by the electorate in a referendum held November 5, 2002.

Effective Date: Section 9, Ch. 580, L. 1999, provided that this section is effective on passage and approval. Approved May 10, 1999.

69-8-421. Approval of electricity supply resources.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 251, L. 2023. Amendment effective April 25, 2023.

2019 Amendment: Chapter 449 inserted (1)(b) concerning the competitive solicitation process; in (4)(b) near middle substituted "public meetings" for "public hearing" and after "on the application for approval" inserted "in accordance with 69-3-1205(2)"; in (4)(d) after "following the" substituted "meetings" for "hearing"; in (5) near end inserted "if necessary, in accordance with 69-3-1207"; in (6)(c)(ii) after "requirements" inserted "and objectives" and substituted "69-3-1201 through 69-3-1209" for "the objectives in 69-8-419"; in (9) near end after "69-3-201" deleted "69-8-419"; deleted former (10) that read: "(10) The commission may engage independent engineering, financial, and management consultants or advisory services to evaluate a public utility's electricity supply resource procurement plans and proposed electricity supply resources. The consultants must have demonstrated knowledge and experience with electricity supply procurement and resource portfolio management, modeling, risk management, and engineering practices. The commission shall charge a fee to the public utility to pay for the costs of consultants or advisory services. These costs are recoverable in rates"; in (10) at beginning deleted "By March 31, 2008"; and made minor changes in style. Amendment effective July 1, 2020.

Saving Clause: Section 19, Ch. 449, L. 2019, was a saving clause.*Severability:* Section 18, Ch. 449, L. 2019, was a severability clause.

2009 Amendment: Chapter 2 in (9) near end of first sentence after "power" deleted "supply". Amendment effective October 1, 2009.

2007 Amendment: Chapter 491 in (1) near beginning after "A" substituted reference to public utility that removed generation assets from rate base pursuant to chapter before October 1, 2007, for "default supplier" and after "commission for" substituted reference to approval of electricity resource not yet procured for "advanced approval of a power supply purchase agreement that is:

(a) not executed; or

(b) executed with a provision that allows termination of the agreement if the commission does not find the agreement reasonable"; deleted former (2) that read: "(2) (a) The commission shall issue an order on the default supplier's application for advanced approval of a power supply purchase agreement in a timely manner as provided in this subsection (2).

(b) In establishing an administrative procedure for reviewing an application for advanced approval, the commission shall consider any financing and market constraints and the due process rights of affected persons"; in (2) in first sentence near beginning substituted "public utility's" for "default supplier's" and substituted "approval" for "advanced approval" and in second sentence at end substituted "the deficiencies" for "how the filing fails to comply with the objectives in 69-8-419 and the rules adopted pursuant to 69-8-419"; in (3) inserted "for approval of a power purchase agreement from an existing generating resource"; inserted (4) requiring commission to issue order within specified timeframes; in (5) near middle after "prior to the" substituted "public utility's" for "default supplier's"; in (6)(a) at end substituted "approval of an electricity supply resource" for "advanced approval of a power supply purchase agreement"; in (6)(b) at end substituted "approval" for "advanced approval of a power supply purchase agreement"; in (6)(c) substituted "approval of an application" for "advanced approval of a power supply purchase agreement"; in (6)(c)(i) at beginning substituted "approval, in whole or in part" for "advanced approval of all or part of the agreement"; deleted former (6)(c)(ii) and (6)(c)(iii) that read: "(ii) the agreement resulted from a reasonable effort by the default supplier to comply with the objectives in 69-8-419 and the rules adopted pursuant to 69-8-419; and

(iii) the price, quantity, duration, and other contract terms directly related to the price, quantity, and duration of the power supply purchase agreement are reasonable"; inserted (6)(c)(ii) regarding procurement of electricity supply resource; inserted (6)(d) and (6)(e) concerning commission orders; in (6)(g) near middle substituted "approval" for "advanced approval"; in (7) near end substituted "related to the approved electricity supply resource" for "incurred under the agreement"; deleted former (5) that read: "(5) If a default supplier does not apply for advanced approval of a power supply purchase agreement, the commission shall consider the prudence of the default supplier's resource procurement actions in the context of a default supplier's cost recovery filing pursuant to 69-8-210 or in a separate proceeding. The commission's decisions in these proceedings must be based on facts that were known or should reasonably have been known by the default supplier at the time of its procurement decisions"; inserted (8) concerning commission approval of certain coal-fired electrical generating facilities or equipment; in (9) in first sentence after "in any future" substituted "rate" for "cost recovery", substituted "public utility" for "default supplier", substituted "dispatched, operated, or maintained any resource or managed any power supply purchase agreement" for "a power supply purchase agreement", and near end inserted "resource" and in second sentence substituted "rate recovery for the" for "default supply", substituted "public utility" for "default supplier", and substituted "manage, dispatch, operate, maintain, or administer electricity supply resources in a manner consistent with 69-3-201, 69-3-419, and commission rules" for "administer power supply purchase agreements in the context of its overall default supply portfolio management and service obligations"; in (10) in first sentence near beginning inserted "engineering, financial, and management", substituted "public utility's electrical supply" for "utility's default supply", and at end substituted "electricity supply resources" for "power supply purchase agreements", in second sentence near end inserted "and engineering", in third sentence substituted "public utility" for "default supplier", and in fourth sentence near end after "recoverable in" deleted "default supply"; inserted (11) concerning adoption of rules by commission; and made minor changes in style. Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

Effective Date: Section 8, Ch. 509, L. 2003, provided that this section is effective on passage and approval. Approved April 24, 2003.

Applicability: Section 9, Ch. 509, L. 2003, provided: "[Sections 1 through 3] [69-8-419 through 69-8-421 (69-8-419 and 69-8-420 now repealed)] apply only to power supply purchase agreements for which the procurement process begins on or after [the effective date of this act]." Effective April 24, 2003.

Case Notes

Allegation of Threatened Harm to Consumers in Form of Higher Electricity Bills Minimally Adequate to Confer Standing. 350 Mont. v. St., 2023 MT 87, 412 Mont. 273, 529 P.3d 847.

69-8-426. Use of generation assets.

Compiler's Comments

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

Effective Date: This section is effective October 1, 2007.

Part 5
Transition and Tax Revenue Analysis

69-8-503. Transition costs financing.

Compiler's Comments

2003 Amendment: Chapter 565 in (1) near beginning after "may" deleted "after July 1, 1997"; and made minor changes in style. Amendment effective July 1, 2003.

Saving Clause: Section 22, Ch. 565, L. 2003, was a saving clause.

Severability: Section 23, Ch. 565, L. 2003, was a severability clause.

1999 Amendment: Chapter 305 in (15)(a) after "chapter 9" substituted "part 6" for "part 5"; and at end of first sentence of (19) substituted "as those terms are defined in 30-9-122 [renumbered 30-9A-102]" for "under 30-9-106". Amendment effective July 1, 2001.

Part 6
Net Metering

Part Compiler's Comments

Applicability: Section 6, Ch. 323, L. 1999, provided that this part does not apply to corporations organized under Title 35, chapter 18.

Effective Date: Section 8, Ch. 323, L. 1999, provided: "[This act] is effective July 1, 1999."

69-8-602. Utility net metering requirements.

Compiler's Comments

2017 Amendment: Chapter 248 in (2)(a) at beginning substituted "If" for "unless" and at end inserted "the commission may establish additional metering equipment requirements"; in (2)(b) at beginning substituted "The commission shall consider the benefits and costs to a public utility and a customer-generator" for "after taking into account the benefits and costs", near middle substituted "costs of additional net metering equipment" for "costs of net metering", and at end substituted "public utility" for "utility"; in (3)(a) substituted "The commission shall charge the customer-generator an appropriate rate pursuant to 69-3-306" for "charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class"; in (3)(b) at beginning inserted "Notwithstanding 69-8-610 through 69-8-612, if the", near middle substituted "that a public utility is incurring direct costs" for "the utility will incur direct costs", and near end substituted "the commission may impose" for "public policy is best served by imposing" and substituted "public utility's" for "utility's"; and made minor changes in style. Amendment effective on occurrence of contingency.

2007 Amendment: Chapter 491 in introductory clause and in (1)(b), (2)(a), and (2)(b) substituted reference to utility for reference to distribution services provider. Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

69-8-603. Net energy measurement calculation.

Compiler's Comments

2017 Amendment: Chapter 248 in middle of first sentence inserted exception clause; in (1) near beginning substituted "public utility" for "utility" and throughout remainder of section substituted "public utility" for "electricity supplier"; in (2) at end substituted "and billed at the appropriate rate pursuant to 69-3-306 in accordance with 69-8-602 and 69-8-610 through 69-8-612" for "in accordance with normal metering practices"; in (3) inserted "Subject to 69-8-602 and 69-8-610 through 69-8-612"; in (3)(a) substituted "billed at the appropriate rate pursuant to 69-3-306 for that billing period" for "billed for the appropriate customer charges for that billing period, in accordance with 69-8-602"; and made minor changes in style. Amendment effective on occurrence of contingency.

2007 Amendment: Chapter 491 in (1) substituted "utility" for "distribution services provider". Amendment effective October 1, 2007.

Saving Clause: Section 22, Ch. 491, L. 2007, was a saving clause.

Severability: Section 23, Ch. 491, L. 2007, was a severability clause.

2001 Amendment: Chapter 328 in (4) at beginning substituted "On January 1, April 1, July 1, or October 1 of each year, as designated by the customer-generator as the beginning date of a 12-month billing period" for "At the beginning of each calendar year" and substituted "previous 12 months" for "previous year". Amendment effective April 21, 2001.

69-8-604. Net metering system — reliability and safety.

Compiler's Comments

2017 Amendment: Chapter 410 in (2) near middle after "the commission" deleted "or the local governing body"; and inserted (3) requiring the commission to biennially review and update interconnection requirements and rules for customer-generators. Amendment effective May 22, 2017.

69-8-610. Cost-benefit analysis.

Compiler's Comments

Effective Date: Section 13(1), Ch. 248, L. 2017, provided that this section is effective on passage and approval. Approved May 3, 2017.

69-8-611. Classification of service — net metering customers.

Compiler's Comments

Effective Date: Section 13(1), Ch. 248, L. 2017, provided that this section is effective on passage and approval. Approved May 3, 2017.

69-8-612. New classifications of service — grandfather clause.

Compiler's Comments

Effective Date: Section 13(1), Ch. 248, L. 2017, provided that this section is effective on passage and approval. Approved May 3, 2017.

Part 8
Electric Vehicle Charging Stations

Part Compiler's Comments

Effective Date: Section 6, Ch. 441, L. 2019, provided: "[This act] is effective on passage and approval." Approved May 10, 2019.

69-8-803. Electric vehicle charging stations — service entity requirements.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 619, L. 2023. Amendment effective May 19, 2023.

CHAPTER 12
MOTOR CARRIERS

Chapter Compiler's Comments

Interim Study: HJR 27 and HJR 33 (1981) requested an interim study of transportation in Montana. The Legislative Council designated the Joint Subcommittee on Transportation to conduct the study.

Chapter Case Notes

Nonreceipt of Certificate as Affecting Pending Contracts: In an action by the plaintiff contractor against the defendant motor carrier for breach of contract caused by the defendant's refusal to haul fabricated silo sections at a previously agreed price, the trial court did not err in finding that the fact that the defendant did not receive written state approval of the transfer of a motor carrier's certificate until after the contract was agreed to did not affect the legality of the contract. Under the rules of the Public Service Commission, the transfer of the certificate was effective before the contract was made, and nothing in the law prevented the defendant from contracting pending issuance of the certificate. Also, the hauling was to be done after the date upon which the defendant received his certificate. Consequently, the defendant could have performed the hauling contract. Empire Steel Mfg. Co. v. Carlson, 191 M 189, 622 P2d 1016, 38 St. Rep. 101 (1981).

Constitutionality:

The trial court erred in granting the defendant's motion to dismiss when his complaint alleged that certain portions of this law violated the Montana and United States Constitutions, because a summary procedure should not be used in cases involving important public issues when any fact is in dispute unless the trial judge is satisfied that the evidence is sufficient to give him the necessary background of knowledge. Garrett Freightlines, Inc. v. Mont. R.R. & P.S.C., 153 M 380, 457 P2d 469 (1969).

The provisions of the motor carrier law are not invalid for failure to specify any method by which gross operating revenue of carrier in state could be determined or for failure to make distinction between large and small vehicles or heavy or light loads or number of miles traveled over state highways. Bd. of R.R. Comm'rs v. Aero Mayflower Transit Co., 119 M 118, 172 P2d 452 (1946), affirmed in Aero Mayflower Transit Co. v. Bd. of R.R. Comm'rs, 332 US 495, 92 L Ed 99, 68 S Ct 167 (1947).

The title of an act regulating motor carriers, stating that it provided for enforcement of the act and punishment for violation of the act, sufficiently gave notice of venue provision in the act. The state constitution requirements that a bill's subject be clearly expressed in its title and that local and special laws must not be passed on certain subjects are not violated. Great N. Ry. v. Hatch, 98 M 269, 38 P2d 976 (1934).

The motor carrier law is not violative of the 1889 Montana Constitution, nor is it rendered unconstitutional as special legislation. St. v. Healow, 98 M 177, 38 P2d 285 (1934).

The motor carrier law, regulating the use of state highways by motor carriers for hire, is a valid enactment, contrary to the contentions of a private contract carrier that by requiring him to obtain from the Board of Railroad Commissioners (now Public Service Commission) a certificate of public convenience and necessity, the act is invalid, denying him the right to contract and offending the Equal Protection of the Law and the Due Process of the Law Clauses of the Montana Constitution. Fulmer v. Bd. of R.R. Comm'rs, 96 M 22, 28 P2d 849 (1934); Barney v. Bd. of R.R. Comm'rs, 93 M 115, 17 P2d 82 (1923).

Application: The motor carrier law was intended to apply to all intrastate and interstate motor carriers operating over state highways. Bd. of R.R. Comm'rs v. Aero Mayflower Transit Co., 119 M 118, 172 P2d 452 (1946), affirmed in Aero Mayflower Transit Co. v. Bd. of R.R. Comm'rs, 332 US 495, 92 L Ed 99, 68 S Ct 167 (1947).

Application of Section: Section 8-110, R.C.M. 1947 (now 69-12-313, now repealed, and 69-12-324), does not contemplate the inclusion of those engaged in other businesses and using motor vehicles solely for the incidental purpose of delivering and transporting their own goods and merchandise in the course of such businesses. Bd. of R.R. Comm'rs v. Gamble-Robinson Co., 111 M 441, 111 P2d 306 (1941).

Evasion of Regulatory Act: When there is an attempt to evade the regulation of motor transportation and requirement of obtaining certificates of public convenience provided in this chapter through the formation of a corporation or association, courts will go behind the form of subterfuge or scheme to the substance. Bd. of R.R. Comm'rs v. Reed, 102 M 382, 58 P2d 271 (1936).

Regulations Held Reasonable: The use of the public highways is special and extraordinary and generally may be regulated by the state, and regulation by means of certificates of public convenience is reasonably devised to protect the public from abusive use of roads and evils incident to unregulated competition. Bd. of R.R. Comm'rs v. Reed, 102 M 382, 58 P2d 271 (1936).

Persons Required to Procure Certificate:

The provisions of the motor carrier law relating to the persons who must procure certificates of convenience and necessity before they may operate a motor vehicle for hire are broad enough to include the driver thereof, employed by its owner to operate it (whether such owner be an individual or corporation). Therefore, in a prosecution against an owner and driver, a contention that a penalty for a violation of the act could not be imposed upon the latter may not be sustained. St. v. Healow, 98 M 177, 38 P2d 285 (1934).

As a means of protecting its highways from abusive use and the public from the evils incident to unregulated competition, the state has the power to require both common and private motor carriers for hire to obtain from the Railroad Commission (now the Public Service Commission) certificates of public convenience and necessity as a condition precedent to the right to conduct such business. Barney v. Bd. of R.R. Comm'rs, 93 M 115, 17 P2d 82 (1932).

Grounds for Denying Certificate: Under this chapter, making it incumbent upon the Board of Railroad Commissioners (now Public Service Commission) in passing on an application for a certificate to operate motor vehicles for hire to give "reasonable consideration" to existing transportation facilities, including railroads, the general rule is that the certificate should be denied unless the service furnished is inadequate or additional service would benefit the general public, or unless the existing carrier has been afforded an opportunity to furnish such additional service as may be required. Fulmer v. Bd. of R.R. Comm'rs, 96 M 22, 28 P2d 849 (1934).

Discretion of Board in Granting Certificate: The requirement of this chapter that one desiring to operate a motor vehicle for hire must secure a certificate of convenience and necessity carried with it a discretion on the part of the Board of Railroad Commissioners (now Public Service Commission) to refuse it if in its judgment it is unwise to grant it. The contention that it has no power to deny it to one qualified and capable to furnish adequate service is without merit. Fulmer v. Bd. of R.R. Comm'rs, 96 M 22, 28 P2d 849 (1934).

Highways as Belonging to People: The state highways belong to the people for use in the ordinary way. Their use for the purpose of gain is special and extraordinary, which the state may prohibit altogether or permit on such conditions as it may consider proper to impose. Barney v. Bd. of R.R. Comm'rs, 93 M 115, 17 P2d 82 (1932).

Purpose of Statute: In the construction of the motor carrier law, the purpose of which is the supervision, regulation, and control of the state highways by motor carriers for hire, a matter of legislative discretion, all existing statutes relating to their use must be taken into consideration. Barney v. Bd. of R.R. Comm'rs, 93 M 115, 17 P2d 82 (1932).

Part 1
General Provisions

Part Administrative Rules

ARM 38.3.101 Motor carriers — generally.
ARM 38.3.102 Definitions.
ARM 38.3.103 Vicinity, tributary, radius, between.
ARM 38.3.104 "Contract" versus "common" carrier.
ARM 38.3.118 Lost or misplaced operating authority document.
ARM 38.3.204 I.C.C. rules.
ARM 38.3.403 Motor carrier authority — possession of certificates and permits.
ARM 38.3.601 Operation upon granting of certificate.
ARM 38.3.602 Operation after sale or transfer of certificate.
ARM 38.3.1502 Obligation to carry passengers.
ARM 38.3.1504 Disabled passenger vehicle — transportation of passengers.

69-12-101. Definitions.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 1, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (3) after "Class A" deleted "Class B"; in (4) after "Class A" deleted "and Class B"; and made minor changes in style. Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 inserted definitions of certificate of compliance, certificate of public convenience and necessity, digital network, personal vehicle, prearranged ride, transportation network carrier, transportation network carrier driver, transportation network carrier rider, and transportation network carrier services; in definition of certificate in middle inserted "or a certificate of compliance"; in definition of motor carrier at end inserted "A motor carrier includes a transportation network carrier"; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

2011 Amendment: Chapter 218 inserted definition of charter service; and made minor changes in style. Amendment effective April 18, 2011.

Severability: Section 4, Ch. 218, L. 2011, was a severability clause.

1995 Amendment: Chapter 358 inserted definitions of garbage and household goods; in definition of motor carrier, near middle, substituted "passengers, household goods, or garbage" for "persons or property" and deleted second sentence that read: "The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter"; in definition of recyclable, near middle after "reused", inserted "in the production of heat or energy or"; and made minor changes in style. Amendment effective July 1, 1995.

1993 Amendment: Chapter 364 deleted definition of log that read: ""Log" means a fallen or felled tree, delimbed and cut to length for transportation to a point for storage or processing."

1991 Amendments: Chapter 341 inserted definition of recyclable.

Chapter 481 inserted definition of log. Amendment effective April 20, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 341, L. 1991, provided: "A statement of intent is required for this bill in order to provide guidance to the public service commission in adopting rules. It is the intention of the legislature that a Class D motor carrier have the authority to collect and transport source-separated recyclables and that Class C motor carriers have the authority to transport recyclables."

Administrative Rules

ARM 38.3.301 Jurisdictional policy.

Title 38, chapter 3, subchapter 10, ARM Transportation incidental to principal business.

Case Notes

Transportation Activities Incidental to Principal Business Not Subject to Motor Carrier Regulation: Grouse Mountain Associates, Ltd. (Grouse Mountain), provides guest transportation between its resort facility and The Big Mountain Ski Resort, the local airport, and the railway station at no cost and, for a nominal fee, to downtown Whitefish. The transportation service is not advertised or offered to the general public. A rival Whitefish business filed a complaint alleging that Grouse Mountain's guest transportation was subject to Public Service Commission motor carrier regulation. The District Court properly determined that Grouse Mountain's transportation services do not meet the definition of motor carrier because the service is accommodative only, is merely incidental to Grouse Mountain's principal business, and thus is not subject to motor carrier regulation. Grouse Mtn. Associates, Ltd. v. Dept. of Public Service Regulation, 284 M 65, 943 P2d 971, 54 St. Rep. 750 (1997).

Definition of Motor Vehicle as Resulting in an Undue Burden on Interstate Commerce: Definition of motor vehicles (prior to 1979 amendment correcting the problem) as including a trailer, semitrailer, or dolly and requirement for a $5 fee on each motor vehicle constituted an undue burden on interstate commerce when Interstate Commerce Commission regulations provided for a maximum registration fee of $5 and the Interstate Commerce Commission definition of a motor vehicle was limited to the mechanical drive unit, not to whatever was being pulled by that power unit, because federal statute and regulations promulgated by the Interstate Commerce Commission were controlling over contrary provisions of state law. State ex rel. Sammons Trucking, Inc. v. Bollinger, 169 M 88, 544 P2d 1235 (1976).

"Motor Carrier" for Hire: A person who transports merely himself or his own property by means of a motor vehicle is not a "motor carrier" for hire even though he may be compensated directly or indirectly, within the meaning of this chapter, so far as it requires a certificate of public convenience and necessity. One who engages in the transportation of goods for another as an independent calling, under contract and for compensation, is such a carrier. Bd. of R.R. Comm'rs v. Gamble-Robinson Co., 111 M 441, 111 P2d 306 (1941).

Meaning of "For Hire": Several city mercantile establishments entered into a contract of purchase of a truck, agreeing to pay the seller $1,000, payable $100 down and $75 per month for 12 months. The truck was to be used for transporting merchandise bought or sold, and the purchasers assumed the expense of upkeep and operation as a certain ratio as between themselves based on the weight of merchandise carried for each per mile. The seller was employed as transportation manager at $6 per day and was to receive a bonus for good service. Neither the purchasers nor the seller, their employee, were carriers for hire and therefore were not required to secure a certificate of public convenience and necessity from the Board of Railroad Commissioners (now the Public Service Commission) to entitle them to the use of state highways in the transportation of such merchandise. Christie Storage & Transfer Co. v. Hatch, 95 M 601, 28 P2d 470 (1934), distinguished in Bd. of R.R. Comm'rs v. Reed, 102 M 382, 58 P2d 271 (1936).

69-12-102. Scope of chapter — exemptions.

Compiler's Comments

2021 Amendments — Composite Section: Chapter 89 in (2) at beginning deleted "Except for the identification of ownership requirements provided in 69-12-408"; and made minor changes in style. Amendment effective October 1, 2021.

Chapter 212 inserted (1)(n) regarding transportation to or from outdoor recreation sites and transportation on circular tours; and made minor changes in style. Amendment effective October 1, 2021.

2015 Amendment: Chapter 456 in (1)(l) after "group of passengers" deleted "by charter service". Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

2011 Amendment: Chapter 218 inserted (1)(l) regarding transportation of group of passengers by charter service; inserted (1)(m) regarding transportation of group of employees; and made minor changes in style. Amendment effective April 18, 2011.

Severability: Section 4, Ch. 218, L. 2011, was a severability clause.

2009 Amendment: Chapter 224 in (2) deleted former second sentence that read: "However, commercial tow truck firms shall file policies of insurance showing coverage required by 61-8-906". Amendment effective October 1, 2009.

2007 Amendment: Chapter 223 in (1)(c) near end after "village" inserted "with a population of less than 500 persons". Amendment effective October 1, 2007.

2005 Amendment: Chapter 82 inserted (1)(h)(iii) concerning public transportation systems recognized by department of transportation; in (1)(k) near beginning after "transportation of" deleted "disabled or elderly" and at end after "organizations" inserted clause concerning organizations recognized by department of transportation; deleted definition of disabled that read: ""disabled" means an individual who has a physical or mental impairment that substantially limits one or more major life activities"; deleted definition of elderly that read: ""elderly" means a person 60 years of age or older"; and made minor changes in style. Amendment effective March 24, 2005.

2003 Amendment: Chapter 88 at beginning of (2) inserted exception clause; and made minor changes in style. Amendment effective October 1, 2003.

1995 Amendments: Chapter 283 deleted former (1)(f) that read: "(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles"; in (1)(k) and (1)(k)(i) substituted "disabled" for "handicapped"; inserted (2) excluding certain commercial tow trucks from the provisions of Title 69, chapter 12, and requiring proof of insurance required under 61-8-906; and made minor changes in style. Amendment effective March 29, 1995.

Chapter 358 deleted former (1)(a) that read: "(a) motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products of agricultural commodities) if the motor vehicles are not used in carrying other property or passengers for compensation"; in (1)(b), in two places after "employees", deleted "supplies, and materials"; in (1)(c), near beginning, substituted "household goods and garbage" for "property"; deleted former (1)(f) that read: "(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles"; deleted former (1)(i) that read: "(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill"; deleted former (1)(k) that read: "(k) the transportation of property by motor carrier as part of a continuous movement if that property, prior or subsequent to part of a continuous movement, has been or will be transported by an air carrier"; in (1)(i), after "used", deleted "exclusively" and after "transportation of" deleted "coins, currency, silver bullion, gold bullion, and other precious metals, precious stones"; in (1)(j), near beginning after "transportation of", substituted "household goods or garbage" for "a commodity"; in (1)(k) and (1)(k)(i) substituted "disabled" for "handicapped"; and made minor changes in style. Amendment effective July 1, 1995.

Coordination Instruction: Section 18, Ch. 283, L. 1995, provided: "If Senate Bill No. 378 [LC 981] is passed and approved and if it includes a section that repeals 69-12-102, then [section 15 of this act], amending 69-12-102, is void." Senate Bill No. 378 amended rather than repealed 69-12-102; therefore, the amendment to 69-12-102 in sec. 15, Ch. 283, L. 1995, was effective as approved.

1993 Amendment: Chapter 364 in (1)(a), after "consisting of agricultural commodities", deleted "other than logs"; and made minor changes in style.

1991 Amendments: Chapter 322 inserted (1)(o) exempting the transportation of handicapped or elderly persons provided by private, nonprofit organizations; and made minor changes in style.

Chapter 481 in (1)(a), after "commodities", inserted "other than logs"; and made minor change in style. Amendment effective January 1, 1992.

1985 Amendment: Inserted (1)(n) providing that state law on motor carriers does not affect the transportation of a commodity under an agreement between a motor carrier and federal office or agency.

Code Commissioner Correction: In (1) the Code Commissioner has deleted "Except as provided in 69-12-201(1)(f), (1)(g), and (2)" because subsections were deleted by sec. 1, Ch. 686, L. 1985.

1983 Amendments: Chapter 27 inserted (1)(j) providing that except for safety standards, state motor carrier laws do not affect transportation by motor vehicle of not more than 15 passengers between residences or termini near residences and places of employment in single daily round trip if driver is enroute to or from place of employment.

Chapter 75 inserted (1)(k) providing that except for safety standards, state motor carrier laws do not affect transportation of property by motor carrier as part of continuous movement if property, prior or subsequent to continuous movement, has been or will be air transported.

Chapter 160 inserted (1)(l) providing that except for safety regulations, state motor carrier laws do not affect the operation of urban transportation districts or municipal bus service.

Chapter 584 inserted (1)(m) providing that except for safety regulations, state motor carrier laws do not affect the operation of armored motor vehicles used exclusively for transportation of certain precious metals, stones, paintings, and other items of unusual value requiring special handling and security.

1981 Amendment: Added "Except as provided in 69-12-201(1)(f)" at the beginning of (1).

Administrative Rules

ARM 38.3.106 Commercial area exemption.

Case Notes

Responsibility for Primary Insurance Coverage: The federal statutes and regulations do not automatically impose responsibility for primary insurance coverage on the insurer of the I.C.C. carrier as a matter of law. Truck Ins. Exch. v. Transport Indem. Co., 180 M 419, 591 P2d 188 (1979).

Application of Act: The motor carrier law was intended to apply to all intrastate and interstate motor carriers operating over state highways. Bd. of R.R. Comm'rs v. Aero Mayflower Transit Co., 119 M 118, 172 P2d 452 (1946), affirmed in Aero Mayflower Transit Co. v. Bd. of R.R. Comm'rs, 332 US 495, 92 L Ed 99, 68 S Ct 167 (1947).

69-12-105. Nature of accommodative transportation.

Case Notes

Transportation Activities Incidental to Principal Business Not Subject to Motor Carrier Regulation: Grouse Mountain Associates, Ltd. (Grouse Mountain), provides guest transportation between its resort facility and The Big Mountain Ski Resort, the local airport, and the railway station at no cost and, for a nominal fee, to downtown Whitefish. The transportation service is not advertised or offered to the general public. A rival Whitefish business filed a complaint alleging that Grouse Mountain's guest transportation was subject to Public Service Commission motor carrier regulation. The District Court properly determined that Grouse Mountain's transportation services do not meet the definition of motor carrier because the service is accommodative only, is merely incidental to Grouse Mountain's principal business, and thus is not subject to motor carrier regulation. Grouse Mtn. Associates, Ltd. v. Dept. of Public Service Regulation, 284 M 65, 943 P2d 971, 54 St. Rep. 750 (1997).

69-12-106. Acts indicative of status as motor carrier.

Administrative Rules

ARM 38.3.116 Transportation for hire on a commercial basis.

ARM 38.3.201 Intrastate carriers — vehicle registration fee.

Case Notes

Transportation Activities Incidental to Principal Business Not Subject to Motor Carrier Regulation: Grouse Mountain Associates, Ltd. (Grouse Mountain), provides guest transportation between its resort facility and The Big Mountain Ski Resort, the local airport, and the railway station at no cost and, for a nominal fee, to downtown Whitefish. The transportation service is not advertised or offered to the general public. A rival Whitefish business filed a complaint alleging that Grouse Mountain's guest transportation was subject to Public Service Commission motor carrier regulation. The District Court properly determined that Grouse Mountain's transportation services do not meet the definition of motor carrier because the service is accommodative only, is merely incidental to Grouse Mountain's principal business, and thus is not subject to motor carrier regulation. Grouse Mtn. Associates, Ltd. v. Dept. of Public Service Regulation, 284 M 65, 943 P2d 971, 54 St. Rep. 750 (1997).

Transportation of Merchandise by Mercantile Establishments: Several city mercantile establishments entered into a contract of purchase of a truck, agreeing to pay the seller $1,000, payable $100 down and $75 per month for 12 months. The truck was to be used for transporting merchandise bought or sold, and the purchasers assumed the expense of upkeep and operation as a certain ratio as between themselves based on the weight of merchandise carried for each per mile. The seller was employed as transportation manager at $6 per day and was to receive a bonus for good service. Neither the purchasers nor the seller, their employee, were carriers for hire and therefore were not required to secure a certificate of public convenience and necessity from the Board of Railroad Commissioners (now the Public Service Commission) to entitle them to the use of state highways in the transportation of such merchandise. Christie Storage & Transfer Co. v. Hatch, 95 M 601, 28 P2d 470 (1934), distinguished in Bd. of R.R. Comm'rs v. Reed, 102 M 382, 58 P2d 271 (1936).

69-12-108. Violations.

Administrative Rules

ARM 38.3.201 Intrastate carriers — vehicle registration fee.

Case Notes

No Authority to Revoke Compliant Certificate Based on Public Service Commission and Prior Certificate Holder Misconduct — Penalty Statutes Not Self-Executing: The Public Service Commission (PSC) authorized the purchase and transfer of a solid waste transportation certificate that had been purchased and transferred on three prior occasions with PSC approval. Plaintiffs contended that the first three owners had failed to comply with applicable rules and that the PSC failed to enforce the rules and that as a result of these violations, the certificate was invalid when it was transferred to the current owner and should be revoked. The PSC determined that the certificate was valid, the District Court affirmed, and plaintiffs appealed. The Supreme Court held that the penalty statutes applicable to revocation of a certificate are not self-executing, in that revocation of a certificate requires PSC action to implement the penalties, so a court may not revoke a compliant certificate holder's certificate based on misconduct. Thus, plaintiffs' complaint presented a nonjusticiable moot issue, and the Supreme Court declined to disturb the District Court's decision. Mont. Solid Waste Contractors, Inc. v. Dept. of Public Service Regulation, 2007 MT 154, 338 M 1, 161 P3d 837 (2007).

Part 2
Role of Commission

69-12-201. Supervision and regulation of motor carriers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 2, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (1)(b) after "Class A" deleted "and Class B". Amendment effective July 1, 2021.

1993 Amendment: Chapter 364 deleted (4) allowing Commission to determine rates for Class E motor carriers operating under contract when rates are required for best interests of public transportation; and made minor changes in style.

1991 Amendment: Inserted (4) allowing Commission to set rates of operations of Class E motor carriers; and made minor changes in style. Amendment effective April 20, 1991.

1985 Amendment: In (1)(c) substituted "regulate the properties, facilities, operations, accounts, service, practices, and affairs of all motor carriers" for "regulate the properties, facilities, operations, accounts, service, practices, affairs, and safety of operations of all motor carriers, each of which is considered to consent impliedly to reasonable safety inspections of its motor vehicles utilized in furtherance of its business as a motor carrier"; and deleted former (1)(f), (1)(g), and (2) that read: "(f) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles; and

(g) provide standards for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight if they are:

(i) being used to transport passengers for hire; or

(ii) being used to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the commission.

(2) Such standards of safety shall be the same as prescribed for motor carriers, and the same inspection standards and procedures shall apply. However, standards relating to drivers, other than drivers for motor carriers, do not apply to a vehicle operated exclusively within a 200-mile radius of its work reporting location".

1981 Amendments: Chapter 226 added the last clause in (1)(c) after "all motor carriers" relating to implied consent for safety inspections.

Chapter 227 inserted (1)(f), (1)(g), and (2) (see 1985 amendment note for text).

Code Commissioner Changes: The Code Commissioner added "provide standards for the safe operation of" at the beginning of (1)(g) and divided the material inserted by Ch. 227 into three subsections, (1)(f), (1)(g), and (2), for clarification and renumbered former subsections (2) and (3) as (3) and (4).

1981 Statement of Intent: The statement of intent attached to HB 749 (Ch. 227, L. 1981) provided: "A statement of intent is required for this bill because it grants the Public Service Commission the authority to provide safety standards for motor vehicles used in commerce.

All interstate motor carriers, interstate private carriers, and carriers hauling unregulated commodities in interstate commerce must now meet equipment safety requirements and inspections as established by the Federal Motor Carrier Safety Regulations of the Department of Transportation. In addition, regulated intrastate motor carriers must also meet the same safety standards.

The Legislature intends to include large over-the-road trucks, in excess of 26,000 pounds GVW, used in commerce operating on Montana's highways to adhere to safety equipment standards. It is the intent of the Legislature to establish by regulation uniform safety standards and a safety inspection program that will focus on mechanical factors most often blamed for accidents involving trucks, passenger carriers, and hazardous material transporters. Included would be detailed inspections of brakes, steering components, tires, and driver logs where required.

It is intended that rules promulgated by PSC incorporate the "Critical Item Truck Inspection" program and that the rules include a procedure for conducting the inspection program as well as providing for a vehicle identification program acknowledging the inspection. The rules shall provide that safety infractions posing no imminent threat to public safety shall not result in an "out of service" order. Such a vehicle shall be allowed to proceed to obtain repairs before final inspection and issuance of inspection acknowledgment. It is recognized that repairing or parking large over-the-road trucks on the roadway is extremely dangerous." (Annotator's Note: Chapter 686, L. 1985, transferred authority for setting motor carrier and motor vehicle safety standards from the Public Service Commission to the Department of Justice.)

1979 Statement of Intent: The statement of intent attached to SB 473 (Ch. 387, L. 1979) provided: "A statement of intent is required for this bill because it creates the necessity for the adoption of additional rules under the rulemaking authority granted by 69-12-201 to carry out the amendments to 69-12-314 and 69-12-407.

It is the intent of the legislature that the Public Service Commission has the authority to make rules defining what activities will be necessary to constitute the transportation of material allowed under a Class D motor carrier certificate "on a regular basis as part of the motor carrier's usual business operation." Thus the Public Service Commission may by rule establish the criteria by which "regular basis" is measured and may make rules describing how "part of the motor carrier's usual business operation" is to be interpreted in implementing the amendment to 69-12-314.

To implement the amendments to 69-12-407 regarding records and reports by Class D motor carriers, the Public Service Commission may amend the present rules governing the reports and records of Class A and Class B motor carriers to include Class D motor carriers. In addition, the Public Service Commission may by rule determine what will be "sufficient information" to show that a motor carrier is entitled to a Class D certificate and how the information is to be provided by the Class D motor certificate holder."

Administrative Rules

Title 38, chapter 2, ARM Procedural rules.

Title 38, chapter 3, subchapter 1, ARM Motor carriers — definitions and general rules.

Title 38, chapter 3, subchapter 2, ARM Laws and rules applicable to intrastate and interstate carriers.

Title 38, chapter 3, subchapter 4, ARM Applications for motor carrier authority.

Title 38, chapter 3, subchapter 5, ARM Temporary operating authority.

Title 38, chapter 3, subchapter 6, ARM Requirements of prompt and continued operation.

Title 38, chapter 3, subchapter 7, ARM Insurance.

Title 38, chapter 3, subchapter 8, ARM Fees and reports.

Title 38, chapter 3, subchapter 10, ARM Transportation incidental to principal business.

Title 38, chapter 3, subchapter 12, ARM Minimum operations requirements for Class D motor carriers.

Title 38, chapter 3, subchapter 15, ARM Transportation of passengers.

Title 38, chapter 3, subchapter 20, ARM Leasing of power equipment, interchange of equipment, and lease of authority.

Title 38, chapter 3, subchapter 21, ARM Sale or transfer of certificate of authority.

Title 38, chapter 3, subchapter 24, ARM Tariffs — generally.

Title 38, chapter 3, subchapter 25, ARM Tariffs — filing.

Title 38, chapter 3, subchapter 26, ARM Tariffs — format.

Title 38, chapter 3, subchapter 27, ARM Tariffs — rate provisions.

Title 38, chapter 3, subchapter 28, ARM Tariffs — cancellation, amendment or supplement.

Title 38, chapter 3, subchapter 29, ARM Tariffs — loose-leaf.

Title 38, chapter 3, subchapter 30, ARM Tariffs — suspension.

Title 38, chapter 3, subchapter 33, ARM Tariffs — special provisions.

Title 38, chapter 3, subchapter 34, ARM Minimum filing standards for motor carrier rate increases.

ARM 38.3.3601 Fuel cost surcharge.

ARM 38.3.3605 Temporary rate reductions.

Case Notes

Standard of Review of Public Service Commission Conclusion of Law: The standard of review applicable to a Public Service Commission's conclusion of law is whether the Public Service Commission correctly interpreted the law in reaching the conclusion. Grouse Mtn. Associates, Ltd. v. Dept. of Public Service Regulation, 284 M 65, 943 P2d 971, 54 St. Rep. 750 (1997).

Waiver of Condition of Public Service Commission Approval of Certificate Transfer: Rite-Line Transportation Services, Inc. (Rite-Line), owned Certificate No. 1136 that authorized it to operate certain routes in Montana. Molerway Freight Lines, Inc. (Molerway), sought to obtain the certificate and entered into a buy-sell agreement expressly conditioned on Public Service Commission (P.S.C.) approval of the transfer. After tendering a $30,000 downpayment, Molerway made two monthly installment payments. The P.S.C. approved the lease of the certificate but indicated that portions of the certificate that were duplicative of other routes already covered in Molerway's other certificates would be canceled. Both parties feared that the cancellation of duplicate authorities would jeopardize the buy-sell agreement. Both Rite-Line and Molerway requested that the cancellation of duplicate authorities be delayed until the buy-sell agreement was fulfilled. Although the P.S.C. granted the parties' request, Molerway objected, stopped payment on its monthly installment, and sought to rescind the contract and get back its downpayment, which Rite-Line resisted. In enforcing the contract, the District Court properly concluded that even if the P.S.C.'s cancellation of the duplicate authorities constituted denial of the transfer, Molerway's conduct manifested a voluntary and intentional relinquishment of its right to rely on the condition precedent of P.S.C. approval in order to void the contract. Molerway Freight Lines, Inc. v. Rite-Line Transp. Serv., Inc., 273 M 95, 902 P2d 9, 52 St. Rep. 839 (1995).

Automatic Approval of Tariff Revisions: The Public Service Commission (P.S.C.), in refusing to approve and give effect to relator's proposed tariff schedules, failed to perform a clear legal duty arising under the motor carrier law. Since the P.S.C. did not hold a hearing within 180 days of suspension of relator's tariff, the tariff revisions were considered approved and effective as filed. State ex rel. Chem. Transp. v. Bollinger, 173 M 535, 568 P2d 172 (1977).

Terms and Conditions on Certificate: Under this section and 69-12-323, the Board of Railroad Commissioners (now the Public Service Commission) is authorized and has a duty to supervise every motor carrier in the state and may, in its discretion upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. Walter v. Bd. of R.R. Comm'rs, 153 M 384, 457 P2d 479 (1969). (Annotator's Note: Chapter 686, L. 1985, transferred authority for setting motor carrier and motor vehicle safety standards from the Public Service Commission to the Department of Justice.)

Discretionary Appointment: A taxpaying citizen was not entitled to an injunction in an action questioning the qualifications of a supervisor appointed by the Board of Railway Commissioners (now the Public Service Commission) in the proper exercise of its discretion. Steel v. Bd. of R.R. Comm'rs, 144 M 432, 397 P2d 101 (1964).

69-12-203. Field inspectors.

Compiler's Comments

2011 Amendment: Chapter 4 deleted former (1) and (2) that read: "(1) The commission shall appoint a supervisor of motor carriers who has general responsibility to the commission for enforcement of the provisions of this chapter. The supervisor must be either an attorney admitted to practice law in Montana or a person qualified by at least 5 years of suitable experience and training in appropriate phases of the motor carrier industry. The supervisor shall serve at the pleasure of the commission and at an annual salary to be set by the commission.

(2) The supervisor shall direct all enforcement activities on behalf of the commission, including the investigation and prosecution of violations of this chapter or the rules or orders prescribed under this chapter by the commission"; at beginning of section substituted "The commission may employ field inspectors to investigate and enforce the provisions of this chapter. Field inspectors employed by the commission are peace officers" for "The supervisor and whatever field inspectors may be employed by the commission to assist the supervisor are considered peace officers"; and made minor changes in style. Amendment effective October 1, 2011.

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

1985 Amendment: In (3) near middle of second sentence, after "motor vehicles" deleted "make reasonable safety inspections of commercial motor vehicles utilized by motor carriers".

1981 Amendment: Inserted "make reasonable safety inspections of commercial motor vehicles utilized by motor carriers" after "make reasonable inspections of cargoes carried by commercial motor vehicles" in (3).

Administrative Rules

ARM 38.3.124 Receipt content.

Case Notes

Duties of Commission: Under 69-12-201 and 69-12-323, the Board of Railroad Commissioners (now the Public Service Commission) is authorized and has a duty to supervise every motor carrier in the state and may, in its discretion upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. Walter v. Bd. of R.R. Comm'rs, 153 M 384, 457 P2d 479 (1969). (Annotator's Note: Chapter 686, L. 1985, transferred authority for setting motor carrier and motor vehicle safety standards from the Public Service Commission to the Department of Justice.)

Discretionary Appointment: A taxpaying citizen was not entitled to an injunction in an action questioning the qualifications of a supervisor appointed by the Board of Railway Commissioners (now the Public Service Commission) in the proper exercise of its discretion. Steel v. Bd. of R.R. Comm'rs, 144 M 432, 397 P2d 101 (1964).

69-12-204. General administrative procedure.

Administrative Rules

ARM 38.3.121 Filing business addresses and telephone numbers.

ARM 38.3.404 Notice of public hearing on application for operating authority.

ARM 38.3.2102 Notice of public hearing on application for sale or transfer of certificate of authority.

69-12-205. Rules to reflect differences between carrier classes.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 3, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (1) near middle after "Class A" deleted "Class B"; in (2)(a) and (2)(b) near beginning after "Class A" deleted "and Class B"; and made minor changes in style. Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 in (1) at beginning inserted exception clause, substituted "recognize the differences between types of" for "have due regard for the differences existing between", after "Class D" inserted "and Class E", and after "to the classes" inserted "and types"; in (2)(a) at beginning substituted "In establishing" for "In fixing", after "the carrying of persons" deleted "or property, or both", and at end deleted "the public necessity of the service, and the effect of the tariff and rates upon other transportation agencies, if any, and shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier"; inserted (2)(b) and (3) regarding establishing rates for Class A and Class B motor carriers and exempting Class E motor carriers from certain commission rules; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

1993 Amendment: Chapter 364 near beginning, after "Class D", deleted "and Class E"; and made minor changes in style.

1991 Amendment: In first sentence, after "Class D", inserted "and Class E"; and made minor changes in style. Amendment effective April 20, 1991.

69-12-206. Investigations by commission.

Case Notes

Petition for Rehearing: Montana Board of Railroad Commissioners (now the Public Service Commission), granting motor carrier's application for certificate of convenience and necessity and granting railroad carrier's application to discontinue rail passenger service, was not shown to be without authority to grant rehearing, notwithstanding change in membership of Board, when petition for rehearing was filed before conditions in Board's order had been fulfilled. N. Pac. Ry. v. Bd. of R.R. Comm'rs, 13 F. Supp. 529 (D.C. Mont. 1935).

69-12-207. Temporary operating authority.

Administrative Rules

Title 38, chapter 3, subchapter 5, ARM Temporary operating authority.

69-12-209. Enforcement procedures.

Compiler's Comments

2015 Amendment: Chapter 104 in (1) substituted "by the commission in accordance with Title 69, chapter 14, part 1" for "the enforcement of orders of the commission by the provisions of parts 1, 3, 4, and 8 of chapter 14"; in (2) near beginning of second sentence substituted "the provisions of this chapter or commission orders" for "obedience thereto" and near end substituted "require the carrier or its officers, agents, employees, or representatives to obey the requirements of this chapter or the order" for "enjoin upon it or them obedience to the same"; and made minor changes in style. Amendment effective October 1, 2015.

Saving Clause: Section 12, Ch. 104, L. 2015, was a saving clause.

Severability: Section 13, Ch. 104, L. 2015, was a severability clause.

Case Notes

Enjoining Use of Highways: This section must be construed with 69-14-134 (now repealed). The former, being a later enactment, modifies the latter so that the Board of Railroad Commissioners (now the Public Service Commission) could maintain an action to enjoin a motor carrier from operating motor vehicles over state highways until the motor carrier complied with provisions of the motor carrier law. Bd. of R.R. Comm'rs v. Aero Mayflower Transit Co., 119 M 118, 172 P2d 452 (1946), affirmed in Aero Mayflower Transit Co. v. Bd. of R.R. Comm'rs, 332 US 495, 92 L Ed 99, 68 S Ct 167 (1947).

Change of Venue: Though, generally speaking, all equitable suits (injunction, inter alia) are properly triable, under 25-2-108 (renumbered 25-2-118 by Code Commissioner, 1985), in the county in which defendants, or any of them, reside, this section specifically provides that a party injured by the illegal operation of a motor vehicle for hire may by Writ of Injunction seek enforcement of the act in any county in which the motor carrier is engaged in business. Hence, when injunctive relief was sought against such a carrier in a county and the defendant was doing business between the county seat of that county and the county seat of his home county, the court erred in granting a change of venue to his home county. Great N. Ry. v. Hatch, 98 M 269, 38 P2d 976 (1934).

69-12-210. Complaints.

Compiler's Comments

2015 Amendment: Chapter 456 in (1) after "The commission" substituted "may conduct" for "has jurisdiction to conduct"; and in (2) after "motor carrier's certificate" deleted "of operating authority". Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

1993 Statement of Intent: The statement of intent attached to Ch. 156, L. 1993, provided: "In determining whether a motor carrier should be granted a certificate of operating authority, a threshold question to be answered by the public service commission is whether the carrier is fit, willing, and able to provide the proposed service, otherwise referred to as an inquiry into carrier fitness. [Section 1] [69-12-415] is intended to clarify the public service commission's authority in this regard by codifying the carrier fitness requirement. Although 69-12-201 and 69-12-203 provide the commission with supervisory, regulatory, and enforcement authority over motor carriers, its authority to investigate and hear complaints concerning violations of Title 69, chapter 12, is not clearly defined. [Section 2] [69-12-210] is intended to clarify this authority."

Effective Date: Section 4, Ch. 156, L. 1993, provided: "[This act] is effective on passage and approval." Approved March 24, 1993.

Case Notes

No Authority to Revoke Compliant Certificate Based on Public Service Commission and Prior Certificate Holder Misconduct — Penalty Statutes Not Self-Executing: The Public Service Commission (PSC) authorized the purchase and transfer of a solid waste transportation certificate that had been purchased and transferred on three prior occasions with PSC approval. Plaintiffs contended that the first three owners had failed to comply with applicable rules and that the PSC failed to enforce the rules and that as a result of these violations, the certificate was invalid when it was transferred to the current owner and should be revoked. The PSC determined that the certificate was valid, the District Court affirmed, and plaintiffs appealed. The Supreme Court held that the penalty statutes applicable to revocation of a certificate are not self-executing, in that revocation of a certificate requires PSC action to implement the penalties, so a court may not revoke a compliant certificate holder's certificate based on misconduct. Thus, plaintiffs' complaint presented a nonjusticiable moot issue, and the Supreme Court declined to disturb the District Court's decision. Mont. Solid Waste Contractors, Inc. v. Dept. of Public Service Regulation, 2007 MT 154, 338 M 1, 161 P3d 837 (2007).

Part 3
Classification and Motor Carrier Certificates

Part Case Notes

Denial of Certificate — No Unconstitutional Taking: The Legislature directed the Public Service Commission (P.S.C.) to issue a certificate of public convenience and necessity (PCN certificate) to any carrier meeting the criteria set forth in 69-12-328 (now repealed). The plaintiff applied for a PCN certificate, but the P.S.C. denied the application because the plaintiff did not satisfy the statutory requirements. Ultimately, the plaintiff appealed the case to the Supreme Court and argued that the denial of the PCN certificate constituted an unconstitutional taking. The Supreme Court disagreed, ruling that since the plaintiff did not already have a PCN certificate, it did not have a compensable property interest that could be taken. Billings Yellow Cab, LLC v. St., 2014 MT 275, 376 Mont. 463, 335 P.3d 1223.

Evasion of Regulatory Act: When there is an attempt to evade the regulation of motor transportation and requirement of obtaining certificates of public convenience provided in this chapter through the formation of a corporation or association, courts will go behind the form of subterfuge or scheme to the substance. Bd. of R.R. Comm'rs v. Reed, 102 M 382, 58 P2d 271 (1936).

Regulations Held Reasonable: The use of the public highways is special and extraordinary and generally may be regulated by the state, and regulation by means of certificates of public convenience is reasonably devised to protect the public from abusive use of roads and evils incident to unregulated competition. Bd. of R.R. Comm'rs v. Reed, 102 M 382, 58 P2d 271 (1936).

Discretion of Board in Granting Certificate: The requirement of this chapter that one desiring to operate a motor vehicle for hire must secure a certificate of convenience and necessity carried with it a discretion on the part of the Board of Railroad Commissioners (now Public Service Commission) to refuse it if in its judgment it is unwise to grant it. The contention that it has no power to deny it to one qualified and capable to furnish adequate service is without merit. Fulmer v. Bd. of R.R. Comm'rs, 96 M 22, 28 P2d 849 (1934).

Grounds for Denying Certificate: Under this chapter, making it incumbent upon the Board of Railroad Commissioners (now Public Service Commission) in passing on an application for a certificate to operate motor vehicles for hire to give "reasonable consideration" to existing transportation facilities, including railroads, the general rule is that the certificate should be denied unless the service furnished is inadequate or additional service would benefit the general public or unless the existing carrier has been afforded an opportunity to furnish such additional service as may be required. Fulmer v. Bd. of R.R. Comm'rs, 96 M 22, 28 P2d 849 (1934).

Persons Required to Procure Certificate:

The provisions of the motor carrier law relating to the persons who must procure certificates of convenience and necessity before they may operate a motor vehicle for hire are broad enough to include the driver thereof, employed by its owner to operate it (whether such owner be an individual or corporation). Therefore, in a prosecution against an owner and driver, a contention that a penalty for a violation of the act could not be imposed upon the latter may not be sustained. St. v. Healow, 98 M 177, 38 P2d 285 (1934).

As a means of protecting its highways from abusive use and the public from the evils incident to unregulated competition, the state has the power to require both common and private motor carriers for hire to obtain from the Railroad Commission (now the Public Service Commission) certificates of public convenience and necessity as a condition precedent to the right to conduct such business. Barney v. Bd. of R.R. Comm'rs, 93 M 115, 17 P2d 82 (1932).

69-12-301. Classification of motor carriers.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 4, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (1) near beginning of introductory clause substituted "four classes" for "five classes"; deleted former section (1)(b) that read: "(b) Class B motor carriers"; deleted former (3) that read: "(3) Class B motor carriers include all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale and not between fixed termini or over a regular route"; and made minor changes in style. Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 in (1) substituted "five classes" for "four classes"; inserted (1)(e) regarding Class E motor carriers; inserted (6) regarding transportation network carriers; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

1995 Amendment: Chapter 358 in (4), after "motor carriers", deleted "operating motor vehicles for distributing, delivering, or collecting wares, merchandise, or commodities or transporting persons"; and in (5), at end, substituted "garbage" for "(including pickup and disposal) ashes, trash, waste, refuse, rubbish, garbage, organic and inorganic matter, and recyclables". Amendment effective July 1, 1995.

1993 Amendment: Chapter 364 near beginning of (1) reduced number of classes from five to four; deleted (1)(e) referring to Class E motor carriers; deleted (6) specifying Class E motor carriers as motor carriers transporting logs for remuneration fixed in and transportation furnished under a written contract or agreement; and made minor changes in style.

1991 Amendments:

Chapter 341 in (5) expanded Class D motor carrier classification to include transportation of recyclables.

Chapter 481 in (1) increased number of classes from four to five; inserted (1)(e) providing for Class E motor carriers; inserted (6) to include in Class E all motor carriers operating motor vehicles transporting logs under certain circumstances; and made minor changes in style. Amendment effective April 20, 1991.

1991 Statement of Intent: The statement of intent attached to Ch. 341, L. 1991, provided: "A statement of intent is required for this bill in order to provide guidance to the public service commission in adopting rules. It is the intention of the legislature that a Class D motor carrier have the authority to collect and transport source-separated recyclables and that Class C motor carriers have the authority to transport recyclables."

Case Notes

Proper Notice of Violation and Opportunity for Discovery Required by Statute and Due Process — Remand to Exhaust Administrative Remedies: Wilsons, who operated a garbage transport business under a certificate granted by the Public Service Commission, were served by the P.S.C. with a complaint and order to show cause why their certificate should not be terminated. The complaint and order did not refer to any particular rule, statute, or previous order of the Commission that was alleged to have been violated. Later, after the Commission denied an opportunity for Wilsons to discover the evidence to be used against them, the District Court granted Wilsons' motion to amend their application for a review of the P.S.C. order to include immediate review under 2-4-701. The Supreme Court held that the notice used by the P.S.C. did not comply with the requirements of 69-12-327, in that the notice did not specify the rule, statute, or order alleged to have been violated, and held that basic procedural due process was not followed by the P.S.C. in their denial of the Wilsons' request for discovery. The Supreme Court also held that judicial review of the final agency decision was not an adequate remedy when the record on which the final decision of the agency will be based contained no evidence of the statute, rule, or order violated; when no discovery was allowed; when there was no evidence that Wilsons had been notified of who would testify against them; and when, cumulatively, it appeared that Wilsons had been denied fundamental fairness. Wilson v. Dept. of Public Service Regulation, 260 M 167, 858 P2d 368, 50 St. Rep. 985 (1993).

Compliance: Where holder of Class C motor carrier certificate, in response to statutory requirement authorizing only Class D carriers to haul garbage and providing for issuance of Class D certificate upon submission of business records showing that carrier had been hauling garbage for period of 1 year, made an inadequate submission of the information required by statute, District Court was not in error by voiding the certificate that had been issued. In re Application of Galt, 196 M 534, 644 P2d 1019, 39 St. Rep. 106 (1982).

Scope of Judicial Review: Where District Court nullified Public Service Commission (P.S.C.) motor carrier certificate and appellant contended under 2-4-702(1)(b) that validity had not been an issue in the administrative hearing and that court was therefore precluded from reviewing question of validity, Supreme Court held that record shows that issue of validity had been raised before the P.S.C. and therefore court did not exceed its scope of judicial review. In re Application of Galt, 196 M 534, 644 P2d 1019, 39 St. Rep. 106 (1982).

69-12-311. Class A motor carrier certificate.

Compiler's Comments

2015 Amendment: Chapter 456 in (1)(a) after "transport persons" deleted "property, or both" and at end substituted "certificate of compliance" for "certificate declaring that public convenience and necessity require the operation"; inserted (1)(b) requiring certificate of public convenience and necessity; in (2) near beginning inserted "Class A"; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

2013 Amendment: Chapter 35 in (1) near middle substituted "obtaining, pursuant to" for "first having obtained from the commission, under the provisions of"; in (2) in introduction substituted "application" for "petition"; in (2)(a) before "its officers" deleted "the names and addresses of"; in (2)(b) substituted "where the applicant" for "over which it"; in (2)(c) at beginning deleted "the kind of transportation, whether passenger, freight, or both, together with" and at end deleted "of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic"; in (2)(e) before "schedule" inserted "proposed" and substituted "to be charged" for "desired to be charged for the transportation of freight and/or passengers"; in (2)(h) substituted current language for former language that read: "such other or additional information as the commission may by order require"; and made minor changes in style". Amendment effective February 20, 2013.

Applicability: Section 7, Ch. 35, L. 2013, provided: "[This act] applies to certificates, records, reports, and identifications issued, completed, or displayed after [the effective date of this act]." Effective February 20, 2013.

1983 Amendment: In (3), after "fee" deleted "of $100 to $300", after "by" inserted "rule of", and after "commission" deleted "based on the number of counties for which the certificate is requested".

Administrative Rules

ARM 38.3.401 Completion of applications for motor carrier authority.

ARM 38.3.402 Application and protest fees.

ARM 38.3.405 Completion of protest to application for certificate of public convenience and necessity.

69-12-314. Class D motor carrier certificate of public convenience and necessity.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 5, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (1) at end of first sentence substituted "69-12-301(4)" for "69-12-301(5)". Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 in (1) in middle substituted "additional certificate of public convenience and necessity" for "additional authority"; in (2) after "motor carrier certificate" inserted "of public convenience or necessity"; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

1997 Amendment: Chapter 42 in (2) substituted "garbage" for "ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter". Amendment effective March 12, 1997.

Administrative Rules

ARM 38.3.401 Completion of applications for motor carrier authority.

ARM 38.3.402 Application fees.

ARM 38.3.405 Completion of protest to application for certificate of public convenience and necessity.

Title 38, chapter 3, subchapter 12, ARM Minimum operations requirements for Class D motor carriers.

Case Notes

No Authority to Revoke Compliant Certificate Based on Public Service Commission and Prior Certificate Holder Misconduct — Penalty Statutes Not Self-Executing: The Public Service Commission (PSC) authorized the purchase and transfer of a solid waste transportation certificate that had been purchased and transferred on three prior occasions with PSC approval. Plaintiffs contended that the first three owners had failed to comply with applicable rules and that the PSC failed to enforce the rules and that as a result of these violations, the certificate was invalid when it was transferred to the current owner and should be revoked. The PSC determined that the certificate was valid, the District Court affirmed, and plaintiffs appealed. The Supreme Court held that the penalty statutes applicable to revocation of a certificate are not self-executing, in that revocation of a certificate requires PSC action to implement the penalties, so a court may not revoke a compliant certificate holder's certificate based on misconduct. Thus, plaintiffs' complaint presented a nonjusticiable moot issue, and the Supreme Court declined to disturb the District Court's decision. Mont. Solid Waste Contractors, Inc. v. Dept. of Public Service Regulation, 2007 MT 154, 338 M 1, 161 P3d 837 (2007).

Criteria for Finding of Fitness of Motor Carrier Applicant: The Public Service Commission properly considered the following factors when evaluating whether a motor carrier applicant was fit, willing, and able to provide service: (1) the financial condition of the applicant; (2) the intention of the applicant to perform the service sought; (3) the adequacy of the equipment that the applicant has to perform the service; (4) the applicant's experience in conducting the service sought; and (5) the nature of previous operations, if there are allegations of illegal operations. Waste Management Partners of Bozeman, Ltd. v. Dept. of Public Service Regulation, 284 M 245, 944 P2d 210, 54 St. Rep. 866 (1997).

Discretion of Public Service Commission to Consider Competition as Factor in Determining Public Convenience and Necessity: The Public Service Commission (PSC) can properly consider competition as one additional factor in assessing public convenience and necessity when rendering a decision on an application for a motor carrier certificate. Inherent in the concept of competition is the notion that the new applicant may take away some business from an existing transport service, but this fact alone does not mandate denial of an application. Rather, the issue is whether under the facts of the case, competition would impose undue hardship and impair the existing transport's ability to provide service to an extent that would be contrary to public interest. The PSC may consider competition case by case in any particular order with other factors, such as whether: (1) the applicant is fit and able to perform the proposed service; (2) public convenience and necessity require authorization of the proposed service; (3) public need for the proposed service can and will be met by existing carriers; and (4) the proposed service would have an adverse impact on existing transportation services. Waste Management Partners of Bozeman, Ltd. v. Dept. of Public Service Regulation, 284 M 245, 944 P2d 210, 54 St. Rep. 866 (1997).

Reexamination of Circumstances Reserved by Public Service Commission — No Error in Failure to Explain Departure From Prior Decision: The Public Service Commission (PSC) denied a Class D application in 1984, finding that competition with Three Rivers Disposal Company (Three Rivers) at that time would be destructive. In 1994, the PSC reconsidered and granted a Class D certificate to the 1984 applicant, finding that competition would promote the public interest in improving service and, perhaps, rates. Three Rivers contended PSC error in its failure to follow its own precedent and to provide a reasoned explanation for its departure from that precedent. Citing Atchison Topeka & Santa Fe RR Co. v. Bd. of Trade, 412 US 800, 37 L Ed 2d 350, 93 S Ct 2367 (1973), the Supreme Court noted that an agency has a duty to either follow its own precedent or provide a reasoned analysis explaining its departure from precedent. However, in this case, there was no change in prior PSC policy and standards; only the facts changed. In the 1984 decision, the PSC placed Three Rivers on notice that the power was reserved by the PSC to reexamine the situation and to grant a new authority if circumstances changed. Therefore, the PSC did not depart from established precedent and its order certifying a new motor carrier was correctly affirmed. Waste Management Partners of Bozeman, Ltd. v. Dept. of Public Service Regulation, 284 M 245, 944 P2d 210, 54 St. Rep. 866 (1997).

Unwillingness of Present Carrier to Provide Adequate Service — Unmet Shipper Need: Whether an existing carrier is capable of providing adequate service means nothing if it is unwilling to provide adequate service. It was not error for the Public Service Commission, based on overwhelming evidence of substantial unmet shipper need and inadequate service by a certified carrier, to consider competition when assessing public need and convenience in granting a certificate to another carrier that could fill unmet consumer needs, improve service, and, perhaps, improve rates. Waste Management Partners of Bozeman, Ltd. v. Dept. of Public Service Regulation, 284 M 245, 944 P2d 210, 54 St. Rep. 866 (1997).

Entry Into Business, Not Rates, Controlled by Commission: Through the authority bestowed on it in Title 69, the Public Service Commission controls entry into the garbage-hauling business; however, the Commission does not regulate rates charged by Class D motor carriers and does not regulate the quality of service provided. The express authority to regulate entry is not concomitant with the implied requirements to regulate rates. Rozel Corp. v. Dept. of Public Service Regulation, 226 M 237, 735 P2d 282, 44 St. Rep. 618 (1987).

Adoption of Self-Government Charter — Doctrine of Implied Preemption: Appellant private garbage haulers contended that the Legislature preempted the field of garbage regulation and preempted municipalities from collecting garbage by enacting 7-2-4736. Prior to the 1972 Constitution, cities had only those powers expressly given to them by the Legislature, and if the Legislature considered a subject to be a matter of statewide concern, it could enact laws on the subject and preempt local governments from the field. However, Art. XI, sec. 6, Mont. Const., states that a local government which adopts a self-government charter may exercise any power not prohibited by the Constitution, law, or the charter. The city of Billings adopted a self-government charter in 1976, and 7-1-102 allows the city to provide services or perform any functions not expressly prohibited. The Supreme Court held in Tipco Corp., Inc. v. Billings, 197 M 339, 642 P2d 1074 (1982), that "the only way the doctrine of pre-emption by the state can co-exist with self-government powers of a municipality is if there is an express prohibition by statute which forbids local governments . . . from acting in a certain area. The doctrine of implied pre-emption, by definition, cannot apply to local governments with self-government powers". Powers specifically denied to local governments are enumerated in 7-1-111 and include the exercise of any power that prohibits the grant or denial of a certificate of public convenience and necessity. Under this section, private garbage haulers are required to get a certificate of public convenience and necessity prior to doing business. The decision by Billings voters that the city should provide garbage services in no way prohibits the grant or denial of a certificate of public necessity. The Supreme Court held that the city was simply exercising its self-government powers to provide a service for its residents and was taxing them for that service. D & F

Sanitation Serv. v. Billings, 219 M 437, 713 P2d 977, 43 St. Rep. 74 (1986), overruling Billings v. Weatherwax, 193 M 163, 630 P2d 1216, 38 St. Rep. 1034 (1981).

69-12-321. Hearing on application for motor carrier certificate.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 6, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (1)(a) near beginning after "Class A" deleted "Class B"; in (1)(c) after "69-12-311(1)(a)" deleted "or 69-12-312(1)(a)"; in (4) near beginning after "69-12-311(1)(b)" deleted "or 69-12-312(1)(b)"; and made minor changes in style. Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 in (1)(a) near beginning after "filing of an application" inserted "for a certificate", after "Class D" inserted "or Class E", and near end substituted "provide notice of the application" for "give notice of the filing of the application"; inserted (1)(c) regarding limits on certain protests; in (4) substituted current language for "However, an application by a Class A, Class B, Class C, or Class D motor carrier for a certificate may be disallowed without a public hearing when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities have materially changed since the previous public investigation and finding and that public convenience and necessity now require the motor carrier operation"; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

1993 Amendment: Chapter 364 near beginning of (1) and (4), after "Class D", deleted "or Class E"; and made minor changes in style.

1991 Amendments: Chapter 481 in (1) and (4) inserted reference to Class E motor carrier; and made minor changes in style. Amendment effective April 20, 1991.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

1983 Amendment: In (1), after "contract" substituted "as provided in 69-12-324" for "with the United States government (or an agency or department thereof)".

Composite Section: This section was amended by Ch. 25 and Ch. 55, L. 1979, and a composite section was prepared by the Code Commissioner, 1979. Both chapters amended subsection (1) concerning notice of hearing, and in preparing the composite the language "fix a time and place for hearing thereon" was not deleted, as was done in Ch. 55, in order to accommodate the changes made by Ch. 25.

Administrative Rules

ARM 38.3.404 Notice of public hearing on application for operating authority.

ARM 38.3.405 Completion of protest to application for certificate of public convenience and necessity.

ARM 38.3.406 Completion of protest to application for certificate of compliance.

Case Notes

Withdrawal of Application for Class D Carrier Certificate — Case Dismissed by District Court as Moot — Dismissal Appealed by Parties Protesting Application — District Court Affirmed by Supreme Court. In re Big Foot Dumpsters & Containers, LLC, 2022 MT 67, 408 Mont. 187, 507 P.3d 169.

Transportation of Petroleum Products: A certificate of public convenience and necessity was properly granted for the transportation of petroleum products in bulk as a carrier. H. F. Johnson, Inc. v. Bd. of R.R. Comm'rs, 128 M 76, 270 P2d 990 (1954).

Petition for Rehearing: Montana Board of Railroad Commissioners (now the Public Service Commission), granting motor carrier's application for certificate of convenience and necessity and granting railroad carrier's application to discontinue rail passenger service, was not shown to be without authority to grant rehearing, notwithstanding change in membership of Board, when petition for rehearing was filed before conditions in Board's order had been fulfilled. N. Pac. Ry. v. Bd. of R.R. Comm'rs, 13 F. Supp. 529 (D.C. Mont. 1935).

69-12-322. Notice of hearing.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 7, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (2)(a) near end after "Class C authority" deleted "and geographically limited Class B authority"; and in (2)(b) at end deleted "and geographically broad contemplated Class B authority". Amendment effective July 1, 2021.

1993 Amendment: Chapter 364 in (2)(a), after "Class C", deleted "or Class E".

1991 Amendment: In (2)(a) inserted reference to Class E motor carrier authority; and made minor changes in style. Amendment effective April 20, 1991.

Administrative Rules

ARM 38.3.404 Notice of public hearing on application for operating authority.

ARM 38.3.2102 Notice of public hearing on application for sale or transfer of certificate of authority.

69-12-323. Decision on application.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 8, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (3) after "69-12-311(1)(b)" deleted "or 69-12-312(1)(b)"; and in (5)(a) after "69-12-311(1)(a)" deleted "or 69-12-312(1)(a)". Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 in (1)(a) at beginning substituted "Except as provided in subsection (1)(b), within 180 days from the date of the completed filing of an application, the commission shall issue" for "The commission must issue, within 180 days from and after the date of the completed filing of said application"; in (1)(b) substituted "extend the time for making a decision" for "extend the foregoing time for decision"; in (2)(a) substituted current first sentence for former first sentence that read: "If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefor shall be issued" and in last sentence after "a certificate" inserted "of public convenience and necessity"; in (2)(b) substituted "For the purposes of issuing a certificate of public convenience and necessity to a Class D motor carrier" for "For the purposes of Class D certificates"; in (3) substituted current language for "The commission may issue the certificate as prayed for or issue it for the partial exercise only of the privilege sought and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require"; in (4) at beginning substituted "If a certificate is issued" for "When a certificate has once been issued", substituted "the certificate is in effect" for "such certificate shall continue in force", and after "for cause" deleted "as herein provided"; inserted (5) regarding consideration of certain motor carriers and establishing rebuttable presumptions; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

1983 Amendment: Inserted (2)(b) allowing Commission to consider competition in determination of public convenience and necessity for Class D certificate.

Administrative Rules

ARM 38.3.2015 Compensation and fees.

Case Notes

Consideration of Competition in Granting Certificate at Commission's Discretion: The petitioners asked the District Court to review the Public Service Commission's order granting a trash hauler's application for a Class D motor carrier certificate to a competitor. The petitioners argued that the Commission could only consider competition after it first determined a public need existed. The Commission, however, contended that the consideration of competition is at the discretion of the Commission. After the District Court upheld the ruling, the petitioners appealed. The Supreme Court agreed with the Commission's conclusion that this section does not place any limitation on when the Commission considers competition. McGree Corp. v. Pub. Serv. Comm'n, 2019 MT 75, 395 Mont. 229, 438 P.3d 326.

Burden of Proof on Applicant — Certificate Properly Denied: A taxi company filed an application for a certificate of public convenience and necessity (PCN certificate) with the Public Service Commission (P.S.C.). The P.S.C. denied the application, and the District Court affirmed the denial. The taxi company appealed to the Supreme Court, which concluded that, as the applicant, the taxi company had the burden of proof to show that there was a statewide need for its services. Given the testimony before the P.S.C., the Supreme Court ruled that the taxi company had not met its burden of proof, and it affirmed the denial of the PCN certificate. Billings Yellow Cab, LLC v. St., 2014 MT 275, 376 Mont. 463, 335 P.3d 1223.

Criteria for Finding of Fitness of Motor Carrier Applicant: The Public Service Commission properly considered the following factors when evaluating whether a motor carrier applicant was fit, willing, and able to provide service: (1) the financial condition of the applicant; (2) the intention of the applicant to perform the service sought; (3) the adequacy of the equipment that the applicant has to perform the service; (4) the applicant's experience in conducting the service sought; and (5) the nature of previous operations, if there are allegations of illegal operations. Waste Management Partners of Bozeman, Ltd. v. Dept. of Public Service Regulation, 284 M 245, 944 P2d 210, 54 St. Rep. 866 (1997).

Discretion of Public Service Commission to Consider Competition as Factor in Determining Public Convenience and Necessity: The Public Service Commission (PSC) can properly consider competition as one additional factor in assessing public convenience and necessity when rendering a decision on an application for a motor carrier certificate. Inherent in the concept of competition is the notion that the new applicant may take away some business from an existing transport service, but this fact alone does not mandate denial of an application. Rather, the issue is whether under the facts of the case, competition would impose undue hardship and impair the existing transport's ability to provide service to an extent that would be contrary to public interest. The PSC may consider competition case by case in any particular order with other factors, such as whether: (1) the applicant is fit and able to perform the proposed service; (2) public convenience and necessity require authorization of the proposed service; (3) public need for the proposed service can and will be met by existing carriers; and (4) the proposed service would have an adverse impact on existing transportation services. Waste Management Partners of Bozeman, Ltd. v. Dept. of Public Service Regulation, 284 M 245, 944 P2d 210, 54 St. Rep. 866 (1997).

Reexamination of Circumstances Reserved by Public Service Commission — No Error in Failure to Explain Departure From Prior Decision: The Public Service Commission (PSC) denied a Class D application in 1984, finding that competition with Three Rivers Disposal Company (Three Rivers) at that time would be destructive. In 1994, the PSC reconsidered and granted a Class D certificate to the 1984 applicant, finding that competition would promote the public interest in improving service and, perhaps, rates. Three Rivers contended PSC error in its failure to follow its own precedent and to provide a reasoned explanation for its departure from that precedent. Citing Atchison Topeka & Santa Fe RR Co. v. Bd. of Trade, 412 US 800, 37 L Ed 2d 350, 93 S Ct 2367 (1973), the Supreme Court noted that an agency has a duty to either follow its own precedent or provide a reasoned analysis explaining its departure from precedent. However, in this case, there was no change in prior PSC policy and standards; only the facts changed. In the 1984 decision, the PSC placed Three Rivers on notice that the power was reserved by the PSC to reexamine the situation and to grant a new authority if circumstances changed. Therefore, the PSC did not depart from established precedent and its order certifying a new motor carrier was correctly affirmed. Waste Management Partners of Bozeman, Ltd. v. Dept. of Public Service Regulation, 284 M 245, 944 P2d 210, 54 St. Rep. 866 (1997).

Unwillingness of Present Carrier to Provide Adequate Service — Unmet Shipper Need: Whether an existing carrier is capable of providing adequate service means nothing if it is unwilling to provide adequate service. It was not error for the Public Service Commission, based on overwhelming evidence of substantial unmet shipper need and inadequate service by a certified carrier, to consider competition when assessing public need and convenience in granting a certificate to another carrier that could fill unmet consumer needs, improve service, and, perhaps, improve rates. Waste Management Partners of Bozeman, Ltd. v. Dept. of Public Service Regulation, 284 M 245, 944 P2d 210, 54 St. Rep. 866 (1997).

Entry Into Business, Not Rates, Controlled by Commission: Through the authority bestowed on it in Title 69, the Public Service Commission controls entry into the garbage-hauling business; however, the Commission does not regulate rates charged by Class D motor carriers and does not regulate the quality of service provided. The express authority to regulate entry is not concomitant with the implied requirements to regulate rates. Rozel Corp. v. Dept. of Public Service Regulation, 226 M 237, 735 P2d 282, 44 St. Rep. 618 (1987).

Attachment of Terms and Conditions: Under this section and 69-12-201, the Board of Railroad Commissioners (now the Public Service Commission) is authorized and has a duty to administratively supervise every motor carrier in the state and may in its discretion, upon issuance of any certificate, attach such terms and conditions as in its judgment may be required. Walter v. Bd. of R.R. Comm'rs, 153 M 384, 457 P2d 479 (1969). (Annotator's Note: Chapter 686, L. 1985, transferred authority for setting motor carrier and motor vehicle safety standards from the Public Service Commission to the Department of Justice.)

69-12-324. Special provisions when federal or state contract involved.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 9, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (1) after "69-12-311(1)(a)" deleted "or 69-12-312(1)(a)" and after "69-12-311(1)(b)" deleted "or 69-12-312(1)(b)". Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 in (1) substituted "A written contract presented to the commission is sufficient proof that a motor carrier pursuant to 69-12-311(1)(a) or 69-12-312(1)(a) or a Class E motor carrier meets the requirements for a certificate of compliance or that a motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), a Class C motor carrier, or a Class D motor carrier meets the requirements for a certificate of public convenience and necessity" for "The presentation of the written contract to the commission shall be deemed sufficient proof of public convenience and necessity"; in (2) at end substituted "may be issued without a public hearing" for "may be issued thereafter without requiring the commission to fix a time and place for public hearing"; in (3) near beginning after "The certificate" deleted "of public convenience and necessity" and in second sentence after "another definite term if the" deleted "same"; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

1985 Amendment: In (1)(a) deleted "or commodities" after "hire of persons".

1983 Amendment: In (1), deleted first sentence, which read: "The transportation for hire of any persons or commodities between any two points within the state by any motor carrier pursuant to the terms of a written contract between said carrier and the United States government or an agency or department thereof or the state or an agency or department thereof for the transportation of solid waste shall be deemed a transportation movement subject to the provisions of this chapter.", inserted last sentence of (1) and (1)(a) and (1)(b) describing transportation movement; and in (1), (2), and (3) inserted "government" before "contract" in six places.

Administrative Rules

ARM 38.3.402 Applications for motor carrier authority — fees.

Case Notes

Award of Contract Under Montana Procurement Act — No Preemption of Other Statutory Requirements: The plaintiff was awarded a state contract to haul goods for the school lunch program. The contract was contingent upon the plaintiff's obtaining a Class C certificate from the Public Service Commission by August 1, 1989. The Commission informed the plaintiff that a public hearing had to be held on issuing the certificate and that the earliest the hearing could be held was August 23, 1989. The plaintiff argued that the policy of the Montana Procurement Act to promote competition preempted this section, which operates to protect the existing carrier. The Supreme Court ruled that more specific statutes regulating carriers govern over the procurement statutes with respect to carriers. State ex rel. Roberts v. Pub. Ser. Comm'n, 242 M 242, 790 P2d 489, 47 St. Rep. 774 (1990).

Different Treatment of Transportation Companies Reasonable: The plaintiff was awarded a state contract to haul goods for the school lunch program. The contract was contingent upon the plaintiff's obtaining a Class C certificate from the Public Service Commission by August 1, 1989. The Commission informed the plaintiff that a public hearing had to be held on issuing the certificate and that the earliest the hearing could be held was August 23, 1989. The plaintiff argued that the hearing requirement denied him equal treatment because Class C solid waste carriers were exempt from the hearing process. The Supreme Court held that there was a reasonable basis for excluding solid waste carriers because they were regulated by other state laws and agencies. State ex rel. Roberts v. Pub. Ser. Comm'n, 242 M 242, 790 P2d 489, 47 St. Rep. 774 (1990).

No Blanket Exemption From Hearing Requirements: The plaintiff was awarded a state contract to haul goods for the school lunch program. The contract was contingent upon the plaintiff's obtaining a Class C certificate from the Public Service Commission by August 1, 1989. The Commission informed the plaintiff that a public hearing had to be held on issuing the certificate and that the earliest the hearing could be held was August 23, 1989. The plaintiff sought declaratory relief that all Class C carriers who had a state or federal contract were exempt from the hearing requirement. The Supreme Court ruled that there was no blanket exemption and that the plaintiff was required to adhere to the hearing procedure. State ex rel. Roberts v. Pub. Serv. Comm'n, 242 M 242, 790 P2d 489, 47 St. Rep. 774 (1990).

Application of Section: Section 8-110, R.C.M. 1947 (now 69-12-313, now repealed, and 69-12-324), does not contemplate the inclusion of those engaged in other businesses and using motor vehicles solely for the incidental purpose of delivering and transporting their own goods and merchandise in the course of such businesses. Bd. of R.R. Comm'rs v. Gamble-Robinson Co., 111 M 441, 111 P2d 306 (1941).

Attorney General's Opinions

Federal Reserve Banks and National Banks as Agencies of U.S. Government: Federal Reserve Banks and national banks are agencies of the U.S. government for the purposes of this section. Accordingly, a contract between such banks and a motor carrier is proof of public convenience and necessity. 39 A.G. Op. 47 (1982).

69-12-325. Transfer of certificate or privilege.

Administrative Rules

ARM 38.3.201 Intrastate carriers — vehicle registration fee.

Title 38, chapter 3, subchapter 21, ARM Sale, transfer or encumbering of certificate of authority.

Case Notes

Waiver of Condition of Public Service Commission Approval of Certificate Transfer: Rite-Line Transportation Services, Inc. (Rite-Line), owned Certificate No. 1136 that authorized it to operate certain routes in Montana. Molerway Freight Lines, Inc. (Molerway), sought to obtain the certificate and entered into a buy-sell agreement expressly conditioned on Public Service Commission (P.S.C.) approval of the transfer. After tendering a $30,000 downpayment, Molerway made two monthly installment payments. The P.S.C. approved the lease of the certificate but indicated that portions of the certificate that were duplicative of other routes already covered in Molerway's other certificates would be canceled. Both parties feared that the cancellation of duplicate authorities would jeopardize the buy-sell agreement. Both Rite-Line and Molerway requested that the cancellation of duplicate authorities be delayed until the buy-sell agreement was fulfilled. Although the P.S.C. granted the parties' request, Molerway objected, stopped payment on its monthly installment, and sought to rescind the contract and get back its downpayment, which Rite-Line resisted. In enforcing the contract, the District Court properly concluded that even if the P.S.C.'s cancellation of the duplicate authorities constituted denial of the transfer, Molerway's conduct manifested a voluntary and intentional relinquishment of its right to rely on the condition precedent of P.S.C. approval in order to void the contract. Molerway Freight Lines, Inc. v. Rite-Line Transp. Serv., Inc., 273 M 95, 902 P2d 9, 52 St. Rep. 839 (1995).

69-12-326. Lease of certificate.

Administrative Rules

ARM 38.3.201 Intrastate carriers — vehicle registration fee.

ARM 38.3.2014 Lease of certificates of authority — general.

ARM 38.3.2015 Compensation and fees.

ARM 38.3.2016 Continued obligation of owner.

69-12-327. Revocation of certificate — right of review.

Administrative Rules

ARM 38.3.120 Failure of owners, drivers or operators to comply with rules.

Case Notes

No Authority to Revoke Compliant Certificate Based on Public Service Commission and Prior Certificate Holder Misconduct — Penalty Statutes Not Self-Executing: The Public Service Commission (PSC) authorized the purchase and transfer of a solid waste transportation certificate that had been purchased and transferred on three prior occasions with PSC approval. Plaintiffs contended that the first three owners had failed to comply with applicable rules and that the

PSC failed to enforce the rules and that as a result of these violations, the certificate was invalid when it was transferred to the current owner and should be revoked. The PSC determined that the certificate was valid, the District Court affirmed, and plaintiffs appealed. The Supreme Court held that the penalty statutes applicable to revocation of a certificate are not self-executing, in that revocation of a certificate requires PSC action to implement the penalties, so a court may not revoke a compliant certificate holder's certificate based on misconduct. Thus, plaintiffs' complaint presented a nonjusticiable moot issue, and the Supreme Court declined to disturb the District Court's decision. Mont. Solid Waste Contractors, Inc. v. Dept. of Public Service Regulation, 2007 MT 154, 338 M 1, 161 P3d 837 (2007).

Proper Notice of Violation and Opportunity for Discovery Required by Statute and Due Process — Remand to Exhaust Administrative Remedies: Wilsons, who operated a garbage transport business under a certificate granted by the Public Service Commission, were served by the P.S.C. with a complaint and order to show cause why their certificate should not be terminated. The complaint and order did not refer to any particular rule, statute, or previous order of the Commission that was alleged to have been violated. Later, after the Commission denied an opportunity for Wilsons to discover the evidence to be used against them, the District Court granted Wilsons' motion to amend their application for a review of the P.S.C. order to include immediate review under 2-4-701. The Supreme Court held that the notice used by the P.S.C. did not comply with the requirements of this section, in that the notice did not specify the rule, statute, or order alleged to have been violated, and held that basic procedural due process was not followed by the P.S.C. in their denial of the Wilsons' request for discovery. The Supreme Court also held that judicial review of the final agency decision was not an adequate remedy when the record on which the final decision of the agency will be based contained no evidence of the statute, rule, or order violated; when no discovery was allowed; when there was no evidence that Wilsons had been notified of who would testify against them; and when, cumulatively, it appeared that Wilsons had been denied fundamental fairness. Wilson v. Dept. of Public Service Regulation, 260 M 167, 858 P2d 368, 50 St. Rep. 985 (1993).

Hearing Required: Cancellation of a person's certificate without giving him notice or an opportunity to appear or to show cause why it should not be canceled deprived such person of the right to operate as a motor carrier and was in violation of this section and Art. II, sec. 17, Mont. Const., by depriving him of a property right without due process of law. State ex rel. Daniels v. Bd. of R.R. Comm'rs, 131 M 9, 306 P2d 264 (1957).

Petition for Rehearing: Montana Board of Railroad Commissioners (now the Public Service Commission), granting motor carrier's application for certificate of convenience and necessity and granting railroad carrier's application to discontinue rail passenger service, was held not shown to be without authority to grant rehearing, notwithstanding change in membership of Board, when petition for rehearing was filed before conditions in Board's order had been fulfilled. In a suit for injunctive relief, the equity rule dispensing with the necessity for a reply was held applicable, except as to allegations concerning petition for rehearing and what was done about it, in the absence of an agreement between counsel that allegations of answer were admitted. N. Pac. Ry. v. Bd. of R.R. Comm'rs, 13 F. Supp. 529 (D.C. Mont. 1935).

69-12-340. Class E motor carrier certificate of compliance.

Compiler's Comments

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

Effective Date: Section 30, Ch. 456, L. 2015, provided: "[This act] is effective July 1, 2015."

69-12-341. Fare charged for transportation network carrier services.

Compiler's Comments

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

Effective Date: Section 30, Ch. 456, L. 2015, provided: "[This act] is effective July 1, 2015."

69-12-342. Authority.

Compiler's Comments

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

Effective Date: Section 30, Ch. 456, L. 2015, provided: "[This act] is effective July 1, 2015."

69-12-343. Insurance requirements of transportation network carriers.

Compiler's Comments

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

Effective Date: Section 30, Ch. 456, L. 2015, provided: "[This act] is effective July 1, 2015."

69-12-344. Disclosures.

Compiler's Comments

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

Effective Date: Section 30, Ch. 456, L. 2015, provided: "[This act] is effective July 1, 2015."

69-12-345. Motor vehicle liability insurance provisions.

Compiler's Comments

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

Effective Date: Section 30, Ch. 456, L. 2015, provided: "[This act] is effective July 1, 2015."

Part 4
Requirements for Motor Carriers

69-12-401. Compliance with state law.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Administrative Rules

ARM 38.3.120 Failure of owners, drivers or operators to comply with rules.

ARM 38.3.201 Intrastate carriers — vehicle registration fee.

69-12-402. Compliance with commission rules.

Administrative Rules

ARM 38.3.120 Failure of owners, drivers or operators to comply with rules.

ARM 38.3.201 Intrastate carriers — vehicle registration fee.

Title 38, chapter 3, subchapter 7, ARM Insurance.

69-12-403. Discontinuance of service.

Compiler's Comments

2021 Amendment: Chapter 512 at beginning substituted "A Class A motor carrier may not" for "No Class A or Class B motor carrier shall"; and made minor changes in style. Amendment effective July 1, 2021.

Administrative Rules

ARM 38.3.603 Interruption and discontinuance of operations.

69-12-404. Suspension of certificate by petition.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 10, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (1)(b) in one place and in (2)(b) in two places after "69-12-311(1)(b)" deleted "or 69-12-312(1)(b)"; and in (2)(a) in two places after "69-12-311(1)(a)" deleted "or 69-12-312(1)(a)". Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 in (1)(a) substituted current language for "Every motor carrier as defined within this chapter may petition the commission in writing to suspend its intrastate operating authority for a period not to exceed 6 months. An additional 6 months' suspension may be requested and granted but no other"; in (1)(b) substituted "The suspension of a certificate of public convenience and necessity requested by a motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), by a Class C motor carrier, or by a Class D motor carrier may be granted" for "Such suspension may be granted by the commission"; in (2)(a) substituted current language for "The suspension of any intrastate operating authority of any carrier as provided for in subsection (1) for a period of 12 consecutive months shall be deemed to establish"; in (2)(b) at beginning inserted "The suspension of a certificate of public convenience and necessity for a motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), a Class C motor carrier, or a Class D motor carrier as provided in subsection (1) for a period of 12 consecutive months establishes" and in second sentence after "notice and hearing" inserted "motor carrier pursuant to 69-12-311(1)(b) or 69-12-312(1)(b), the Class C motor carrier, or the Class D motor"; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

69-12-406. Restriction on transportation of certain waste.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 11, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 after "Class A" deleted "Class B"; and made minor changes in style. Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 substituted "Class A, Class B, Class C, or Class E motor carrier" for "Class A, B, or C carrier". Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

1997 Amendment: Chapter 42 in first sentence substituted "garbage" for "ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter"; and made minor changes in style. Amendment effective March 12, 1997.

1991 Amendment: Inserted last sentence exempting recyclables from carrier restrictions.

1991 Statement of Intent: The statement of intent attached to Ch. 341, L. 1991, provided: "A statement of intent is required for this bill in order to provide guidance to the public service commission in adopting rules. It is the intention of the legislature that a Class D motor carrier have the authority to collect and transport source-separated recyclables and that Class C motor carriers have the authority to transport recyclables."

1983 Amendment: Inserted proviso at beginning of section.

69-12-407. Records and reports.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 12, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in (1) in first and second sentences after "Class A" deleted "Class B"; and made minor changes in style. Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 in (3) after "certificate" inserted "of public convenience and necessity"; inserted (4) and (5) regarding Class E motor carrier audits, identification numbers, and records; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

2013 Amendment: Chapter 35 in (2) deleted former second and third sentences that read: "Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission. In addition to annual reports every motor carrier shall prepare and file with the commission, at the time or times and in the form to be prescribed by the commission, annual reports, special reports, and statements giving to the commission information it requires in order to perform its duties under this chapter"; in (3) substituted "a Class D motor carrier shall provide sufficient information to the commission" for "the commission shall require the holder of a Class D motor carrier certificate to provide sufficient information"; and made minor changes in style. Amendment effective February 20, 2013.

Applicability: Section 7, Ch. 35, L. 2013, provided: "[This act] applies to certificates, records, reports, and identifications issued, completed, or displayed after [the effective date of this act]." Effective February 20, 2013.

1993 Amendment: Chapter 364 in two places in (1), after "Class D", deleted "and Class E"; deleted (4) requiring Class E motor certificate holder to demonstrate entitlement to possess the certificate under requirements of 69-12-315; and made minor changes in style.

1991 Amendment: In (1), in two places, inserted reference to Class E motor carrier; inserted (4) requiring a Class E motor carrier to demonstrate entitlement to certification; and made minor changes in style. Amendment effective April 20, 1991.

Administrative Rules

ARM 38.3.201 Intrastate carriers — vehicle registration fee.
ARM 38.3.709 Annual financial reports required for self-insurance.
ARM 38.3.805 Reports and uniform system of accounts.
Title 38, chapter 3, subchapter 12, ARM Minimum operations requirements for Class D motor carriers.

69-12-408. Identification of ownership of certain large motor vehicles.

Compiler's Comments

2021 Amendment: Chapter 89 in (1) at beginning of first sentence deleted "Except as provided in subsection (2)" and in middle after "10,000 pounds" substituted "upon a public highway in this state for the transportation of passengers, household goods, or garbage for hire on a commercial basis" for "on the highways of the state"; and made minor changes in style. Amendment effective October 1, 2021.

2013 Amendment: Chapter 35 in (1)(a) at beginning inserted exception clause, after "combination of vehicles" deleted "except farm vehicles", and after "commission" deleted "interstate commerce commission"; in second sentence of (1)(a) inserted "If a number is displayed, it must be the"; in (1)(b) after "display" deleted "of name"; inserted (2)(a) concerning farm vehicles; in (2)(b)(iii) substituted "prospective buyer" for "prospect"; and made minor changes in style. Amendment effective February 20, 2013.

Applicability: Section 7, Ch. 35, L. 2013, provided: "[This act] applies to certificates, records, reports, and identifications issued, completed, or displayed after [the effective date of this act]." Effective February 20, 2013.

1991 Amendment: In (1) (a), near middle, substituted "city and state of or the name or trade name and the public service commission, interstate commerce commission, or department of transportation" for "address or M.R.C. or I.C.C. certificate"; deleted (3) that was a misdemeanor penalty clause; and made minor changes in style. Amendment effective March 25, 1991.

69-12-415. Carrier fitness.

Compiler's Comments

2015 Amendment: Chapter 456 near beginning after "A certificate" deleted "of operating authority"; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

1993 Statement of Intent: The statement of intent attached to Ch. 156, L. 1993, provided: "In determining whether a motor carrier should be granted a certificate of operating authority, a threshold question to be answered by the public service commission is whether the carrier is fit, willing, and able to provide the proposed service, otherwise referred to as an inquiry into carrier fitness. [Section 1] [69-12-415] is intended to clarify the public service commission's authority in this regard by codifying the carrier fitness requirement. Although 69-12-201 and

69-12-203 provide the commission with supervisory, regulatory, and enforcement authority over motor carriers, its authority to investigate and hear complaints concerning violations of Title 69, chapter 12, is not clearly defined. [Section 2] [69-12-210] is intended to clarify this authority."

Effective Date: Section 4, Ch. 156, L. 1993, provided: "[This act] is effective on passage and approval." Approved March 24, 1993.

Administrative Rules

ARM 38.3.406 Completion of protest to application for certificate of compliance.

69-12-421. Annual fee for motor carriers.

Compiler's Comments

1983 Amendment: In (1), after "between" changed "January 1" to "October 1" and changed "January 15 of each calendar year" to "the following January 31", and after "Montana" changed "the sum of $5" to "a fee set by rule of the commission".

Administrative Rules

ARM 38.3.124 Receipt content.
ARM 38.3.201 Intrastate carriers — vehicle registration fee.
ARM 38.3.801 Fees.
ARM 38.3.2015 Compensation and fees.

Case Notes

Definition of Motor Vehicle as Resulting in an Undue Burden on Interstate Commerce: Definition of motor vehicles (prior to 1979 amendment correcting the problem) as including a trailer, semitrailer, or dolly and requirement for a $5 fee (prior to the 1983 amendment authorizing the fee to be set by the Public Service Commission) on each motor vehicle constituted an undue burden on interstate commerce when Interstate Commerce Commission regulations provided for a maximum registration fee of $5 and the Interstate Commerce Commission definition of a motor vehicle was limited to the mechanical drive unit, not to whatever was being pulled by that power unit, because federal statute and regulations promulgated by the Interstate Commerce Commission were controlling over contrary provisions of state law. State ex rel. Sammons Trucking, Inc. v. Bollinger, 169 M 88, 544 P2d 1235 (1976).

Motor Carriers' Tax Held Unconstitutional: The Supreme Court held that the statute levying a tax on motor carriers for use of highways in the state was discriminatory and denied common carrier of general commodities uniformity of taxation, due process, and equal protection. Two factors were key in the decision. Motor vehicles used for carrying agricultural commodities, supplies and materials for construction and maintenance of highways, for logging and mining operations, and for transport of newspapers, newspaper supplements, periodicals and magazines, and business concerns which acquired their own vehicles and accomplished their own hauling were exempt from the tax. Secondly, the formula used to compute revenue payable under statute was based upon income-producing ability of vehicles in interstate commerce rather than upon the use of highways, and therefore constituted a tax on the privilege of doing business and placed burden on interstate commerce in violation of commerce clause. Garrett Freightlines v. Mont. R.R. & P.S.C., 161 M 482, 507 P2d 1040 (1973).

Fee Higher Than Allowed by Federal Law: The imposition of a $10 fee on motor vehicles engaged in interstate commerce conflicted with federal law and regulations thereunder. The state could impose a fee no greater than the $5 per vehicle permitted by federal regulations. State ex rel. Sammons Trucking, Inc. v. Boedecker, 158 M 397, 492 P2d 919 (1972), distinguishing Aero Mayflower Transit Co. v. Bd. of R.R. Comm'rs, 332 US 495, 92 L Ed 99, 68 S Ct 167 (1947).

69-12-423. Fees to be charged by commission.

Compiler's Comments

1983 Amendment: In (1), after "commission" changed "shall" to "may", after "schedules" inserted "applications", and after "supplements" deleted "of these and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in its office, unless" and inserted "not"; and after "charge" deleted: "under the following schedule:

(a) filing annual reports, each..............$5.00;
(b) filing tariffs, time schedules, and supplements thereto, each.............$2.00;
(c) for issuing certificates of public convenience and necessity to motor carriers, each............$2.00;
(d) classification for motor carriers, each...........$.50;

(e) for a copy of the rules for motor carriers and blank forms of annual reports for common carriers.......... cost."

Administrative Rules

ARM 38.3.201 Intrastate carriers — vehicle registration fee.
ARM 38.3.801 Fees.
ARM 38.3.2015 Compensation and fees.

Part 5
Ratemaking Requirements

Part Administrative Rules

ARM 38.3.2403 Public inspection.
ARM 38.3.2404 Assistance in preparing tariffs and time schedules.
ARM 38.3.2405 Transmittal form letter — sample.
ARM 38.3.2501 Individual or bureau filing.
ARM 38.3.2502 Number of tariff copies to be filed.
ARM 38.3.2503 Address for tariffs.
ARM 38.3.2505 Who may file tariffs.
ARM 38.3.2508 Form required for modification of tariffs, time schedules — sample.
ARM 38.3.2509 Commission may reject tariff publications.
ARM 38.3.2510 Rejected schedules.
Title 38, chapter 3, subchapter 26, ARM Tariffs — format.
Title 38, chapter 3, subchapter 27, ARM Tariffs — rate provisions.
Title 38, chapter 3, subchapter 28, ARM Tariffs — cancellation, amendment or supplement.
Title 38, chapter 3, subchapter 29, ARM Tariffs — loose leaf.
ARM 38.3.3001 Suspension of tariffs.
Title 38, chapter 3, subchapter 33, ARM Tariffs — special provisions.
Title 38, chapter 3, subchapter 34, ARM Minimum filing standards for motor carrier rate increases.

69-12-501. Rate schedules to be maintained.

Compiler's Comments

2021 Amendment: Chapter 512 in (1) near beginning after "Class A" deleted "or B". Amendment effective July 1, 2021.

2015 Amendment: Chapter 456 in (1) at beginning substituted "A Class A or B motor carrier issued a certificate shall maintain on file with the commission, if applicable" for "Every Class A or B motor carrier holding a certificate must maintain on file with the commission"; and made minor changes in style. Amendment effective July 1, 2015.

Transition: Section 26, Ch. 456, L. 2015, provided: "A motor carrier that possesses a certificate issued by the commission on or before June 30, 2015, is considered to possess a valid certificate."

Saving Clause: Section 28, Ch. 456, L. 2015, was a saving clause.

Severability: Section 29, Ch. 456, L. 2015, was a severability clause.

Administrative Rules

ARM 38.3.201 Intrastate carriers — vehicle registration fee.
ARM 38.3.2401 Tariffs generally.
ARM 38.3.2402 Who must file, intrastate and interstate.
ARM 38.3.3601 Fuel cost surcharge.
ARM 38.3.3605 Temporary rate reductions.

Case Notes

Automatic Approval of Tariff Revisions: The Public Service Commission (P.S.C.), in refusing to approve and give effect to relator's proposed tariff schedules, failed to perform a clear legal duty arising under the Montana motor carrier law. Because the P.S.C. did not hold a hearing within 180 days of suspension of relator's tariff, the tariff revisions were considered approved and effective as filed. State ex rel. Chem. Transp. v. Bollinger, 173 M 535, 568 P2d 172 (1977).

69-12-502. Prohibition on deviation from rate schedules.

Compiler's Comments

2023 Amendment: See 2023 Session Law for amendment made by sec. 13, Ch. 422, L. 2023. Amendment effective May 4, 2023.

2021 Amendment: Chapter 512 in three places after "Class A" deleted "or B"; and made minor changes in style. Amendment effective July 1, 2021.

69-12-503. Rates to be reasonable and nondiscriminatory.

Administrative Rules

ARM 38.3.201 Intrastate carriers — vehicle registration fee.

Case Notes

Suspension Period — Effect on Public Participation: The resultant effect of the 180-day period of suspension in 69-12-505 is not to deprive the Consumer Counsel or any other interested member of the public of a vehicle for challenging the reasonableness of a motor carrier's proposed intrastate rate increase. State ex rel. Chem. Transp. v. Bollinger, 173 M 535, 568 P2d 172 (1977).

69-12-504. Procedure to revise rate schedule.

Administrative Rules

ARM 38.3.201 Intrastate carriers — vehicle registration fee.
ARM 38.3.2506 Notice of change.
ARM 38.3.2507 Notice required and notation on tariff.

69-12-505. Suspension of proposed rate revision — hearing.

Case Notes

Suspension Period — Effect on Public Participation: The resultant effect of the 180-day period of suspension in 69-12-505 is not to deprive the Consumer Counsel or any other interested member of the public of a vehicle for challenging the reasonableness of a motor carrier's proposed intrastate rate increase. State ex rel. Chem. Transp. v. Bollinger, 173 M 535, 568 P2d 172 (1977).

Automatic Approval of Tariff Revisions: The Public Service Commission (P.S.C.), in refusing to approve and give effect to relator's proposed tariff schedules, failed to perform a clear legal duty arising under the Montana motor carrier law. Because the P.S.C. did not hold a hearing within 180 days of suspension of relator's tariff, the tariff revisions were considered approved and effective as filed. State ex rel. Chem. Transp. v. Bollinger, 173 M 535, 568 P2d 172 (1977).

CHAPTER 13
PIPELINE CARRIERS

Chapter Case Notes

Fuel Storage Tank as Part of Pipeline — Construction in Agricultural-Open Zone Permitted: After careful and conscientious review by the zoning coordinator and planning department, a building permit for a 35,000-barrel diesel fuel tank on property zoned agricultural-open space was properly granted. The tank could be considered part of a pipeline, which is a permitted use within such a zone. The Supreme Court found that contentions of error in interpreting the county zoning plan, which disallowed liquid fuel storage in a tank no matter how temporary or in what context in any agricultural-open zone, to be too narrow and rigid. The court held that since zoning laws and ordinances are in derogation of the common-law right to free use of private property, such ordinances must be strictly construed and must be given a fair and reasonable interpretation, by the officials assigned to interpret and apply the zoning laws, with some regard to the proposed use. Whistler v. Burlington N. RR Co., 228 M 150, 741 P2d 422, 44 St. Rep. 1415 (1987).

Chapter Attorney General's Opinions

Parameters of County Commission Authority to Permit County Road Use for Pipelines: A Board of County Commissioners is charged with a significant amount of discretion under 7-1-2103, 7-14-2102, and 7-14-2107 in determining whether to permit the use of a county road right-of-way for the laying of permanent or temporary pipelines. This discretion is potentially limited by state regulations under Title 69, ch. 13, concerning pipeline carriers, depending on specific factual situations. To be consistent with the holding in Bolinger v. Bozeman, 158 M 507, 493 P2d 1062 (1972), the Board must find that the action: (1) is necessary for the best interest of the county roads and the road districts; (2) does not unreasonably impair the special easements of abutting owners in the street for purposes of access, light, and air; and (3) is conducive to the public welfare and serves one of the purposes for which highways and streets are dedicated. 42 A.G. Op. 40 (1987).

Part 1
General Provisions

69-13-101. Common carrier pipeline — definition.

Compiler's Comments

2013 Amendment: Chapter 44 throughout section in six places substituted "crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide" for "crude petroleum, coal, the products of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels"; inserted (2) defining plant or facility that produces or captures carbon dioxide; and made minor changes in style. Amendment effective February 26, 2013.

2009 Amendment: Chapter 231 in (1) in introductory clause at beginning deleted "The following are hereby declared to be common carriers and subject to the provisions of this chapter" and at end substituted "is a common carrier if it engages in" for "of any kind whatever"; in (1)(a) in two places, in (1)(b), in (1)(c) in two places, and in (1)(d) inserted reference to carbon dioxide produced in the combustion or gasification of fossil fuels; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendment Void: The amendment to this section made by Ch. 365, L. 2007, was rendered void by sec. 7, Ch. 365, L. 2007, a contingent voidness provision.

69-13-102. Scope of chapter — enforcement.

Compiler's Comments

2013 Amendment: Chapter 44 throughout section in four places substituted "crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide" for "crude petroleum, coal, the products of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels"; and near end of (1) after "captures carbon dioxide" deleted "bought or sold". Amendment effective February 26, 2013.

2009 Amendment: Chapter 231 in (1) in four places inserted reference to carbon dioxide produced in the combustion or gasification of fossil fuels and in second sentence near end after "purview of this" substituted "chapter" for "law"; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendment Void: The amendment to this section made by Ch. 365, L. 2007, was rendered void by sec. 7, Ch. 365, L. 2007, a contingent voidness provision.

69-13-103. Right to construct pipelines.

Attorney General's Opinions

Parameters of County Commission Authority to Permit County Road Use for Pipelines: A Board of County Commissioners is charged with a significant amount of discretion under 7-1-2103, 7-14-2102, and 7-14-2107 in determining whether to permit the use of a county road right-of-way for the laying of permanent or temporary pipelines. This discretion is potentially limited by state regulations under Title 69, ch. 13, concerning pipeline carriers, depending on specific factual situations. To be consistent with the holding in Bolinger v. Bozeman, 158 M 507, 493 P2d 1062 (1972), the Board must find that the action: (1) is necessary for the best interest of the county roads and the road districts; (2) does not unreasonably impair the special easements of abutting owners in the street for purposes of access, light, and air; and (3) is conducive to the public welfare and serves one of the purposes for which highways and streets are dedicated. 42 A.G. Op. 40 (1987).

69-13-104. Use of power of eminent domain.

Compiler's Comments

2001 Amendment: Chapter 125 in last sentence substituted "The power of eminent domain must be exercised as provided in Title 70, chapter 30" for "The manner and method of such condemnation and the assessment and payment of the damages therefor shall be the same as is provided by law in the case of railroads"; and made minor changes in style. Amendment effective October 1, 2001.

Interim Study Bill — Eminent Domain: Chapter 125, L. 2001, was enacted as a result of an interim study. See Eminent Domain in Montana, published by the Legislative Environmental Policy Office, May 2001.

Case Notes

Description of Secondary Access Right-of-Way Within Statutory Requirements: In its complaint for condemnation for a pipeline and fiber optic right-of-way access across plaintiff's property, Cenex incorporated by reference the "minimum necessary interest" requirement and included a map of the pipeline route and a description of the primary easement sought. When the District Court granted condemnation of the 50-foot easement, plaintiff appealed, alleging that the District Court erred because Cenex had failed in its description to set forth a fixed way of access. In affirming the condemnation grant, the Supreme Court held that because Cenex was entitled only to the "minimum necessary interest", the description of the secondary right of access complied with the requirement of 70-30-203 through incorporation by reference of the requirement. Cenex Pipeline LLC v. Fly Creek Angus, Inc., 1998 MT 334, 292 M 300, 971 P2d 781, 55 St. Rep. 1358 (1998).

69-13-106. Confidentiality of cultural sites.

Compiler's Comments

Effective Date: Section 4, Ch. 296, L. 2017, provided: "[This act] is effective on passage and approval." Approved May 4, 2017.

Applicability: Section 5, Ch. 296, L. 2017, provided: "[This act] applies to certificates issued under the Montana Major Facility Siting Act on or after [the effective date of this act]." Effective May 4, 2017.

Part 2
Role of Commission

69-13-201. Establishment of rates and operating rules.

Compiler's Comments

2013 Amendment: Chapter 44 in (1) substituted "crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide" for "crude petroleum, coal, the products of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels". Amendment effective February 26, 2013.

2009 Amendment: Chapter 231 in (1) in first sentence inserted reference to carbon dioxide produced in the combustion or gasification of fossil fuels; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendment Void: The amendment to this section made by Ch. 365, L. 2007, was rendered void by sec. 7, Ch. 365, L. 2007, a contingent voidness provision.

Part 3
Requirements for Pipeline Carriers

69-13-301. Records and reports.

Compiler's Comments

2013 Amendment: Chapter 44 throughout section in three places substituted "crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide" for "crude petroleum, coal, the products of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels"; and in middle of (2) substituted "the quantities" for "that". Amendment effective February 26, 2013.

2009 Amendment: Chapter 231 in (1) and in (2) in two places inserted reference to carbon dioxide produced in the combustion or gasification of fossil fuels; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendment Void: The amendment to this section made by Ch. 365, L. 2007, was rendered void by sec. 7, Ch. 365, L. 2007, a contingent voidness provision.

Administrative Rules

Title 38, chapter 7, subchapter 1, ARM Pipeline company reports.

69-13-302. Connection and interchange facilities.

Compiler's Comments

2015 Amendment: Chapter 55 in (2) in second sentence substituted "crude petroleum" for "crude oil". Amendment effective October 1, 2015.

2013 Amendment: Chapter 44 in (1) in third sentence substituted "delivery at all points on the pipeline of crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide" for "delivery of crude petroleum, coal, the products of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels of patrons at all points on the pipeline"; and in (2) in first sentence substituted "crude petroleum, coal, or the products of crude petroleum or coal or any carbon dioxide from a plant or facility that produces or captures carbon dioxide" for "crude petroleum, coal, the products of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels" and in second sentence substituted "crude oil, coal, or the products of crude petroleum or coal or in carbon dioxide from a plant or facility that produces or captures carbon dioxide" for "crude oil, coal, the products of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels". Amendment effective February 26, 2013.

2009 Amendment: Chapter 231 in (1) and in (2) in two places inserted reference to carbon dioxide produced in the combustion or gasification of fossil fuels; in (1) in first sentence after "tonnage" inserted "or carbon dioxide volume" and in second sentence after "tonnage" inserted "and volume"; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendment Void: The amendment to this section made by Ch. 365, L. 2007, was rendered void by sec. 7, Ch. 365, L. 2007, a contingent voidness provision.

69-13-303. Prohibition of discrimination in rates or service.

Compiler's Comments

2013 Amendment: Chapter 44 throughout section in five places substituted "crude petroleum, coal, or the products of crude petroleum or coal or of carbon dioxide from a plant or facility that produces or captures carbon dioxide" for "crude petroleum, coal, the products of crude petroleum or coal, or carbon dioxide produced in the combustion or gasification of fossil fuels"; in (1) in two places before "produced or purchased" inserted "when any of those products were" and at end of last sentence in two places substituted "any of those products" for "the products". Amendment effective February 26, 2013.

2009 Amendment: Chapter 231 in (1) in four places and in (2) inserted reference to carbon dioxide produced in the combustion or gasification of fossil fuels; and made minor changes in style. Amendment effective October 1, 2009.

2007 Amendment Void: The amendment to this section made by Ch. 365, L. 2007, was rendered void by sec. 7, Ch. 365, L. 2007, a contingent voidness provision.

CHAPTER 14
RAILROADS

Chapter Case Notes

Injunction Tolled FELA Statute of Limitations on Asbestos Claim Against Railway: The Bankruptcy Court's order enjoining claims against W.R. Grace and other affiliated entities, including the defendant railway company, tolled the statute of limitations on the plaintiff employee's claim. The plaintiff's asbestos-related disease claim accrued in October 2007. While his claim was still well within the Federal Employers' Liability Act's (FELA's) 3-year statute of limitations under 45 U.S.C. 56, the Bankruptcy Court issued its April 22, 2008, order expanding the injunction to include the defendant as a nondebtor affiliate. This injunction, as modified by the Bankruptcy Court's January 22, 2002, order, barred the commencement of new actions against affiliates. Effective upon the issuance of the Bankruptcy Court's April 22, 2008, order, therefore, the plaintiff was barred from commencing his asbestos-related disease action against the defendant. The Bankruptcy Court's injunction was lifted on February 3, 2014, at which time the plaintiff's statute of limitations resumed running. The plaintiff amended his complaint to include the defendant on November 28, 2014. Approximately 6 months passed between October 22, 2007, when the plaintiff's claim against the defendant accrued, and April 11, 2008, when the Bankruptcy Court's injunction was expanded to include the defendant. Approximately 10 months passed between February 3, 2014, when the Bankruptcy Court's injunction was lifted, and November 28, 2014, when the plaintiff amended his complaint to include the defendant. After excluding the time that the plaintiff was enjoined from commencing an action against the defendant, he amended his complaint to include a claim against the defendant approximately 16 months after his claim accrued, which was well within the FELA's 3-year statute of limitations. Watson v. BNSF Ry. Co., 2017 MT 279, 389 Mont. 292, 405 P.3d 634.

Federal Railroad Safety Liability Preemption — Shanklin Clarified, Not Overruled by Subsequent Federal Legislation: In Norfolk S. Ry. Co. v. Shanklin, 529 US 344 (2000), the U.S. Supreme Court held that when federal funds are used to install warning devices at railroad crossings, the preemption clause of the Federal Railroad Safety Act of 1970 (FRSA), 49 U.S.C. 20106 (1994), preempts state law tort claims. In 2007, Congress amended the preemption clause by adding an additional subsection clarifying state law causes of action. However, the amendment did not overrule the Shanklin preemption analysis or effect a substantive change to FRSA's preemption clause, but instead simply clarified the scope of the preemption clause, so the Shanklin preemption remains in effect. Smith v. Burlington N. & Santa Fe Ry. Co., 2008 MT 225, 344 M 278, 187 P3d 639 (2008).

Whistle Statute Applicable to Any Railroad Crossing, Not Just Public Railroad Crossing: Langemo was injured in a collision with a Montana Rail Link train at a private railroad crossing. Langemo contended that the railroad was liable for negligence per se under 69-14-562 (now repealed) because no whistle post was ever installed at the crossing, nor did the engineer sound the train whistle when approaching the crossing, in accordance with a longstanding railroad policy of not sounding the whistle at private crossings. The District Court applied the definition of road in 60-1-103, in which the word denotes a public way, and concluded that the whistle statute required bells and whistles to be sounded only at public crossings and granted summary judgment for the railroad. The Supreme Court disagreed and reversed. The District Court's interpretation violated basic rules of statutory construction and misinterpreted the applicable statutes. The whistle statute's use of the phrase "any highway, road, or railroad crossing", in its ordinary and usual meaning, meant every railroad crossing, not just public crossings. The whistle statute was not expressly repealed by the highway code, nor did the general highway code enacted in 1965 impliedly repeal the specific whistle statute of 1873. (However, note that 2001 amendments to 69-14-562 now explicitly require that railroad bells and whistles be sounded only at public crossings and the 2003 amendment provides for compliance with a written request to sound bells and whistles at a private crossing.) Langemo v. Mont. Rail Link, Inc., 2001 MT 273, 307 M 293, 38 P3d 782 (2001).

Improper Grant of Partial Summary Judgment on Issue of Whether Train Crew Gave Adequate Auditory Warning at Railroad Crossing: Mickelson was injured when the fire truck that he was driving was struck by a Montana Rail Link (MRL) train and sought damages. In its order granting partial summary judgment to MRL, the District Court ruled, as a matter of law, that the MRL train crew had properly sounded the train whistle (now designated as locomotive horn) and bell, in accordance with 69-14-562 (now repealed), and that because Mickelson had no memory of the accident, he could not produce any specific facts that presented a genuine issue worthy of trial. In the brief opposing summary judgment, Mickelson pointed out several inconsistencies in the testimony of the train crew that raised factual and credibility issues concerning the crew's story about how the accident occurred, particularly with regard to Mickelson's prior common practice of loading the fire truck in a particular manner, which conflicted with the crew's story. The Supreme Court held that the trial court committed reversible error by preventing the jury from deciding crucial factual and credibility issues regarding adequate auditory warnings, citing several cases that precluded summary judgment on whistle issues because of disputed facts. Mickelson v. Mont. Rail Link, Inc., 2000 MT 111, 299 M 348, 999 P2d 985, 57 St. Rep. 446 (2000). See also Easterwood v. CSX Transp., Inc., 933 F2d 1548 (11th Cir. 1991), Bowman v. Norfolk S. Ry. Co., 832 F. Supp. 1014 (D. S.C. 1993), and Borden v. CSX Transp., Inc., 843 F. Supp. 1410 (M.D. Ala. 1993).

Improper Jury Instruction Regarding Speed of Train — Applicable Law of Case: Mickelson was injured when the fire truck that he was driving was struck by a Montana Rail Link (MRL) train and sought damages. MRL moved for summary judgment, arguing that the subject of train speed was preempted by CSX Transp., Inc. v. Easterwood, 507 US 658, 123 L Ed 2d 387, 113 S Ct 1732 (1993). The District Court denied MRL's motion, ruling that a negligence action based on a state law duty to slow or stop a train to avoid a specific individual hazard was not preempted under CSX. Nevertheless, the court's instructions to the jury stated that "Under the laws governing the speed of trains, a train crew has no duty to slow a train until a reasonable and prudent train operator has reason to believe, based upon the circumstances present, that the operator of a motor vehicle will not yield to the train and there is a substantial risk of a collision" and that "Montana law does not provide the driver of an emergency vehicle any special privilege in relation to railroad crossings. Emergency vehicle drivers must follow the requirements when approaching and crossing railroad crossings as any other vehicle driver". Following jury deliberations, MRL was found not liable. The Supreme Court held that the District Court abused its discretion in instructing the jury on the speed of trains because the instructions did not state the applicable law of the case. As set out in Runkle v. Burlington N., Inc., 188 M 286, 613 P2d 982 (1980), whether a railroad is negligent in a particular manner, such as failing to reduce train speed, is a question of fact for the jury. Here, the jury instructions improperly removed the question of train speed from jury consideration, compelling the jury to conclude that the train crew did not have a duty to do anything more than they did, rather than deciding whether the facts and circumstances of this case constituted a specific individual hazard. Mickelson v. Mont. Rail Link, Inc., 2000 MT 111, 299 M 348, 999 P2d 985, 57 St. Rep. 446 (2000).

Master-Servant Relationship Between Railroad and Locomotive Service Facility Established by Common Control — Applicability of Federal Employers' Liability Act: Employees of the Livingston Rebuild Center, Inc. (LRC), sought damages under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51, et seq., alleging that they were injured during the course of their employment while nominally employed by LRC, but that LRC was actually the servant of Montana Rail Link, Inc. (MRL), which engaged in the business of common carrier by railroad in interstate commerce. MRL's affirmative defense was that plaintiffs could not recover FELA benefits against LRC because LRC was not a railroad and that they could not recover FELA benefits against MRL because they were not employed by MRL. The issue on appeal was whether the District Court erred when it held that plaintiffs were not employed by a common carrier by railroad for purposes of FELA. As applicable law, the Supreme Court cited Kelley v. S. Pac. Co., 419 US 318, 42 L Ed 2d 498, 95 S Ct 472 (1974). Among the factors typically considered for purposes of determining whether a master-servant relationship exists, the most significant is the degree of control that the alleged master exercises over the work of the alleged servant. In this case, a master-servant relationship was established between MRL and LRC not only by control of business practices through common ownership and directorship, but also through: (1) MRL's direct, frequent, and unique supervision of LRC employees; (2) MRL's at-will acquisition of LRC property, including land exchanges without consideration or for less consideration than full market value, when acquisition was in MRL's self-interest; (3) LRC's dependence on MRL for training, tools, equipment, and parts; and (4) MRL's use of LRC property for its own purposes without compensation, including the common sharing of physical facilities. Based on the master-servant relationship, the LRC employees were also considered employees of MRL at the time that they were injured and were thus covered under FELA. Watts v. Mont. Rail Link, Inc., 1999 MT 18, 293 M 167, 975 P2d 283, 56 St. Rep. 88 (1999).

Admissibility Dependent on Nature of Treatise: Learned treatises are permissible for use in cross-examination of an expert if the treatise is "established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice". Here, a treatise on design of grade railway-highway crossings was properly used to test the knowledge of an expert witness in cross-examination. Another treatise concerning the visibility and audibility of trains approaching crossings was properly held to be inadmissible, as it was merely advisory in nature. Treatises may be admitted upon the foundation that they: (1) show what is feasible to the jury; or (2) show what the defendant knew or should have known about safety precautions. Runkle v. Burlington N. Ry., 188 M 286, 613 P2d 982, 37 St. Rep. 995 (1980).

Warning Signal:

The court found that the obvious legislative intent of 69-14-562 (now repealed) is that the whistle (now designated as locomotive horn) and bell of a train be audibly effective to persons on foot or in vehicles approaching or crossing over an intersection with the railroad. The court found that the legislative purpose is satisfied if either the whistle (now designated as locomotive horn) or the bell, both being sounded for the statutory distance, gives an audible warning to others using the grade crossing sufficiently effective that a collision with the train can be avoided by exercising reasonable care. Runkle v. Burlington N. Ry., 188 M 286, 613 P2d 982, 37 St. Rep. 995 (1980).

The failure of railroad employees in charge of engine to sound the whistle (now designated as locomotive horn) was not the proximate cause of collision when a motorist struck the unlighted second passenger car of a train stopped on a crossing. The mere alleged failure of a signal at the crossing to function at time of collision was not evidence of negligence on part of railroad when it inspected the signals daily and found no defect in them and when they were in good order and functioned properly a few hours before and a few hours after the collision. In the absence of knowledge, the railroad was not under a duty to place a servant or light or other signal at or near the crossing to warn of the presence of a train on the crossing. N. Pac. Ry. v. Bacon, 91 F2d 173 (9th Cir. 1937), certiorari denied, Bacon v. N. Pac. Ry., 302 US 730, 82 L Ed 564, 58 S Ct 55 (1937).

While it may be conceded that a locomotive engineer who, on approaching a crossing, observes that signals are not heard or that his train is not seen by one crossing must give such additional signals as an ordinarily prudent man would deem necessary, refusal to give such an instruction was held not error as not warranted by the evidence. Norton v. Great N. Ry., 85 M 270, 278 P 521 (1929).

The burden of proving that defendant railway company's enginemen on approaching a highway crossing did not sound the locomotive whistle (now designated as locomotive horn) or ring the bell may be sustained by plaintiff's negative testimony, provided the attendant circumstances were such as to have afforded him a reasonable opportunity to hear the warning signals, if given. Grant v. Chicago, Milwaukee & St. Paul Ry., 78 M 97, 252 P 382 (1927).

It is negligence for a railroad to permit its trains to approach a crossing without sounding the whistle (now designated as locomotive horn) and ringing the bell. Stroud v. Chicago, Milwaukee & St. Paul Ry., 75 M 384, 243 P 1089 (1926); Sprague v. N. Pac. Ry., 40 M 481, 107 P 412 (1910); Hunter v. Mont. Cent. Ry., 22 M 525, 57 P 140 (1899).

When a person seeing a train approaching is killed in an endeavor to effect a crossing ahead of the train, failure of the enginemen to ring the locomotive bell or sound the whistle (now designated as locomotive horn), though punishable as a misdemeanor, is not a proximate cause of the death. Melzner v. Chicago, Milwaukee & St. Paul Ry., 51 M 487, 153 P 1019 (1915).

A variance between an averment that defendant railroad was negligent in failing to give any warning of the approach of one of its trains and evidence which tended to show that, while warning was given, it was not until the train was within about 100 feet of the crossing was immaterial. De Atley v. N. Pac. Ry., 42 M 224, 112 P 76 (1910).

Evidence of failure of a railroad to give proper signals of the approach of its trains at crossings makes out a prima facie case of negligence. De Atley v. N. Pac. Ry., 42 M 224, 112 P 76 (1910); Sprague v. N. Pac. Ry., 40 M 481, 107 P 412 (1910); Hunter v. Mont. Cent. Ry., 22 M 525, 57 P 140 (1899). See Kelley v. John R. Daily Co., 56 M 63, 181 P 326 (1919).

Obstruction of Watercourses:

A railroad that quitclaimed land including the right-of-way across an irrigation ditch was not relieved of its statutory duty to maintain the cement drop, siphon, and wooden flume for the benefit of lower landowners who depended on the water. Harrer v. N. Pac. Ry., 147 M 130, 410 P2d 713 (1966).

A "watercourse" within the meaning of 69-14-532 (now repealed) is a channel cut by running water with well-defined banks through which water flows for a substantial period of each year. Heckaman v. N. Pac. Ry., 93 M 363, 20 P2d 258 (1933).

Under the common law a railroad company was, and under 69-14-532 (now repealed) is, required to exercise the skill and knowledge ordinarily practiced in the construction of an embankment used with a bridge over a watercourse, and to leave sufficient openings for the passage of water known to flow in the stream in the time of usual freshets, and such as experience shows might occur at any time. Heckaman v. N. Pac. Ry., 93 M 363, 20 P2d 258 (1933).

Under the common-law rule of liability for the obstruction of surface waters in force in this state in the absence of statute providing otherwise, the defendant railway company was not liable for damage caused to the plaintiff's property by surface waters which were dammed up by its embankment and for the escape of which it had failed to construct culverts or openings. Its duty in this respect was confined by 69-14-532 (now repealed) and 69-14-240 to providing outlets for streams, watercourses, etc., intersected by the embankment. The plaintiff's evidence failed to establish that the invading waters were conveyed through a natural watercourse. Le Munyon v. Gallatin Valley Ry., 60 M 517, 199 P 915 (1921).

Publication and Notice: The Board of Railroad Commissioners (now the Public Service Commission) is not required, when acting upon a petition or application for reduced rail rates, to cause publication and to give notice pursuant to section 72-117, R.C.M. 1947 (replaced by 69-14-305 through 69-14-310, all now repealed), and section 72-118, R.C.M. 1947 (pertinent parts replaced in 69-14-311 and 69-14-312, both now repealed), in advance of any action on such petition or prior to issuance of any authorization thereon. State ex rel. Mont. Motor Tariff Bureau, Inc. v. Smith, 144 M 110, 394 P2d 758 (1964).

Effect of Specific Indemnity Clause in Lease: A specific indemnity clause in a lease agreement between a railroad and a lessee which provided that the lessee would indemnify the railroad for claims, "whether due or not due to the negligence" of the railroad, was not invalid as applied to action against railroad for injuries allegedly received because of a violation of 69-14-562 (now repealed) by the railroad. Ryan Merc. Co. v. Great N. Ry., 294 F2d 629 (9th Cir. 1961), affirming Ryan Merc. Co. v. Great N. Ry., 186 F. Supp. 660 (D.C. Mont. 1960).

Obligation to Review: The fact that the Board of Railroad Commissioners (now the Public Service Commission) ruled it had no jurisdiction to act on the railroad's petition to discontinue service did not authorize the railroad to discontinue service without the Commission's consent. The order was subject to review, and the obligation to have it reviewed rested on the railway company as a necessary step to procure consent for abandonment of service. Great N. Ry. v. Bd. of R.R. Comm'rs, 130 M 250, 298 P2d 1093 (1956), appeal dismissed in Great N. Ry. v. Bd. of R.R. Comm'rs, 352 US 904, 1 L Ed 2d 114, 77 S Ct 146 (1956).

Change in Rates: Advantage, preference, or discrimination standing alone is not sufficient justification for interference with intrastate rates. It is only undue or unreasonable advantage, preference, or prejudice or undue, unreasonable, or unjust discrimination that justifies intervention by the Interstate Commerce Commission. Mont. Citizens' Freight Rate Ass'n v. Bd. of R.R. Comm'rs, 128 M 127, 271 P2d 1024 (1954).

Disparity Between Interstate Rates and Intrastate Rates: The state board (now the Public Service Commission) has no authority to grant an automatic raise in intrastate rates simply because the Interstate Commerce Commission had granted a raise in interstate rates. The mere disparity between the interstate rates and the intrastate rates does not compel the state board to grant an increase so as to remove the disparity. Mont. Citizens' Freight Rate Ass'n v. Bd. of R.R. Comm'rs, 128 M 127, 271 P2d 1024 (1954).

Appellant Review: The findings of the Board of Railroad Commissioners (now the Public Service Commission) are by law considered prima facie just, reasonable, and proper. Courts should ascribe to them the strength given to the judgments of a tribunal appointed by law and informed by experience. The Board's conclusion is subject to review, but when supported by evidence it is accepted as final. Chicago, Milwaukee, St. Paul & Pac. Ry. v. Bd. of R.R. Comm'rs, 126 M 568, 255 P2d 346 (1953), explained in Great N. Ry. v. Bd. of R.R. Comm'rs, 130 M 250, 298 P2d 1093 (1956).

Requiring Continuation of Service at a Loss: The fact that two trains were operated at a loss was not, standing alone, sufficient to justify discontinuance of the trains in question. The requirement that a particular service be rendered at a loss does not make a service confiscatory and thereby an unconstitutional taking of property. Chicago, Milwaukee, St. Paul & Pac. Ry. v. Bd. of R.R. Comm'rs, 126 M 568, 255 P2d 346 (1953), explained in Great N. Ry. v. Bd. of R.R. Comm'rs, 130 M 250, 298 P2d 1093 (1956).

Federal Court Jurisdiction: A three-judge District Court was held to have jurisdiction of a suit by a railroad to enjoin Montana Railroad Commissioners (now the Public Service Commission) from enforcing orders for continuation of operation of a certain of railroad's trains, because under this statute such review constituted exercise of a judicial function. Great N. Ry. v. Nagle, 16 F. Supp. 532 (D.C. Mont. 1936).

Liability for Flood Damage:

A railroad maintaining a bridge across a stream had the duty of ordinary care for protection of life and property along the course of the stream. The mere fact that flood occurring in valley was unprecedented in its volume and extent did not relieve the railroad of the responsibility to maintain a proper bridge across the stream. Whether it was negligent in failing to do so in anticipation of the flood and whether negligence was a proximate cause of the plaintiff's damages were questions for the jury. N. Pac. Ry. v. Wagner, 86 F2d 63 (9th Cir. 1936).

Liability for flood damage attaches only upon a showing of a railroad's negligence. When a railroad company constructs and maintains a grade across a watercourse, with proper culverts in conformity with statutory requirements and so as to provide for the passage of waters reasonably to be expected in times of usual freshets or such as are unusual but which experience shows might occur at any time, its construction or maintenance is not negligence per se. A railroad is not an insurer against flood damage. Peel v. Chicago, Milwaukee, St. Paul & Pac. Ry., 94 M 334, 22 P2d 617 (1933); Heckaman v. N. Pac. Ry., 93 M 363, 20 P2d 258 (1933).

Restoration of Stream:

Instruction that "the law contemplates some variation from the original condition of the stream and allows some discretion in the engineers" was proper on the issue of restoring a stream. Wibaux Realty Co. v. N. Pac. Ry., 101 M 126, 54 P2d 1175 (1935).

The failure of a railroad to restore a stream crossed while constructing its road constitutes actionable negligence. The duty to restore does not require that the full width of the channel be left open for passage of water, but it may be fulfilled by widening it and deepening it to carry as much water as it did originally. The duty may not be broadened by the courts. Heckaman v. N. Pac. Ry., 93 M 363, 20 P2d 258 (1933).

The usefulness of or "franchise" of a nonnavigable stream which 69-14-532 (now repealed) requires a railroad to restore is its use for irrigation purposes and drainage. Heckaman v. N. Pac. Ry., 93 M 363, 20 P2d 258 (1933).

When a railroad company, after exercise of reasonable care in the construction of an embankment and bridge in crossing a stream, thereafter narrows the opening left for the passage of water or subsequently discovers that the opening is insufficient to carry away waters which may reasonably be anticipated, it must make suitable provision for such water within a reasonable time. Otherwise, the duty it owes under 69-14-532 (now repealed) to restore the stream to its original usefulness is not discharged. Heckaman v. N. Pac. Ry., 93 M 363, 20 P2d 258 (1933).

Authority to Lay Out Road:

The mere fact that one has made substantial improvements along a railroad in the expectation of its continued operation does not burden the railroad company with an implied obligation to operate. Briggs v. Great N. Ry., 92 M 463, 15 P2d 840 (1932).

A railroad company, in projecting a route through a town, had staked a line through the center of one of its streets 80 feet wide and caused it to be mapped and subsequently approved by its executive officer. In an action by a rival company looking to the condemnation of a strip of land 60 feet wide immediately adjoining one side of the street, the evidence was held insufficient to sustain a finding that such strip had already been appropriated by the first company for a public use of equal necessity, namely, for right-of-way purposes. Great Falls & Teton County Ry. v. Ganong, 48 M 43, 136 P 391 (1913).

The language of 69-14-532 (now repealed), "not exceeding in width one hundred feet on each side of its center line", is not a grant but a limitation. No obligation is imposed upon any company to take the full amount permitted, and in the absence of any necessity it cannot do so, either as against the will of the owner or the necessities of a competing road. Great Falls & Teton County Ry. v. Ganong, 48 M 43, 136 P 391 (1913).

Rates Not to Be Changed Retroactively: Both the Public Service Commission and the courts lack power to invalidate retroactively established rates and thus permit recovery of overcharge or undercharge by shipper or carrier. Although ruling in Doney case, cited below, allowing reparations when Commission subsequently changes rates, was in error, it was binding until overruled. Mont. Horse Prod. Co. v. Great N. Ry., 91 M 194, 7 P2d 919 (1932), overruling contrary holding in Doney v. N. Pac. Ry., 60 M 209, 199 P 432 (1921), and followed in Sunburst Oil & Ref. Co. v. Great N. Ry., 91 M 216, 7 P2d 927 (1932). No federal right was infringed upon by trial court's adherence to Doney or Supreme Court's application of rule to past cases. Great N. Ry. v. Sunburst Oil & Ref. Co., 287 US 358, 77 L Ed 360, 53 S Ct 145 (1932), affirming Sunburst decision above.

Voluntary Rate Reduction: Voluntary reduction of a rate by a carrier, with consent of the Board of Railroad Commissioners (now the Public Service Commission), does not make the prior rate unlawful, unreasonable, or discriminatory or the basis of an action for damages. Mont. Horse Prod. Co. v. Great N. Ry., 91 M 194, 7 P2d 919 (1932).

Procedure:

Certiorari did not lie to annul an order of the Board of Railroad Commissioners (now the Public Service Commission) directing removal of station facilities from one town to another because the relator had a sufficient remedy under 69-14-402 (now repealed) by bringing an action in the District Court to determine whether the order was just and reasonable. State ex rel. Mahood v. Bd. of R.R. Comm'rs, 73 M 1, 234 P 834 (1925).

A shipper, considering himself aggrieved by a rate fixed by the Montana Railroad Commission (now the Public Service Commission) because unjust, unreasonable, or discriminatory, must proceed under 69-14-402 (now repealed) if he desires to have it declared so. When no rate has been fixed or the one established is considered excessive, he must apply to the Commission for investigation and determination of his contention under 69-14-114 (now repealed) before he can maintain an action in the courts. If his case is predicated upon freight charges made in excess of those fixed and established by the Commission, his complaint must so allege and the action must be brought within 12 months from the date of payment, under 69-14-322 (since amended, now repealed). Doney v. N. Pac. Ry., 60 M 209, 199 P 432 (1921), explained in Mont. Horse Prod. Co. v. Great N. Ry., 91 M 194, 7 P2d 919 (1932), Sunburst Oil & Ref. Co. v. Great N. Ry., 91 M 216, 7 P2d 927 (1932), and Great N. Ry. v. Sunburst Oil & Ref. Co., 287 US 358, 77 L Ed 360, 53 S Ct 145 (1932).

Complaint: Because the presumption obtains that the Railroad Commission (now the Public Service Commission) fixed and established reasonable rates in obedience to section 72-116, R.C.M. 1947 (replaced by 69-14-301, now repealed, 69-14-302, now repealed, and 69-14-321, now repealed), and that the rate as established is in accordance with the approved and published tariff, a complaint which fails to allege that freight charges were not in accordance with such tariff is defective. Doney v. N. Pac. Ry., 60 M 209, 199 P 432 (1921), explained in Mont. Horse Prod. Co. v. Great N. Ry., 91 M 194, 7 P2d 919 (1932), Sunburst Oil & Ref. Co. v. Great N. Ry., 91 M 216, 7 P2d 927 (1932), and Great N. Ry. v. Sunburst Oil & Ref. Co., 287 US 358, 77 L Ed 360, 53 S Ct 145 (1932).

Established Tariff — Effect of Statute: A tariff duty filed and published by the Railroad Commission (now the Public Service Commission) has the force and effect of a statute and is binding alike upon the shipper and carrier until modified by the tribunal authorized to change it. Doney v. N. Pac. Ry., 60 M 209, 199 P 432 (1921), explained in Mont. Horse Prod. Co. v. Great N. Ry., 91 M 194, 7 P2d 919 (1932), Sunburst Oil & Ref. Co. v. Great N. Ry., 91 M 216, 7 P2d 927 (1932), and Great N. Ry. v. Sunburst Oil & Ref. Co., 287 US 358, 77 L Ed 360, 53 S Ct 145 (1932).

Exclusive Remedy: The remedies prescribed by Montana carriers law for the recovery of damages caused by the exaction of discriminatory or unreasonable freight charges are exclusive, and a complaint based upon the common-law remedy and drawn in entire disregard of the provisions of the statute did not state a cause of action, the common-law remedies having been superseded by that law. Doney v. N. Pac. Ry., 60 M 209, 199 P 432 (1921), explained in Mont. Horse Prod. Co. v. Great N. Ry., 91 M 194, 7 P2d 919 (1932), Sunburst Oil & Ref. Co. v. Great N. Ry., 91 M 216, 7 P2d 927 (1932), and Great N. Ry. v. Sunburst Oil & Ref. Co., 287 US 358, 77 L Ed 360, 53 S Ct 145 (1932).

Hearing Complaint: A shipper, considering himself aggrieved by a rate fixed by the Railroad Commission (now the Public Service Commission) because unjust, unreasonable, or discriminatory, must proceed under 69-14-402 (now repealed), if he desires to have it declared so. When no rate has been fixed or the one established is considered excessive, he must apply to the Commission for investigation and determination of his contention, under section 72-118, R.C.M. 1947 (replaced by 69-14-114, now repealed, 69-14-301, now repealed, 69-14-311, now repealed, and 69-14-312, now repealed), before he can maintain an action in the courts. If his case is predicated upon freight charges made in excess of those fixed and established by the Commission, his complaint must so allege and the action must be brought within 12 months from the date of payment, under 69-14-322 (since amended and now repealed). Doney v. N. Pac. Ry., 60 M 209, 199 P 432 (1921), explained in Mont. Horse Prod. Co. v. Great N. Ry., 91 M 194, 7 P2d 919 (1932), Sunburst Oil & Ref. Co. v. Great N. Ry., 91 M 216, 7 P2d 927 (1932), and Great N. Ry. v. Sunburst Oil & Ref. Co., 287 US 358, 77 L Ed 360, 53 S Ct 145 (1932).

Injunction: The District Court has no power over any rate order of the Railroad Commissioners (now the Public Service Commission) except by final judgment. This necessarily deprives a railroad, as well as a shipper, of the right to invoke and prohibits the court from issuing a preliminary injunction in its behalf. The District Court has, however, jurisdiction to use the provisional remedy of injunction in limine to suspend an order made by the Commission requiring a railroad company to operate a local passenger train each way daily between designated stations, pending final determination of action for review. State ex rel. Bd. of R.R. Comm'rs v. District Court, 53 M 229, 163 P 115 (1917), explained in Mtn. States Power Co. v. P.S.C., 299 US 167, 81 L Ed 99, 57 S Ct 169 (1936).

Number of Directors: Section 69-14-501 (now repealed) fixes five as the minimum number of the directors of a railroad corporation. Great Falls & Teton County Ry. v. Ganong, 48 M 54, 136 P 390 (1913).

Filing of Charter or Articles: If a foreign railroad company, engaged as a common carrier of passengers between different states, seeks to engage in interstate commerce in this state, buys or is about to buy out another railroad, and seeks to avail itself of the benefits of 69-14-514 (now repealed), which requires the filing of its charter or articles of incorporation with the Secretary of State, it is not obliged to pay a fee, under 2-6-103 (now repealed), for the filing of articles of incorporation, on the basis of a percentage of its entire capital stock. The exaction of such a fee would be an unauthorized burden upon interstate commerce. Chicago, Milwaukee & St. Paul Ry. v. Swindlehurst, 47 M 119, 130 P 966 (1913). See State ex rel. Gen. Elec. Co. v. Alderson, 49 M 29, 140 P 82 (1914).

Street Railroads Not Affected: Section 69-14-555 (now repealed) has no application to street railroads. Helena Light & Ry. v. Helena, 47 M 18, 130 P 446 (1913); Daly Bank & Trust Co. v. Great Falls Street Ry., 32 M 298, 80 P 252 (1905); Cent. Trust Co. v. Warren, 121 F 323 (1903); Mass. Loan & Trust Co. v. Hamilton, 88 F 588 (9th Cir. 1898).

Eminent Domain: The provisions of 69-14-531 (now repealed), section 15-810, R.C.M. 1947 (now repealed), and section 72-205, R.C.M. 1947 (69-14-532, 69-14-533, 69-14-539, 69-14-552, 69-14-558, and 69-14-561, all sections now repealed), are exceedingly liberal, but they must be interpreted in the light of section 93-9905, R.C.M. 1947 (70-30-111), and the rule of necessity must be determinative of the right to take in each instance. N. Pac. Ry. v. McAdow, 44 M 547, 121 P 473 (1912).

Construction: As a statute may be remedial in part and penal in part for purposes of construction, the penalty clause of 69-14-303 (now repealed) should be construed according to the fair import of its terms, with a view to effectuating its object, as required by section 94-101, R.C.M. 1947 (since repealed), but the part prohibiting unjust discrimination in charging for transportation should be liberally construed with a view to carrying out the legislative intention. John v. N. Pac. Ry., 42 M 18, 111 P 632 (1910).

Purpose: The purpose of 69-14-303 (now repealed) was not only to benefit the railroad companies by driving the ticket brokers out of business but to provide against loss to the purchaser of an unused ticket by requiring that it should be redeemed by the seller. It was enacted that the railroad companies should themselves be prohibited from indulging in kindred practices of pernicious discrimination between persons of the same class. John v. N. Pac. Ry., 42 M 18, 111 P 632 (1910).

Power to Acquire Realty: Under 69-14-532 (now repealed) and 69-14-553 (now repealed), a railroad may acquire any land necessary for the construction and maintenance of its road and its adjuncts and appendages by purchase or by voluntary grant or donation, subject only to the limitations that the right-of-way not exceed 200 feet in width, except where a greater width is required for excavations and embankments, and that the land for excavations, embankments, sidetracks, turnouts, shops, etc., not exceed the amount necessary for such uses and purposes. State ex rel. Bloomington Land & Live Stock Co. v. District Court, 34 M 535, 88 P 44 (1906). See N. Pac. Ry. v. McAdow, 44 M 547, 121 P 473 (1912); Postal Telegraph-Cable Co. of Am. v. Nolan, 53 M 129, 162 P 169 (1916).

Contributory Negligence: A railroad's failure to obey statute does not excuse citizen from use of at least ordinary diligence and prudence. Sprague v. N. Pac. Ry., 40 M 481, 107 P 412 (1910); Hunter v. Mont. Cent. Ry., 22 M 525, 57 P 140 (1899).

Consolidation Defined by Section — Leases: Section 69-14-512 (now repealed) is not merely a legislative declaration of the manner of consolidation but serves as a definition as well. The provisions of section 72-223, R.C.M. 1947 (codified in part as 69-14-513, now repealed) limiting the right of railroad companies to lease their roads to one another or to other companies that are not parallel or competing roads were repealed by section 72-229, R.C.M. 1947 (69-14-514, now repealed). State ex rel. Nolan v. Mont. Ry., 21 M 221, 53 P 623 (1898).

Parallel and Competing Roads:

Section 72-229, R.C.M. 1947 (69-14-514, now repealed), repealed section 72-223, R.C.M. 1947 (codified in part as 69-14-513, now repealed), insofar as section 72-223, R.C.M. 1947, limited the right of railroad companies to lease their roads to one another or to other companies that are not parallel or competing roads. State ex rel. Nolan v. Mont. Ry., 21 M 221, 53 P 623 (1898).

Under 69-14-514 (now repealed), one railroad company can lease its road to a parallel and competing road for a term of 10 years, and such lease is not a consolidation of the two roads within the meaning of the state constitution. Section 69-14-514 is to be read as merely authorizing the amalgamation or consolidation of railroads not forbidden to amalgamate or consolidate by the state constitution. State ex rel. Nolan v. Mont. Ry., 21 M 221, 53 P 623 (1898).

Injunction Against Interference With Competitor: When one railroad company, being duly authorized, has built its roadbed and obtained its right-of-way and grounds for station buildings, machine shops, sidetracks, etc., through a defile or canyon, the court will grant an injunction in its favor restraining another railroad corporation, authorized to build to the same point, from going upon or interfering with the track or right-of-way of the corporation first in possession until an adjustment of rights can be made by the court under the general railroad law. Mont. Cent. Ry. v. Helena & Red Mtn. R.R., 6 M 416, 12 P 916 (1887).

Chapter Law Review Articles

Captive Regulators, Captive Shippers: The Legacy of McCarty Farms, Johnstone, 70 Mont. L. Rev. 239 (2009).

Section 13(4) of the Interstate Commerce Act: Unfair?, Alke, 36 Mont. L. Rev. 146 (1975).

Update on Clean Air Act Issues Affecting Railroads, Hoggan & Anderson, 21 Nat. Resources & Env't 51 (2006).

Part 1
Role of Commission — Penalties

Part Case Notes

Telemetry Requirement Unconstitutional: The requirement that certain trains be equipped with end-of-train telemetry devices was preempted by the Federal Railroad Safety Act of 1970, 45 U.S.C. 421 through 444 (see 1993 amendment). Burlington N. RR Co. v. St., CV 91-38-H-CCL (D.C. Mont. 1992).

Authority of State to Regulate Railroads on Indian Reservation: The court, citing White Mountain Apache Tribe v. Bracker, 448 US 136, 65 L Ed 2d 665, 10 S Ct 2578 (1980), held that the proper test to determine whether the state had regulatory jurisdiction over a railroad operated by non-Indians on an Indian reservation involved balancing state versus federal/tribal interests in the particular circumstances. It found that the state of Montana had exercised comprehensive regulatory authority over all railroads in the state, including on-reservation lines, for over 70 years, whereas there had been no federal or tribal regulatory action for nearly 100 years. The court therefore held that the state's interest predominated and that the state Public Service Commission had jurisdiction. Burlington N. RR. v. Dept. of Pub. Serv. Regulation, 221 M 497, 720 P2d 267, 43 St. Rep. 1005 (1986).

Discontinuance of Service:

An order of the Board of Railroad Commissioners (now the Public Service Commission) that there should be no curtailment or discontinuance of passenger train service between points within the state except when authorized by Commission (now P.S.C.) is valid under the statute and in line with authority stating that a public utility may not discontinue its service without approval of the Public Service Commission. Great N. Ry. v. Bd. of R.R. Comm'rs, 130 M 250, 298 P2d 1093 (1956), appeal dismissed in 352 US 904, 1 L Ed 2d 114, 77 S Ct 146 (1956).

Railroad was not authorized to discontinue service without permission of commission (now the Public Service Commission), although in an earlier petition by the railroad to discontinue service the Commission had ruled it had no jurisdiction. That order was subject to review, and the obligation to have it reviewed rested on the railway company as a necessary step to procure consent of Board of Railroad Commissioners (now P.S.C.) for abandonment of service. Great N. Ry. v. Bd. of R.R. Comm'rs, 130 M 250, 298 P2d 1093 (1956), appeal dismissed in 352 US 904, 1 L Ed 2d 114, 77 S Ct 146 (1956).

Change in Rates: Advantage, preference, or discrimination standing alone is not sufficient justification for interference with interstate rates. It is only undue or unreasonable advantage, preference, or prejudice or undue, unreasonable, or unjust discrimination that justifies intervention by the Interstate Commerce Commission. (See 1997 amendment.) Mont. Citizens' Freight Rate Ass'n v. Bd. of R.R. Comm'rs, 128 M 127, 271 P2d 1024 (1954).

Disparity Between Interstate Rates and Intrastate Rates: The state board (now the Public Service Commission) has no authority to grant an automatic raise in intrastate rates simply because the Interstate Commerce Commission had granted a raise in interstate rates. The mere disparity between the interstate rates and the intrastate rates does not compel the state board to grant an increase so as to remove the disparity. (See 1997 amendment.) Mont. Citizens' Freight Rate Ass'n v. Bd. of R.R. Comm'rs, 128 M 127, 271 P2d 1024 (1954).

Hearing Complaint: A shipper, considering himself aggrieved by a rate fixed by the Montana Railroad Commission (now the Public Service Commission) because unjust, unreasonable, or discriminatory, must proceed under 69-14-402 (now repealed) if he desires to have it declared so. When no rate has been fixed or the one established is considered excessive, he must apply to the Commission for investigation and determination of his contention under 69-14-402 before he can maintain an action in the courts. If his case is predicated upon freight charges made in excess of those fixed and established by the Commission, his complaint must so allege and the action must be brought within 12 months from the date of payment, under 69-14-322 (since amended). (See 1997 amendment.) Doney v. N. Pac. Ry., 60 M 209, 199 P 432 (1921), explained in Mont. Horse Prod. v. Great N. Ry., 91 M 194, 7 P2d 919 (1932), Sunburst Oil & Ref. Co. v. Great N. Ry., 91 M 216, 7 P2d 927 (1932), and Great N. Ry. v. Sunburst Oil & Ref. Co., 287 US 358, 77 L Ed 360, 53 S Ct 145 (1932).

69-14-102. Application — definition.

Compiler's Comments

2015 Amendment: Chapter 104 in (1) inserted "In accordance with the commission's authority pursuant to 69-14-111"; inserted (2) defining railroad; and made minor changes in style. Amendment effective October 1, 2015.

Saving Clause: Section 12, Ch. 104, L. 2015, was a saving clause.

Severability: Section 13, Ch. 104, L. 2015, was a severability clause.

Case Notes

Authority of State to Regulate Railroads on Indian Reservation: The court, citing White Mountain Apache Tribe v. Bracker, 448 US 136, 65 L Ed 2d 665, 10 S Ct 2578 (1980), held that the proper test to determine whether the state had regulatory jurisdiction over a railroad operated by non-Indians on an Indian reservation involved balancing state versus federal/tribal interests in the particular circumstances. It found that the state of Montana had exercised comprehensive regulatory authority over all railroads in the state, including on-reservation lines, for over 70 years, whereas there had been no federal or tribal regulatory action for nearly 100 years. The court therefore held that the state's interest predominated and that the state Public Service Commission had jurisdiction. Burlington N. RR. v. Dept. of Pub. Serv. Regulation, 221 M 497, 720 P2d 267, 43 St. Rep. 1005 (1986).

69-14-104. Violations of railroad laws — penalties.

Compiler's Comments

Effective Date: This section is effective October 1, 2015.

Saving Clause: Section 12, Ch. 104, L. 2015, was a saving clause.

Severability: Section 13, Ch. 104, L. 2015, was a severability clause.

69-14-111. Supervision of railroads.

Compiler's Comments

2015 Amendment: Chapter 104 substituted current text concerning supervision for "The commission shall have the general supervision of all railroads subject to the provisions of this chapter". Amendment effective October 1, 2015.

Saving Clause: Section 12, Ch. 104, L. 2015, was a saving clause.

Severability: Section 13, Ch. 104, L. 2015, was a severability clause.

1997 Amendment: Chapter 235 after "all railroads" deleted "express companies, car companies, sleeping-car companies, and freight and freight-line companies and any common carrier engaged in the transportation of passengers or property in this state, in all matters appertaining to the duty of said commission and within its power and authority"; and made minor changes in style.

Case Notes

Authority of State to Regulate Railroads on Indian Reservation: The court, citing White Mountain Apache Tribe v. Bracker, 448 US 136, 65 L Ed 2d 665, 10 S Ct 2578 (1980), held that the proper test to determine whether the state had regulatory jurisdiction over a railroad operated by non-Indians on an Indian reservation involved balancing state versus federal/tribal interests in the particular circumstances. It found that the state of Montana had exercised comprehensive regulatory authority over all railroads in the state, including on-reservation lines, for over 70 years, whereas there had been no federal or tribal regulatory action for nearly 100 years. The court therefore held that the state's interest predominated and that the state Public Service Commission had jurisdiction. Burlington N. RR. v. Dept. of Pub. Serv. Regulation, 221 M 497, 720 P2d 267, 43 St. Rep. 1005 (1986).

Part 2

Requirements for Railroads

Part Case Notes

State Law Requiring Caboose Preempted by Federal Regulation: The provision in 69-14-232 (now repealed) requiring a caboose on all trains more than 2,000 feet in length was preempted by Federal Railroad Administration regulations permitting the use of telemetry devices as a substitute for visual inspection at the rear of trains. (See 1997 amendment.) Burlington N. RR Co. v. Mont., 880 F2d 1104 (9th Cir. 1989).

Statute Requiring Railroad to Maintain Freight Offices Upheld: Because it regulates economic activity, the standard for judging the constitutionality of 69-14-202 (now repealed) is the same under the Due Process, Equal Protection, or Commerce clauses. It will be upheld if it bears a rational relationship to a legitimate state interest. It is generally agreed that legitimate state interest is defined by the state's need to ensure that carriers serve the public need and necessity. The public convenience and necessity may require a railroad to provide adequate and suitable facilities for the convenience of the communities served by the railroad. When enacted in 1905, the predecessor of 69-14-202 was designed to serve the public convenience and necessity and was, therefore, valid. Burlington Northern did not meet its burden of establishing that the

Legislature acted irrationally when it amended 69-14-202 in 1969. Therefore, the statute was upheld. Burlington N. R.R. v. Dept. of Public Service, 763 F2d 1106 (9th Cir. 1985).

Admissibility Dependent on Nature of Treatise: Learned treatises are permissible for use in cross-examination of an expert if the treatise is "established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice". Here, a treatise on design of grade railway-highway crossings was properly used to test the knowledge of an expert witness in cross-examination. Another treatise concerning the visibility and audibility of trains approaching crossings was properly held to be inadmissible, as it was merely advisory in nature. Treatises may be admitted upon the foundation that they: (1) show what is feasible to the jury; or (2) show what the defendant knew or should have known about safety precautions. Runkle v. Burlington N. Ry., 188 M 286, 613 P2d 982, 37 St. Rep. 995 (1980).

Operation and Effect: Section 69-14-207 (now repealed) merely declares just what the rule of law applicable in an ordinary negligence action would be in the absence of the statute. Burles v. Oreg. Short Line R.R., 49 M 129, 140 P 513 (1914).

Pullman Cars: A person who enters a train consisting wholly of Pullman cars without paying Pullman car fare in addition to the purchase of a regular first-class ticket, may, if he refuses to pay such fare and if other trains have been provided for his carriage, be ejected, if done without unnecessary force. It is a passenger's duty to comply with all reasonable rules of the railway company. Doherty v. N. Pac. Ry., 43 M 294, 115 P 401 (1911).

Reduction of Fare:

In the absence of statutory prohibition, a railway company may sell, for a reduced fare, a particular form of ticket whereby its liability is restricted and its obligations curtailed. Miley v. N. Pac. Ry., 41 M 51, 108 P 5 (1910).

One who purchased a railroad ticket at a reduced rate to a certain station on defendant's line and boarded a train which did not stop at the point to which his ticket called for transportation, having failed to pay the regular fare, was not one of the class of persons for whose benefit 69-14-209 (now repealed) was enacted and therefore could not maintain an action for the penalty therein provided. Miley v. N. Pac. Ry., 41 M 51, 108 P 5 (1910).

Damages: In the absence of a special contract limiting the carrier's liability, the provisions of 69-14-210 (now repealed) would authorize the recovery of the actual value of the baggage lost. Rose v. N. Pac. Ry., 35 M 70, 88 P 767 (1907).

Constitutionality: Section 69-14-211(1) (now repealed) is constitutional. It is in the nature of a police regulation and not a provision for revenue purposes. St. v. Bernheim, 19 M 512, 49 P 441 (1897).

Part Attorney General's Opinions

Glass Windshield Required: A railroad may not remove the safety glass windshield from a track motor car and substitute for it a canvas windshield. 28 A.G. Op. 65 (1960).

Interpretation of "Canopy or Top": If the climate is such as to require side curtains or similar protective devices for the complete protection of occupants of track motor cars from inclement weather, track motor cars must be equipped with such devices, in addition to a canopy or top. 28 A.G. Op. 65 (1960).

69-14-240. Duty to construct drains and ditches.

Case Notes

Duty to Drain Surface Waters Whose Passage One Obstructs: The duty under 69-14-240 to drain or carry off water along a railroad when the draining of the water has been obstructed or rendered necessary by the construction of the railroad applies to obstructed surface waters. To the extent that LeMunyon v. Gallatin Valley Ry., 60 M 517, 199 P 915 (1921), holds that the duty does not apply to surface waters, it is overruled. Formicove, Inc. v. Burlington N., Inc., 207 M 189, 673 P2d 469, 40 St. Rep. 2068 (1983).

69-14-252. Accident reports.

Compiler's Comments

2015 Amendment: Chapter 104 after "occurrence of any accident" deleted "mentioned in 69-14-112(2)"; and made minor changes in style. Amendment effective October 1, 2015.

Saving Clause: Section 12, Ch. 104, L. 2015, was a saving clause.

Severability: Section 13, Ch. 104, L. 2015, was a severability clause.

Administrative Rules

ARM 38.4.601 Wrecks and accidents.

Part 6
Railroad Highway Crossings

Part Case Notes

Duty of Driver to Stop:

A motorist who was killed when his car hit a train at a railroad crossing was negligent in that he did not comply with the statutory mandate to bring his vehicle to a complete stop not less than 10 or more than 100 feet from a railroad crossing when a train is within sight or hearing or if crossing and view is not clear, full, and distinct. O'Brien v. Great N. Ry., 148 M 429, 421 P2d 710 (1966).

A railroad has a right to expect motorists to approach a railroad crossing with caution and is not bound to protect against the negligence of a motorist. Hernandez v. Chicago, Burlington & Quincy R.R., 144 M 585, 398 P2d 953 (1965).

Section 72-164, R.C.M. 1947 (now 61-8-349) does not apply to trains that are not approaching a crossing but are actually occupying it. Broberg v. N. Pac. Ry., 120 M 280, 182 P2d 851 (1947).

Section 61-8-349, requiring a motorist, when the view of railroad crossing is obscure, to stop not less than 10 or more than 100 feet from the intersection of the crossing and the highway, does not impose on a driver a duty to stop within such distance from a grade crossing when the driver is not familiar with the location and when he cannot see the crossing because of peculiar conditions. Broberg v. N. Pac. Ry., 120 M 280, 182 P2d 851 (1947).

Contributory Negligence:

A railroad was not liable for the death of the plaintiff's son, even though it had failed to put out fusees at time when the car struck the train, because driver's view of the crossing was unobstructed, reflector signs warning of the crossing were in well-kept condition, and there were no other extrahazardous conditions. Hernandez v. Chicago, Burlington & Quincy R.R., 144 M 585, 398 P2d 953 (1965).

Knowledge or lack of knowledge of a custom to warn or of the fact that customary protective signals have been abandoned or are not in operating condition has an important bearing on the question of contributory negligence, but it does not affect the question of primary negligence. Hernandez v. Chicago, Burlington & Quincy R.R., 144 M 585, 398 P2d 953 (1965).

A truck driver could not recover for a collision with a train when he could have seen or heard the train if he had taken proper precautions. Monforton v. N. Pac. Ry., 138 M 191, 355 P2d 501 (1960).

Duty of Guest of Driver:

The negligence of a driver in failing to stop at a railroad crossing, as required by 61-8-349, cannot be imputed to his passenger. Hernandez v. Chicago, Burlington & Quincy R.R., 144 M 585, 398 P2d 953 (1965), followed in McGinnis v. Hand, 1999 MT 9, 293 M 72, 972 P2d 1126, 56 St. Rep. 39 (1999).

This rule does not absolve a passenger from taking reasonable precautions for his own safety. Grant v. Chicago, Milwaukee & St. Paul Ry., 78 M 97, 252 P 382 (1927).

Hazardous Conditions: Railroad crossings are not made extrahazardous by the number of vehicles passing over crossing, dark-colored road surfaces tending to absorb vehicle's lights, or setting out of fusees by railroad. Hernandez v. Chicago, Burlington & Quincy R.R., 144 M 585, 398 P2d 953 (1965).

Motorist Not Absolved From Using Reasonable Care:

A railroad crossing is as a matter of law a place of known danger and one is bound by law to recognize it as such. Hernandez v. Chicago, Burlington & Quincy R.R., 144 M 585, 398 P2d 953 (1965).

One of the highest obligations of railroad operators is to protect the public at highway crossings. Watchmen and warning devices are required by law and installed for the primary purpose of warning the traveling public of approaching trains or cars, but the absence of such warning devices does not excuse the negligence of the highway traveler who is charged with reasonable care in the premises. Incret v. Chicago, Milwaukee, St. Paul & Pac. Ry., 107 M 394, 86 P2d 12 (1938).

Railroad's Duty: The infrequent use of a railroad crossing may affect the degree of care required to be taken by the train in approaching the crossing, but when the train is on the crossing, that is in itself a sufficient warning of danger to the traveling public and a railroad is not negligent in failing to sound a whistle or bell, place warning lights along a train, or to provide a flagman to warn traffic. Hernandez v. Chicago, Burlington & Quincy R.R., 144 M 585, 398 P2d 953 (1965).

"Obscure" Defined: The word "obscure" as used in section 72-164, R.C.M. 1947 (now 61-8-349) means "not clear, full or distinct". Broberg v. N. Pac. Ry., 120 M 280, 182 P2d 851 (1947).

Outside Corporate Limits of Municipality: Crossing that was partly within city limits was not "outside" limits within meaning of section 72-164, R.C.M. 1947 (now 61-8-349), thus an instruction on the statutory duty to stop at a crossing outside city limits under certain conditions was inapplicable and the failure of a jury to follow the instruction did not require reversal of the judgment. Jarvella v. N. Pac. Ry., 101 M 102, 53 P2d 446 (1935).

69-14-602. Construction and maintenance of railroad crossings outside of incorporated cities and towns.

Case Notes

Duty of Railroad to Construct and Maintain Safe Railroad Crossing — Summary Dismissal of Liability Case Against County for Road Construction Proper: The North Alaska road crossing was built in the early 1920s through the cooperative efforts of the county and the railroad. The crossing was entirely on railroad property, and the railroad allowed access to the county over the years to maintain the road and to erect signs on the railroad's right-of-way. Fisch was injured in 1998 when his dump truck was struck by a train at the crossing. The railroad sought to ascribe liability to the county for negligent design and construction of the crossing. The county denied all allegations of negligence, and the District Court granted summary judgment to the county on the issue of liability. The railroad appealed on grounds that ARM 18.6.311 required the county to construct and maintain the roadway through the crossing in a safe manner. The Supreme Court disagreed. The clear intent of the administrative rule was to limit application of the rule to projects arising from the state's allocation of federal funds made available to improve the safety of railroad crossings and did not address road-rail alignment or crossing design. The historical ambiguity of whether the railroad or the county chose the exact location for the crossing raised no genuine issue of material fact and was irrelevant to the question of which entity had the duty to construct and maintain the crossing. Rather, under this section, that duty was statutorily assigned to and rested clearly with the railroad. Thus, summary dismissal of the liability claim against the county was proper. Fisch v. Mont. Rail Link, Inc., 2003 MT 76, 315 M 13, 67 P3d 267 (2003).

Admissibility Dependent on Nature of Treatise: Learned treatises are permissible for use in cross-examination of an expert if the treatise is "established as a reliable authority by the testimony or admission of the witness or by other expert testimony or by judicial notice". Here, a treatise on design of grade railway-highway crossings was properly used to test the knowledge of an expert witness in cross-examination. Another treatise concerning the visibility and audibility of trains approaching crossings was properly held to be inadmissible, as it was merely advisory in nature. Treatises may be admitted upon the foundation that they: (1) show what is feasible to the jury; or (2) show what the defendant knew or should have known about safety precautions. Runkle v. Burlington N. Ry., 188 M 286, 613 P2d 982, 37 St. Rep. 995 (1980).

Jury Instruction on Negligence as Matter of Law — Effect of Department Manual: Plaintiff contended that it was error to refuse to instruct the jury that the state and Burlington Northern were negligent as a matter of law in failing to place signals on the railroad crossing where the accident occurred in conformity with the Department of Highway's (now Department of Transportation's) Manual on Traffic Control Devices. The manual, however, does not have equal dignity with statutory law. Before the defendants can be charged with negligence in violating the manual, it must first be determined: (1) that the crossing was extrahazardous; and (2) that failure to install additional warning signals was the proximate cause of defendant's injuries. These were questions of fact for the jury since conflicting evidence was offered at trial, so no error was committed by failing to give the requested instructions. Penn v. Burlington N. Ry., Inc., 185 M 223, 605 P2d 600, 37 St. Rep. 93 (1980).

69-14-604. Procedure to order construction of crossing.

Compiler's Comments

1997 Amendment: Chapter 235 deleted third sentence that read: "Service of said order may be made upon the railroad company by delivering such copy to any station agent employed in connection with the operation of said railroad in said county"; and made minor changes in style.

69-14-610. Effect of railroad crossing provisions on liability of railroad.

Compiler's Comments

2003 Amendment: Chapter 527 in (1) at end substituted "a railroad crossing" for "any crossings"; inserted (2) concerning liability for damages at a railroad crossing in a quiet zone; and made minor changes in style. Amendment effective April 26, 2003.

Case Notes

Duty of Railroad to Construct and Maintain Safe Railroad Crossing — Summary Dismissal of Liability Case Against County for Road Construction Proper: The North Alaska road crossing was built in the early 1920s through the cooperative efforts of the county and the railroad. The crossing was entirely on railroad property, and the railroad allowed access to the county over the years to maintain the road and to erect signs on the railroad's right-of-way. Fisch was injured in 1998 when his dump truck was struck by a train at the crossing. The railroad sought to ascribe liability to the county for negligent design and construction of the crossing. The county denied all allegations of negligence, and the District Court granted summary judgment to the county on the issue of liability. The railroad appealed on grounds that ARM 18.6.311 required the county to construct and maintain the roadway through the crossing in a safe manner. The Supreme Court disagreed. The clear intent of the administrative rule was to limit application of the rule to projects arising from the state's allocation of federal funds made available to improve the safety of railroad crossings and did not address road-rail alignment or crossing design. The historical ambiguity of whether the railroad or the county chose the exact location for the crossing raised no genuine issue of material fact and was irrelevant to the question of which entity had the duty to construct and maintain the crossing. Rather, under 69-14-602, that duty was statutorily assigned to and rested clearly with the railroad. Thus, summary dismissal of the liability claim against the county was proper. Fisch v. Mont. Rail Link, Inc., 2003 MT 76, 315 M 13, 67 P3d 267 (2003).

Locomotives — Safety Devices: The U.S. Congress has not preempted the field of warning devices on railroad locomotives, and a jury trying a railroad crossing accident case should be allowed to decide whether a railroad has a common-law duty to equip its locomotives with various warning devices. Henry v. District Court, 198 M 8, 645 P2d 1350, 39 St. Rep 430 (1982).

Locomotives — Standards of Care — Writ of Supervisory Control: Petition for Writ of Supervisory Control, brought by plaintiff suing railroad in crossing accident case, was granted where District Court incorrectly decided that federal law preempted the field of warning devices on locomotives and that the jury could thus not deliberate on the question of whether railroad had the duty to equip its locomotives with devices other than those required by federal law. Henry v. District Court, 198 M 8, 645 P2d 1350, 39 St. Rep. 430 (1982).

Proceedings in Another Court: Railroad sued in railroad crossing accident case moved for a stay of state court proceedings, contending that there was a substantial risk that the state decision would conflict with a federal circuit court decision; that the issue was a federal question of congressional preemption of an interstate commerce matter and thus more appropriately decided by the federal courts; that the risk of conflicting decisions would create a dilemma for the railroad in operating its trains in Montana and other states; and that the interests of justice, judicial economy, and good court administration required a stay. The Supreme Court denied a stay because there was in fact no preemption question and thus no substantial risk of conflicting decisions; the railroad did not sufficiently show that a great hardship would befall it were a stay not granted; the railroad did not satisfy the court that the hardship on it would be less than that on plaintiff; and it was very doubtful that judicial economy would be adversely affected by refusing a stay. Henry v. District Court, 198 M 8, 645 P2d 1350, 39 St. Rep. 430 (1982).

69-14-620. Establishment of railroad quiet zones.

Compiler's Comments

Effective Date: Section 6, Ch. 527, L. 2003, provided: "[This act] is effective on passage and approval." Approved April 26, 2003.

Part 7
Protection of Livestock and Agricultural Resources

69-14-701. Maintenance of fences — exception — penalty.

Compiler's Comments

1993 Amendment: Chapter 363 in (1), near beginning of first sentence after "corporations", substituted "shall build" for "must make", after "maintain a" deleted "good and", and at end inserted exception clause and inserted second sentence allowing landowner or lessee to construct, maintain, or repair fence subject to approval and reimbursement by railroad corporation; near beginning of (2), after "not", substituted "build" for "make" and after "cars" inserted "because of the lack of a fence or maintenance of a fence"; inserted (3) allowing landowner or lessee to file complaint with Public Service Commission for fence in disrepair, requiring Public Service Commission to notify railroad corporation responsible for fence and to inform County Attorney that railroad corporation was notified of fence, requiring railroad corporation to repair fence within 30 days or be fined, requiring County Attorney to prosecute civil action against railroad for failure to repair fence, and requiring fine to be deposited in county general fund; and made minor changes in style.

Case Notes

Sufficiency of Complaint:

When injury to livestock was not occasioned by reason of the nonexistence of a fence enclosing defendant railway's tracks but, as alleged in the complaint, was caused by its employees in driving them away from the tracks into an enclosure where there was no water, the complaint insofar as it relied upon failure to fence did not state a cause of action under this section. Fabert v. N. Pac. Ry., 77 M 446, 251 P 546 (1926).

Under this section, a railroad which fails to maintain sufficient cattle guards is not liable for the value of livestock killed or maimed on its right-of-way unless the complaint alleges and the proof shows that the killing or maiming was done by its engine or cars, and the absence of such an allegation renders the complaint insufficient. Hunt v. White Sulphur Springs & Yellowstone Park Ry., 63 M 508, 208 P 917 (1922).

In an action against a railroad for damages sustained by the plaintiff in killed and injured cattle because of a railroad's negligence in failing to see that a private gate, which had been constructed by it in its right-of-way fence for plaintiff's convenience, was not left open, plaintiff need not allege or prove that defendant knew or should have known that the gate had been left open. Scheffer v. Chicago, Milwaukee & Puget Sound Ry., 53 M 302, 163 P 565 (1917).

In an action against a railroad for killing of livestock, it is necessary that the complaint allege plaintiff's ownership or possession of land along or through which the railroad runs, and that the stock was killed at such place. Metlen v. Oreg. Short Line R.R., 33 M 45, 81 P 737 (1905); Beaudin v. Oreg. Short Line R.R., 31 M 238, 78 P 303 (1904).

When, in an action against a railroad company for killing livestock, the only evidence was that the animals were found near the track, one dead and the other injured so badly that it had to be killed, and no showing was made as to the character of the injuries except that one had its legs broken, such evidence was insufficient to show that the animals were killed by an engine or cars of defendant. Beaudin v. Oreg. Short Line R.R., 31 M 238, 78 P 303 (1904).

No allegation of defendant's negligence in the operation of its trains is necessary to render it liable under statutes of this character. Beaudin v. Oreg. Short Line R.R., 31 M 238, 78 P 303 (1904).

Highway Crossings: This section, making it incumbent upon railroads to maintain good and legal fences on both sides of their track and property, impliedly excepts highway crossings, at which, however, they must install cattle guards made effective by wing fences on both sides of the highway. Bowers v. Chicago, Milwaukee & St. Paul Ry., 61 M 200, 201 P 825 (1921).

Applicability to Station Grounds:

Railroad tracks at the depot and station grounds where passengers and freight are received and discharged, where employees are required to pass continuously back and forth, and where public convenience requires free and unobstructed access are impliedly excepted from the requirements of fencing made by this section. Bowers v. Chicago, Milwaukee & St. Paul Ry., 61 M 200, 201 P 825 (1921).

No duty devolves upon a railroad to fence at a station under statutes of this nature. Beaudin v. Oreg. Short Line R.R., 31 M 238, 78 P 303 (1904).

Not Applicable to Sidings or Spurs: Under this section, a railroad is not required to fence its tracks at spurs or sidings and is liable for injuries to livestock only at such places where its actual negligence is established. Knop v. Chicago, Milwaukee & St. Paul Ry., 57 M 288, 187 P 1020 (1920).

Duty Relative to Private Crossing and Gate: When, for the convenience of a ranch owner, a railroad constructed a private crossing and a gate in its right-of-way, the railroad was, under this section, bound to see that it was not left open by persons passing through it. Failure in this respect constitutes negligence per se. Scheffer v. Chicago, Milwaukee & Puget Sound Ry., 53 M 302, 163 P 565 (1917).

Common-Law Duty to Fence: The duty to fence railway tracks may exist, not by virtue of the fencing statute but because of the railway company's common-law obligation to exercise ordinary care to furnish its employees with a reasonably safe place in which to work. Whether the duty does exist depends upon the presence of circumstances that may render such precaution necessary. Alexander v. Great N. Ry., 51 M 565, 154 P 914 (1916), appeal dismissed in Great N. Ry. v. Alexander, 246 US 276, 62 L Ed 713, 38 S Ct 237 (1918).

No Liability for Death of Child for Failure to Fence: The failure of a railroad to maintain a fence along its tracks does not render it liable on that ground for the death of a child who entered upon the unfenced track and was struck by a train. Nixon v. Mont., Wyo., & SW. Ry., 50 M 95, 145 P 8 (1914).

69-14-707. Liability for negligent destruction of domestic animals.

Case Notes

Injury to Livestock at Fenced Station Ground: In the absence of willfulness or negligence in handling their trains, railroads are not liable for injuring or killing livestock that stray into their depot or station grounds. A plaintiff who conceded that locomotive engineer was not negligent in handling the train which killed a horse for which damages were sought was not entitled to recover. Bowers v. Chicago, Milwaukee & St. Paul Ry., 61 M 200, 201 P 825 (1921).

Evidence:

When the presumption of negligence on the part of a railroad company in the killing of livestock by one of its trains, relied on by plaintiff, is confronted with testimony of its train operatives that there was not any negligence on their part, the result is a conflict of evidence resolvable by the jury, and a directed verdict in favor of defendant was properly refused. Johnson v. Chicago, Milwaukee & St. Paul Ry., 52 M 73, 155 P 971 (1916).

In an action against a railroad under this section, proof of an injury to an animal which would inevitably result in its death substantially supports an allegation of killing. Poindexter & Orr Livestock Co. v. Oreg. Short Line R.R., 33 M 338, 83 P 886 (1905).

In an action against a railroad under this section, the testimony that the section boss showed the witness where the animal was struck and stated that after it was struck he killed it to end its suffering was not admissible as res gestae. Poindexter & Orr Livestock Co. v. Oreg. Short Line R.R., 33 M 338, 83 P 886 (1905). See Callahan v. Chicago, Burlington & Quincy R.R., 47 M 401, 133 P 687 (1913).

Instruction on This Section: A jury instruction, given in an action for the killing of livestock, to the effect that the law presumed such killing to have been the result of defendant's negligence, correctly stated the law, even though it appeared that while the animal was fatally injured by the locomotive and cars of the defendant the actual killing was done by one of the defendant's employees to end its suffering. Poindexter & Orr Livestock Co. v. Oreg. Short Line R.R., 33 M 338, 83 P 886 (1905).

Admissions of Employee as Prima Facie Case: In an action against a railroad company to recover for injuries to stock, the admissions of an agent of the company, acting within the scope of his authority and with knowledge of the circumstances, that he had ordered the animal killed and the beef sold for the benefit of the company and the receipt of the proceeds of such sale by the company establish a prima facie case of the admission of negligence by the company. McCauley v. Mont. Cent. Ry., 11 M 483, 28 P 729 (1892).

69-14-708. Records of accidents involving livestock.

Compiler's Comments

1997 Amendment: Chapter 235 in (1) substituted current language requiring railroad company to report livestock killed or injured to Department of Livestock for former provision requiring record to be kept at county seat of train killing or injuring animal (see 1997 Session Law for former text); inserted (2) regarding liability of railroad failing to give notice to the Department; deleted former (2), (3), and (4) concerning inspection of records of animals killed or injured, notice of a railroad station designated to keep records, and liability of railroad failing to keep required records (see 1997 Session Law for former text); and made minor changes in style.

1989 Amendment: Near end of (1) substituted "written demand provided for in 69-14-709" for "affidavit hereinafter provided for".

Case Notes

County Seat: When a railroad keeps the book required by this section in county seat town through which its line passes, it is under no obligation to cause a notice to be filed with the County Clerk designating the station at which it is kept. Its omission to do so does not render it liable in damages under this section. (See 1997 amendment.) Hunt v. White Sulphur Springs & Yellowstone Park Ry., 63 M 508, 208 P 917 (1922).

Failure to Keep Record Book:

When a railway fails to keep the book prescribed by this section, the District Court may, in an action to recover damages, decline to hear its defense and award judgment for plaintiff, the statute not being open to constitutional attack. (See 1997 amendment.) Foster v. Oreg. Short Line R.R., 62 M 230, 204 P 375 (1922).

The fact that the owner of cattle killed has actual knowledge of the killing does not prevent him from invoking the provision of this section imposing absolute liability for failure to keep the required record book. (See 1997 amendment.) Dewell v. N. Pac. Ry., 54 M 350, 170 P 753 (1918).

Constitutionality: This section is not unconstitutional for delegating lawmaking powers to the court or jury. Dewell v. N. Pac. Ry., 54 M 350, 170 P 753 (1918).

Pleading and Proof: Under this section it is not necessary for the plaintiff to allege or prove negligence on the part of the railroad. Dewell v. N. Pac. Ry., 54 M 350, 170 P 753 (1918).

Police Regulation: This statute is a general police power provision, analogous to one requiring fencing and cattle guards, and as such is valid. Dewell v. N. Pac. Ry., 54 M 350, 170 P 753 (1918).

69-14-709. Allowance of attorney fees.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Value of Services: In action under this section, testimony regarding the value of the attorney's services is not admissible, the question of its allowance being one for the determination of the court and not the jury. Vaill v. N. Pac. Ry., 66 M 301, 213 P 446 (1923).

Constitutionality: The provision of this section (prior to a 1919 amendment) allowing an owner, in an action brought by him to recover damages for cattle alleged to have been killed by railroad company, to recover also an attorney's fee if he is successful but denying such fee to the railroad company if it is successful, was unconstitutional as denying equal protection of the law. Dewell v. N. Pac. Ry., 54 M 350, 170 P 753 (1918).

69-14-710. Tender or deposit of value of animal.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-14-711. Payment of damages to department of livestock.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-14-713. Violation of provisions dealing with injury to livestock.

Compiler's Comments

1997 Amendment: Chapter 235 in (1), at end of exception clause, inserted "in this chapter" and near middle deleted reference to 69-14-712; in (2), after "provisions of 69-14-711", deleted "or 69-14-712"; and made minor changes in style.

69-14-721. Control of fire hazard along right-of-way.

Compiler's Comments

1995 Amendment: Chapter 588 substituted current text concerning control of dangerous or combustible material within the right-of-way for former text that read: "It shall be the duty of all railroad corporations or railroad companies operating any railroad within this state to keep their railroad track and either side thereof for a distance of 100 feet on each side of the track or roadbed, so far as it passes through any portion of this state, free from dead grass, weeds, or any dangerous or combustible material. Any railroad company or corporation failing to keep its railroad track and each side thereof free as specified above shall be liable for any damages which may occur from fire emanating from operating such railroad. A neglect to comply with the provisions of this section in keeping free any railroad track and either side for a distance equal to the space of ground covered by the grant of the right-of-way for the railroad corporation or company shall be prima facie evidence of negligence on the part of any such railroad corporation or company. No railroad corporation or company shall be required to keep free, as specified above, any land not a part of its right-of-way."

Case Notes

Definition of Railroad: The term "railroad" as employed in this section refers only to common carriers. Crowley v. Polleys Lumber Co., 92 M 27, 9 P2d 1068 (1932).

Logging Railroad: This section has no application to a logging railroad used solely in connection with the owner's logging business. Crowley v. Polleys Lumber Co., 92 M 27, 9 P2d 1068 (1932).

Rebuttal of Presumption: A prima facie case of negligence established by plaintiff may be overcome by evidence that the railway company exercised reasonable care to keep its right-of-way free from combustible material. Pure Oil Co. v. Chicago, Milwaukee & St. Paul Ry., 56 M 266, 185 P 150 (1919).

Necessary Showing for Recovery:

In an action for the destruction of property by fire communicated to it through combustible material permitted by a railway to accumulate on its right-of-way, a prima facie case of negligence is established by showing that the defendant permitted the accumulation of such material on its right-of-way. To enable plaintiff to recover, he must show also that the property was destroyed by fire emanating from the operation of the railroad and that the combustible material was an agency through which the fire was communicated to the property destroyed. Pure Oil Co. v. Chicago, Milwaukee & St. Paul Ry., 56 M 266, 185 P 150 (1919).

Failure to comply with this section does not render railroad liable for damage occurring from any fire emanating from operating the railroad unless combustible matter operated as an agency in communicating the fire to plaintiff's property. Spencer v. Mont. Cent. Ry., 11 M 164, 27 P 681 (1891).

Purpose of Damages: The damages awarded to individuals for the failure of a railroad company to comply with this section are compensatory only and hence are not a "penalty otherwise provided for" within the meaning of section 94-35-252, R.C.M. 1947 (since repealed). Cooper v. N. Pac. Ry., 212 F 533 (9th Cir. 1914).

Who May Complain:

A lease was construed as exempting a railway from liability for loss occasioned by fire incident to or arising from railway operation but not exempting it for loss arising from fire due to the railway's violation of this section. Cooper v. N. Pac. Ry., 212 F 533 (9th Cir. 1914).

This section is for the benefit of all going on the right-of-way for the purposes of or incidental to transportation and of all off the right-of-way who may be injured by the railroad's failure to perform the duty imposed. The benefit does not extend to trespassers or tenants on the right-of-way who take the same as they find it, or subject to the terms of their occupancy. Cooper v. N. Pac. Ry., 212 F 533 (9th Cir. 1914).

Provision Not Offensive to Chartered Right: It is as much the duty of a railroad company to keep its right-of-way free from dead grass, weeds, or any dangerous or combustible material as it is to use proper means to prevent the emission of sparks of fire. A statute requiring this to be done does not trench upon the chartered right, under act of Congress, of such a railroad company. Diamond v. N. Pac. Ry., 6 M 580, 13 P 367 (1887). See Bielenberg v. Mont. Union Ry., 8 M 271, 20 P 314 (1889).

69-14-722. Maintenance of fireguards.

Case Notes

Range or Grazing Country: One seeking recovery for failure to comply with this section must allege in his complaint that the property burned was situated in a "range or grazing country". Failure to so allege renders testimony relating to a breach of its provisions inadmissible and instructions relating thereto improper. Missoula Trust & Sav. Bank v. N. Pac. Ry., 76 M 201, 245 P 949 (1926).

Part 9

Grain and Commodity Storage and Transportation

69-14-901. Authorization to locate and erect grain warehouse or elevator on railroad right-of-way.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-14-921. Suitable cars to be furnished for shipment of grain and other commodities in bulk.

Compiler's Comments

1997 Amendment: Chapter 235 in (1), near beginning of first sentence, and in (2), near beginning, substituted "cars" for "boxcars"; in (2), near end after "properly cleaned", deleted "and coopered"; and made minor changes in style.

69-14-922. Action by shipper to render cars suitable.

Compiler's Comments

1997 Amendment: Chapter 235 in (1), in first sentence after "clean and", substituted "prepare" for "safely cooper" and at end, after "properly and safely" substituted "clean and prepare" for "cooper and clean", inserted second sentence prohibiting repairs covered in 49 CFR, parts 200 through 399, and in third sentence substituted "cleaning or preparation" for "repairs at the rate of $3 per 8-hour day" and at end, after "material used", deleted "providing that such charge shall in no case exceed $5 for each car so coopered"; and made minor changes in style.

69-14-924. Liability of railroad for repairs.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-14-931. Definitions.

Compiler's Comments

Severability: Section 6, Ch. 814, L. 1991, was a severability clause.

Effective Date: Section 7, Ch. 814, L. 1991, provided that this section is effective on passage and approval. Approved May 17, 1991.

69-14-932. First right to purchase or match offer — lease preference — negotiation process — exception.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Severability: Section 6, Ch. 814, L. 1991, was a severability clause.

Effective Date: Section 7, Ch. 814, L. 1991, provided that this section is effective on passage and approval. Approved May 17, 1991.

Part 10

Railroad Personnel

69-14-1002. Compensation of employees on removal of railroad division point or terminal.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Livingston Employees' Claims Against Railroad That Left Town: Claims of former railroad employees for damages caused by railroad's closure of its Livingston, Montana, operations, even though the railroad had allegedly twice promised that it would never leave town, were preempted by the federal Railway Labor Act. Therefore, the District Court had no jurisdiction over the claims. The employees' spouses' claims were also preempted because the claims were derivative in that the claims were based on damages the spouses allegedly suffered because their employee-husbands lost their jobs. However, a request to file an amended complaint to allege violation of this section and to claim damages under this section should not have been denied, and that part of the case should not have been dismissed. Polich v. Burlington N. RR Co., 942 F2d 1467 (1991). The decision holding that claims were preempted by the Interstate Commerce Act was affirmed in Polich v. Burlington N., Inc., 114 F3d 122 (1997).

Adequacy of Available Remedy — Availability of Injunction: Injunction was not allowed employees of defendant railroad when the latter attempted to move a home terminal because there was no convincing showing of any unlawful act, and if there were, a remedy in damages was plain, speedy, and adequate. Hamblin v. Chicago, Milwaukee, St. Paul & Pac. R.R., 34 St. Rep. 1048 (1977) (apparently not reported in Montana Reports).

69-14-1003. Railroad personnel as law officers.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-14-1004. Penalty for being under the influence while engaged in train operations.

Compiler's Comments

1997 Amendment: Chapter 235 near beginning substituted "under the influence, as provided in 49 CFR 383.51, of alcohol or a drug" for "intoxicated" and after "car or train" deleted "whether propelled by steam or otherwise"; and made minor changes in style.

69-14-1005. Medical aid for injured train operator.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

69-14-1006. Liability for death or injury to railroad employees.

Compiler's Comments

2009 Amendment: Chapter 56 made section gender neutral; and made minor changes in style. Amendment effective October 1, 2009.

Case Notes

Locomotive Inspection Act Claim — Railroad Employee Injury — Cause of Accident Proper Question for Jury: The plaintiff, an employee of a railroad, pursued a cause of action under the Federal Employers' Liability Act (FELA) coupled with the Locomotive Inspection Act (LIA) for a work-related injury that prevented him from working as a conductor for 6 months. The District Court allowed the jury to weigh the evidence regarding whether snow and ice on the locomotive steps caused the plaintiff to slip, and a verdict was returned in favor of the railroad. On appeal, the Supreme Court affirmed the District Court after determining that the employee's burden of proof differs in a FELA case, which requires a showing of negligence, whereas a LIA case requires proof of a statutory or regulatory violation. As applied, there was sufficient evidence to support the jury's determination that the railroad was not liable for the plaintiff's injury due to the presence of ice and snow on the locomotive steps. Martin v. BNSF Ry. Co., 2015 MT 167, 379 Mont. 423, 352 P.3d 598.

Strict Liability for Railroad Safety Under Federal Act — Contributory Negligence No Factor — Summary Judgment Proper: A motion for summary judgment was properly granted to claimant when the railroad admitted violation of portions of the federal Safety Appliance Act, 45 U.S.C. 1, et seq., since under the Act violation by a carrier of a specific safety requirement is held to constitute negligence as a matter of law regardless of a showing of negligence on an employee's part. Plouffe v. Burlington N., Inc., 224 M 467, 730 P2d 1148, 43 St. Rep. 2341 (1986). See also Weber v. BNSF Ry. Co., 2011 MT 223, 362 Mont. 53, 261 P.3d 984, which held that the District Court erred in granting the railroad's motion for judgment as a matter of law on the injured railroad employee's Locomotive Inspection Act claim when the evidence presented at trial indicated the locomotive was not performing properly and the locomotive's failure created an unnecessary danger of carbon monoxide exposure to the employee.

Availability of Affirmative Defenses to Railroad — Absolute Liability: Plaintiff was employed by a subsidiary of Burlington Northern and was injured in an accident involving Burlington's railroad cars. The Supreme Court decided the federal Safety Appliance Act applied despite the fact the railroad cars involved in the accident were on a siding where loading operations were handled by the subsidiary. Noting that the U.S. Supreme Court has declared that the question of whether a railroad can assert contributory negligence or assumption of risk as a defense in a case involving a nonrailroad employee depends entirely on state law, the Supreme Court cited its 1966 holding that, where the theory of absolute liability applies, liability is established when it is proved that a statute has been violated and there is a proximate cause connection between the violation and the resulting injuries. Proximate cause in a case under the Safety Appliance Act is decided using the definition that prevails under state law. Comparing the 1966 case under the Scaffolding Act with this case, the Supreme Court denied the defendant the two defenses. The Supreme Court also noted that railroad employees are entitled to a more liberal standard imposing liability than nonrailroad employees. Reynolds v. Burlington N. Ry., 190 M 383, 621 P2d 1028, 37 St. Rep. 1883 (1980).

Duty to Provide Safe Working Place — Railroad Employee: In a case brought by an employee injured while working for a subsidiary of a railroad, the Supreme Court held that the plaintiff was owed the duty to provide him with a safe place to work. Noting that giving the jury information about the subsidiaries might well have been highly prejudicial to the defendant railroad, the Supreme Court nonetheless felt obliged to consider it in this case. The plaintiff was working directly in the operations of the railroad in every sense of the word. The railroad would not be absolved of the responsibility to provide a safe place to work for employees who are technically employed by a subsidiary corporation but whose employment is directly related to the operations of a railroad. Closeness of the businesses of the parent and subsidiary companies was a factor in the court's conclusion that both corporations owed the duty to provide the plaintiff with a safe place to work. Reynolds v. Burlington N. Ry., 190 M 383, 621 P2d 1028, 37 St. Rep. 1883 (1980).

Punitive Damages Not Allowable Under Federal Employers' Liability Act: Court erred in allowing plaintiff to amend his complaint alleging willful and wanton conduct as a basis for punitive damages because only compensatory damages are the measure of damages recoverable under the Federal Employers' Liability Act. State ex rel. Burlington N. Ry., Inc. v. District Court, 169 M 480, 548 P2d 616 (1976).

Knowledge of Danger:

In an action against a railway for injuries to the feet of a shop laborer resulting from wearing defective and improper safety shoes furnished by the railway, the defense of assumed risk was not available. Palmer v. Great N. Ry., 119 M 68, 170 P2d 768 (1946).

Under state railroad employers' liability law an employee generally assumes risks normally incident to the occupation in which he voluntarily engages but does not assume other and extraordinary risks and those due to employer's negligence until he is made aware thereof or they become so obvious and immediately dangerous that an ordinarily prudent person would observe and appreciate them. Palmer v. Great N. Ry., 119 M 68, 170 P2d 768 (1946).

Whether a carman falling from ladder that assistant foreman allegedly directed him to use until scaffold could be found for use in replacing part of the siding of a freight car in the defendant railroad's repair shop assumed the risk of his employment or risk in using a simple tool was a jury question. Great N. Ry. v. Wojtala, 112 F2d 609 (9th Cir. 1940).

The defense of assumption of risk may be interposed as a bar in an action for personal injuries to an employee when they have been caused by hazard which is incident to the particular business or when they have been brought about by an increased hazard occasioned by the failure of the employer to perform his primary duty with relation to the safety of the employee if the latter was aware of such increased hazard or it was so obvious that an ordinarily prudent person under like circumstances would have observed and appreciated it. Matson v. Hines, 63 M 214, 207 P 474 (1922), certiorari denied, 260 US 734, 67 L Ed 487, 43 S Ct 95 (1922).

When an employee, knowing that obedience to an order of his foreman will expose him to injury and that the danger incident to obedience is obvious, glaring, and imminent, obeys the command, suffering injury, he assumes the risk. When, however, he has no independent knowledge of danger and relies upon the superior knowledge of his employer, he may rely upon the latter's judgment and assume that the order could be safely obeyed without laying himself open to the defense of assumption of risk. Matson v. Hines, 63 M 214, 207 P 474 (1922), certiorari denied, 260 US 734, 67 L Ed 487, 43 S Ct 95 (1922).

In an action by a section hand for injuries sustained in lifting a rail, in which the negligence charged was failure of the defendant company to furnish a sufficient number of men to assist him in doing the work in hand, the Supreme Court held that the plaintiff, 28 years of age, familiar with the work he was engaged in, and who knew, as testified to by him, that it required from six to eight men to lift a rail weighing from 750 to 800 pounds with reasonable safety to the men doing the lifting, assumed the risk of injury from overstrain in attempting to lift it in company with three others. Matson v. Hines, 63 M 214, 207 P 474 (1922), certiorari denied, 260 US 734, 67 L Ed 487, 43 S Ct 95 (1922).

Liberal Construction: This statute is remedial in its nature, and its operation ought not to be limited by narrow construction. Palmer v. Great N. Ry., 119 M 68, 170 P2d 768 (1946); Regan v. Mont. Logging Co., 53 M 153, 162 P 388 (1917).

What Are Appliances: Safety shoes used by laborer in railroad shops were "appliances" and "equipment" within the meaning of this section. Palmer v. Great N. Ry., 119 M 68, 170 P2d 768 (1946).

Contributory Negligence — Pleading and Proof:

Contributory negligence on the part of a railroad employee does not bar his right to recover damages for injuries received during the course of his employment. The jury in such case is required to diminish the damages "in proportion to the amount of negligence attributable to such employee". Palmer v. Great N. Ry., 119 M 68, 170 P2d 768 (1946); Hall v. N. Pac. Ry., 56 M 537, 186 P 340 (1919).

Failure of a carman, injured by fall, to obtain a scaffold rather than a ladder that the assistant foreman allegedly directed him to use when replacing siding of freight car in repair shop would not be more than contributory negligence, which does not bar recovery under the statute. Great N. Ry. v. Wojtala, 112 F2d 609 (9th Cir. 1940).

Under the rule of comparative negligence declared by this chapter, contributory negligence on the part of the plaintiff is a partial defense which must be pleaded. Cornell v. Great N. Ry., 57 M 177, 187 P 902 (1920).

This statute does not change the rule that in a personal injury action the burden of pleading and proving contributory negligence on the part of the plaintiff is upon the defendant. Cornell v. Great N. Ry., 57 M 177, 187 P 902 (1920).

Scope of Employment:

This act covers injuries to railroad employees while engaged in any part of work connected with, and necessarily and directly contributing to, operation of railroad or handling or movement of any train, engine, or car. Palmer v. Great N. Ry., 119 M 68, 170 P2d 768 (1946).

A conductor of a work train was not only acting in furtherance of the operations entrusted to him but was also within the scope of his authority when, in the temporary absence of the engineer, he assumed charge of the locomotive and in his endeavor to switch a caboose from the main line, where it was a menace to life and limb on account of passing trains, to a sidetrack, caused a collision with the caboose injuring the plaintiff. Wegge v. Great N. Ry., 61 M 377, 203 P 360 (1921).

Whether a section hand injured by a collision while resting in a caboose standing upon the main line after the dinner hour and waiting to be transported to work was acting within the scope of his employment was a jury question. Wegge v. Great N. Ry., 61 M 377, 203 P 360 (1921).

Removability of Action Joining Causes Under Similar State and Federal Liability Acts: A plaintiff did not waive the right to trial in state court by joining with a cause of action under Federal Employers' Liability Act a cause of action under similar state statutes based on identical facts. The action was not removable to federal court. When an injured railroad employee is employed in interstate commerce, his remedy under the Federal Employers' Liability Act is exclusive, such act superseding similar state acts. Hoepfner v. N. Pac. Ry., 61 F. Supp. 819 (D.C. Mont. 1945).

Repair of Rolling Stock: This statute includes the repair of rolling stock and was applicable when a carman fell from a ladder while replacing vertical siding of a freight car in a repair shop. Great N. Ry. v. Wojtala, 112 F2d 609 (9th Cir. 1940).

Sufficiency of Complaint:

A complaint of a boilermaker who lost sight in one eye while working with an air hammer caulking bolts in the firebox of a locomotive alleging by way of conclusion that it was railroad's duty to furnish him with reasonably safe tools and appliances and containing additional averments as to the conditions under which he was required to work and necessity for protective goggles was sufficient to state a cause of action. Morelli v. Great N. Ry., 89 M 603, 300 P 210 (1931).

When a plaintiff locomotive engineer had but one cause of action against the defendant railway company, i.e., its wrongful act in permitting an engine to move on the same track at the same time and in the opposite direction from the engine operated by the plaintiff, causing a collision, and in his complaint brought under the federal liability law alleged that he was injured while in the engine whereas at the trial he testified that the injury occurred by coming in contract with the ground as a result of his jumping from the engine to escape the collision, the amended complaint filed by leave of court to conform to the facts did not state a new and different cause of action, and therefore refusal to strike it from the files was proper. Gillespie v. Great N. Ry., 63 M 598, 208 P 1059 (1922).

Limitation of Action: When an amended complaint in an action brought under the federal liability law did not state a new cause of action, the action was barred by the 2-year limitation prescribed therein. The amendment relating back to the date of the commencement of the action was unaffected by the intervening lapse of time. Gillespie v. Great N. Ry., 63 M 598, 208 P 1059 (1922).

Apportionment of Damages: Contributory negligence of plaintiff employee in an action brought under the Federal Employers' Liability Act or state law does not bar recovery but is a fact which may be considered by the jury in apportioning damages. Kamboris v. Chicago, Milwaukee & St. Paul Ry., 62 M 88, 203 P 859 (1921).

When Jury's Verdict Is Conclusive in Regarding Negligence: A jury's determination that a railroad was negligent in the death of a section man struck from rear by work train while shoveling cinders from track was conclusive when the evidence was in direct conflict. Kamboris v. Chicago, Milwaukee & St. Paul Ry., 62 M 88, 203 P 859 (1921).

Burden of Proof:

A plaintiff has the burden of proving negligence in a personal injury action by an employee against his employer, whether based upon this statute or not. Hassan v. N. Pac. Ry., 60 M 105, 198 P 446 (1921).

In action by a railroad section hand for injuries caused by a tie falling upon him from a car which he, with others, was unloading, a nonsuit was properly granted, his evidence not disclosing negligence on the part of anyone to which the fall of the tie and the consequent injuries could be said to have been attributable. Hassan v. N. Pac. Ry., 60 M 105, 198 P 446 (1921).

Common-Law Liability: The purpose of the Legislature in enacting this legislation was to substitute for the benefit of railway employees the action provided by it in place of the common-law action, and in case of death, to create a new cause of action in favor of the dependents named for the pecuniary loss suffered by them. Cornell v. Great N. Ry., 57 M 177, 187 P 902 (1920).

Definition of Railroad: "Railroad", as used in this section, includes a road used for logging purposes. Regan v. Mont. Logging Co., 53 M 153, 162 P 388 (1917).

"Operating" Construed: When the plaintiff, a brakeman on the defendant's logging road, was also required to assist in loading and unloading cars and while doing so was injured by the breaking of an appliance, the defendant company was "operating" its road at the time of the injury within the meaning of this act. Regan v. Mont. Logging Co., 53 M 153, 162 P 388 (1917).

Part 11
Sale or Transfer of Railroad Line

69-14-1102. Conditions for transfer of line of railroad.

Compiler's Comments

2015 Amendment: Chapter 104 near beginning substituted "federal surface transportation board" for "interstate commerce commission". Amendment effective October 1, 2015.

Saving Clause: Section 12, Ch. 104, L. 2015, was a saving clause.

Severability: Section 13, Ch. 104, L. 2015, was a severability clause.

Part 12
Railroad Vandalism Prevention Act

Part Compiler's Comments

Effective Date: This part is effective October 1, 2001.

Termination: Section 8, Ch. 432, L. 2001, provided: "[This act] [69-14-1201 through 69-14-1206] terminates April 30, 2003."

69-14-1201. Short title.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 490, L. 2003, repealed sec. 8, Ch. 432, L. 2001, which terminated this section April 30, 2003. Effective April 24, 2003.

69-14-1202. Purpose.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 490, L. 2003, repealed sec. 8, Ch. 432, L. 2001, which terminated this section April 30, 2003. Effective April 24, 2003.

69-14-1203. Definitions.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 490, L. 2003, repealed sec. 8, Ch. 432, L. 2001, which terminated this section April 30, 2003. Effective April 24, 2003.

69-14-1204. Stowing away on railroad property.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 490, L. 2003, repealed sec. 8, Ch. 432, L. 2001, which terminated this section April 30, 2003. Effective April 24, 2003.

69-14-1205. Intentional vandalism to railroad property.

Compiler's Comments

2003 Amendment: Chapter 490 in (3)(a) increased the property damage maximum from $500 to $1,000, decreased the maximum fine from $10,000 to $1,000, near end inserted "in the county jail", and decreased the maximum incarceration from 10 years to 6 months; in (3)(b) increased the property damage minimum from $500 to $1,000, decreased the maximum fine from $20,000 to $10,000, and decreased the maximum incarceration from 20 years to 10 years; in (3)(c) decreased the maximum fine from $25,000 to $20,000, decreased the maximum incarceration from life to 20 years, and at end deleted "except as provided in 46-18-219 and 46-18-222"; in (3)(d) decreased the maximum fine from $100,000 to $50,000, decreased the maximum incarceration from life to 40 years, and at end deleted "except as provided in 46-18-219 and 46-18-222"; and made minor changes in style. Amendment effective April 24, 2003.

Termination Provision Repealed: Section 2, Ch. 490, L. 2003, repealed sec. 8, Ch. 432, L. 2001, which terminated this section April 30, 2003. Effective April 24, 2003.

69-14-1206. Theft of railroad freight — receiving stolen railroad freight.

Compiler's Comments

Termination Provision Repealed: Section 2, Ch. 490, L. 2003, repealed sec. 8, Ch. 432, L. 2001, which terminated this section April 30, 2003. Effective April 24, 2003.